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Colorado General Assembly

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MEMORANDUM

TO: Erin Behrens and Giuliana Day
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: July 31, 2019
SUBJECT: Proposed initiative measure 2019-2020 #118, concerning prohibition on late-term abortions

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.

This initiative was submitted with a series of initiatives including proposed initiatives 2019-2020 #117 to #121. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2019-2020 #117 and #119 to #121, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum. Only new comments and questions are included in this memorandum.

Earlier versions of this proposed initiative, proposed initiatives 2019-2020 #108 and #116, were the subject of memoranda dated May 31, 2019, and July 15, 2019, which were discussed at public meetings on June 4, 2019, and July 17, 2019, respectively. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meetings, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here may continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To make it unlawful for a person to intentionally or recklessly perform or attempt to perform an abortion if the gestational age of the fetus is at least twenty-two weeks, except under certain circumstances set forth in the proposed initiative; and
2. To define unprofessional conduct by a physician to include performing or attempting to perform an abortion that violates the provisions relating to abortion when the probable gestational age of the fetus is at least twenty-two weeks.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and 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. In proposed initiative 2019-2020 #117, proposed section 18-6-903 (1) makes it unlawful for any person to intentionally or recklessly perform or attempt to perform an abortion on a pregnant woman if the gestational age of the fetus is at least twenty-two weeks. In proposed initiative 2019-2020 #118, an abortion may not be performed on "any other person."
 - a. What is the effect of changing the language from "on a pregnant woman" to "on any other person"?

- b. Should the language in proposed section 18-6-903 (4) be changed to reflect "a person on whom an abortion is performed," rather than a "woman"?
- 3. The proponents have removed the criminal penalty section in the proposed initiative, which makes the provision appear to be a regulatory action rather than the creation of a crime. However, the provision is still contained in title 18, Colorado Revised Statutes, within the criminal code, and proposed section 18-6-903 (4) states that a woman on whom an abortion is performed cannot be charged with a crime.
 - a. Is it your intent that a violation of proposed section 18-6-903 is a criminal act?
 - b. If so, by removing the reference to the class of crime or associated penalty, it is unclear how the provision would be charged or enforced.
- 4. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the Legislative Council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
 - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
 - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
 - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least twelve days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the Legislative Council staff at BallotImpactEstimates.ga@state.co.us.

Technical Comments

There are no additional technical comments.