

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

May 2, 2006

TO: Pete Maysmith and Maura Tierney

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed Initiative Measure 2005-2006 #120, Concerning Ethics in Government

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 specify the findings of the people of the state of Colorado regarding the conduct of public officers, members of the general assembly, local government officials, and government employees in carrying out their duties for the benefit of the people of the state by specifying that:
 - a. Such persons must hold the respect and confidence of the people;
 - b. Such persons must carry out their duties for the benefit of the people of this state;

c. Such persons must avoid conduct that is in violation of their public trust or that creates a justifiable impression that such trust is being violated;

d. Any effort to realize personal financial gain through public office, other than the compensation provided by law, is a violation of that trust; and

e. Such persons must have the benefit of specific standards to guide their conduct and the benefit of a penalty mechanism to enforce the standards.

2. To specify the findings of the people of the state of Colorado that there are certain costs associated with holding public office and that, to ensure the integrity of the office and to comply with the new constitutional article created by the measure, to specify that those costs, of a reasonable and necessary nature, should be born by the state or local jurisdiction.

3. To define the following terms: "Government employee", "local government official", "professional lobbyist", and "public officer".

4. To prohibit a public officer, member of the general assembly, local government official, or government employee from, either directly or indirectly through a spouse or dependent child, accepting or receiving money, forbearance, or forgiveness of indebtedness from any person without lawful consideration of equal or greater value in return.

5. To prohibit a public officer, member of the general assembly, local government official, or government employee, either directly or indirectly through a spouse or dependent child, from soliciting, accepting, or receiving any gift or other thing of value having either a fair market value or aggregate actual cost greater than fifty dollars in any calendar year from a single person without lawful consideration of equal or greater value in return and to describe such a gift to include, but not be limited to, gifts, loans, rewards, promises or negotiations of future employment, favors or services, honoraria, travel, entertainment, or special discounts, while explicitly excluding the salary paid in the normal course of employment and gifts or other things of value paid for by the state or local jurisdiction.

6. To identify the following items to which the restrictions on accepting a gift or thing of value do not apply:

a. Campaign contributions;

b. Unsolicited items of trivial value less than twenty-five dollars;

c. Unsolicited tokens or awards of appreciation;

d. Unsolicited informational material, publications, or subscriptions related to the recipient's performance of official duties;

e. Admission to, and the cost of food or beverages consumed at, a reception, meal, or meeting by an organization before whom the recipient appears to speak or to answer questions as

part of a scheduled program;

f. Reasonable expenses paid by a nonprofit organization or government for attendance at a convention, fact-finding mission or trip, or other meeting, if the recipient is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the state or local jurisdiction, provided that the nonprofit organization receives less than five percent of its funding from for-profit organizations or entities;

g. Gifts from a relative or personal friend of the recipient, unless the relative or friend is a professional lobbyist.

7. To prohibit a professional lobbyist from offering, giving, or arranging to give a public officer, member of the general assembly, local government official, or government employee, or such person's family member, a gift, thing of value, meal, or beverage, paid for in the course of such lobbyist's business or in connection with a personal or social event, with the exception of campaign contributions authorized by law, unless the lobbyist is an immediate family member of the recipient.

8. To authorize the general assembly to make conforming amendments to statutory reporting and disclosure requirements.

9. To provide for an automatic adjustment to the fifty-dollar limit on gifts, based on the United States bureau of labor statistics consumer price index for Denver-Boulder-Greeley, beginning in the year 2011.

10. To create a five-member independent ethics commission to hear complaints, issue findings, assess penalties, and issue advisory opinions on ethics issues.

11. To authorize the independent ethics commission to adopt rules for administering and enforcing the provisions of the new constitutional article created by the measure and other specified statutory provisions.

12. To specify the following appointing authorities of the five independent ethics commission members: The Colorado senate, the Colorado house of representatives, the governor of the state of Colorado, the chief justice of the Colorado supreme court, and the four such appointees who shall appoint the fifth member from among local government officials or employees.

13. To specify that the members of the independent ethics commission be registered Colorado voters, no two of whom may be affiliated with the same political party, which members shall be continuously registered with the same political party, or continuously unaffiliated with any political party, for at least two years prior to the appointment to the commission.

14. To specify that the members of the independent ethics commission shall serve four-year terms, except the first members appointed by the Colorado senate and the governor who shall serve only two-year terms, and to further specify that members appointed to fill a vacancy shall serve the term of the person whose vacancy they fill.

