

# STATE OF COLORADO

## Colorado General Assembly

Kirk Mlinek, Director  
Legislative Council Staff

**Colorado Legislative Council**  
029 State Capitol Building  
Denver, Colorado 80203-1784  
Telephone (303) 866-3521  
Facsimile (303) 866-3855  
TDD (303) 866-3472  
E-Mail: lcs.ga@state.co.us



Charles W. Pike, Director  
Office of Legislative Legal Services

**Office Of Legislative Legal Services**  
091 State Capitol Building  
Denver, Colorado 80203-1782  
Telephone (303) 866-2045  
Facsimile (303) 866-4157  
E-Mail: olls.ga@state.co.us

### MEMORANDUM

January 27, 2005

**TO:** Ryan Call and John Zakhem

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

**SUBJECT:** Proposed initiative measure 2005-2006 #77, concerning campaign and political finance

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.

An earlier version of this initiative was the subject of a memorandum dated December 28, 2005. Proposal 2005-2006 #67 was discussed at a hearing on December 30, 2005. 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 hearing 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 appear to be:

1. To repeal and reenact article XXVIII of the Colorado constitution;
2. To declare purposes and findings;
3. To require all candidate committees, political parties, political committees, and issue committees to register with and report to the appropriate officer the following information:
  - a. All contributions received, including the name and address of each person who has contributed twenty dollars or more;
  - b. All expenditures made; and
  - c. All obligations entered into by the committee or party.
4. To require natural persons making certain types of contributions that are required to be disclosed to include the person's occupation and employer;
5. To require that the reports that are required to be filed with the appropriate officer be filed within forty-eight hours of the receipt of any contribution, expenditure made, or obligation entered into;
6. To require any person who spends one thousand dollars or more per calendar year on independent expenditures or electioneering communications to report to the appropriate officer the amount spent, the candidate committee, political party, or political committee, the name and address of any person that contributes more than twenty dollars per year to the person expending one thousand dollars or more on the independent expenditures or electioneering communications;
7. To require the report to be filed with the appropriate officer within forty-eight hours after making or obligating funds for certain expenditures;
8. To require the secretary of state to:
  - a. Develop an online and electronic filing system, online search and retrieval system, and other processes for use by candidate committees, political parties, political committees, issue committees, and other persons required to file statements and reports with the secretary of state as required by law;
  - b. Promulgate rules to administer and enforce campaign finance and disclosure law; and
  - c. Make the information contained in the electronic filing system available to the public in a readily accessible, electronic format.

9. To require the general assembly to enact legislation which prohibits a business corporation, a labor association, or a foreign citizen from making a contribution to a candidate committee, except that a corporation or labor association may establish and contribute to a political committee;
10. To authorize the general assembly to:
  - a. Enact definitions of terms pertaining to the proposed initiative and to any statutory provisions pertaining to campaign finance and disclosure;
  - b. Enact contribution limits for candidate committees, political parties, and political committees, consistent with the proposed initiative, provided that the limits be not repugnant to other provisions of the Colorado constitution or the constitution of the United States.
11. To declare any provisions in the statutes of the state, or adopted at any county, municipal, special district, or other local level, in conflict or inconsistent with the proposed initiative inapplicable to the matters covered and provided by the proposed initiative;
12. To establish that the proposed initiative will take effect on the date of the official declaration of the vote by proclamation of the governor and shall apply for all elections thereafter;
13. To allow legislation to be enacted to facilitate its operations, but in no way limit or restrict the provisions of the proposed initiative or the powers granted by the proposed initiative; and
14. To declare the provisions of the proposed initiative severable.

### 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 showing the heading of the proposed initiative and individual section headings in lower case letters while retaining the bold-face typeset as illustrated by the following example?

## ARTICLE XXVIII

### 21st Century Campaign and Political Finance

#### **Section 1. Purpose and findings.**

2. The purpose of the review and comment process is to review the text of the proposed law or

constitutional amendment. The submission appears to contain language for a proposed ballot title. Given that the ballot title and submission clause are determined by the title board and that our offices do not have the authority to review and comment on proposed ballot titles, would the proponents consider removing the text of the proposed ballot title?

