

STATE OF COLORADO

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MEMORANDUM

May 3, 2006

TO: William F. Gondrez and Peggy Wild

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed Initiative Measure 2005-2006 #124, 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, and April 14, 2006. Proposals 2005-2006 #91, 2005-2006 #96, and 2005-2006 #103 were discussed at hearings on March 14 and 31, 2006, and April 20, 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 facility", "picketing", and "protester";
2. To protect citizens from unlawful engagement of picketing or other protest activities at a funeral establishment;
3. To protect cemeteries, churches, mortuaries, mosques, synagogues, and any other facilities for all who participate;
4. To protect all groups, both military and civilian;
5. To protect all persons who are part of a funeral procession from disruption of the procession caused by other persons;
6. To prohibit demonstrations, disturbances, picketing, and protesters within five hundred feet of a funeral or memorial service and during the time period beginning one hour before and ending four hours after the funeral or memorial service;
7. To protect the people of the state of Colorado from any demonstrations, disturbances, picketing, and protesters at funerals or memorial services;
8. To authorize the General Assembly to enact implementing legislation addressing criminal conduct and penalties; and
9. To protect persons who are mourning for their departed loved ones.

Comments and Questions

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

Technical questions:

1. Section 1 (8) of article V of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by initiative:

"Be it Enacted by the People of the State of Colorado:"

To comply with Colorado's constitutional requirement, the proponents should include the enacting clause above in its entirety at the beginning of the proposed initiative. Would the proponents consider including the phrase above at the beginning of the proposed initiative?

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 picketing 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?

3. 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?

4. The introductory clause to the defined terms in the proposed measure reads: "**Definitions as used in this section, unless the context otherwise requires.**". It is standard drafting practice, however, that a group of defined terms are preceded by the following text: "**Definitions.** As used in this section, unless the context otherwise requires:". Would the proponents consider redrafting the introductory clause for the definitions?

5. The font for definitions (1) through (3) is different from the font of the remainder of the proposed measure. Would the proponents consider conforming the font to be uniform throughout the entire proposed measure?

6. The definition of "demonstration" states that the term "means a public exhibition of an attitude of a group of persons or person toward a polemic argument made by picketing or parading during a funeral or a memorial service.". Would the proponents consider:

- a. Separating the words "attitude" and "of" with a space?
- b. Instead of stating "group of persons or person", stating "person or group of persons"?

7. In the definition of "disturbance", would the proponents consider correcting the spelling of, or substituting other words for, the words "interfers" and "outbreat"?

8. The definition of "other facility" appears to be missing the word "as" in the phrase "venue such a park ...". Would the proponents consider adding "as" after "such"?

9. 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 "interrupts" in the definition of "disturbance"; and after "disapproval" in the definition of "protester"?

10. 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 after "facilities" in subsection (1) under the heading "**Funerals will have no picketing.**"?

11. The first sentence under the heading "**Funerals will have no picketing.**" states: "The

measure amends the Colorado constitution by protecting its citizens from unlawful engagement of picketing or other protest activities in front of or about any funeral establishment, as defined." The proposed measure, however, neither defines the term "funeral establishment" nor uses it in any other instance. Would the proponents consider:

- a. Separating the words "Colorado" and "constitution" with a space?
 - b. Replacing the phrase "funeral establishment, as defined." with the word "funeral"?
12. In the last paragraph of the proposed measure, would the proponents consider the following:
- a. Capitalizing the first word "the" to read "The"?
 - b. In the third sentence, correcting the spelling of the word "conduit"?

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 "public exhibition of an attitude ... toward a polemic argument" in the definition of "demonstration"?
4. In the definition of "disturbance", what does the phrase "mourner's intent of a funeral" mean?
5. The definition of "picketing" and the second sentence of the last paragraph of the proposed measure both refer to demonstrations within the four hours "following the commencement of a funeral". Subsection (4) under the heading "Funerals will have no picketing." prohibits demonstrations within four hours "following funerals". Is it the proponents' intent to calculate the four hours from the time the funeral begins or from the time the funeral ends? Would the proponents consider clarifying this language?
6. The fifth sentence of the last paragraph of the proposed measure states that "The interest of families privately and peacefully mourning the loss of deceased relatives and friends are violated when funerals are targeted by picketing and other public demonstrations." Is the "interest" singular or are the proponents actually speaking to more than one interest? Also, is it the proponents' intent to create a specific state constitutional right of privacy to mourn at funerals? If so, what is the intended extent of this right of privacy?

7. 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, obstruction of highway or passageway, unlawful conduct on public property, and disorderly conduct. Is it the proponents' intent to replace or supplement these laws with regard to the activities described in the proposed measure?

8. The federal and state constitutions protect certain conduct and content of protests and demonstrations at meetings and events. The constitutional protections depend upon the nature and character of the meeting or event and upon implicit customs and usages or explicit rules relevant to the meeting or event. Conceivably, there may be protests and demonstrations containing speech that appears 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, assembly, and religion?