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MEMORANDUM

April 4, 2011

TO: Jerry Dryer and Warren Dryer

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #24, concerning election funding

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 allow only money from an individual who lives full-time in Colorado to be used for any election concerning the state of Colorado, including elections for state or federal office or ballot initiatives.

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. Pursuant to article V, section 1 (2), proposed initiatives must amend either the Colorado constitution or state law (i.e., the Colorado Revised Statutes). The proposed initiative should be revised to indicate whether it amends the Colorado constitution or the Colorado Revised Statutes and to show where in the constitution or statutes its provisions should be inserted.
2. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado". To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative.
3. For the proposed initiative, it is not necessary to capitalize the word "state" or "corporate", and it is standard drafting practice that the words "full time" be written as "full-time".
4. Commas need to be used in a series before the conjunction.
5. It is standard drafting practice to include an amending clause telling the reader what is being added to or amended in the Colorado Revised Statutes or Colorado constitution. For example, if your intention is to add a new article to title 39 of the Colorado Revised Statutes, include an amending clause that reads as follows: "Title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:".
6. It is standard drafting practice to use small capital letters [rather than ALL CAPS] to show the language being added to the Colorado constitution or Colorado Revised Statutes. For example, the first sentence would begin "ONLY MONEY FROM AN INDIVIDUAL..."
7. In general, "people" are not "running" for "ballot initiatives" which is presumably a term the proponents are using to refer to issue campaigns that do not involve candidates for office. The language of the proposed initiative should be revised to ensure agreement among the all the nouns, verbs, and subjects in this clause.

Substantive Comments and Questions

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

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. What will be the effective date of the proposed initiative?
3. What do the proponents mean by the phrase "[o]nly money from an individual (no Corporate)..." Does this mean contributions to candidate and ballot campaigns may only be made by individuals or is some other meaning intended?

4. What do the proponents mean by "an individual" for purposes of the proposed initiative? Is the term intended to be restricted to "natural persons" or is some other meaning intended?
5. What do the proponents mean by the term "Corporate" for purposes of the proposed initiative? Is the term intended to be limited to a business entity organized as a corporation or is some other meaning intended? Specifically, do the proponents intend that the term "Corporate" be an umbrella term to cover all forms of business entities? Have the proponents considered the application of prohibition in the proposed initiative to associations, partnerships, cooperatives, limited liability companies and other forms of business entities separate from a corporation? Does the term "corporation" include both for-profit and non-profit entities? Is the same restriction to be imposed upon a labor union?
6. To what extent is the proposed initiative intended to cover expenditures or any other form of financial assistance besides a contribution, such as a loan?
7. What is the rationale for the proposed initiative?
8. What do proponents mean by the phrase "can be used for any election concerning the State of Colorado?" Does this mean no contributions (or other forms of assistance) may be given by persons that are not individuals to a candidate or issue campaign on the ballot in Colorado or is some other meaning intended? In particular, what does the phrase "concerning the State of Colorado mean"?
9. To conform to standard drafting practice in Colorado, and to assist in clarifying your intent, would the proponents consider substituting the words "shall" or "may" for the word "can" in the text of the proposed initiative?
10. Is it the intent of the proponents that the proposed initiative cover elections for local offices or only elections for state or federal office and ballot initiatives? If "yes", which local offices?
11. The use of the term "includes" necessarily means that some entities are covered that are not listed. Accordingly, what elections do the proponents intend to cover beyond the elections explicitly referenced, i.e., state, federal, and ballot initiatives?
12. What do the proponents intend the term "ballot initiatives" to mean?
13. What do the proponents mean by the phrase "living full time in the state of Colorado." Would this mean an individual could not participate in Colorado elections if he or she had a part-time residence in another state? How would such a requirement be enforced? The term "residence" is well known and commonly used in election law. *See* section 1-2-102, Colorado Revised Statutes. Would the proponents consider using this term in place of the language in the proposed initiative?
14. What is the rationale for applying the prohibition in the proposed initiative to candidates for

federal office who are part of the government for the nation as a whole even though they are elected from a state or district? Have the proponents researched whether such a requirement is legal with respect to financial assistance to federal candidates? If "yes", what has this research found?

15. Are the proponents aware that both federal and Colorado law already prohibit direct contributions to political campaigns by corporations and labor unions? In light of this existing prohibition (which in Colorado is enshrined in our state constitution), to what other forms of activity is the proposed initiative intended to apply?
16. Last year in the case of *Citizens United vs. Federal Election Commission*, 130 S. Ct. 876 (2010), the United States Supreme Court upheld the right of corporations and labor organizations under the First Amendment of the United States constitution to use moneys from their general treasuries to finance independent expenditures supporting or opposing candidates for office. In this case, the Supreme Court clearly upheld the speech rights of corporate entities. Under the Supremacy Clause of the federal constitution, this holding would trump any contrary provision in a state constitution or state statutory law and would apply to all elections and not just elections of candidates to federal office. Insofar as the proposed initiative intends to restrict a corporation or labor organization (or other form of business entity) from using moneys for the purpose of financing such expenditures, it is presumed to be unconstitutional under the *Citizens United* case. Is the proposed initiative intended to cover such activity? Have the proponents researched the *Citizens United* case for the purpose of assessing the permissible legal restrictions in this field? If "yes", what has your research found?