Amendment 41
Standards of Conduct in Government

Amendment 41 proposes to add a new Article XXIX to the Colorado Constitution that:

- prohibits elected state officials and certain elected local officials, appointed state and local officials, and government employees from accepting any amount of money or more than $50 in gifts in any calendar year from anyone except a relative or a personal friend on a special occasion;

- prohibits immediate family members of elected state officials and certain elected local officials, appointed state and local officials, and government employees from accepting more than $50 worth of gifts or other things of value in any calendar year that directly or indirectly benefit the public official or government employee;

- bans lobbyists from giving gifts or meals to any elected state official and certain elected local officials, appointed state and local officials, and government employees or to the immediate family members of these public officials and employees;

- prohibits statewide elected officeholders and state legislators from lobbying certain elected state officials for pay for two years after leaving office; and

- creates a five-member appointed ethics commission, with individual members having subpoena power, to investigate and hear state and local complaints, assess penalties, and advise government officials and employees when asked regarding the scope of the law.

Summary and Analysis

Acceptance of gifts by public officials. Current law prohibits an elected state official from accepting the following gifts in connection with the person's public service:

- ✓ any money; or
- ✓ any equipment, supplies, or services worth more than $50, such as a fax machine, an office computer, a newspaper subscription, or donated office space.

Other gifts are allowed, but some must be reported quarterly to the Secretary of State. The prohibitions and reporting requirements apply to the following elected state officials, as well as candidates for these offices: governor, lieutenant governor, secretary of state, attorney general, treasurer, state legislators, district attorneys, members of the State Board of Education, and regents of the University of Colorado.

Amendment 41 expands the current prohibitions to cover other gifts and things of value, such as favors or services, travel, meals, entertainment, and honoraria, as well as promises of future employment. Amendment 41 also extends the ban to apply to heads of departments of state government, salaried members of state boards and commissions, county and municipal officials, and most government employees, including independent contractors.

Gifts from lobbyists and lobbying by former elected state officials. Amendment 41 prohibits professional lobbyists from giving gifts of any kind, including meals, to public officials and government employees or their family members. It also prohibits statewide elected officeholders and state legislators from lobbying professionally for two years after leaving office. This restriction applies only to lobbying a state legislator or a statewide elected officeholder. Professional lobbying is when a person is paid to advocate an interest or position to policymakers.

Ethics commission. Under current law, public officials and government employees are subject to a code of ethics. Ethics complaints against statewide elected officeholders, governor appointees, and employees of state departments are reviewed by a board of ethics upon request of the governor. Complaints filed against legislators are heard by a committee made up of legislators at the discretion of legislative leadership. Many local governments also have procedures in place to handle ethics complaints.

Amendment 41 creates an ethics commission with jurisdiction over all state, county, and municipal officials and employees. The commission's purpose is to hear complaints, issue findings, assess penalties, and issue advisory opinions. Any person can file a complaint with the commission alleging a violation of the proposal, or any other standard of conduct or reporting requirement specified in law. The commission must investigate the complaint, hold a public hearing, and issue findings, unless the complaint is found to be frivolous. The commission has the power to subpoena documents or witnesses. It can also assess penalties if it finds an ethics violation occurred. In addition to investigating complaints, the commission can issue advisory opinions in response to a written request from a public official or government employee.

The commission consists of five people. The state senate, the state house of representatives, the governor, and the chief justice of the Colorado Supreme Court each appoint one person to the commission. The fifth person is a local government official or local government employee selected by the other members. No more than two members may be from the same political party, and members must have been continuously registered with the same political party, or continuously unaffiliated, for at least two years before their appointment. Amendment 41 is silent on holding individual commission members accountable for any malfeasance committed while acting in their official capacity as members of the independent ethics commission.

Arguments For

1) The credibility and integrity of the political process is damaged when public officials accept gifts from lobbyists. When lobbyists give gifts to public officials, the perception is that they gain access and influence that other citizens in the state do not have. Amendment 41 strengthens public confidence by reducing actual or perceived conflicts of interest that arise when public officials accept gifts such as tickets to sporting events, meals, and lodging.

2) Amendment 41 eliminates the temptation for elected officials to make decisions based on the potential of future employment. Requiring lawmakers to wait two years before they can lobby ensures that policy decisions are based upon what is best for constituents.

3) Elected officials may not always objectively judge the ethics of their peers. Instead, an independent forum is needed where citizens can file legitimate concerns about possible ethics violations by their elected representatives. The ethics commission created by Amendment 41 is charged with enforcing standards of conduct for both state and local public officials and employees and provides a central venue for filing ethics complaints from across the state.

Arguments Against

1) Amendment 41 does not belong in Colorado's constitution and may have unintended and undesirable consequences. Elected officials can already be investigated for ethics violations, recalled, or removed from office when they run for reelection. Current law already prohibits state elected officials from receiving any money in connection with their public service, and many other gifts worth more than $50 must already be publicly disclosed on a regular basis. Additionally, Amendment 41 may result in requiring the state to provide additional money for elected officials to attend certain educational and other seminars that could no longer be funded by private organizations. Amendment 41 would make gifts, even between any family members of most public employees, potentially subject to a politically motivated investigation that would include subpoena powers. Furthermore, it would prohibit most government employees, including entry-level local and county government employees and higher education faculty and employees, from accepting or receiving, among other things, educational scholarships for themselves, their dependent children, or their spouse.

2) Former lawmakers often have expertise in specific policy areas that can benefit the public. In addition, private companies should be allowed to hire the person they believe will best represent their interests. The responsibility for making policy decisions in the public interest lies with current elected officials, not former officials.

3) The commission may not be able to objectively judge the ethics of government officials because its members are appointed by, and it may actually include, government officials. With only five members to cover all city, county, and state public officials and employees, complaints may not receive a thorough or timely investigation. Procedures already exist to address ethics complaints at every level of government in Colorado. Establishing a new commission adds unneeded bureaucracy that may duplicate the work of existing ethics oversight entities.

Estimate of Fiscal Impact

Amendment 41 is expected to increase state government expenditures and state, county, and municipal government revenues. The increase in expenditures will depend upon the number of staff employed by the ethics commission and the cost of office space and supplies. Staff will be needed to investigate complaints, advise the commission, and prepare subpoenas. State revenues will increase to the extent that public officials and employees are fined for ethics violations. Most existing ethics laws and standards are similar to this proposal. As such, any state or local government revenue from fines is anticipated to be minimal.