INTRODUCED

LLS NO. 10-0443.01 Dan Cartin

HOUSE BILL 10-1100

HOUSE SPONSORSHIP
Stephens,

SENATE SPONSORSHIP
(None),

House Committees
State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

CONCERNING WITHDRAWAL OF AN INITIATIVE PETITION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://www.leg.state.co.us/billsummaries.)

Section 1 of the bill makes legislative findings and declarations.

Section 3 of the bill repeals current law authorizing the proponents of an initiative petition to withdraw the petition from consideration as a ballot issue by requesting the secretary of state, no later than 60 days prior to the election, not to place the petition on the ballot. Instead, the bill prohibits the proponents or other persons from withdrawing an initiative petition after it has been submitted to the secretary of state for verification.
of signatures.

Section 4 of the bill specifies that the proponents or the designated representatives of the proponents of an initiative petition withdraw an initiative petition if the proponents or the designated representatives of the proponents:

! Do not submit the initiative petition to the secretary of state for title setting;
! Do not circulate the initiative petition for signatures after the titles and submission clause have been fixed and determined;
! Discontinue circulation of the initiative petition prior to the expiration of the period for filing an initiative petition with the secretary of state; or
! Do not file the initiative petition with the secretary of state for the examination of names and signatures.

Section 4 of the bill also makes it unlawful and a class 1 misdemeanor offense for any person, directly or through any other person:

! To pay, loan, or contribute, or offer or promise to pay, loan, or contribute, any money or valuable consideration to or for the proponents or the designated representatives of the proponents of an initiative petition, or to or for any other person, to compel, induce, or prevail upon the proponents or designated representatives to withdraw the petition from consideration as a ballot issue; or
! To receive, agree to accept, or contract for any money, contribution, gift, loan, or other valuable consideration for withdrawing or agreeing to withdraw an initiative petition from consideration as a ballot issue.

Section 2 of the bill makes a conforming amendment necessitated by the addition of the offense in section 3.

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Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) During the 2008 general election, the proponents of certain citizen-initiated ballot issues were offered money or other valuable consideration by persons to withdraw the ballot issues from the general election ballot and subsequently withdrew those measures;
(b) The payments to withdraw these citizen-initiated ballot issues effectively silenced, for a negotiated cost, the thousands of individuals who had signed initiative petitions for the measures and the public discourse associated with an election campaign contrary to the letter and spirit of the right of initiative guaranteed the people of Colorado by section 1 of article V of the Colorado constitution;

(c) The large amounts of money that the persons and groups offered to and that were accepted by the proponents of these citizen-initiated ballot issues to gain the removal of the measures from the ballot and foreclose consideration by the voters at the election gave rise to an appearance of impropriety or corruption in the election campaign on the measures.

(2) The general assembly further finds and declares that:

(a) The state of Colorado has an interest in ensuring that the right to legislate reserved to the people by the initiative process under section 1 (2) of article V of the Colorado constitution does not become a subterfuge or vehicle for the personal economic gain of individuals or groups and that those citizen-initiated ballot issues are submitted to the people for adoption or rejection pursuant to section 1 (7) of article V of the Colorado constitution;

(b) The state of Colorado has previously acted to protect the integrity and reliability of the initiative process in the provisions of articles 40 and 45 of title 1, Colorado Revised Statutes, specifically, and has regulated elections and governmental operations in ways similar to the provisions of section 4 of House Bill 10-___ by prohibiting the intimidation of electors, giving or promising money or employment to electors, receiving money or jobs in connection with voting or refraining
to vote for a particular person or measure, and bribery of public servants;

c The narrowly focused prohibition contained in section 4 of House Bill 10-____ on the transfer of money or valuable consideration for the purpose of effectuating the withdrawal of a citizen-initiated ballot issue or the acceptance of money or valuable consideration in exchange for that withdrawal is consistent with the concept that it is offensive to give money in exchange for a vote or official action and with state regulation of such activities.

(3) The general assembly further finds and declares that:

(a) A contribution or expenditure that is made for the purpose of advancing or opposing a citizen-initiated ballot issue in an election campaign is protected political speech;

(b) The transfer of money or other valuable consideration to the proponents of a citizen-initiated ballot issue for the purpose of gaining the removal of the measure from consideration as a ballot issue cannot reasonably be characterized as a contribution or an expenditure within the meaning of the campaign finance law and is inconsistent with the type of advocacy and political speech protected by the constitution;

(c) The provisions of section 4 of House Bill 10-____ are therefore permissible governmental regulation that is distinguishable from the limitations on contributions and expenditures in ballot initiative campaigns that have been found to impermissibly impair freedom of expression;

(d) The narrowly focused provisions of section 4 of House Bill 10-____ will serve the compelling governmental interest of removing corruption or the appearance of corruption from ballot initiative campaigns and promote public confidence in government and the right of
initiative.