15. To establish a procedure for the filing of complaints by any person with the independent ethics commission concerning whether a public officer, member of the general assembly, local government official, or government employee failed to comply with the provisions of the new constitutional article created by the measure or certain statutory provisions, which procedure includes the authority for the commission to dismiss frivolous complaints without a public hearing and the requirement that the commission conduct a public hearing and render findings on non-frivolous complaints pursuant to written rules adopted by the commission.
16. To authorize the independent ethics commission to assess penalties for violations, as prescribed by the new constitutional article created by the measure and law.
17. To provide the members of the independent ethics commission with subpoena powers.
18. To authorize a current or future public officer, member of the general assembly, local government official, or government employee to request an advisory opinion from the independent ethics commission and to direct the commission to render such an advisory opinion pursuant to written rules adopted by the commission.
19. To make public officers, members of the general assembly, local government officials, and government employees who breach the public trust for private gain, and persons or entities inducing such breach, liable to the state or local jurisdiction for double the amount of the financial equivalent of benefits realized by such actions and to authorize the manner of recovery and additional damages to be established by law.
20. To authorize a county or municipality to adopt an ordinance or charter provision concerning ethics that is more stringent than the provisions set forth in the new constitutional article created by the measure and to provide that the new constitutional article created by the measure is not to apply to home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address the same matters.
21. To state that any statutory provisions that are in conflict or inconsistent with the provisions of the new constitutional article created by the measure are inapplicable to the matters covered by and provided for in the new constitutional article.
22. To make the provisions of the new constitutional article created by the measure effective on January 1, 2007, and to be applicable thereafter.
23. To authorize the enactment of legislation to facilitate the operation of the new constitutional article created by the measure, but not to limit or restrict its provisions or the powers granted by the article.
24. To declare the provisions of the new constitutional article created by the measure to be severable by specifying that, if any provision of the new constitutional article created by the measure, or the application thereof, is held invalid, such invalidity shall not affect the other provisions or applications of the article that can be given effect without the invalid provisions or application.

Comments and Questions

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

Technical questions:

1. Pursuant to standard drafting practice, an amending clause typically states the body of law to be amended (such as the constitution of the state of Colorado), how it is to be amended identified in capital letters (such as "BY THE ADDITION OF A NEW ARTICLE"), followed by the lead-in words in small case, "to read:". In order to conform to the standard practice for drafting amending clauses, would the proponents consider changing the amending clause set forth in the proposed measure from, "The constitution of the state of Colorado is amended BY THE ADDITION OF A NEW ARTICLE:" to, "The constitution of the state of Colorado is amended BY THE ADDITION OF A NEW ARTICLE to read:"?

2. Standard drafting practice generally identifies the **ARTICLES** of the state constitution with capital letters in bold type and the title of the article in bold type. To conform to this standard drafting style, would the proponents consider changing the reference to "Article XXIX Ethics in Government" to "**ARTICLE XXIX Ethics in Government**"?

3. a. Standard drafting practice generally identifies the sections of the state constitution, including the headnote, with letters in bold type, followed by a period. In addition, it is the standard practice to capitalize only the first letter of the first word of the headnote. To conform to standard drafting practice, would the proponents consider changing each of the section numbers and headings created in the proposed measure accordingly? For example, would the proponents consider changing "Section 1. Purposes and Findings" to "**Section 1. Purposes and findings.**"?

b. Existing provisions of the state constitution typically show the text of a section immediately following the headnote without a "hard return". Would the proponents consider making such an adjustment to each of the sections of the proposed measure in order to conform to the general style of the state constitution? For example:

"Section 1. Purposes and findings. THE PEOPLE OF THE STATE OF COLORADO HEREBY FIND AND DECLARE THAT...."

4. To conform to the standard drafting style in which existing law and amendments to existing law are written such that the text of existing law is shown in regular font and the text of newly proposed language is shown in SMALL CAPITALS font, would the proponents consider showing the text of the proposed measure in SMALL CAPITALS font to indicate that the text shown is new language to be added to the state constitution?

5. a. Oftentimes, ease of understanding can be enhanced by breaking apart lengthy sections with subsections and lengthy paragraphs with subparagraphs. For example, Section 1. Purposes and

Findings, set forth in the proposed measure, may be easier to read and understand if the proponents were to structure the section as follows:

"Section 1. Purposes and findings. (1) The people of the state of Colorado hereby find and declare that:

(a) The conduct of public officers, members of the general assembly, local government officials, and government employees must hold the respect and confidence of the people;

(b) They shall carry out their duties for the benefit of the people of the state;

(c) They must, therefore, avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated;

(d) Any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust; and

(e) To ensure propriety and to preserve public confidence, they must have the benefit of specific standards to guide their conduct and of a penalty mechanism by which to enforce those standards.

(2) The people of the state of Colorado also find and declare that there are certain costs associated with holding public office and that to ensure the integrity of the office and to comply with this article, such costs of a reasonable and necessary nature should be born by the state or local jurisdiction."

b. Would the proponents consider making this structural change to enhance the clarity of the section?

