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COLORADO GENERAL ASSEMBLY**

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**AN ANALYSIS OF  
1994 BALLOT PROPOSALS**

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September 19, 1994

This analysis of statewide measures to be decided at the 1994 general election has been prepared by the Colorado Legislative Council as a public service to members of the General Assembly and the general public pursuant to section 2-3-303, Colorado Revised Statutes. All of the statewide proposals for the 1994 election are amendments to the Colorado Constitution.

Referenda A, B, and C are referred by the General Assembly. Amendment 1 and Amendments 11 through 18 are measures initiated by the people. If approved by the voters, the constitutional amendments may be revised only by a vote of the electors at a subsequent general election.

Initiated measures are placed on the ballot by petition of the registered electors. Initiated measures require the signature of registered electors in an amount equal to five percent of votes cast for all candidates for the Office of Secretary of State at the previous general election. This year 49,279 valid signatures were required for an initiative to be placed on the ballot. Signatures may be collected by volunteers or paid petition circulators.

In this publication, the provisions of each proposal are set forth, with general comments on their application and effect. Careful consideration has been given to the arguments for and against the various proposals in an effort to fairly present both sides of each issue. Major arguments have been set forth so that each citizen may decide the relative merits of each proposal.

The Legislative Council takes no position with respect to the merits of these proposals. In listing the ARGUMENTS FOR and the ARGUMENTS AGAINST, the Council is merely setting forth arguments relating to each proposal. The quantity or quality of the FOR and AGAINST paragraphs listed for each proposal is not to be interpreted as an indication or inference of Legislative Council sentiment.

Respectfully submitted,

Representative Paul Schauer  
Chairman  
Colorado Legislative Council

# TABLE OF CONTENTS

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Referendum A	Single Subject – Initiatives and Referenda . . . . .	2
Referendum B	Ballot Information Booklet . . . . .	5
Referendum C	Post-Conviction Bail . . . . .	7
Amendment 1	Tobacco Taxes . . . . .	12
Amendment 11	Workers' Choice of Care . . . . .	16
Amendment 12	Election Reform . . . . .	20
Introductory Comments – Limited Gaming (Applicable to Amendments 13 and 14) . . . . .		33
Amendment 13	Limited Gaming in Manitou Springs and Public Airports . . . . .	35
Amendment 14	Limited Gaming in Trinidad . . . . .	39
Amendment 15	Campaign and Political Finance . . . . .	41
Amendment 16	Obscenity – First Amendment . . . . .	47
Amendment 17	Term Limits . . . . .	52
Amendment 18	State Medical Assistance – Repayment . . . . .	56

**NOTE**

The lettering and numbering system used to designate this year's statewide ballot issues is based on the following organizational structure:

Issues referred by the General Assembly . . . . . Referenda A, B, and C

Issues initiated by the People

Measures to Increase Taxes . . . . . Amendment 1

Other Citizen Initiatives . . . . . Amendments 11 through 18

## REFERENDUM A – SINGLE SUBJECT FOR INITIATIVES AND REFERENDA

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**Ballot Title:** AN AMENDMENT TO ARTICLES V AND XIX OF THE CONSTITUTION OF THE STATE OF COLORADO, REQUIRING THAT ANY MEASURE PROPOSED BY INITIATIVE OR REFERENDUM BE CONFINED TO A SINGLE SUBJECT.

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### **The proposed amendment to the Colorado Constitution would:**

- require that proposals initiated by the people and referred by the General Assembly be confined to a single subject which shall be clearly expressed in the title;
- place procedural requirements in the constitution relative to the setting of ballot titles and for revising and changing the proposal, (if the official or officials responsible for fixing the title determine that more than one subject is contained in a proposal);
- provide that any subject contained in an initiated or referred measure, which subject is not expressed in the title of the measure, shall be void to the extent that it is not expressed in the title; and
- state that the revision and resubmission procedures shall not extend filing deadlines for the measure.

### **Background**

This proposal requires that initiated or referred amendments to the Colorado Constitution and to the statutes of the state of Colorado embody only one subject. The constitution is amended in two places: Article V provides the right of the initiative and the referendum, and Article XIX concerns the method by which amendments to the constitution are made. The term "initiative" means ballot proposals that are initiated by the people by petition; "referendum" means ballot proposals referred to the people by the General Assembly.

