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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 #119, 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, #118, #120, and #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. Proposed section 18-6-903 (3) appears to expand the exception found in proposed initiatives 2019-2020 #117, #118, and #120 to allow an abortion to be performed even though it is not "immediately required" to "save the life of a pregnant woman" in circumstances where "continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman."
 - a. Is it correct that these abortions can be done even if they are not "immediately required" to save the pregnant woman's life?

- b. Is this expanded exception still "such a situation" that allows the physician to reasonably rely upon an assessment of gestational age made by another physician, or does the lack of immediacy mean that the performing physician must make his or her own assessment?
 - c. The proposed initiative does not define the term "major bodily function." What does "major bodily function" mean?
 3. Similar to proposed initiative 2019-2020 #118, this proposed initiative removes the criminal classification and penalty. Is this your intent?
 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

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. In proposed section 18-6-903 (3), "WOMAN THAT" should be "WOMAN WHO."
2. The paragraph reference in the proposed amendment to section 12-240-121 (1), Colorado Revised Statutes, should be to "(ee)" not "(dd)" to be consistent with the amending clause.