6. Certain grammatical and diction errors are found in Section 1. of the proposed measure that the proponents may wish to consider correcting. They are as follows:

a. The word "which" is used twice in the fifth line of the first section. However, according to its context, the word "that" would be more appropriate. Would the proponents consider changing the word "which" to "that" in each of the two instances?

b. The phrase "impression among the public" is used in the first section. The word "among" is intended to be used in reference to two or more items or people. Because the word "public" is a single entity, would the proponents consider correcting this error by using a phrase such as "impression among *members of the public*" or "impression among *persons of the public*" [emphasis added]?

c. The word "state" is not a proper noun and therefore does not need to be capitalized. Would the proponents consider making the "s" in "state" lower case in this section and in every other instance in which the word "state" is capitalized in the proposed measure?

7. Standard drafting practice provides for a comma before the conjunctive or disjunctive preceding the last item in a series. For example, "public officers, members of the general assembly, local government officials and government employees" would read, "public officers, members of the general assembly, local government officials, and government employees". Would the proponents consider correcting this omission throughout the text of the proposed measure?

8. a. Standard drafting practice generally provides for an introductory portion to definition sections set forth in law. Would the proponents consider including such an introductory portion in the second section of the proposed measure, to read, "As used in this article, unless the context otherwise requires:"?

b. Each term in a definition section is generally identified with a subsection number. Would the proponents consider adding subsection numbers to this section of the measure? For example:

(1) "Government employee" means....

c. In standard drafting practice, only the first letter of the first word of a defined term is capitalized. Would the proponents consider changing the first defined term accordingly such that "Government Employee" would read "Government employee"?

d. It is standard drafting practice to use gender-neutral terms whenever appropriate and possible. Accordingly, would the proponents consider changing the word "his" as it appears twice in the definition of "professional lobbyist" to "his or her" or another gender-neutral word or phrase?

e. Pursuant to standard drafting practice, when a term that is being defined is used again in the definition, the term is set apart by quotation marks, such as the proponents employed in the definition of "professional lobbyist". Would the proponents consider using the same practice in the definition of "public officer"?

9. In Section 3. of the proposed measure, the proponents use the phrase "fifty (\$50)", but omit the written word "dollars". Would the proponents consider changing the phrase to "fifty dollars (\$50)"?

10. Standard drafting practice typically provides for the first letter of the first word of a subsection, paragraph, and subparagraph flowing from an introductory paragraph to be capitalized. In order to conform to standard drafting practice, would the proponents consider making that change to paragraphs (a) through (g) in subsection (3) of Section 3. of the proposed measure?

11. The preferred spelling of "nonprofit" is without a hyphen. Would the proponents consider making that change to paragraph (f) of subsection (3) of Section 3. of the proposed measure?

12. There appears to be a diction error in subsection (4) of Section 3. of the measure. Specifically, that section states that a lobbyist shall not "offer, give, or arrange *a gift* to any [government person] any gift or thing of value,...."[emphasis added]. Clarity might be achieved if the italicized phrase were changed to "*to give*". Would the proponents consider making that change to subsection (4), if it does not change the intent of the proponents?

13. Rules of grammar and punctuation dictate that multiple-word adjectives be hyphenated, such as "fifty-dollar limit" or "four-year period". Would the proponents consider making these changes to subsection (6) of Section 3. of the proposed measure in order to comply with standard rules of grammar and punctuation? (The same rule would apply to "two-year terms" used in subsection (2) of Section 4. of the proposed measure.)

14. In Section 4. of the proposed measure, the proponents use the phrase "ethical issues" rather than "ethics issues". If it is the intent of the proponents to reference issues that pertain to the subject matter of ethics, rather than to the determination of whether the issues themselves are or are not ethical, would the proponents consider changing the adjective "ethical" to "ethics" to accurately reflect their intent?

15. In Section 4. of the proposed measure, the proponents use the phrase "rules and regulations". Standard statutory drafting practice is to use the sole term "rule" to mean rule and regulation . *See* section 24-4-102 (15), Colorado Revised Statutes. Because the phrase "rules and regulations" presents an unnecessary redundancy and may even lead to confusion concerning the distinction between what are rules and what are regulations, would the proponents consider deleting the words "and regulations"?

16. a. For ease of reading and understanding, the proponents may wish to consider breaking down subsection (2) of Section 4. into paragraphs as follows:

"(2) (a) Members of the independent ethics commission shall be appointed as follows:

(I) One member shall be appointed by the Colorado senate;

(II) One member shall be appointed by the Colorado house of representatives;

(III) One member shall be appointed by the governor of the state of Colorado;

(IV) One member shall be appointed by the chief justice of the Colorado supreme court; and

(V) One member shall be either a local government official or a local government employee appointed by the affirmative vote of at least three of the four members appointed pursuant to subparagraphs (I) to (IV) of this paragraph (a).

