

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

December 2, 2005

**TO:** Page Penk and Chester Penk

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

**SUBJECT:** Proposed initiative measure 2005-2006 #65, concerning a prohibition on nuclear weapons in Colorado.

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 amendment appear to be:

1. To amend article XXVI of the Colorado constitution by adding new sections that would:
  - a. Withdraw the consent of the people as taxpayers for locating atomic bombs in the state of Colorado;
  - b. Declare the state of Colorado to be a nuclear weapons free zone;
  - c. Make it a felony for anyone elected from the state of Colorado to vote in favor for research into, testing of, or maintenance on nuclear weapons;

- d. Require any person convicted of the new felony of voting in favor for research into, testing of, or maintenance on nuclear weapons to serve a mandatory minimum sentence of thirty years in a maximum security prison before probation or parole;
- e. Specify that all existing sections of article XXVI of the Colorado constitution would remain in effect.

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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. Showing the portions of the proposed initiative that constitute new substantive language (as opposed to section headnotes) that will be added to article XXVI of the Colorado constitution in LARGE AND SMALL CAPITAL LETTERS?
  - b. Replacing the words "concerning Nuclear Detonations is amended to add the following sections:" at the end of the amending clause of the proposed initiative with the words "is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:"?
  - c. Numbering the new sections to be added to article XXVI of the Colorado constitution and showing the headnotes to the new sections in **bold type face** to match the formatting of the existing sections of article XXVI of the Colorado constitution? For example, would the proponents consider formatting the new enforcement section as follows:

**"Section 6. Enforcement. IT SHALL BE A FELONY FOR ANYONE ELECTED FROM THE STATE OF COLORADO TO VOTE IN FAVOR FOR RESEARCH INTO, TESTING OF OR MAINTENANCE ON NUCLEAR WEAPONS."**?
  - d. Replacing the number "30" with the word "THIRTY" in the penalty section of the proposed initiative?

#### 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. Article VI, clause (2) of the United States constitution states that federal law is "the supreme law of the land . . . anything in the constitution or laws of any state to the contrary notwithstanding," which means that federal law trumps conflicting state law and raises the following questions:
  - a. Article I, section 8, clause (1) of the United States constitution grants the United States Congress power to "provide for the common defense . . . of the United States," issues of national defense are thus generally governed by federal law, and it appears that the United States government owns, possesses, and controls all atomic bombs and nuclear weapons within the United States and the state of Colorado. Since atomic bombs and nuclear weapons are part of the arsenal that the United States government relies upon to "provide for the common defense," would the provisions of the proposed initiative that would withdraw the consent of the people of Colorado for locating atomic bombs within the state and declare Colorado to be a nuclear weapons free zone conflict with federal law and thus be legally ineffective?
  - b. Article I, section 8, clause (17) of the United States constitution grants the United States Congress power to exercise exclusive jurisdiction over "all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings (i.e., federal property within the borders of a state), which raises the following questions:
    - i. Do the proponents believe that the people of the state of Colorado have authority to withdraw their consent to the location of atomic bombs on federal property located within the borders of Colorado?
    - ii. If so, what is the source of such authority?
  - c. What other potential conflicts with federal law, if any, do the proponents believe might arise if the voters of the state approve the proposed initiative?
3. Pursuant to sections 24-60-1401 to 24-60-1404, Colorado Revised Statutes, Colorado is a party to the Western Interstate Nuclear Compact, which generally calls upon party states to cooperate in developing nuclear technology and provide mutual aid in coping with nuclear incidents. Do the proponents anticipate or intend that the proposed initiative will change Colorado's role as a party to the Western Interstate Nuclear Compact? If so, how will Colorado's role change?
4. With respect to the paragraph of the proposed initiative that begins with the words "We the People":
  - a. Would the declaration of the state of Colorado as a nuclear weapons free zone

prohibit the temporary transport of a nuclear weapon by ground transportation through the state of Colorado or through Colorado's air space?

- b. Do the terms "atomic bombs" and "nuclear weapons" have different meanings? If so, what does each term mean? If not, would the proponents consider using only one of the terms for the sake of consistency?
  - c. Are there currently any "atomic bombs" or "nuclear weapons", as proponents define those terms, located in Colorado?
5. With respect to the enforcement section of the proposed initiative:
- a. What does it mean for a person to be "elected from the state of Colorado." Are the following categories of persons "elected from the state of Colorado":
    - i. A United States Senator who represents the state of Colorado?
    - ii. A United States Congressman who represents a portion of the state of Colorado?
    - iii. A member of the Colorado General Assembly who represents a state House or Senate district comprised of a portion of the state of Colorado?
    - iv. A member of the State Board of Education?
    - v. A member of the Board of Regents of the University of Colorado?
    - vi. A member of a board of county commissioners?
    - vii. A member of a city or town council or a local school board?
    - viii. A public official elected to an executive branch office or position within the federal government, the state of Colorado, or a local government such as: the President and Vice-President of the United States; the Governor, Lieutenant Governor, Attorney General, Secretary of State, and State Treasurer of the state of Colorado; or the mayor of a city or town?
  - b. What does it mean to "vote in favor for research into, testing of or maintenance on nuclear weapons"? Would the proposed initiative make it a felony:
    - i. To vote in favor of such research, testing, or maintenance if the goal of the research, testing, or maintenance is to make dismantling or disposal of nuclear weapons, or conversion of such weapons to peaceful uses, more

efficient or safer?

- ii. For a member of Colorado's Congressional delegation to vote in favor of an omnibus defense bill or appropriations bill, the focus of which is not nuclear weapons research, testing, or maintenance, but which includes authorization of or appropriations for such activities?
- c. The "speech and debate" clauses of article 1, section 6, clause (1) of the United States constitution and article V, section 16 of the Colorado constitution, as interpreted by various federal and state courts, respectively grant members of the United States Congress and the Colorado General Assembly legislative immunity from criminal prosecution for acts taken in the course of their legislative duties such as voting on legislation. Common law, as expressed in judicial decisions, provides similar legislative immunity to members of local legislative bodies such as boards of county commissioners and city and town councils. In light of this legislative immunity:
  - i. Is it the proponents' intent that members of the United States Congress be subject to prosecution for voting in favor of legislation that authorizes or funds nuclear weapons research, testing, or maintenance? If so, are the proponents concerned that the legislative immunity granted to members of Congress by the United States constitution would trump the proposed initiative and prohibit such prosecutions?
  - ii. Is it the proponents' intent that members of the Colorado General Assembly, local boards of county commissioners, and city and town councils be subject to prosecution for voting in favor of legislation that authorizes or funds nuclear weapons research, testing, or maintenance? If so, would the proponents consider adding language to the proposed initiative to clearly indicate the intention to override such persons' legislative immunity?
  - iii. Are the proponents aware of any existing federal or state law or local ordinance that criminalizes the act of voting in favor of or against any particular type of legislation?
6. The addition of new provisions to an existing constitutional article does not repeal or otherwise affect the existing provisions of the article unless the new language includes an explicit repeal of the existing provisions or clearly conflicts with the existing constitutional language. The new constitutional language contained in the proposed initiative does not explicitly repeal any existing provisions of article XXVI of the Colorado constitution and does not appear to conflict with those existing provisions. Accordingly, why have the proponents included the last sentence, which seems to have no effect, in the proposed initiative?