

**Initiative #89  
Local Government Regulation of Environment**

1 **Amendment ? proposes amending the Colorado Constitution to:**

- 2           ♦ create a right to the environment for Colorado's residents and  
3           declare Colorado's environment, including clean air, pure water, and  
4           natural and scenic values to be common property;
- 5           ♦ establish state and local governments as trustees of the  
6           environment charged with conserving the environment; and
- 7           ♦ allow local governments to enact laws more restrictive and  
8           protective of the environment than state laws in order to facilitate  
9           environmental conservation.

10 **Summary and Analysis**

11           **Common property.** Amendment ? lists clean air, pure water, and natural and  
12 scenic values as elements of Colorado's environment, and declares the environment  
13 to be the common property of the state's residents. Common property can have a  
14 variety of meanings. One example of common property is public access to a resource  
15 that is not owned or managed by an individual or entity, such as fish in rivers where  
16 fishing rights have not been established. Another example is land in which all  
17 members of the community hold equal rights, such as a plot where community  
18 members may graze livestock. All land and most water in Colorado is owned by either  
19 a private individual or a government. It is unclear how the measure's declaration of  
20 the environment as common property will impact existing property rights, either in  
21 scope or enforcement.

22           **Federal and state environmental protections.** The mission of the federal  
23 Environmental Protection Agency (EPA) is to protect human health and the  
24 environment, including air, water, and land. Together, the EPA and state, local, and  
25 tribal agencies enforce environmental laws. States that administer federal laws, like  
26 Colorado, are required to adopt laws that are at least as stringent as national  
27 standards. Certain industrial activities are exempt from some of the federal  
28 government's environmental standards. To address environmental problems, the EPA  
29 uses incentives, monitoring, and enforcement tools.

30           The Colorado Department of Public Health and Environment has  
31 environmental responsibilities that include protecting and improving the quality of land,  
32 air, and water; hazardous and solid waste management; and pollution prevention. The  
33 Colorado Department of Natural Resources is responsible for managing the water,  
34 land, wildlife, mineral, energy, geology, and outdoor recreation resources of the state.  
35 Both agencies have authority to adopt rules, after a public input period, concerning the  
36 regulation of certain environmental matters.

1 Amendment ? would give new responsibilities to state and local governments  
2 to act as trustees charged with conserving the environment. A trustee typically acts as  
3 a guardian of property for another's benefit.

4 **Role of local governments.** Colorado currently has about 340 counties,  
5 cities, and towns that have the authority to make certain decisions about how land  
6 within their boundaries is used. For example, cities, towns, and counties can regulate  
7 zoning, noise, access, and visual impacts. State laws may take precedence over  
8 conflicting local ordinances in matters of statewide concern. Amendment ? allows  
9 local governments to enact laws more restrictive or protective of the environment than  
10 those at the state level. Where such laws are in conflict with state law, the more  
11 restrictive and protective law governs.

12 **Pennsylvania constitutional environmental protections.** In 1971,  
13 Pennsylvania adopted a constitutional provision similar to Amendment ?. The  
14 Pennsylvania Supreme Court recently used the provision in December 2013 to rule  
15 unconstitutional laws that required local governments to allow for state-regulated oil  
16 and gas development.

*For information on those issue committees that support or oppose the  
measures on the ballot at the **November 4, 2014**, election, go to the Colorado  
Secretary of State's elections center web site hyperlink for ballot and initiative  
information:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

## 17 **Arguments For**

18 1) Cities, towns, and counties are better suited for regulating land use and  
19 resource development, since they are able to account for local impacts not addressed  
20 by state law. Development that might be suitable for one area of the state is not  
21 necessarily suitable in all areas of the state. Amendment ? allows local communities  
22 to make their own priorities concerning environmental preservation and economic  
23 development.

24 2) Amendment ? allows for stronger protection of the environment where  
25 existing state and federal protections prove to be inadequate. The environment is a  
26 finite resource requiring stewardship. By empowering local governments to enact  
27 sensible regulations that protect the environment, Amendment ? allows for a  
28 reasonable balance between natural resource development and environmental  
29 conservation.

1     **Arguments Against**

2             1) Amendment ? is vague and overly broad, leaving the state vulnerable to  
3 potentially sweeping impacts on long-established property and water rights. The  
4 measure does not define key terms or explain what it means to have a right to the  
5 environment. Placing new, unclear responsibilities on state and local governments  
6 may require these governments to act against the interests of property owners.

7             2) Amendment ? threatens to harm the state's economy by allowing local  
8 governments to create a confusing patchwork of laws that hinder business  
9 development. The federal and state governments already have an effective  
10 framework in place to protect the environment while allowing for the development of  
11 natural resources. Amendment ? jeopardizes this regulatory balance.

12     **Estimate of Fiscal Impact**

13     *(Please Note: A summary of the fiscal impact will be included in this space in the*  
14 *second draft of the analysis, and an official fiscal note will be prepared and placed on*  
15 *the web when the final blue book is sent to voters.)*