(b) Each of the five members must be registered...."

b. Would the proponents consider making this structural change to enhance the clarity of subsection (2)?

17. Subsection (2) of Section 4. uses the word "must" in two instances, when identifying the party affiliation of the commission members. Standard drafting practice favors the use of the word "shall" over "must" when referencing mandatory language or compliance. For example, "No more than two members ~~may~~ **shall** be affiliated with the same political party." Would the proponents consider making this change to conform to standard drafting practice?

18. In subsection (2) of Section 4., the "however" phrase following the semi-colon in the sentence addressing the terms of the members of the independent ethics commission creates an exception to the general rule that members of the commission shall be appointed to four-year terms. Would the proponents consider changing the word "however, " to the phrase "except that," for greater accuracy in identifying the exception that follows?

19. Section 7. of the proposed measure uses the phrase "matters covered and provided for in this article.". The phrase omits the appropriate preposition for the verb "covered". Would the proponents consider adding the word "by" after the word "covered" in that sentence?

20. Typically, the effective date of a proposed measure or a bill to amend a provision of the state constitution or the Colorado Revised Statutes does not appear in the text of the constitutional or statutory measure. Standard drafting style generally makes an effective date and applicability clause a separate, non-constitutional or non-statutory section of the measure or bill. To conform to this standard drafting style, would the proponents consider making the following changes:

a. Make the part of Section 8. of the measure that addresses the effective date and applicability a non-constitutional provision by creating a separate section of the measure, as follows: "**SECTION 2. Effective date - applicability.**". The remaining "Section 9." would then need to be renumbered as "Section 8.". The effect of such a change would be that the effective date and applicability clause would appear in the supplement to the 2006 Session Laws, but not in the actual text of the new article created in the state constitution. An editor's note would follow the newly adopted article of the constitution that would identify the actual date that the new provision went into effect and its applicability as specified in the measure.

b. Identify that the remainder of the measure is a separate section by inserting the phrase "**SECTION 1.**" immediately before the amending clause on page 1 of the measure.

Substantive questions:

1. Given the difficulties of amending the state constitution and the need for the law to remain sufficiently flexible to accommodate new conditions, have the proponents considered amending the Colorado Revised Statutes instead of the state constitution?

2. The statement of purposes and findings in Section 1. of the proposed measure makes statements concerning the duties and obligations of public officers, members of the general assembly, local government officials, and government employees to hold the respect and confidence of the people and to avoid conduct that is in violation of their public trust, and more. Is it the intent of the proponents that a complaint based in ethics could actually be filed against such a public figure based upon this declaratory language, or is it the intent of the proponents that complaints should be based on only the more substantive and specific provisions that follow in the article?

3. Section 1. of the proposed measure states, among other things, that public officers, members of the general assembly, local government officials, and government employees must "avoid conduct

which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated...." What type of conduct do the proponents believe "creates a justifiable impression among the public that such trust is being violated"? Are the proponents aware of any specific examples of actual conduct involving officials of the government in Colorado that have created this "justifiable impression"?

4. In the last sentence of Section 1. of the proposed measure, the proponents identify that there are "certain costs" associated with holding public office and that such costs of a reasonable and necessary nature should be born by the state or the local jurisdiction. What do the proponents intend by this statement? What costs or expenses are the proponents referring to and how, or by whom, are they to be determined reasonable and necessary? Are the proponents suggesting that the reimbursement of these costs or expenses should be in excess of the salary or wages paid to the person holding public office and any travel and expense reimbursements already authorized by law? Is this statement intended to be authorization for implementing legislation by the general assembly to address the issue?

5. a. In the definition of "government employee" set forth in Section 2. of the proposed measure, when using the word "employee" in the definition, is it the intent of the proponents to include part-time employees, temporary employees, salaried employees, hourly employees, and all other types of employees?

b. In the definition of "government employee", the proponents cover employees of both the executive branch and the legislative branch; however, the proponents do not include employees of the judicial branch. Why are the proponents omitting employees of the judicial branch from the definition of "government employee"? Is it the intent of the proponents that this measure also apply to employees of the state judicial department?

c. Is it the intent of the proponents to also include aides and interns in the definition of "government employee", such that an aide or intern may not be entitled to receive a scholarship, reduced-rate loan, or other similar benefit that might qualify as a gift prohibited by the measure?

6. In the definition of "government employee" set forth in Section 2. of the proposed measure, the proponents use the term "public university"; however, there are publicly funded institutions of higher education that are not universities. Would the proponents consider changing the terminology accordingly if they wish to cover those other publicly funded institutions of higher education as well?

