

STATE OF COLORADO

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MEMORANDUM

June 29, 2007

TO: Kristine Burton & Mark Meuser

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #36, concerning the definition of a person

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.

Purpose

The major purpose of the proposed amendment appears to be:

1. To include in the definition of "person" or "persons", any human being from the moment of fertilization, for purposes of sections 3, 6, and 25 of article II of the state constitution.

Comments and Questions

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

Technical questions:

1. To ensure compliance with section 1 (8) of article V of the state constitution, would the proponents consider changing the capitalization in the enacting clause to "Be it Enacted by the People of the State of Colorado:"?
2. Standard drafting practice calls for a space to be placed between the phrase beginning "Be it enacted" and the phrase beginning "Article II". Would the proponents consider adding a space between these two phrases?
3. To conform to the style in which existing law and amendments to existing law are written, would the proponents consider:
 - a. Changing the amending clause to "**SECTION 1.** Article II of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:"?
 - b. Indenting the headnote "**Section 31.**"?
 - c. Adding two spaces after "**Section 31.**" and adding a bolded period after "**Person defined**"?
 - d. Adding two spaces after "**Person defined.**", and moving the text of the new section up to immediately follow those spaces, e.g., "**Person defined.** AS USED IN ..."?
 - e. Changing the font of the text for the new section to small caps?
 - f. Reordering the citation to the state constitution in the text of the new section to "AS USED IN SECTIONS 3, 6, AND 25 OF ARTICLE II OF THE STATE CONSTITUTION,"?
 - g. Changing the word "WORDS" in the text of the new section to "TERMS"?
 - h. Would the proponents consider capitalizing the words "AS" and "COLORADO" in the text for the new section?

Substantive questions:

1. What is the intent of defining the terms "person" and "persons" for sections 3, 6, and 25 of article II of the state constitution? Do the proponents intend that the definition of "person" and "persons" in the measure apply to other sections of the state constitution or to the Colorado Revised Statutes? How does the definition of "person" or "persons" in the measure work with other definitions of "person" or "persons" that currently exist in Colorado statute?
2. How does the new definition for "person" or "persons" apply to section 3 of article II of the state constitution and how do you anticipate it will be implemented?

3. How does the new definition of "person" or "persons" apply to section 6 of article II of the state constitution and how do you anticipate it will be implemented?
4. How does the new definition of "person" or "persons" apply to section 25 of article II of the state constitution and how do you anticipate it will be implemented?
5. Does the measure provide a legal status to a fetus that is separate from that of the mother? If so, what is the effect of this provision?
6. Will a human being at the moment of fertilization have the same rights as any other human being; as a minor; as an adult?
7. It appears that the proposed language could affect a woman's constitutional right to have an abortion. The following questions are based on the assumption that a court would interpret the language in that manner.
 - a. Do you expect that the proposed language would create an "undue burden" on or a "substantial obstacle" to a woman's right to an abortion?
 - b. Since section 25 of article II of the state constitution deals with due process of law, do you anticipate due process procedures being applied prior to an abortion, and, if so, what form would the due process take?
8. Would the proponents consider defining "moment of fertilization"? Does this term differ from "conception"?
9. How will someone know when fertilization has occurred, and how will this affect the implementation of the law?
10. Section 3 of article II of the state constitution guarantees a person certain rights, some of which are specified. Section 6 of the article II of the state constitution guarantees to a person access to the courts. Section 25 of article II of the state constitution guarantees that a person shall not be deprived of life, liberty, or property without due process of law. Section 1 (5.5) of article V of the state constitution prohibits an initiated measure from including more than one subject. What is the single subject of this proposed measure?