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MEMORANDUM

February 15, 2013

TO: Michelle LeMay and Isaac Smith

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2013-2014 #3, concerning prohibit cannabis possession penalties

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 amendment to the Colorado constitution appear to be:

1. To direct the judiciary branch of all governing bodies in the state of Colorado to prohibit and relieve their courts from imposing any fine or sentence for the possession of cannabis.

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 office has developed a new amending clause format. Here is an example of the new format: In the constitution of the state of Colorado, article XVIII, **add** section 17 as follows:
2. The proposed initiative proposes a new section 16 to article XVIII of the Colorado constitution. After the passage of Amendment 64, article XVIII contains 16 sections, so the proposed new section should actually be identified as "Section 17".
3. In the definition of "cannabis", (I) ends with a comma, and (II) begins with "and". Instead, (I) should end "dead; and".

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. As a change to the Colorado constitution, the proposed initiative may only be amended by a subsequent amendment to the constitution. Is this your intention?
3. The proposed initiative states the purpose is "to direct the judiciary branch of all governing bodies in the state of Colorado to prohibit and relieve their courts from imposing any fine or sentence for the possession of cannabis". However, the proposed initiative does not contain a substantive legal provision that accomplishes the purpose. How do the proponents intend for their purpose to be accomplished? Do the proponents expect the General Assembly to enact such a provision?
4. The proposed initiative states the purpose is "to direct the judiciary branch of all governing bodies in the state of Colorado to prohibit and relieve their courts from imposing any fine or sentence for the possession of cannabis.". Is it the proponents' intent that a person could still be arrested, prosecuted, and convicted of possession of cannabis but not sentenced for the conviction?
5. Under section 16 of article XVIII of the Colorado constitution, possession of one ounce or less of marijuana and up to six marijuana plants is legal for a person age 21 or older. It appears that the proposed initiative would permit unlimited possession. Why are the proponents proposing a new section to the constitution rather than eliminating the limitations contained in section 16 of article XVIII?
6. The definition of "Possession of cannabis" appears to exclude cannabis that is located within real property that is under someone else's ownership or control. For example, "possession of cannabis" does not appear to apply to cannabis found within a home owned by someone other than the person possessing the cannabis. Is this the proponents' intent?
7. Paragraph (2)(d) of the proposed initiative states that "relieve" means to "alleviate". What does it mean to "alleviate [the] courts from imposing any fine or sentence for the possession of

cannabis,"? Does this mean that fines and/or sentences can be imposed if they are lessened? Do the proponents see any contradiction in stating that courts are both prohibited from and "alleviated" from imposing any fine or sentence for cannabis-related offenses?

8. Paragraph (3) of the proposed initiative states that "Nothing in this act shall be construed to modify any provision of this article or any other constitutional or statutory provision concerning cannabis". How is this statement to be reconciled with the future need to amend the Criminal Code (Title 18 of the Colorado Revised Statutes) to remove statutory fines and penalties for the possession of marijuana, if the measure is adopted?

9. Can the proponents clarify the effective date of the measure with respect to possession-of-cannabis cases that are in progress? For example, is it the proponents' intent that the language relieving or prohibiting courts from imposing any fine or sentence for the possession of cannabis will apply to anyone charged with cannabis on or after the effective date, or to anyone who has a sentencing hearing on or after such date?