7. In the definition of "local government official" set forth in Section 2. of the proposed measure, the proponents use the term "local government". Have the proponents considered adding a definition of "local government" to the text of the measure? Is it the proponents' intent that "local government" include only counties and municipalities? Any special districts? Any other political subdivisions? A definition may eliminate doubts or ambiguities with respect to this issue.

8. In the definition of "professional lobbyist" set forth in Section 2. of the proposed measure, it appears that a word or words are missing from the first line, in which the definition reads, ""Professional lobbyist" means any individual who engages or is engaged by any other person for pay or for any consideration for lobbying." The same definition found in section 24-6-301 (6),

Colorado Revised Statutes, includes the word "himself" following the word "engages". In order to clarify this definition and maintain gender neutrality, would the proponents consider adding the words "himself or herself" or the word "individually" to the definition after the word "engages"?

9. In the definition of "professional lobbyist" set forth in Section 2. of the proposed measure, the proponents use the term "lobbying". This term is not defined in the measure. What do the proponents intend by this term? In order to eliminate the possibility of ambiguity, would the proponents consider adding a definition of "lobbying"? If not, is it the proponents' intent that the definition set forth in section 24-6-301 (3.5), Colorado Revised Statutes, govern the proposed measure in this respect?

10. In the definition of "professional lobbyist" set forth in Section 2. and elsewhere in the proposed measure, the proponents include a reference to a specific statutory provision of law. Typically it is the better practice to avoid including specific statutory references in the state constitution. The statutes can be changed much more easily and readily than can the state constitution. That specific statute may be repealed in the future or be amended to reflect something entirely different or unintended by the proponents. Accordingly, would the proponents consider replacing the references to specific statutory sections of law in this section, and in all the other sections in this proposed measure, with a general phrase such as "as provided by law" or with a more specific description, without reference to a statutory number, to the matter sought to be incorporated by reference?

11. The definition of "public officer", set forth in Section 2. of the proposed measure, includes the terms "state officer" and "statewide elected officeholders". This definition varies from a similar statutory definition set forth in section 24-18-102 (8), Colorado Revised Statutes, which definition uses the defined term "elected officer", rather than "state officer". What do the proponents mean by the terms "state officer" and "statewide elected officeholders"? Would the proponents consider amending the measure to include in Section 2. definitions for either or both of these terms?

12. The first two subsections of Section 3. of the proposed measure addressing gift bans appear to attempt to prohibit a public officer, member of the general assembly, local government official, or government employee from indirectly accepting or receiving a thing of value by means of a gift given to his or her spouse or dependent child. However, the use of the indefinite article "a" preceding the phrase "spouse or dependent child" calls into question *whose* spouse or dependent child. Is it the intent of the proponents to prohibit receipt or acceptance of a gift provided to the spouse or dependent child of the officer, member, official, or employee? If so, would the proponents consider replacing the word "a" with more specific language connecting these relatives to the officer, member, official, or employee in both subsections (1) and (2)?

13. Both subsections (1) and (2) of Section 3. of the proposed measure use the term "dependent child". What do the proponents mean by the term "dependent child"? To eliminate the possibility of ambiguity, would the proponents consider defining this term in the measure?

14. The first two subsections of Section 3. of the proposed measure addressing gift bans appear to prohibit public officers, members of the general assembly, local government officials, and government employees from soliciting, accepting, or receiving a gift or thing of value from a single person without the person receiving lawful consideration of equal or greater value in return. Is it the

intent of the proponents that the consideration must be provided by the officer, member, official, or employee actually receiving the gift or thing of value? If so, would the proponents consider clarifying that fact in both subsections (1) and (2)?

15. The first two subsections of Section 3. of the proposed measure address the receipt of gifts or things of value from a "person". What do the proponents intend by the term "person"? Do the proponents mean an individual or do they mean something more broad? Section 2-4-401 (8), Colorado Revised Statutes, defines the term "person" as it applies to every statute unless the context otherwise requires, to include "any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity." If the proponents intend a broader meaning for the word "person" than an individual, would the proponents consider defining the term in Section 2. of the measure? In addition, the word "person" in subsection (2) is preceded by the word "single". By the phrase "single person", do the proponents mean unmarried persons or do the proponents intend a single source? The term "single person" could be read as providing restrictions only on gifts from a single person, without restricting gifts from more than one person. Is this the proponents' intent? Would the proponents consider clarifying this language?

16. The last sentence of subsection (2) of Section 3. states, "This section does not apply to the salary paid in the normal course of employment, nor to any gift or other thing of value paid for by the State or a local jurisdiction." What do the proponents mean by "any gift or other thing of value paid for by the State or a local jurisdiction"? Do proponents have any examples with which to clarify the intent of this language? What is a "local jurisdiction"? Is it the same as a "local government"? Have proponents considered including a definition for the term "local jurisdiction"?

