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MEMORANDUM

March 21, 2012

TO: Tom Minnery and Michael Norton

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #64, concerning religious freedom

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed initiative appear to be to amend the Colorado constitution as follows:

1. To add a new section to Article II of the Colorado constitution that prevents the state government from placing a burden on a person's or religious organization's freedom of religion.

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. The amending clause should read as follows: "In the constitution of the state of Colorado, **add** section 32 to article II as follows:".
2. As new language, the text of the proposed initiative should be in small capital letters. For example: "(1) THE RIGHT TO ACT OR REFUSE TO ACT...".
3. Subsection (3) of the proposed initiative concerns the effective date of the initiative and should be placed in a separate section of the proposal, rather than as language to be added to the constitution. For example:

"SECTION 2. Effective date. This section will take effect on the date of the official declaration of the vote thereon by the governor."

4. Please ensure that all typographical errors are identified and corrected.
 - a. Subsection (1), line 3, "infringing the" should be "INFRINGING UPON THE".
 - b. Subsection (2), line 1, "such a as" should be "SUCH AS".
 - c. Subsection (2), line 2, "one of more" should be "ONE OR MORE".
 - d. Subsection (2), line 2, "and/or" should be "OR".
 - e. Subsection (2), line 3, "facility." should be "FACILITIES."

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Section 1 (5.5) of article V of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. The First Amendment of the United States constitution and Section 4 of Article II of the Colorado constitution currently provide for religious freedom. Additionally, these provisions have been interpreted by the courts to require that if the state burdens the free exercise of religion, it must do so in the least restrictive manner and to achieve a compelling government interest. See *Thomas v. Review Board*, 450 U.S. 707, 101 S. Ct. 1425, 67 L.Ed. 2d 624 (1981); *Sherbert v. Verner*, 347 U.S. 398, 83 S. Ct. 1790, 10 L.Ed. 2d 965 (1963); *Engraff v. Indus. Comm'n*, 678 P.2d 564 (Colo. App. 1983). How do the proponents see the proposed constitutional amendment adding a new meaning or interpreting existing language?

3. What benefits, programs, or facilities is a person or religious organization currently withheld or excluded from that would be protected if this measure is adopted?
4. Section 34 of Article V of the Colorado constitution prohibits appropriations "to any denominational or sectarian institution or association." Similarly, section 7 of Article IX of the Colorado constitution prohibits the general assembly, county, city, school district, or other public corporation from appropriating or paying public moneys "in aid of any church or sectarian society" or "to help support or sustain any school...controlled by any church or sectarian denomination". If the measure passes, do the proponents intend that appropriations or payments of public moneys to religious organizations would then be allowed under the Colorado constitution?