

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

March 6, 2006

TO: William F. Gondrez and Peggy Wild

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed Initiative Measure 2005-2006 #91, 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.

Purposes

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

1. To establish that persons have a right to privacy during funerals and memorial services;
2. To implement this right of privacy by protecting all citizens in Colorado from protests, demonstrations, or disturbances at funerals and memorial services;
3. To specify mortuaries, cemeteries, churches, synagogues, and mosques as the facilities and areas at which participants who are attending funeral or memorial services will be protected from protests, demonstrations, or disturbances; and

4. To initiate the measure for all faith groups, military and civilian.

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 that the proponents "propose that a law be enacted ...". Is it the proponents' intent to amend the state constitution or the Colorado Revised Statutes? To assist the Revisor of Statutes in publishing the proposed amendment, if it is enacted into law, the proponents should identify where in the constitution or in the statutes the proposed language would be added. If the proponents intend to amend the constitution, they should identify the article of the constitution being amended and provide a section number and a section title for the proposed language. Similarly, if the proponents are intending to amend the statutes, they should specify the title and article of the Colorado Revised Statutes to which the language is being added and provide a statutory section number and a statutory section title for the proposed language.
2. 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?

3. 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 appears to be more of a description of what a proposed amendment to the constitution or to the statutes would accomplish. Do the proponents intend that the measure submitted to the Legislative Council staff is the actual text of an amendment to the constitution or to the statutes?
4. Standard drafting practice generally identifies the **SECTIONS** of a constitutional measure or a bill with capital letters in bold type in order to distinguish the section numbers of the proposed measure or bill from the actual sections of the article of the state constitution or the actual sections of statute being amended. In addition, the **SECTION** number of the proposed measure or bill is typically followed by a period. To conform to this standard drafting style, would the proponents consider including the term "**SECTION**" and number to precede each section of the proposed measure?
5. 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 or to state statute?

6. Under section 1 (4) of article V of the state constitution, a measure approved by the voters does not become law until it is officially proclaimed by the governor. Is it the intent of the proponents that the measure become law upon proclamation of the governor or at some point thereafter?

7. If the intent is that the measure become law after proclamation of the governor, the proponents may wish to designate an effective date. The effective date of a proposed measure to amend a provision of the state constitution or the Colorado Revised Statutes usually does not appear in the text of the constitutional or statutory measure. Rather, standard drafting style generally makes an effective date clause a separate, non-constitutional or non-statutory section of the measure or bill. If the proponents wish to have an effective date in their initiative measure, would they consider conforming their proposal to this drafting style and making the effective date provision a separate, non-constitutional or non-statutory provision by creating a separately numbered **SECTION** of the measure entitled "**Effective date.**"? The effect of such a change would be that the effective date would appear in the supplement to the 2006 Session Laws but not in the actual text of the state constitution or statute. An editor's note would follow the newly adopted section of the constitution or statute that would identify the actual date that the new provision went into effect.

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 proposed measure would prevent any protests, demonstrations, or disturbances at funerals and memorial services. Is it the proponents' intent that the protections be limited only to organized funerals and memorial services? Are these the only times of mourning that the proponents expect the proposed measure to apply to?

3. What do the proponents mean by the term "protests, demonstrations, or disturbances"? What if the mourning family members are the sponsors of or otherwise in support of a demonstration or protest at the funeral or memorial service? What if the funeral or memorial service is a demonstration?

4. The measure states that mortuaries, cemeteries, churches, synagogues, and mosques are the protected areas. Would the measure prohibit demonstrations or disturbances or protests at a memorial service that is held in another public venue such as a park, amphitheater, or stadium? Many churches meet in storefronts or other rented areas that are not recognized as traditional church

buildings and may be used for non-religious purposes during the week. Would the measure prohibit demonstrations, disturbances, or protests at these venues?

5. The proposed measure states, "Everyone has a natural right to have their privacy during these solemn moments." Is it the proponents' intent to create a specific state constitutional right of privacy or statutory right of privacy to attend certain services or to mourn at certain facilities or within certain areas? What is the intended extent of this right of privacy?

6. The violation of constitutional rights or statutory rights may be remedied in various ways, depending on the nature of the right, the relief sought, and the remedies available. Do the proponents intend to create any civil or criminal remedies or penalties for the infringement or violation of the right to privacy described in the proposed initiative?

7. Several state and local laws currently may be applicable 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 supplant or supplement these laws with regard to the activities described in the proposed measure?

8. If it is the proponents' intent that the proposed measure amend the state constitution, do the proponents intend for the General Assembly to have the authority to enact implementing legislation?

9. 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?

10. The last sentence of the proposed measure states, "this law is initiated for all faith groups, military, and/or civilian." What does this mean?