3. To conform to standard drafting practices, would the proponents consider initial capitalizing the first letter of each sentence as illustrated by the following example:

"(a) Current campaign finance laws . . . "?

4. To conform to standard drafting practices, would the proponents consider starting the text of substantive language on the same line of text as the section headings as illustrated by the following example:

"**Section 2. Disclosure.** (1) (a) (I) ALL CANDIDATE COMMITTEES, POLITICAL PARTIES, POLITICAL COMMITTEES...."?

5. To conform to standard drafting practices, and in the interests of economy of language, in section 2 (1) (a) (I) of the proposed initiative, would the proponents consider add the word "all" at the end of the introductory portion of the subparagraph, thereby eliminating the need to repeat the word "all" at the beginning of each sub-subparagraph? Similarly, would the proponents consider making a parallel change with respect to the word "shall" in connection with the secretary of state's duties in section 3 (1) of the proposed initiative?
6. It appears words or punctuation may be missing in connection with the clause that reads "the candidate committee, political party, or political committee" in section 2 (2) (a) of the proposed initiative. What is it the proponents are trying to say here? Would the proponents consider modifying the text of the proposed initiative on this point to make their intent more clear?
7. In the last sentence of section 2 (2) (a), does it make sense to have the operative language read "after making funds available or obligating funds for any such expenditures"?
8. In section 3 (1) (a) of the proposed initiative, would the proponents consider removing the word "to" from the phrase "in accordance with to"?
9. What do the proponents mean by a "labor association" as the phrase is used in section 3 (2) (b) of the proposed initiative? Is this phrase intended to have the same meaning as a "labor organization"? If so, would the proponents consider substituting the more commonly known and understood phrase "labor organization" for "labor association"?
10. The word "independent" in the sixth line of section 2 (2) (a) of the proposed initiative is misspelled. Would the proponents consider correcting this mistake?
11. The word "declaration" in the second line of section 5 of the proposed initiative is misspelled. Would the proponents consider correcting this mistake?

12. To conform to standard drafting practices would the proponents consider using the word "moneys" instead of the word "funds"?

Substantive questions:

1. With respect to the clause at the end of section 1 (1) (g) of the proposed initiative that refers to "strong enforcement of campaign finance disclosure requirements", what is the proponents' intent in adding this last clause to the text of the proposed initiative?
2. What type of electronic filing system would satisfy the requirement of section 3 (1) (c) of the proposed initiative? By what date is the secretary of state required to have implemented the system? Would the proponents consider adding an implementation deadline to the text of the proposed initiative?
3. The prior version of the proposed initiative, proposed initiated measure #67, required the general assembly to enact definitions for the text of the proposed measure. The current version, proposed initiated measure #77, makes this obligation permissive? Why this change? How would failure on the part of the general assembly to define key terms for the proposed initiative affect, if at all, its implementation, administration, or enforcement? If adopted, do the proponents foresee any implementation legislation that would be required? Does it create a conflict by continuing to use the word "shall" in the second sentence of section 3 (2) (a)?
4. What is the basis for the new requirement contained in section 3 (2) (b) of the proposed initiative that the general assembly shall enact legislation which prohibits a business corporation, a labor association, or a foreign citizen from making a contribution to a candidate committee, except that a corporation or labor association may establish and contribute to a political committee? What do the proponents mean by "business corporation"? Does it include limited liability companies, partnerships, or any other forms of business entities? Is the second reference to "corporation" meant to be the same as "business corporation" and, if so, would the proponents consider using the same term in both places? What is meant by "foreign citizen"? What is the rationale for allowing a business corporation or labor association to establish and contribute to a political committee?
5. The prior version of the proposed initiative, proposed initiated measure #67, required the general assembly to enact contribution limits. The current version, proposed initiated measure #77, makes this obligation permissive? Why this change? How would failure on the part of the general assembly to establish any contribution limits affect, if at all, implementation, administration, or enforcement of the proposed measure or the political system in Colorado generally? As the plaintiffs are aware, reasonable contribution limits have generally been upheld by the courts as a means of addressing either corruption or the appearance of corruption. Is there any reason to be concerned that failure to enact any contribution limits will promote either corruption or the appearance of corruption in the state of Colorado?