17. Subsections (1) and (2) of Section 3. of the proposed measure appear to set forth similar prohibitions that vary slightly. Subsection (1) appears to create a complete prohibition on accepting or receiving any money, forbearance, or forgiveness of indebtedness from any person without consideration. Subsection (2) appears to create a prohibition on soliciting, accepting, or receiving any gift or other thing of value in excess of fifty dollars in value. What is the intent of each of these two subsections and the distinction the proponents intend by these two different, but similar, provisions?

18. a. For the ban described in subsection (1) of Section 3. of the proposed measure, it may promote clarity to specify (as a condition precedent) that the gifts banned are those given in connection with the public or governmental service of the officeholder. Such a specification may eliminate the need to carve out an exception for family members. Would the proponents consider making this change?

b. This same subsection (1) may be read as forbidding a relative from giving the officeholder a loan, except for lawful and sufficient consideration. Is this the proponents' intent? Do the proponents intend "consideration" to be applied in the ordinary legal way (i.e. bargained-for exchange)?

c. Does subsection (1) refer only to money gifts and debt, or is the term "indebtedness" intended to have a broader meaning?

19. Subsection (2) of Section 3. of the proposed measure carves out an exception to the gift ban for the *salary* paid in the normal course of employment. With respect to this particular requirement:

a. Do the proponents intend to include the remuneration paid to contract or hourly wage earners who are not salaried? If so, would the proponents consider clarifying that reference in the measure?

b. It appears to be the intent of the proponents that the exception set forth in the last sentence of subsection (2) of Section 3. apply to the entire gift ban set forth in Section 3. If so, would the proponents consider making the exception a separate subsection in that section or adding the exception to subsection (3), which lists other exceptions to subsections (1) and (2)?

20. a. In subsection (2) of Section 3. of the proposed measure, what is the basis for the fifty-dollar gift ban? Given the paucity of things of substance, such as meals, sporting event tickets, and cultural event tickets, that can be purchased for less than fifty dollars in today's world, why did the proponents elect not to create a ban on gifts altogether?

b. What do the proponents intend by the use of the word "honoraria" as used in subsection (2) of Section 3. of the proposed measure? Would the proponents consider defining this term?

c. Subsection (2) of Section 3. forbids the taking of a gift greater than fifty dollars in value, while subsection (3) of Section 3. allows the acceptance of a trinket of less than twenty-five dollars in value. What if the trinket has a value between twenty-five dollars and fifty dollars? Is there a conflict between these two subsections? Have the proponents considered making the maximum value of the trinket the same as the gift ban, which would be fifty dollars?

21. Section 24-18-104 (1) (b), Colorado Revised Statutes, prohibits a public officer, member of the general assembly, local government official, or employee from accepting a gift of substantial value or substantial economic benefit tantamount to a gift of substantial value that would improperly influence a reasonable person in his or her position to depart from the faithful and impartial discharge of his or her public duties or which he or she or a reasonable person should know is primarily for the purpose of rewarding that person for official action he or she has taken. That statutory section includes a list of exceptions to this prohibition. Is it the intent of the proponents that the proposed measure would work with the existing statutory provision or preempt that statutory provision and render it invalid, or do the proponents intend a different result?

22. How do the proponents intend for the provisions in Section 3. relating to the acceptance or receipt of gifts by public officers, members of the general assembly, and local government officials to affect the disclosure requirements set forth in part 2 of article 6 of title 24, Colorado Revised Statutes, if at all? How do the proponents intend for the provisions of Section 3. relating to limitations on professional lobbyists to affect the disclosure requirements set forth in part 3 of article 6 of title 24, Colorado Revised Statutes, if at all?

23. Subsection (3) (f) of Section 3. of the proposed measure authorizes the receipt of expenses paid by a nonprofit organization or other government for attendance at a convention, fact-finding mission

or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the state or local jurisdiction.

a. Do the proponents intend for the phrase "represent the state or local jurisdiction" to be a "catch-all" phrase intended to cover attendance that does not fall within one of the above, more specific categories or is "represent" intended to have a more specific meaning?

b. What do the proponents intend by the term "other government"?

24. Subsection (3) (f) of Section 3. includes a further condition that a nonprofit organization paying certain expenses on behalf of a public person not receive five percent or more of its funding from a for-profit organization or entity. How is the public person reasonably to know how much funding the donor nonprofit organization receives from for-profit organizations? What is the basis for the five-percent requirement? How did the proponents arrive at this figure? Which expenses would the proponents consider to be "reasonable"?

