

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 29, 2006

TO: William F. Gondrez and Peggy Wild

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed Initiative Measure 2005-2006 #96, 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 define the terms "picketing", "funerals", "protests", "demonstrations", and "disturbances";
2. To protect mortuaries, cemeteries, churches, synagogues, mosques, and any other facilities for all who participate;
3. To protect all military and civilian groups; and
4. To protect persons who are part of funeral processions from intent to disrupt the processions.

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 "Section 15, Article X VIII [sic] of the Colorado constitution is amended by the addition of a new section ...". Currently, article XVIII of the state constitution has only fourteen sections. Therefore, it is not possible to amend "section 15" since it currently does not exist. Rather, 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 and appears to be a description of persons and facilities protected from funeral protests. 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. Standard drafting practice generally identifies the **SECTIONS** of a constitutional measure with capital letters in bold type in order to distinguish the section number of the proposed measure from the actual sections of the article of the state constitution 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 the proposed measure?
4. The portion of the proposed measure designated by "Section: 15, Funerals - No Picketing" has three numbered subsections and is separate from the other portions labeled "Definitions.", "Summary", and "Statement of Purpose". Is it the proponents' intent to include these other portions within the proposed Section 15?
5. 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?
6. Generally, definitions are placed in alphabetical order. Would the proponents consider moving the defined terms into alphabetical order?
7. It is preferred to use the singular form for a definition whenever possible. Would the proponents consider replacing the defined terms with the singular version of the terms?
8. 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?

9. There are several places within the proposed measure where words are separated by a slash - e.g. "and/or", "wake/viewing". Generally, it is difficult to interpret the meaning of a slash, although it is often intended to substitute for the word "or". Is this the proponents' intent? For ease of interpretation, would the proponents consider using "or" in place of "and/or" and using "or" instead of a slash?

10. The definition of "disturbances" appears to include a sentence fragment. Would the proponents consider rewriting the definition to incorporate the proposed second sentence of the definition?

11. Subsections (2) and (3) under the heading "Section: 15, **Funerals - No Picketing**" are both incomplete sentences, including verbs and objects but no subjects. Would the proponents consider rewriting them to be complete sentences?

12. 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?

13. 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 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. 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 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. 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 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. Generally, a statute or constitutional provision defines terms that are used within the text of the provision to assist persons reading the provision in interpreting the meaning of the provision. The proposed measure defines several terms but does not use any of these terms in the portion of the measure that address protections of facilities, persons, or groups. What is the proponents' intent in defining the terms? Would the proponents consider using the terms on those portions of the measure that are designed to regulate conduct or provide protections against disruptions?

4. The summary and statement of purpose included with the measure suggest that the measure is intended to protect persons who are mourning the loss of loved ones through funerals or memorial services. The language that is included in the proposed section 15 of article XVIII, however, does not prohibit picketing, protests, demonstrations, or disturbances. It merely defines them. A portion of the measure appears to be intended to protect facilities, persons, groups, and funeral processions, but it does not specify what they are protected from. Would the proponents consider clarifying the protections to be provided by the measure?

5. The proposed measure states that mortuaries, cemeteries, churches, synagogues, mosques, or "any other facilities" are the protected areas. Is it the proponents' intent that "any other facility" include a facility, other than a mortuary, cemetery, church, synagogue, or mosque, in or at which a funeral or memorial service is held? If so, would the proponents consider having "any other facility" include other venues such as a park, amphitheater, stadium, business, or residence?

6. The proposed measure states "No Picketing" within the heading of "Section: 15"; however, the text of the three numbered subsections within section 15 does not elaborate on what activities are prohibited, except for subsection (3) which protects persons in funeral processions from "intent to disrupt". If it is the proponents' intent to prohibit picketing, protests, and disturbances at funerals and memorial services, would the proponents consider specifically describing the prohibitions in the text of section 15?

7. Subsection (3) states "Protect persons that are part of a funeral procession from intent to disrupt said processions". Usually, laws protect persons from acts but not from intents. How would a person prove that someone had an "intent to disrupt" a procession? Could a person argue that, while it was his or her intent to demonstrate during a procession, the demonstration was not intended to disrupt the procession? Would the proponents consider tying the prohibitions in the measure to actions rather than intents?

8. Under the heading of "Statement and Purpose", 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 to attend certain services or to mourn at certain facilities? If so, what is the intended extent of this right of privacy?

9. The violation of constitutional rights may or may not 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?

10. 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?

11. Since 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?

12. 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?