The constitutional requirement under which the legislature operates reads: "No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title..." The subject of a legislative bill may be broad, such as "concerning the criminal code," or it may be narrow, such as "concerning the crime of trespass." A bill on either of these topics could not be amended to contain unrelated provisions, for example, changes in the income tax or an appropriation for a special project. Over the years, the courts have established guidelines as to what constitutes a violation of the single subject rule.

The single subject requirement would be applied through the process of setting a ballot title for a proposal. Ballot titles are the paragraph long statements of the contents of the proposal. The title, not the entire text, appears on the ballot. Setting the ballot titles for statewide initiatives is the responsibility of a board consisting of the Secretary of State, the Attorney General, and the Director of the Office of Legislative Legal Services. The ballot title will appear on the general election ballot if the proponents obtain enough signatures on petitions to qualify the measure as a ballot proposal.

Under this proposal, the ballot title setting board is required to set a title that clearly expresses the single subject of the measure. If the board finds that the proposal has more than one subject, the proponents could change it. If the proponent's changes involve only the elimination of provisions in order to conform with the single subject rule, the proponents could avoid repeating the initial step in the process, the "review and comment" hearing. If the revisions are so substantial that another hearing is in the public interest,

## REFERENDUM A – SINGLE SUBJECT FOR INITIATIVES AND REFERENDA

a second review and comment hearing may be ordered. If a proposal is revised and resubmitted to the board, the ballot title would be set or the board could conclude that the proposal still contains more than one subject.

This amendment provides that subjects covered in a proposal, but not included in a ballot title, are invalid. If any subject addressed in a measure is not expressed in the title, that part of the measure shall be void.

There have been ballot proposals in recent years that might be considered to include more than one subject. For example, in 1992, a proposal called Amendment 6, which would have increased the state sales tax for increased funding of public schools, contained several proposals for educational reform. Also in 1992, Amendment 1, the "Taxpayer's Bill of Rights," included provisions relating to taxes, elections, state-mandated programs, and spending and revenue limitations. The type of proposals submitted by the legislature in recent years to remove obsolete provisions from the constitution might be considered to contain more than one subject. Under Amendment A, these ballot issues might not have been allowed unless they were changed to reduce their scope.

### **Arguments For**

1) This proposal will help keep unrelated or misleading provisions out of initiated and referred measures to be voted on by the people. The practice of "log-rolling" or "Christmas-treeing" results in ideas, which probably could not pass on their individual merits, being made parts of a larger proposal that is likely to pass. Further, the proposal will protect against unexpected provisions that may be contained in a proposal. Voters, after an election, should not be saying, "I didn't know that provision was in that ballot issue," which is a potential result of having more than one topic in a proposal. Proponents of initiated proposals, and the General Assembly with referred measures, should be required to present coherent ideas for change rather than roaming through Colorado law selecting a change here and another change there.

2) Bills enacted by the General Assembly are subject to the single subject rule. Since the initiative and referendum are forms of legislation, the rule should apply to these methods of amending the constitution and the statutes. The single subject rule is used by the General Assembly to prevent distortions in the legislative process and to focus the debate on one issue at a time. This proposal extends the benefits of the single subject rule to Colorado initiated and referred measures.

3) Of the 17 other states that have the initiative and referendum in a manner similar to that in Colorado, 12 states have restrictions that limit initiatives to a single subject. The people of these states have not appeared to suffer a lack of direct democracy or decrease in their freedoms as a result of this rule. The initiative is actually a process of enacting legislation. The single subject rule as applied to the product of a legislative body, is an appropriate requirement for initiated and referred measures.

4) A law has already been passed indicating that this amendment should be liberally construed to avert the practice of putting together, in one measure, subjects having no necessary or proper connection. The ballot title setting board is to apply judicial standards concerning single subject requirements when considering titles for initiated proposals. The board's discretion is limited and will be exercised according to existing judicial guidelines.