25. Section 4. of the proposed measure creates a five-member independent ethics commission whose responsibility it is to hear complaints, issue findings, assess penalties, and issue advisory opinions. Section 24-18-112, Colorado Revised Statutes, creates a five-member board of ethics for the executive branch, the members of which are appointed by the governor. It is the responsibility of the executive board of ethics, upon request of the governor, to review complaints of violation of the provisions of article 18 of title 24, Colorado Revised Statutes, by a member of the executive branch of government. In addition, section 24-18-113, Colorado Revised Statutes, creates a four-member board of ethics for the general assembly, composed of members appointed by leadership of the general assembly. It is the responsibility of that board, upon written request of a member of the general assembly, to issue advisory opinions concerning issues relating to the requesting member's conduct and the provisions of article 18 of title 24, Colorado Revised Statutes. Finally, section 24-18-111, Colorado Revised Statutes, gives the secretary of state authority to issue advisory opinions to persons subject to the provisions of article 18 of title 24, Colorado Revised Statutes.

a. Is it the intent of the proponents that the independent ethics commission established in the proposed measure coexist with the executive branch ethics board established in section 24-18-112, Colorado Revised Statutes? Or do the proponents intend for the constitutional provision to preempt the statutory provision creating the ethics board or render the statutory board invalid?

b. Is it the intent of the proponents that the independent ethics commission established in the proposed measure coexist with the board of ethics for the general assembly established in section 24-18-113, Colorado Revised Statutes? Or do the proponents intend for the constitutional provision to preempt the statutory provision creating the ethics board or render the statutory board invalid?

c. Although both statutory boards of ethics and the secretary of state have authority to issue advisory ethics opinions, section 24-18-111 (2), Colorado Revised Statutes, clearly specifies that an opinion of the secretary of state shall take priority over any comment issued by the board of ethics for the executive branch or any opinion issued by the board of ethics for the general assembly if the opinions cover the same circumstances and issues. If the proposed measure were to become law, how do the proponents foresee multiple, possibly differing, advisory opinions from the several

different sources be prioritized? Is it the intent of the proponents that the statutorily created boards of ethics and the secretary of state would no longer have the authority to issue advisory opinions or comments?

d. Do the proponents envision that the commission will have staff? If so, how will the commission be staffed?

26. Section 4. of the proposed measure gives the independent ethics commission the authority to adopt rules for the administration and enforcement of the new constitutional article created by the measure and statutory provisions related to ethics. What is the process for this rulemaking and how do the proponents intend for the public, as well as the persons to whom this section may apply, to obtain notice of the rules adopted by the commission?

27. Section 4. of the proposed measure specifies how the members of the independent ethics commission are to be appointed. Specifically, the measure states that one member is to be appointed by the Colorado senate and one member is to be appointed by the Colorado house of representatives. How do the proponents envision a body of thirty-five members or a body of sixty-five members to appoint a single individual to such a commission?

28. Is it the intent of the proponents that the individuals appointed by the senate, the house of representatives, the governor, and the chief justice may be, but need not be, government employees or otherwise associated with the government? In other words, is it the intent of the proponents that only one of the five members need be a public employee?

29. The proposed measure specifies the length of the terms served by members of the independent ethics commission. It does not address how many terms a member may serve. Do the proponents intend that commission members be limited to serve only one term? If so, how will the commission develop depth of experience?

30. The following questions relate to the complaint process set forth in subsection (3) of Section 4. of the proposed measure:

a. It is not clear from the measure whether any step in the complaint process is to be maintained confidential. What is the intent of the proponents?

b. Why do the proponents restrict the bases for complaints, as described in subsection (1) of Section 4., to those sections of law identified? Is it possible that there are other sections of law or constitutional provisions that may give rise to ethical duties? Is it not possible that the general assembly may adopt new provisions in the future that give rise to ethical duties or standards?

c. The process allows the commission to dismiss frivolous complaints at the outset without a hearing. Upon what legal or factual standard or burden of proof do the proponents intend for the commission to base this determination?

d. Do the proponents intend for there to be any statute of limitations for the filing of a complaint? What if the subject of the complaint is no longer in his or her public office? What if the

factual basis for the complaint occurred ten years ago? Do the proponents wish to specify a statute of limitations for such complaints?

e. Who do the proponents envision "prosecuting" the complaint or bringing forth evidence in the proceeding? If any person may file a written complaint, who is to represent the interests of that person or persons in the process?

f. How do the proponents envision the constitutional rights of the subject of the complaint, including his or her 5th amendment right and right to due process, are to be protected?

g. In making its findings, what factual standard or burden of proof do the proponents envision the commission applying in order to make a finding of a violation or in order to dismiss the matter? Would the proponents wish to consider adding this direction to the measure?

h. The complaint procedure set forth in this subsection (3) is rather detailed for inclusion in the state constitution. Have the proponents considered simply authorizing the commission to establish rules or procedures governing the investigation and adjudication of complaints consistent with prevailing standards of due process?

i. Would the proponents consider authorizing the general assembly to enact legislation for the implementation of this section or do the proponents intend that such authority is granted in Section 8. of the measure?

