

STATE OF COLORADO

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MEMORANDUM

October 7, 2011

TO: Trenton Parker and Earl Brauch

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #43 concerning a right to trial by jury

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. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purpose

The major purpose of the proposed initiative appears to be:

To grant all individuals and corporate entities the absolute right to a jury trial in all criminal and civil cases, including but not limited to all cases involving admiralty, equity, divorces, juveniles, probate, foreclosures, evictions, zoning and building code violations, and all contempt of court and civil rights proceedings.

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. It is standard drafting practice to include an amending clause telling the reader what is being added to or amended in the state constitution or Colorado Revised Statutes. For example, if your intention is to add a new article 23 to title 26 of the Colorado Revised Statutes, you would include an amending clause that reads as follows: "In Colorado Revised Statutes, **add** article 23 to title 26 as follows:". Please consider adding an appropriate amending clause(s).

2. The first sentence of the proposed initiative includes the language: "NO. 3: COLORADO CITIZENS' RIGHT TO JURY TRIALS INITIATIVE". Keeping in mind that every word in a ballot initiative must appear in the section of the state constitution or statute that it amends, please consider removing "NO. 3" from the language of the proposed initiative or ballot title.

3. To reflect standard drafting practice, please do not capitalize any word other than the first word in the headnote of the proposed new section or article. E.g., using the language you have provided, the headnote would read "**xx-xx-xxx. Colorado citizens' right to jury trials initiative.**".

Substantive Comments and Questions

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

1. Subsection (5.5) of section 1 of article V of the state constitution requires each proposed initiative to have a single subject. What is the single subject of the proponents' initiative proposal?

2. The proposed initiative appears to be just a ballot title and does not include an amending clause or any indication as to what part of the state constitution or Colorado Revised Statutes is to be amended. Please determine what part(s) of the state constitution or statutes you intend to amend and add an appropriate amending clause(s) and language to reflect that determination.

3. What would be the effective date of the proposed initiative?

4. The Colorado Supreme Court and Court of Appeals has repeatedly held that certain types of cases do not trigger a right to a trial by jury. In particular, the Court has held that claims in equity are triable by the court and not by jury. Section 23 of Article II of the Colorado Constitution guarantees a trial by jury in all criminal cases but allows for trial by jury only as allowed for by law. Do the proponents intend to amend all statutory sections dealing with the issue of trial by jury, such as those concerning probate or domestic issues, in order to avoid ambiguity in the law?