**Arguments Against**

1) This proposal impairs the right of citizens to initiate multiple subject proposals. The Colorado Constitution states that the initiative is "the first power hereby reserved by the people." Any weakening of the power to initiate changes in state law represents an attempt to limit a fundamental right granted to the people under the Colorado Constitution. Further, voters should be given credit for being able to understand more than one concept in a proposal.

2) The proposal gives increased authority to the ballot title setting board whose judgments could interfere with the initiative process. Two of the board's three members would be able to keep ideas that they considered unacceptable from becoming law by their interpretation of the single subject rule. If part of a proposal is not included in the ballot title, that part is declared invalid, giving the board further control over the content of the initiative.

3) This amendment provides additional reasons for delays to occur in the peoples' exercise of the right to initiate proposals. Disputed ballot titles have been the subject of numerous rehearings by the ballot title setting board and subsequent appeals to the Colorado Supreme Court. The single subject rule provides additional grounds for the challenge of ballot titles and additional mechanisms to be used against ideas contained in initiatives. Delay tactics are now used in order to stall the initiative process and thus keep proposals from the ballot. The processes for rehearing and appeals to the court are expensive and wear down the proponents whose proposals are under attack. All of these considerations mean that the right of citizens to petition their government will be compromised under this proposal.

4) This amendment will inhibit the ability of citizens and the legislature to present comprehensive revisions in Colorado law to the voters. In order to change a complex area of the law, more than one question may need to be on the ballot or more than one election may be necessary. If several amendments are necessary to change various aspects of state government, for example a complex subject such as the personnel system, it may be important to include a number of topics within one proposal and to have a consensus of a number of groups in order for the changes to be adopted. This proposal works against achieving system wide changes because complex reforms cannot realistically be accomplished on a piecemeal basis or in a series of elections. It is for these reasons that one state, Florida, will have on its November ballot a proposal to eliminate the single subject requirement for initiated proposals.

## REFERENDUM B – BALLOT INFORMATION BOOKLET

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**Ballot Title:** AN AMENDMENT TO ARTICLES V, X, AND XXIII OF THE CONSTITUTION OF THE STATE OF COLORADO, CONCERNING INFORMATION ABOUT STATEWIDE BALLOT ISSUES, AND, IN CONNECTION THEREWITH, REQUIRING THE NONPARTISAN RESEARCH STAFF OF THE GENERAL ASSEMBLY TO PREPARE AND DISTRIBUTE TO THE PUBLIC AT NO CHARGE A BALLOT INFORMATION BOOKLET THAT INCLUDES THE TEXT, THE TITLE, AND A FAIR AND IMPARTIAL ANALYSIS OF EACH STATEWIDE MEASURE, INCLUDING THE MAJOR ARGUMENTS BOTH FOR AND AGAINST THE MEASURE, AND PROVIDING FOR STATEWIDE PUBLICATION BY THE NONPARTISAN RESEARCH STAFF OF THE GENERAL ASSEMBLY OF THE TEXT AND TITLE OF STATEWIDE BALLOT ISSUES.

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### **The proposed amendment to the Colorado Constitution would:**

- require that the nonpartisan research staff of the General Assembly prepare and distribute to the public at no charge a ballot information booklet that includes the text, the title, and a fair and impartial analysis of each statewide measure. The booklet is to include the major arguments both for and against the measure and shall be distributed at least 30 days before the general election;
- require that the nonpartisan research staff publish, at least once in at least one legal publication of general circulation in each county, the text and title of every statewide initiated or referred constitutional amendment or legislation. Such publication shall occur at least 15 days before the final date of voter registration;
- repeal the present provision that requires publication of proposed constitutional amendments and initiated and referred bills three to five weeks before the election in two issues of two newspapers of opposite political faith in each county in the state; and
- amend Amendment 1, the Taxpayer's Bill of Rights, to provide that the ballot analysis provided under this proposal shall replace the mailed election notice requirements of Amendment 1 for state but not local measures.

