

STATE OF COLORADO

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MEMORANDUM

June 28, 2007

TO: Ryan Frazier and Julian Jay Cole

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #38, concerning employee affiliation with a labor organization

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 amendment appear to be:

1. To prohibit, as a condition of employment, a requirement that a person refrain from voluntary affiliation with or financial support of a labor organization;
2. To require, as a condition of employment, a person to become or remain a member of a labor organization;
3. To prohibit a requirement that a person pay any moneys to a labor organization or to any

- other third party in lieu of payment to a labor organization;
4. To prohibit the deduction of any moneys from an employee's wages, earnings, or other compensation to be paid to a labor organization without prior approval from the employee; and
 5. To create a misdemeanor criminal penalty for any person who violates any provision of the section.

Comments and Questions

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

Technical questions:

To conform with standard drafting practices, would the proponents consider:

1. Putting the enacting clause in regular type instead of bold-face type?
2. In the amending clause, striking the word "Colorado", not capitalizing the word "Constitution", and after the word "constitution", adding "of the state of Colorado"?
3. Putting the word "**Work**" in all lowercase type in the section heading?
4. Striking the word "AMENDMENT" in subsection (1) and substituting the word "SECTION"?
5. Showing all new language, other than the section headings, in small capitals, e.g., "THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS . . ." instead of showing the language in capital letters?
6. On the first page of the proposed initiative, putting a comma after the word "WITH" on line 10, after the word "OF" on line 11, after the word "TO" on line 17, after the word "OF" on line 18, after the word "AND" on line 33, and before the word "SHALL" on line 34?
7. Deleting the words "THE PROVISIONS OF" in subsection (4) and starting the subsection with the word "THIS"?

Substantive questions:

1. Section 1 (5.5) of article V of the state constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. Colorado law currently permits all-union agreements, which may require union membership

or financial support. Do the proponents intend for this proposed measure to supersede this law and ban these types of agreements?

3. Subsection (4) states that the initiative shall apply to all new, renewed, or extended employment contracts after the effective date of the section. Is it the intent of the proponents to not have the proposed measure apply to union contracts as well as employment contracts? If so, would the proponents consider adding the word "union" to the types of contracts covered?
4. Subsection (5) specifies that a person who violates the section commits a misdemeanor and shall be punished by a fine of not more than \$500.
 - a. Are the proponents aware that Colorado has classified misdemeanor crimes with penalties that may be periodically adjusted for inflation and other factors? Would the proponents consider altering the language of this subsection to make this violation punishable in accordance with the current Colorado misdemeanor sentencing statutes? For example: "...shall be punished by a fine in an amount equivalent to the most stringent misdemeanor classification provided by law."
 - b. Is it the intent of the proponents that the fines be directed to the general fund or to some other fund?
5. Subsection (6) defines the term "labor organization". In other areas of Colorado law, the definition includes an organization that exists for the purpose of "collective bargaining or of dealing with employers concerning grievances" and "providing other mutual aid or protection in connection with employment". (See sections 24-34-401 (6) and 26-13-125 (1)(c)) Do the proponents wish to include these purposes in this definition?