

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

March 27, 2014

**TO:** John Caldara and Mike Krause

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**SUBJECT:** Proposed initiative measure 2013-2014 #133, concerning a prohibition on the confiscation of firearms

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 initiatives.

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 purpose of the proposed amendment to the Colorado constitution appears to be to prohibit the confiscation of firearms without due process of law.

## Technical Comments

1. The proponents' initiative must include only an enacting clause, an amending clause, and the actual text of the proponents' proposed constitutional amendment. Therefore, the proponents should delete the heading ("ADDITIONAL PROTECTIONS FOR THE RIGHT TO BEAR ARMS") that precedes these elements and delete the text at the bottom of the page, which indicates the proponents' names, addresses, and e-mail addresses.
2. In the headnote of a constitutional section, only the first word is capitalized. So the headnote of the proposed new constitutional section should read as follows: "**Section 32. Protections for the right to bear arms.**".

## 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. Article II, section 13 of the Colorado constitution protects the right of a person to keep and bear arms. The proponents' language appears to acknowledge this existing provision ("To *further* protect . . ." [emphasis added]) and expand upon it. Is there a reason why the proponents have chosen to locate their language as a new section 32 under article II of the Colorado constitution, rather than simply adding their new language as an amendment to the existing section 13?
3. The proponents' language states that "the confiscation of arms without due process of law is forbidden". If the proponents intend specifically to prohibit such confiscation *by the state government, by any local government, or by any agency thereof*, they may wish to add language indicating such intent.
4. Do the proponents intend that the standards for due process under article II, section 25 of the Colorado constitution as interpreted by the Colorado supreme court be applied to the new provision? If not, what standards of due process should apply?

5. Can the proponents give an example of how arms may be confiscated that would require due process under the new provision?
  
6. Do the proponents anticipate that the enactment of their proposed initiative will require the General Assembly to enact legislation amending or repealing any existing laws?