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MEMORANDUM

June 26, 2013

TO: Mike Holler and Anne Gill

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2013-2014 #42, concerning an amendment to the Colorado constitution to clarify, protect, and strengthen the right of the people to keep and bear arms in self defense

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 purpose of the proposed amendment to the Colorado constitution appears to be:

1. To (a) add language to clarify the scope of article II, section 13 of the Colorado constitution concerning the right to bear arms; (b) to repeal laws enacted after January 1, 2013, that restrict or limit this right to any extent; and (c) to require that any future law that restricts or limits the right to bear arms must be enacted by a vote of the people.

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. The proposed initiative includes an amending clause that reads as follows: "In the constitution of the state of Colorado, article II, section 13, **number** the existing text as clause 1, and **add** clauses 2, 3, and 4 as follows:". To conform to standard drafting practice, please restate this amending clause as follows: "In the constitution of the state of Colorado, **amend** article II, section 13 as follows:".
2. In the proposed new subsection (3), please add a comma after "2013" so the text reads "JANUARY 1, 2013, . . .".
3. In the proposed new subsection (4), please use "ON AND AFTER THE DATE . . ." rather than "FROM THE DATE . . .".
4. For the sake of clarity, in the proposed new subsections (2), (3), and (4), the proponents should consider substituting "THE RIGHT DESCRIBED IN SUBSECTION (1) OF THIS SECTION" for "THIS RIGHT".

Substantive Comments and Questions

The substance of the proposed initiative raises the following questions:

1. 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?
2. The proposed new subsection (2) states that the right to keep and bear arms, as set forth in section 13 of article II of the state constitution, "*INCLUDES* THE RIGHT . . . TO . . . SELL, TRANSFER, . . . LOAN, [AND] TRANSPORT . . . FIREARMS . . ." [emphasis added]. Generally speaking, state and federal laws observe a distinction between the ownership/possession of firearms and the transfer and transporting of firearms. Existing federal law closely restricts transfers and transporting of firearms. (See 18 U.S.C. sec. 921 et seq.) Therefore, the proponents may want to clarify the extent to which they intent for their proposed language to create a right to transfer and transport firearms.
3. The proposed new subsection (3) states that "EACH LAW ENACTED AFTER JANUARY 1, 2013 THAT RESTRICTS OR LIMITS THIS RIGHT TO ANY EXTENT IS HEREBY REPEALED." This provision appears to require a court to find that a law "restricts or limits" the constitutional right to bear arms, as amended, before the offending law may be repealed. If the proponents intend to repeal, without a court finding, specific laws that were enacted

by the General Assembly during the 2013 regular legislative session, the proponents should consider identifying such laws using bill numbers or statutory citations.

4. The proposed new subsection (3) states that "EACH LAW ENACTED AFTER JANUARY 1, 2013 THAT RESTRICTS OR LIMITS THIS RIGHT TO ANY EXTENT IS HEREBY REPEALED." Do the proponents intend for this language to apply only to state laws?
5. There appears to be a potential conflict between the proposed new subsections (3) and (4). The new subsection (3) purports to repeal any "LAW ENACTED AFTER JANUARY 1, 2013 THAT RESTRICTS OR LIMITS" the right to bear arms. But subsection (4) states that a law *may* restrict or limit this right so long the as the law is "ENACTED BY A VOTE OF THE PEOPLE". The proponents may consider resolving this potential conflict by beginning subsection (4) with the phrase "NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, . . .". (Alternatively, the proponents could substitute language identifying specific laws enacted after January 1, 2013, that are repealed. Or the proponents could substitute language limiting subsection (3) to repeal any law enacted after January 1, 2013, "AND BEFORE THE EFFECTIVE DATE OF THIS MEASURE.")