31. Subsection (3) of Section 4. and Section 5. of the proposed measure purport to authorize the independent ethics commission to assess penalties against individuals found to have committed ethics violations. However, with respect to the conduct of the members of the general assembly, section 12 of article V of the state constitution reposes in each house of the general assembly the authority to adopt rules providing for the punishment of its members or other persons for disorderly behavior in its presence, to enforce obedience to its process, and to protect its members against violence, or offers of bribes or private solicitation, including expulsion. What do the proponents intend the impact of this proposed measure to be on the existing constitutional provision that rests the authority for penalizing members of the general assembly with each house of that body?

32. Despite the existing constitutional authority to adopt rules for this purpose, is it the intent of the proponents that the ethics complaint process set forth in the proposed measure, and as it applies to members of the general assembly, would preempt the processes adopted by rule in the House of Representatives pursuant to House Rule 49 and in the Senate pursuant to Senate Rules 41 and 43?

33. Is it the intent of the proponents that the complaint process set forth in subsection (3) of Section 4. of the proposed measure would be in addition to, and not in lieu of, any criminal authority set forth in the constitution or in statute?

34. Subsection (5) of Section 4. of the proposed measure refers to any "current" or "future" public officer, member of the general assembly, local government official, or government employee. The words "current" and "future" are relative terms. Do the proponents intend to identify persons who are in those positions as of the day this measure becomes effective would be considered "current",

or do the proponents intend to identify persons who are in those positions as of the day the independent ethics commission may read the provisions and attempt to apply them perhaps several years from now? Would the proponents consider changing the time-relative terms "current" and "future" in the measure to specific descriptions that more accurately convey their true intent and meaning?

35. Section 5. of the proposed measure refers to a person or entity "inducing" a breach of the public trust for private gain. What do the proponents mean by this phrase? What conduct gives rise to "inducing such breach"? What do the proponents mean by "breach of public trust"? What does one do to breach this trust? If there is no financial gain in connection with the alleged misconduct, is there still a breach of trust? What is the "penalty" for a breach of trust where the official has not realized any financial benefits?

36. Section 6. of the proposed measure authorizes a county or municipality to adopt ordinances or charters concerning ethics matters that are more stringent than the provisions set forth in the measure. Is it the intent of the proponents not to authorize the state to adopt legislation concerning ethics matters that is more stringent than the provisions set forth in the measure? What about statute that currently exists? Do the proponents believe that any existing statutory law is more strict than the provisions of this measure and therefore violative of it?

37. Section 7. of the proposed measure renders inapplicable any statutory provisions that are in conflict or inconsistent with the provisions of the proposed measure. What existing statutory provisions do the proponents believe are in conflict with or inconsistent with the proposed measure? Is Section 7. intended to apply to House Rules or Senate Rules, adopted pursuant to the authority of the state constitution, that may be in conflict with or be inconsistent with the measure?

38. a. Section 8. of the proposed measure specifies that it shall take effect on January 1, 2007. Section V (4) of article V of the state constitution states:

(4) All elections on measures initiated by or referred to the people of the state shall be held at the biennial regular general election, and all such measures shall become ...a part of the constitution, when approved by a majority of the votes cast thereon, and not otherwise, and shall take effect from and after the date of the official declaration of the vote thereon by proclamation of the governor, but not later than thirty days after the vote has been canvassed.

Since the constitution already provides for when the measure would take effect, it is unnecessary to state it in the measure. Furthermore, it may add confusion, since the governor's proclamation may actually occur *after* January 1st. Would the proponents consider eliminating this provision?

b. Section 8. of the proposed measure further states that the provisions of the measure shall be applicable thereafter. Why do the proponents believe this statement is necessary? What effect do the proponents believe this provision has?

39. Section 9. of the proposed measure provides for a severability clause for the new article. Section 10 of article XVIII of the state constitution states as follows:

Section 10. Severability of constitutional provisions. If any provision of any section of any article in this constitution is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions are valid unless the court holds that the valid provisions are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the enactment of the valid provisions would have occurred without the void one; or unless the court determines that the valid provisions, standing alone, are incomplete and not capable of being executed.

In light of this existing constitutional provision, why do the proponents believe it is necessary to include a severability clause in the proposed measure? Would the proponents consider eliminating this provision?

40. Do the proponents believe that the several topics of this measure constitute a single subject? If so, what do the proponents believe is the single subject of the proposed measure?