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Colorado General Assembly

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MEMORANDUM

TO: Mike Speaker and Monty Loftus

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: January 21, 2016

SUBJECT: Proposed initiative measure 2015-2016 #74 concerning a prohibition on restrictions on possession of firearms

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 directors of 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 to the Colorado constitution appear to be:

1. To prohibit the state from recognizing any law that restricts a person's ability to acquire, load, keep, carry (either open or concealed), transfer, trade, manufacture, or modify a firearm; and

2. To establish a felony offense for a person who requests that another individual remove or unload his or her firearm.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado". To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative.
2. 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?
3. What will be the effective date of the proposed initiative?
4. Despite its subject matter, the proposed initiative makes no reference to the existing provision within the Colorado constitution concerning the right to bear arms. Section 13 of article II reads as follows:

Section 13. Right to bear arms.

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 in question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons.

Do the proponents intend to amend, replace, or ignore this existing constitutional provision? The proponents should indicate their intent with an amending clause that identifies how and where their proposed language is to be added to the constitution. For example:

In the constitution of the state of Colorado, **add/amend/repeal** section XXX of article YYY as follows:

5. The proposed initiative states that the term "firearm", as used in the initiative, means "any device intended to move an object or projectile(s) in a specific direction, through any means of internal pressure available, whether generated from internal or external sources . . .". This definition is broad enough to potentially include devices that are not firearms, such as bows, crossbows, and slingshots. The proponents may consider narrowing this definition to reflect their intentions. For reference, a statutory definition of "firearm" appears in section 18-1-901 (3) (h), Colorado Revised Statutes.
6. The proponents should consider clarifying their language concerning the penalty for the new offense created in the proposed initiative. The current language states that "it shall be a class 3 Felony" to request that a person remove or unload his or her firearm. However, the Colorado constitution does not actually include any language separating felony offenses into numbered classes, nor does any existing provision of the Colorado constitution prescribe any specific class for any felony. The statutory classification of felonies appears in section 18-1.3-401 (1) (a) (V), Colorado Revised Statutes. In this section, a class 3 felony is associated with a penalty of 4-12 years imprisonment with 5 years of parole. However, it is not clear whether the proponents intend to utilize the statutory penalty schedule because the proposed initiative (a) makes no reference to this statutory provision and (b) includes language setting forth other specific penalties, including a penalty of "a mandatory minimum of five years in a maximum security penal institution" with a "mandatory minimum fine of five million dollars" for certain offenders.
7. The current language of the proposed initiative makes it a "class 3 Felony" to "*request* that an individual remove or unload his or her firearm" [emphasis added]. Do the proponents intend to prohibit a person from uttering a verbal request of this sort? For example, if a person requests that another person remove or unload his or her firearm, and the person with the firearm lawfully refuses to do so, and nothing else happens – do the proponents intend for the requestor to be charged with a felony under such circumstances? If not, the proponents may consider changing the word "request" to "require" or to some other word that more clearly reflects their intentions. If so, then the proposed initiative appears to be so overly broad as to violate the First Amendment to the United States constitution, which prohibits laws "abridging the freedom of speech".
8. The proposed initiative appears to conflict with federal law because the proposed initiative includes provisions that pose a "direct and positive conflict" with various federal firearms laws (e.g., federal laws requiring licensure of gun dealers, regulating interstate commerce in firearms, and regulating possession of machine

guns, sawed-off shotguns, and destructive devices). The Supremacy Clause of the United States constitution, Article VI, Section 2, provides that laws of the United States are supreme, "anything in the constitution or laws of any state to the contrary notwithstanding." Have the proponents considered whether portions of the measure would be found unconstitutional under the United States constitution?

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. Before the amending clause, number each section, part, etc. that is being amended or added with a section number (e.g., SECTION 1., SECTION 2.). For example:

SECTION 1. In the constitution of the state of Colorado, **add** article XXX as follows:

2. Each constitutional section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, "In the constitution of the state of Colorado, **add** section __ to article X as follows:".
3. Each section in the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to any new section created by the proposed initiative and appear in bold-face type.
4. Sections of the Colorado constitution are numbered with Arabic numbers, and some sections contain subsections, divided in lettered paragraphs. Further, paragraphs may be divided into subparagraphs labeled with Roman numerals. A proposal to amend or add to the Colorado constitution should specify the article and section to be modified or added. For example:

Section __. **Headnote.** (1) Subsection
(a) Paragraph
(I) Subparagraph

5. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to the Colorado constitution, so everything in the new section(s) should appear in SMALL CAPITAL LETTERS. Language being removed from the Colorado constitution should be written in stricken type.
6. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized:
 - a. The first letter of the first word of each sentence;
 - b. The first letter of the first word of each new subsection, paragraph, or subparagraph; and
 - c. The first letter of proper names.