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MEMORANDUM

March 26, 2013

TO: Tim LeVier and JT Davis

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2013-2014 #8, concerning the purchase and possession of ammunition storage and feeding devices

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 purpose of the proposed amendment to the Colorado constitution appears to be:

1. To create a state constitutional right to purchase or possess ammunition storage and feeding devices of any size or capacity.

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. Section 1 (8) of article V of the state constitution states, "The style of all laws adopted by the people through the initiative shall be, 'Be it Enacted by the People of the State of Colorado'." To conform to this constitutional requirement, the proponents should capitalize the words "people" and "state" in the enacting clause.

2. The proponents capitalize the word "state" inconsistently. Except in the enacting clause (described above), there is no need to capitalize this word.

3. In the second paragraph of the "Preamble", please identify "HB1224" as "House Bill 13-1224" and clarify that this bill was introduced during the 2013 legislative session.

4. In the second paragraph of the "Preamble" please use the term "large-capacity" rather than "high-capacity" to reflect the actual terminology of House Bill 13-1224.

5. The second paragraph of the "Preamble" is phrased awkwardly ("exempts existing owners . . . to continuously possess these devices . . ."). Please consider restating the paragraph as follows:

. . . a "grandfather clause" in the 2013 legislative act House Bill 13-1224 allows existing owners of large-capacity ammunition storage and feeding devices to continue to possess these devices after the July 1, 2013 effective date of the act."

6. In the amending clause, please do not capitalize "Article", use bold type for "add", and strike the parentheses around "32", so the clause reads:

"In the constitution of the state of Colorado, article II, **add** section 32 as follows:"

7. In the headnote of the new section 32, please capitalize only the initial letter of the initial word in the headnote, as follows:

"Section 32. Gun magazines - no limitation or restriction."

8. The headnotes of sections appearing within the state constitution must appear in bold type. Please use bold type for the headnote, as follows:

"Section 32. Gun magazines - no limitation or restriction."

9. For clarity, in the text of the new section 32, please insert the words "a law enacted" after the words "No law, except".

10. In the text of the new section 32, please use "or" rather than "and/or".

11. At the end of the initiative, the proponents have included the language, "from and after the date of the official declaration of the vote by proclamation of the governor, but not later than

thirty days after the votes have been canvassed by the secretary of state." This language quotes section 1 (4) of article V of the state constitution concerning the process for the initiative's passage into law if it is approved by the voters. The proponents need not include this language in the initiative.

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. It is not clear whether the proponents intend for the "Preamble" to be included within the language that is to be added to the state constitution. The "Preamble" language appears beneath the enacting clause ("Be it enacted . . .") but before the amending clause ("In the constitution of the state . . .").

If the proponents intend for the "Preamble" to be included within the language that is to be added to the state constitution, they should clarify this intent by moving the "Preamble" beneath the amending clause. For example, the "Preamble" could become subsection (1) of the new constitutional provision, and the existing language there could become subsection (2).

For the purposes of this review and comment memo, we will treat the "Preamble" as if the proponents may have intended to include it as a substantive provision within the state constitution. Therefore, we will address substantive questions and comments to the language of the "Preamble".

3. The third paragraph of the "Preamble" states that ". . . HB1224 is effectively unenforceable due to inconsistent national laws . . .". It is not clear what the proponents mean by this. For example:

By "national laws", do the proponents mean federal laws, other state laws, or both?

Is the unenforceability of House Bill 13-1224 due to its own inconsistency with "national laws", or is this unenforceability a result of the national laws' inconsistency with each other?

4. The third paragraph of the "Preamble" states that ". . . HB1224 is effectively unenforceable due to . . . lack of control features in the manufacture of such devices in other jurisdictions." It is not clear what the proponents mean by "control features" or how the lack of such features in other jurisdictions (meaning "states"?) renders HB13-1224 unenforceable.

5. The text of the new section 32 refers to ". . . devices of any size or capacity." Do the proponents intend to effect a substantive distinction here between "size" and "capacity"? Or do both of these terms essentially refer to the capacity of a magazine? If the proponents intend a distinction, please clarify the distinction. If not, and both of these terms are essentially intended

to refer to capacity, please use only "capacity".

6. Do the proponents anticipate that the general assembly will be required to enact any legislation to implement the proposed initiative if it is enacted by the people?