

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Ms. Heather Browning and Ms. Cynthia Ward
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: October 4, 2022
SUBJECT: Proposed initiative measure 2023-24 #1, concerning the validity of marriages

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 Revised Statutes appear to be:

1. To protect the right to marry for same sex couples in the state of Colorado.

Substantive Comments and Questions

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

1. Under article V, section 1 (2) of the Colorado constitution, proposed initiatives amend either the Colorado constitution or state law (i.e., the Colorado Revised Statutes).
 - a. Should this proposed initiative amend the Colorado constitution or the Colorado Revised Statutes?
2. Article II, section 31 of the Colorado constitution recognizes only marriages between a man and a woman as valid marriages. Colorado constitutional provisions prevail over state laws, therefore article II, section 31 would control over the language of the proposed initiative, if adopted, if same sex marriage were to become illegal on the federal level.
3. The language of the proposed initiative seeks to amend the language of section 14-2-104 (1)(b) and (3) introductory portion to change the references of "one man and one woman" to "two consenting adults."
 - a. "Consenting" may be ambiguous. Would the proponents consider defining "consenting"?
 - b. Under Colorado law, minors sixteen or seventeen years of age may marry with judicial approval. How would the proposed initiative effect minors sixteen or seventeen years of age or an emancipated minor since it refers to adults?
4. 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.

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 and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, "In Colorado Revised Statutes, 14-2-104, **amend** (1)(a) and (3) introductory portion as follows:".
3. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to and stricken type, which appears as ~~stricken type~~, to show language being removed from the Colorado constitution or the Colorado Revised Statutes.
4. Because the language of section 14-2-104 (1)(a), (2), (3)(a), and (3)(b) is not being amended by the proposed initiative, those provisions of section 14-2-104 should be omitted.