### **Background**

This proposal refers to the voters of Colorado the questions of whether to require that the ballot information booklet be distributed statewide and whether changes should be made in requirements for published legal notices concerning ballot issues. This distribution will replace, for statewide issues, election notices now mailed to all voter households. An informational booklet reviewing statewide ballot issues has been published prior to every statewide election since 1954. This document is called "An Analysis of Ballot Proposals," but is commonly referred to as the "blue book." This amendment, and its accompanying legislation, will require that the ballot analysis be distributed to active registered voters statewide, with the distribution to take place not less than 30 days before the election.

Under this amendment, the ballot information booklet will contain the ballot title, the full text of each proposal, an unbiased explanation of each proposal, and statements of major arguments for and against each proposal. The publication will continue to be available without charge. An estimated 1,300,000 books will be printed and distributed to voters throughout the state. Approximately 200,000 have been printed in previous years.

The proposed amendment will change present requirements that the text of each proposal on the statewide ballot be published twice in two newspapers "of opposite

political faith" in each county. Instead, this amendment requires publication of the title and text of every statewide measure at least one time in at least one legal newspaper in each county. A "legal newspaper" is one that qualifies for publishing legal notices. There are currently 162 such newspapers in Colorado.

The cost for this proposal should approximate the present costs. There will be a savings in the expense of newspaper publications by requiring at least one instead of four publications in each county. There will be increased printing and distribution expenses of the blue book, depending on the method of distribution.

Amendment 1 requires that a notice be mailed to voters which includes information on the election, the title and text of ballot issues, fiscal information on tax and spending matters, and summaries for and against each measure. To eliminate the duplication that would be caused by these Amendment 1 requirements and the ballot analysis booklet, the proposed amendment replaces the summaries required by Amendment 1 with a ballot information booklet containing the title, text, explanation, and arguments for and against each proposal. Local districts will still mail local election notices but the state will no longer share that expense.

There is a potential conflict between this proposal and Amendment 12 on this year's ballot. This amendment requires the publication of a ballot analysis booklet by the nonpartisan research staff of the General Assembly; however, Amendment 12 would prohibit governmental material discussing ballot proposals, except election notices under Amendment 1. Thus, the two proposals appear to be in conflict. Historically, when two proposals are passed with provisions that are in conflict, the courts have ruled that the proposal that receives the greater number of favorable votes prevails in areas of conflict.

#### **Arguments For**

1) Passage of this amendment will allow more voters to receive an unbiased analysis of the issues they will be voting on. Distribution of the publication is to be statewide instead of the more limited distribution presently available. Statewide ballot issues are questions before the voters in general elections, submitted to the electors as initiated proposals from the people and as referred issues from the General Assembly. Proposals may be amendments to change the constitution or the statutes of Colorado. The ballot analysis booklet will be prepared, as is currently done, by the nonpartisan research staff of the General Assembly, which is responsible for providing unbiased information to elected officials and to the public. The 18 legislators on the Legislative Council will have final approval of the ballot analysis booklet before it is published.

2) The ballot analysis booklet will help inform voters by providing information on all ballot proposals. Currently, if a ballot issue is a "hot topic," voters may receive a great deal of information about it through television and radio advertisements, as well as through the news media. At times, little mention is made of other important proposals. The information available to the public can be implemented at an estimated cost of about the same amount that is spent under the current procedures.

#### **Arguments Against**

1) It is not the role of the government to tell people about election issues. Under this proposal, legislators will get the final say on the content of the ballot analysis booklet. As is provided in the Taxpayer's Bill of Rights, 500 word statements should be furnished

## REFERENDUM C – POST-CONVICTION BAIL

in election notices by the citizens who favor or oppose a given measure. Proponents and opponents of statewide ballot issues will no longer have the opportunity to explain in the summary statements with the election notices the reasons they support or oppose a measure.

In addition, there are printing and distribution costs needed to implement the proposal. Amendment 1 provides for consolidated mailings by all districts in order to save mailing expenses. There will be additional costs for separate statewide distribution under this proposal. Those costs are now consolidated with election notice mailings by local districts.

2) Preparation of the ballot analysis booklet could become subject to political pressures. This proposal will require that the ballot analysis booklet continue to be published, regardless of its quality or fairness. The nonpartisan staff that writes the document, or the legislators that review it, could allow their prejudices to interfere with a balanced presentation of the issues, or could misconstrue a proposal. There are inherent dangers in assigning the responsibility for preparing a description of ballot proposals to state elected officials and their staff.