SECTION 2. 1-40-132 (1), Colorado Revised Statutes, is amended to read:

1-40-132. Enforcement. (1) The secretary of state is charged with the administration and enforcement of the provisions of this article relating to initiated or referred measures and state constitutional amendments. The secretary of state shall have the authority to promulgate rules as may be necessary to administer and enforce any provision of this article that relates to initiated or referred measures and state constitutional amendments. The secretary of state may conduct a hearing, upon a written complaint by a registered elector, on any alleged violation of the provisions relating to the circulation of a petition, which may include but shall not be limited to the preparation or signing of an affidavit by a circulator OR RELATING TO THE WITHDRAWAL OF AN INITIATIVE PETITION AS PROVIDED IN SECTION 1-40-134. If the secretary of state, after the hearing, has reasonable cause to believe that there has been a violation of the provisions of this article relating to initiated or referred measures and state constitutional amendments, he or she shall notify the attorney general, who may institute a criminal prosecution. If a circulator is found to have violated any provision of this article or is otherwise shown to have made false or misleading statements relating to his or her section of the petition, such section of the petition shall be deemed void.

SECTION 3. 1-40-134, Colorado Revised Statutes, is amended to read:

1-40-134. Withdrawal of initiative petition - restriction. The designated representatives of the proponents of an initiative petition may
withdraw the petition from consideration as a ballot issue by filing a letter
with the secretary of state requesting that the petition not be placed on the
ballot. The letter shall be signed and acknowledged by both designated
representatives before an officer authorized to take acknowledgments and
shall be filed no later than sixty days prior to the election at which the
initiative is to be voted upon. Neither the designated representatives of the proponents of an initiative petition nor
any other person may withdraw the petition from consideration
as a ballot issue after the petition has been filed with the
secretary of state for verification pursuant to sections 1-40-108
and 1-40-116.

SECTION 4. Article 40 of title 1, Colorado Revised Statutes, is
amended by the addition of a new section to read:

1-40-136. Unlawful compensation for withdrawal of initiative
petition - complaint - penalty. (1) For purposes of this section, the
proponents or the designated representatives of the proponents
of an initiative petition withdraw an initiative petition if the
proponents or the designated representatives of the proponents:

(a) Do not submit the initiative petition to the secretary
of state for title setting pursuant to section 1-40-105;

(b) Do not circulate the initiative petition for signatures
after the titles and submission clause have been fixed and
determined pursuant to sections 1-40-106 and 1-40-107;

(c) Discontinue circulation of the initiative petition prior
to the expiration of the period for filing an initiative petition
with the secretary of state pursuant to section 1-40-108; or

(d) Do not file the initiative petition with the secretary of
STATE FOR THE EXAMINATION OF NAMES AND SIGNATURES PURSUANT TO
SECTION 1-40-116.

(2) (a) (I) IT IS UNLAWFUL FOR ANY PERSON, DIRECTLY OR
THROUGH ANY OTHER PERSON:

(A) TO PAY, LOAN, OR CONTRIBUTE, OR OFFER OR PROMISE TO PAY,
LOAN, OR CONTRIBUTE, ANY MONEY OR VALUABLE CONSIDERATION TO OR
FOR THE PROPONENTS OR THE DESIGNATED REPRESENTATIVES OF THE
PROPONENTS OF AN INITIATIVE PETITION, OR TO OR FOR ANY OTHER
PERSON, TO COMPEL, INDUCE, OR PREVAIL UPON THE PROPONENTS OR
DESIGNATED REPRESENTATIVES TO WITHDRAW THE INITIATIVE PETITION;
OR

(B) TO RECEIVE, AGREE TO ACCEPT, OR CONTRACT FOR ANY
MONEY, CONTRIBUTION, GIFT, LOAN, OR OTHER VALUABLE CONSIDERATION
FOR WITHDRAWING OR AGREEING TO WITHDRAW AN INITIATIVE PETITION.

(II) FOR PURPOSES OF THIS SECTION, "PERSON" MEANS ANY
NATURAL PERSON, PARTNERSHIP, COMMITTEE, ASSOCIATION,
corporation, labor organization, political party, or other
organization or group of persons.

(b) EACH OFFENSE SET FORTH IN PARAGRAPH (a) OF THIS
SUBSECTION (2) IS A CLASS 1 MISDEMEANOR PUNISHABLE AS PROVIDED IN
SECTION 18-1.3-501, C.R.S.

SECTION 5. Act subject to petition - effective date. This act
shall take effect at 12:01 a.m. on the day following the expiration of the
ninety-day period after final adjournment of the general assembly (August
11, 2010, if adjournment sine die is on May 12, 2010); except that, if a
referendum petition is filed pursuant to section 1 (3) of article V of the
state constitution against this act or an item, section, or part of this act
within such period, then the act, item, section, or part shall not take effect
unless approved by the people at the general election to be held in
November 2010 and shall take effect on the date of the official
declaration of the vote thereon by the governor.