

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

April 14, 2006

TO: William F. Gondrez and Peggy Wild

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed Initiative Measure 2005-2006 #103, concerning protection from demonstrations at memorial services

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.

Earlier versions of this initiative were the subject of memorandums dated March 6 and 29, 2006. Proposals 2005-2006 #91 and 2005-2006 #96 were discussed at hearings on March 14 and 31, 2006, respectively. The comments and questions raised in this memorandum will be limited so as not to duplicate comments and questions that were addressed at the earlier hearings unless it is necessary to fully address the issues in the revised measure. However, the comments and questions that have not been addressed by changes in the proposal continue to be relevant and are hereby incorporated by reference in this memorandum.

### Purposes

The major purposes of the proposed initiative measure appear to be:

1. To define the terms "demonstration", "disturbance", "funeral", "other facilities", "picketing", and "protests";
2. To protect mortuaries, cemeteries, churches, synagogues, mosques, and any other facilities for all who participate;
3. To protect all groups, both military and civilian;
4. To protect all persons who are part of a funeral procession from disrupting the procession;
5. To prohibit picketing, protests, disturbances, and demonstrations within five hundred feet of a funeral or memorial service and during the time period beginning one 1 hour before and ending four hours after the funeral or memorial service; and
6. To establish that a violation of the prohibition is a class 3 misdemeanor, punishable by a fine and jail sentence.

### Comments and Questions

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

#### Technical questions:

1. The proposed initiative measure states "Article XVIII of the Colorado constitution, with intent to add a new section designated as **SECTION 15**. to read:". Is it the proponents' intent to add a new section designated as "**SECTION 15**" to article XVIII of the state constitution?
2. Section 1 (5) of article V of the state constitution requires the proponents of an initiative to submit "the original draft of the text of proposed initiated constitutional amendments and initiated laws" to the legislative research and drafting offices of the General Assembly for review and comment. The language submitted by the proponents contains definitions, a description of persons and facilities protected from funeral picketing, and language prohibiting funeral protests and related activities. Do the proponents intend that the measure submitted to the Legislative Council staff is the actual text of an amendment to the constitution? Does the text include the summary and statement of purpose?
3. The portion of the proposed measure designated by "**FUNERALS WILL HAVE NO PICKETING.**" has four numbered subsections and is separate from the other portions labeled "Definitions as used in this section.", "Summary", and "Statement of Purpose". Is it the proponents' intent to include these other portions within the proposed Section 15?
4. It is standard drafting practice that a group of defined terms are preceded by the phrase, "As used in this section, unless the context otherwise requires:". Would the proponents consider including this phrase before the actual definitions?

5. It is preferred to use the singular form for a definition whenever possible. Would the proponents consider replacing the defined term, "Other Facilities", with the singular version of the term?
6. It is standard drafting practice to place a comma after the last word before "and" or "or" in a group of three or more words already separated by commas (*e.g. red, white, green, and blue*). Would the proponents consider placing a comma in each of the following locations: after "PROCESSIONS" in the definition of "funeral"; after "MOSQUE" in the definition of "picketing"; after "MOSQUES" in subsection (1) under the heading "FUNERALS WILL HAVE NO PICKETING"; and after "MOSQUE" on the fourth line under the heading "Statement of Purpose"?
7. It is standard drafting practice that two words not preceded by commas but separated by the word "or" normally do not need additional separation by a comma (*e.g. car or truck*). Therefore, would the proponents consider deleting the comma in each of the following locations: after "HINDERS" in the definition of "DISTURBANCE"; after "CREMATION" in the definition of "funeral"; and after "FUNERALS" on the second line under the heading "Statement of Purpose"?
8. The second sentence in the definition of "disturbance" appears to include one or more sentence fragments. Would the proponents consider rewriting the definition to incorporate the proposed second sentence of the definition?
9. The first sentence under "Statement of Purpose" appears to lack a subject. Would the proponents consider rewriting the sentence to specify who is protected?
10. The second sentence under "Statement of Purpose" includes the term "other facilities" in quotation marks. What is the purpose of putting this term in quotes? Would the proponents consider removing the quotes?

Substantive questions:

1. Section 1 (5.5) of article V of the state constitution provides that, "No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title...." The provision goes on to say that, "If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls." What do the proponents believe is the single subject of the proposed measure?
2. The General Assembly is currently considering House Bill 06-1382, "CONCERNING THE CREATION OF THE "RIGHT TO REST IN PEACE ACT". If the General Assembly enacts House Bill 06-1382, what is the proponents' intent regarding any potential conflict between the proposed initiative and this bill?
3. What do the proponents mean by the phrase "controversial issue" in the definition of "demonstration"? Who decides what is controversial?

4. What is the meaning of "quiet rest or peace of a funeral" as stated in the definition of "Disturbance"?

5. The term "protest", in its noun form, is generally known to mean a formal declaration or expression of disapproval or objection issued by a concerned person, group, or organization. The proposed measure, however, defines "protest" to mean "anybody who makes an expression or declaration of objection of disapproval ...". Such a person generally would be thought of as a "protester" rather than a "protest". Because the term "protest" and not "protester" is used several times in the proposed measure in the context of an activity such as expression, would the proponents consider redefining the term "protest" in the context of expression rather than as a person?

6. Subsection (3) under the heading "FUNERALS WILL HAVE NO PICKETING" states "This section will protect all persons that are part of a funeral procession from disrupting said processions.". Is it the proponents' intent to actually protect persons in a funeral procession from disrupting the procession? On the other hand, if it is the intent to protect persons in a funeral procession from outside disruption, would the proponents consider striking the phrase "disrupting said processions." and substituting "disruption of said processions caused by other persons."?

7. Under the heading of "Statement and Purpose", the proposed measure states, "As a result of this new section, everyone will have their privacy during these solemn occasions." Is it the proponents' intent to create a specific state constitutional right of privacy to attend certain services or to mourn at certain facilities? If so, what is the intended extent of this right of privacy?

8. Under the heading of "Statement and Purpose", the proposed measure states that a violation of the funeral picketing prohibition is a misdemeanor punishable by a fine and jail sentence. The state constitution currently does not establish crimes and penalties. Rather, the General Assembly enacts laws that define and penalize criminal conduct. Rather than amend the state constitution to establish criminal conduct and penalties, would the proponents consider replacing this language with language granting the General Assembly authority to enact implementing legislation addressing criminal conduct and penalties?

9. Several current state and local laws may apply to the protection of privacy at funerals and memorial services. These include, but are not limited to, provisions that are generally designed to protect against trespass, disturbances, eavesdropping, loitering, disruption of lawful assembly, harassment, and disorderly conduct. Is it the proponents' intent to replace or supplement these laws with regard to the activities described in the proposed measure?

10. The federal and state constitutions protect certain conduct and content of protests and demonstrations at meetings and events. The constitutional protections depend on the nature and character of the meeting or event and on implicit customs and usages or explicit rules relevant to the meeting or event. Conceivably, there may be protests and demonstrations containing speech or assembly that appear distasteful or out of place but that are still constitutionally protected. Is it the proponents' intent that the proposed measure ban all protests and demonstrations at funerals and memorial services at the facilities and areas discussed in the measure? How do the proponents intend the courts to reconcile the provisions of the proposed measure with the existing constitutional protections for speech and assembly?