

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

January 3, 2006

**TO:** Page Penk and Chester Penk

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

**SUBJECT:** Proposed initiative measure 2005-2006 #69, concerning nuclear and non-lethal weapons.

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 initiative appear to be:

1. To amend article XXVI of the Colorado constitution by adding new sections that would:
  - a. Declare the desire of the people of the state of Colorado for the nuclear weapons age to end by upgrading our defense arsenal to more humane systems;
  - b. Designate January 31 as "strength through non-lethal weapons day";
  - c. Support the goal of ending the nuclear weapons age through promotion of non-lethal weapons by requiring the state to collect a list of non-lethal weapons and their

functions from any person;

- d. Require the state to publish the list on an official state web page that is separate from all others and to update the list weekly;
- e. Require the state to entitle the separate web page "non-lethal weapons list" and link the site to the official Colorado state web site home page with a link entitled "non-lethal weapons" that is in red, positioned above all other links, outlined in a black box, and of a font size four points larger than all other links;
- f. Prohibit any other red from appearing on the Colorado official web site home page;
- g. Require the state to defend against any challenge to the publishing of the "non-lethal weapons list".

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### Comments and Questions

The form and substance of the proposed initiative raise the following comments and questions:

#### Technical questions:

1. To conform to standard drafting practices, would the proponents consider:
  - a. Replacing the amending clause of the proposed initiative with the following amending clause: "Article XXVI of the constitution of the state of Colorado is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:"?
  - b. Showing the headnotes to be added to the new sections of Article XXVI of the Colorado constitution in **bold type face** and ending those headnotes with periods instead of hyphens to match the formatting of the existing sections of article XXVI of the Colorado constitution (e.g., changing "Section 5-" to "**Section 5.**")?
2. Sections 6 and 7 of the proposed initiative contain references to "an official state web page", "the official Colorado state web site home page", "the Colorado web home page" and "the Colorado official web site home page". Do these references all refer to the same web site, and, if so, would the proponents consider using a consistent reference rather than four different ones?

#### Substantive questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires each initiative to have a single subject. What is the single subject of the proposed initiative?

2. With respect to the proposed initiative generally:
  - a. The proposed initiative does not define the term "non-lethal weapons". Accordingly, are the following types of weapons and objects made primarily for other purposes that can easily be used as weapons "non-lethal weapons":
    - i. Weapons whose primary use is to inflict non-lethal bodily harm, but that can nonetheless sometimes be lethal such as brass knuckles, nunchaku (nunchucks), clubs, TASERS, or quarterstaves?
    - ii. Objects that are not made to be used as weapons, but that are similar to objects typically used as weapons such as kitchen knives, hammers, razor blades, carpet cutters, and baseball bats?
    - iii. Objects that are not similar to typical weapons, can be used as weapons in a pinch such as silverware other than knives (e.g., spoons, forks, and sporks); pool cues, screwdrivers, bottles, and frying pans?
  - b. Would the proponents consider defining the term "non-lethal weapons"?
3. With respect to section 5 of the proposed initiative:
  - a. Article XXVI of the Colorado constitution currently includes a section 5. Is it the proponents' intent that section 5 of the proposed initiative replace the existing section 5? If not, would the proponents considering renumbering sections 5, 6, 7, and 7.5 of the proposed initiative as sections 6, 7, 8, and 8.5? If so, would the proponents consider conforming the proposed initiative to standard drafting practices by making the following changes:
    - i. Replacing the amending clause of the proposed initiative with an amending clause that states: "Section 5 of article XXVI of the constitution of the state of Colorado is amended, and the said article XXVI is further amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS, to read:"?
    - ii. Showing the repeal of the existing language of section 5 and its replacement with the language of the new section 5 as follows: "**Section 5.** ~~If any provision of this article, or its application in any particular case, is held invalid, the remainder of the article and its application in all other cases shall remain unimpaired.~~ THE PEOPLE WANT THE NUCLEAR WEAPONS AGE TO END BY UPGRADING THE DEFENSE ARSENAL TO MORE HUMANE SYSTEMS. AS SUCH, JANUARY 31 SHALL BE DESIGNATED BY THE STATE AS "STRENGTH THROUGH NON-LETHAL WEAPONS DAY"."?"

- b. What does the phrase "nuclear weapons age" mean and what set of circumstances would amount to the "end" of the "nuclear weapons age"?
  - c. What is involved in "upgrading our defense arsenal to more humane systems"?
  - d. What are "more humane systems"?
  - e. How would "upgrading our defense arsenal to more humane systems" end the "nuclear weapons age"?
  - f. Would the designation of January 31 as "strength through non-lethal weapons day" apply to every January 31 that occurs after the proposed initiative becomes effective?
  - g. Would "strength through non-lethal weapons day" be an official state holiday? If so, have the proponents considered the financial impact on the state of closing state offices for an additional day?
3. With respect to section 6 of the proposed initiative:
- a. How would "the promotion of non-lethal weapons" end "the nuclear weapons age"?
  - b. How will the state "collect a list of non-lethal weapons and their functions from any person"? Specifically:
    - i. How will the compilation of the list "support the goal of ending the nuclear weapons age through promotion of non-lethal weapons"?
    - ii. What state agency or officials will be responsible for collecting the list and how will they collect the required information?
    - iii. What does "any person" mean? Does the state have to collect a list from any one person it chooses? From every person in Colorado? From federal, state, and local governmental entities such as the United States Air Force Academy, the Colorado National Guard, and state and local police forces? Does "person" include only natural persons or does it include corporate or business entities such as restaurant supply shops and sporting goods stores?
    - iv. What if persons do not want to provide an accounting of their non-lethal weapons to the state for inclusion in the list? Does the proposed initiative require them to do so? If so, how will the state enforce this requirement?
    - v. How often will persons have to provide an accounting of their non-lethal weapons to the state? Annually? Every time they buy or otherwise obtain a

new non-lethal weapon?

- vi. How will the state pay for the costs of compiling and publishing the list?
4. With respect to section 7 of the proposed initiative, what is the intent of the proponents in prohibiting the use of the color red on the Colorado official web site home page for any purpose other than coloring the link to the "non-lethal weapons list" web page?
  5. With respect to section 7.5 of the proposed initiative:
    - a. Does the requirement that the state "defend against any legal challenge to the publishing of the 'non-lethal weapons list' obligate the state to only defend against any challenge to publication of the list or would the state also be required to defend against legal challenges to the collection of information regarding non-lethal weapons?
    - b. What is the extent of the state's obligation to defend against legal challenges to the publishing of the list? If the state defended such a legal challenge in a trial court and lost, would the state be required to appeal the decision to a higher court?