

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

May 6, 2008

**TO:** Reed Norwood and Charles Bader

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**SUBJECT:** Proposed initiative measure 2007-2008 #123, concerning conditions of employment

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 amend the Colorado constitution by prohibiting an employer from requiring, as a condition of employment, that an employee join or pay dues, assessments, or other charges to or for a labor organization;
2. To define "labor organization" to mean any organization of employees that exists solely or

primarily for a purpose other than dealing with employers concerning grievances, labor disputes, wages, rates of pay, employee benefits, hours of employment, or conditions of work; and

3. To state that the definition of "labor organization" shall prevail over any conflicting definition of "labor organization" in article XXVIII of the Colorado constitution, including any provision adopted at the 2008 general election, regardless of the number of votes received by the proposed amendment or any other such amendment.

### Comments and Questions

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

#### Technical questions:

1. Section 1 (8) of article V of the Colorado constitution states "The style of all laws adopted by the people through the initiative shall be, "Be it Enacted by the People of the State of Colorado"." On line 1 of the proposed initiative, would the proponents capitalize the word "enacted" to conform to this constitutional requirement?
2. It is standard drafting practice to indent the beginning of every section heading, subsection, etc., as the proponents have done for subsections (1) and (2) of the proposed initiative. Would the proponents consider adding a "left tab" on the following lines:
  - a. Line 3, before "**SECTION 1.**";
  - b. Line 6, before "**Section 17.**".
3. With regard to the headnote on line 6 of the proposed initiative:
  - a. The proponents are adding a new section 17 to article XVIII of the Colorado constitution. However, there is not an existing section 16 in such article. Since section 16 does not already exist, would the proponents change "**Section 17.**" to "**Section 16.**"?
  - b. It is standard drafting practice to not underline a headnote and for statutory text to immediately follow the headnote on the same line. Would the proponents make such changes, as indicated below?

**Section 16. Limits on conditions of employment. (1) AN**  
EMPLOYER SHALL NOT REQUIRE . . .

(2) AS USED SOLELY IN THIS ARTICLE, AND  
NOTWITHSTANDING . . .

4. On line 16, for proper citation format and to indicate that article XXVIII is within the Colorado constitution, would the proponents consider adding "OF THIS CONSTITUTION" after "ARTICLE XXVIII"?

Substantive questions:

1. Section 1 (5.5) of article V of the Colorado 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. Colorado law currently has different definitions for the term "employer" depending on which area of law the term is used. Do the proponents wish to define "employer" for the purposes of this amendment? (See section 8-1-101, Colorado Revised Statutes, in the general department of labor definitions, and section 8-3-104, Colorado Revised Statutes, in the "Labor Peace Act").
4. The Colorado Supreme Court has held that in order to carry out the meaning and purpose of Section 1 of article V of the Colorado constitution, the one of two inconsistent amendments that received the most votes must prevail. (See 536 P.2d 308, 1975). Is it the intent of the proponents to override this interpretation of the Colorado constitution with the last sentence in subsection (2)?
5. Subsection (2) defines the term "labor organization". In other areas of Colorado law, the term is defined differently. For example, section 24-34-401 (6), Colorado Revised Statutes, states: "'Labor organization" means any organization which exists for the purpose in whole or in part of collective bargaining, or of dealing with employers concerning grievances, terms, or conditions of employment, or of other mutual aid or protection in connection with employment.".
  - a. On lines 12 and 13 of the proposed initiative, the proponents define "labor organization" to mean "any organization of employees that exists *solely or primarily* (emphasis added)..." Is it the intent of the proponents to exclude organizations that may exist "in part" for the same purposes outlined in the proposed initiative?
  - b. Line 13 of the proposed initiative states that a labor organization is an organization that exists for "a purpose *other than* dealing with employers...". This language conflicts with existing statutory definitions of "labor organization". Is this the intent of the proponents?

- c. The proponents do not include "collective bargaining" in the definition of "labor organization". Is this the intent of the proponents?
- 6. Would the proponents consider adding the words "a labor organization" after the word "join" on line 9 of the proposed initiative to clarify the intent of the proponents?