

# STATE OF COLORADO

## Colorado General Assembly

Mike Mauer, 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

February 6, 2008

TO: Stuart J. Allen  
Hallie D. Atencio

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2009-2010 #5, concerning marriage

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.

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 allow for a valid marriage between two consenting adults in Colorado.
2. To specify that any union between two consenting adults shall be recognized as a marriage in Colorado.

#### Technical Comments:

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado". To comply with this constitutional requirement, would the proponents consider adding this phrase to the beginning of the proposed initiative?

2. In order to specify where the text of the proposed measure would be located in the Colorado constitution, an initiative proposal should include an "amending clause" that states which article or section would be modified or added, for example:

Section \_\_\_ of article \_\_\_ of the constitution of the state of Colorado is amended to read:

Or:

The constitution of the state of Colorado is amended BY THE ADDITION OF A NEW \_\_\_ to read:

Would the proponents consider adding an amending clause to the beginning of the proposed initiative?

3. It is standard drafting practice to use small capital letters to show the language being proposed to be added to the Colorado constitution. For example, the first sentence would begin "ANY UNION BETWEEN TWO CONSENTING ADULTS . . .". Would the proponents consider using a small capitals font to show the language that you are proposing for addition to the constitution?

4. It is not necessary to capitalize the word "constitution" in the proposed initiative.

### **Substantive Comments and Questions**

The substance of the proposed initiative raises the following comments and questions:

1. Section 1 (5) of article V of the Colorado constitution requires that the proponents of the measure submit the "text" of an initiated constitutional amendment to our office. The language the proponents have submitted appears to be a question and not the text of the constitutional amendment as it would appear in law. Would the proponents submit the

proposed text of the amendment?

2. The proposed measure, if enacted, would appear to conflict directly with article II, section 31 of the Colorado constitution that states, "Only a union of one man and one woman shall be valid or recognized as a marriage in this state." What impact do you believe that the proposed measure would have on this provision of the Colorado Constitution?

3. If the proponents intend that the proposed measure will repeal article II, section 31 of the Colorado constitution, would the proponents consider adding an amending clause to the proposed measure repealing that section?

4. The proposed measure provides that any union between two consenting adults be "valid *or* recognized" [emphasis added] as a marriage in Colorado.

a. By use of the term "or", do the proponents intend for the term "valid" and the term "recognized" to be alternatives? Do the proponents intend for the term "or" to be interpreted to include "and"? If so, would the proponents consider using the term "and"?

b. What do the proponents intend by the statement that "any union between two consenting adults be *valid* ... as a marriage in Colorado" [emphasis added]?

c. What do the proponents intend by the statement that "any union between two consenting adults be ... *recognized* as a marriage in Colorado [emphasis added]?"

d. Do the proponents believe that there is a distinction between the terms "valid" and "recognized", as applied? If so, what is that distinction?

5. The proposed measure refers to "any union between two consenting adults . . ." What do the proponents mean by the word "union"?

6. Several states have enacted legislation that authorizes the formal establishment and legal recognition of unions between persons of the same sex, such as domestic partnerships, civil unions, and reciprocal beneficiaries. Is it the intent of the proponents that the language of the proposed measure have any impact on persons in a registered or otherwise valid domestic partnership, civil union, reciprocal beneficiary relationship, or other similarly sanctioned same-sex relationship from another jurisdiction, state, or country that is not recognized as a "marriage" in that jurisdiction, state, or country? If so, would the proponents describe what impact they believe the proposed measure would have?

7. What do the proponents intend by using the term "adult" in the proposed measure? Do the proponents intend to include emancipated minors or other persons who are under eighteen years of age but who are authorized to marry under state law in the term "adult"?

8. State law identifies limitations to marriage other than the sex of the persons involved. For example, section 14-10-110, Colorado Revised Statutes, prohibits bigamy and marriage between certain persons of the same family. As drafted, the proposed measure appears to require recognition of a marriage regardless of whether the parties are already married or whether they are close family relations. Is it the intent of the proponents to affect these other statutory restrictions on marriage?

9. Additionally, there are several provisions in state law concerning marriage that refer to the sex of the person. For example, article 2 of title 14, Colorado Revised Statutes, includes the Uniform Marriage Act in part 1 and Rights of Married Women in part 2. Several sections include provisions relating to a "wife" or a "woman".

a. What impact do the proponents believe the proposed measure will have on these statutory provisions as well as any others that might relate to the sex of a married person?

b. If the voters approve the proposed measure, do the proponents intend that the General Assembly will amend conflicting provisions in state law to implement the constitutional provision?

10. Is it the intent of the proponents that the proposed measure would apply to common law marriages that have historically been recognized by case law in Colorado?

11. As a change to the Colorado constitution, the proposed measure, if approved by the voters, may only be amended by a subsequent amendment to the constitution. Is this your intention?

12. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?