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MEMORANDUM

April 28, 2008

TO: Buddy Moore and Anne Moore

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #99, concerning import or export of arms

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 the import or export of arms and related systems by any individual, corporation, state, commonwealth, territory, or the federal government; and
2. To prohibit the placement of weapons in outer space.

Comments and Questions

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

Technical questions:

1. Pursuant to section 1 (8) of article V of the Colorado constitution, would the proponents add the following enacting clause to the proposed initiative: "Be it Enacted by the People of the State of Colorado:"?
2. Citizens of Colorado cannot amend or propose amendments to the federal constitution or to the laws of other states through Colorado's initiative process, nor can they prohibit the actions of the federal government through Colorado's initiative process. Assuming, therefore, that the proposed language is amending Colorado law, it is unclear from the submitted language whether the proponents are intending to amend the Colorado Revised Statutes or the Colorado constitution. Would the proponents consider adding an amending clause indicating whether the Colorado constitution or the Colorado Revised Statutes are being enacted or amended by the proposed initiative?

The following is an example of an amending clause to amend the Colorado Revised Statutes by the addition of new language:

Article ____ of title ____, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

or,

Title ____, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

The following is an example of an amending clause to amend the Colorado Constitution by the addition of new language:

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

or,

Article ____ of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

3. To conform to standard drafting practices, would the proponents consider drafting a section headnote to accurately reflect the content of the proposed initiative? Further, would the proponents consider showing the language to be added in small capital type?

For example:

xx-xx-xxx. Import or export of arms - prohibition. THE IMPORT OR EXPORT OF ARMS AND RELATED SYSTEMS . . .

4. To conform to standard drafting practices, would the proponents add a comma before the conjunction when there is a series in the proposed initiative?

Substantive comments and 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. It would be helpful to further define some of the language in the proposed initiative in order to clarify the person, group, or items to which the law applies. The following language may be too vague for purposes of understanding who and what is affected by the proposed initiative:
 - a. "Arms" - It would be helpful to define the term "arms" and list categories of arms.
 - b. "Related systems" - It would be helpful to define the term "related systems" and list the systems. Notice to the public, as well as enforcement of the proposed initiative, would be difficult without further specificity as to what systems were prohibited.
 - c. "Outer space" - It would be helpful to define the term "outer space" for purposes of notice to the public and enforcement of the proposed initiative.
3. The proposed language does not make it clear whether the proponents' intention is to prohibit the import or export of arms and related systems into or out of Colorado only, by an individual, corporation, state, commonwealth, territory, or the federal government, or if you are attempting to prohibit the import or export of arms into or out of any state or the United States. Would the proponents consider adding language to clarify who is prohibited from acting and the locations in which the importing and exporting is prohibited?
4. The proposed language appears to interfere with the power of the federal government in matters reserved to the federal government. For instance:
 - a. Article VI, section 2 of the United States Constitution - the "supremacy clause" - declares the federal constitution and federal law as the "supreme law of the land" notwithstanding any laws of any state to the contrary. State laws that conflict with federal law are preempted by federal law. Have the proponents considered whether the proposed initiative is likely to be preempted by federal law?
 - b. Article I, section 8, of the United States Constitution gives Congress the power to provide for the common defense and general welfare of the United States, to support armies, maintain a navy, arm the militia, and to make all laws necessary to carry out these powers. Inherent in the power to arm troops is the power to use arms or weapons. Have the proponents considered how the proposed initiative would restrict this federal right?
 - c. Article I, section 8 (3), of the United States Constitution gives Congress the right to

regulate commerce with "foreign nations, and among the several states, and with the Indian tribes." Have the proponents considered how the proposed initiative would restrict the right of Congress to regulate the import or export of goods between Colorado and other states and nations?

- d. Article I, section 10, of the United States Constitution limits the powers of individual states from enacting laws that impair the obligation of contracts. Have the proponents considered how the proposed initiative might impair the obligation of contracts? Further, the proposed language does not prohibit the manufacture of arms or related systems in Colorado, but proposes to prohibit the import or export of those systems from Colorado. Have the proponents considered how a manufacturer would deliver its product to a purchaser under the proposed initiative? If not, have the proponents considered how the law would impair manufacturing contracts and restrict commerce?
 - e. Pursuant to Article II, section 2, of the United States Constitution, the President of the United States is the commander-in-chief of the armed forces of the United States. As commander-in-chief, the President is empowered to determine the plan for waging war, which plan may include the use of arms and weapon systems. Have the proponents considered how the proposed initiative would encroach upon the President's powers as commander-in-chief of the United States military?
5. Pursuant to Article IV, section 5 of the Colorado constitution, the Governor of Colorado is the commander-in-chief of the military forces of the state. He has the power to "call out the militia to execute the laws, suppress insurrection or repel invasion." Have the proponents considered how the proposed initiative would infringe upon the Governor's constitutional duties?
 6. There are federal military facilities within the borders of the state of Colorado. Have the proponents considered how the proposed initiative would interfere with the operation of federal facilities and the power of the federal government to arm federal facilities?
 7. The second amendment to the United States Constitution states that "A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." Further, article II, section 13 of the Colorado constitution provides, in part, that the right of no person to "keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called into question . . ." A prohibition against the import and export of arms by an individual or militia could be interpreted as violating or at least infringing on both the federal and state constitutions. Have the proponents considered a response to this issue?
 8. If the proposed language prohibits the import or export of arms into or out of Colorado, do the arms that are currently in Colorado have to stay in Colorado, even if citizens or governments want to get rid of the arms? What if the arms contain hazardous materials that need to be stored or even destroyed outside of the state?

9. The state of Colorado and the United States do not have the power to unilaterally regulate arms or related weapons systems in outer space or prohibit any other nations from engaging in any activity without the consent of that nation. Further, the federal government specifically reserves the right, pursuant to Article I, section 10 (1) of the United States Constitution, to enter into treaties. Therefore, even if the United States could enter into a treaty with all nations concerning arms in outer space, the state of Colorado could not do so. Do the proponents have a response to this issue?

10. Have the proponents considered how the prohibition in this proposed initiative will be enforced? Do the proponents intend for the general assembly to pass enabling legislation to implement this proposed initiative?