Further, distribution of the ballot information booklet occurs before voter registration closes. Thus, citizens who register late will not be included in the distribution. Publication in newspapers precedes the close of voter registration, meaning there will be no information close to the election when public interest rises.

## REFERENDUM C – POST-CONVICTION BAIL

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**Ballot Title:** AN AMENDMENT TO SECTION 19 OF ARTICLE II OF THE CONSTITUTION OF THE STATE OF COLORADO, DENYING BAIL TO FELONS CONVICTED OF VIOLENT FELONIES AND SPECIFYING THE CONDITIONS UNDER WHICH BAIL SHALL BE DENIED AFTER CONVICTION FOR OTHER FELONIES.

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### **The proposed amendment to the Colorado Constitution would:**

- allow the court to grant post-conviction bail "only as provided by statute as enacted by the General Assembly," except for the offenses listed below;
- specify the following offenses for which a state court would be required to deny bail to a convicted felon while the offender is awaiting sentencing or an appeal of the conviction:
  - murder;
  - any felony sexual assault involving the use of a deadly weapon;
  - any felony sexual assault committed against a child who is under fifteen years of age;
  - a crime of violence as defined by statute enacted by the General Assembly; and
  - any felony involving the use of a firearm;
- require the court to make specific findings in setting bail for an eligible convicted person, as to whether the person is likely to flee, whether the person will pose a danger to the safety of any person or the community, and whether the appeal is frivolous or pursued for the purpose of delay.

## Background

*Explanation of the issue.* Prior to 1982, the Colorado Constitution, as interpreted by the Colorado Supreme Court, provided that all persons (except those accused of certain capital crimes) had a right to be released on bail pending trial of criminal charges (Article II, Section 19). No distinction was made between pre-conviction and post-conviction bail in the text of the Constitution prior to 1982. However, in interpreting the pre-1982 constitutional provision, the Colorado Supreme Court ruled that accused persons have no absolute right to bail after conviction. In 1982, the voters amended the constitutional right to bail provision in several respects, one of which addressed the subject of bail in the post-conviction context. That particular provision excepted from the right to bail those individuals who were convicted of a crime of violence and who were determined by a court to pose a danger to the community. "Crime of violence" is not defined in the state constitution but is defined in state statutes for other purposes, specifically, sentencing purposes.

The proposed amendment is presented as a result of concerns by prosecuting attorneys that the 1982 amendment may have created an absolute right to post-conviction bail, except to those persons convicted of a "crime of violence" whose release places the public in significant danger. Such an interpretation renders ineffective provisions of the state bail statute (section 16-4-201, et. seq.) that restrict courts from granting bail to convicted offenders, and would mean that all people convicted of felonies other than "crimes of violence," and all people convicted of a crime of violence (other than a capital offense) but found by a judge not to present a danger to the community, would have a right to be released on bail pending sentencing or appeal of their convictions.

An offense is classified as a "crime of violence" (section 16-11-309 (2)) when the offender uses, or possesses and threatens the use of, a deadly weapon during the commission or attempted commission of the offense, or when the crime is an unlawful sexual offense in which the victim was injured or where the offender used threat, intimidation, or force against the victim. The current statutory definition of "crime of violence" includes the offenses of murder, felony sexual assault involving the use of a deadly weapon, unlawful sexual offense in which the defendant caused bodily injury to the victim or in which the defendant used threat, intimidation, or force against the victim, and certain felonies involving the use of a firearm.

Under the interpretation of the 1982 amendment, persons committing offenses which are violent in nature, but which are not crimes of violence as defined by statute, have been granted appeal bonds. Although statistics are not available, law enforcement officials testified before committees of the General Assembly about offenders who were released on appeal bond and who either "re-offended" or escaped while on appeal bond. Law enforcement officials also testified about offenders who have harassed victims of the crime for which they were convicted while out on appeal bond.

The proposal will reduce the court's discretion in granting post-conviction bail by specifying the crimes for which bail could not be granted, and by allowing the General Assembly to specify the circumstances under which the court may grant post-conviction bail.

Policy issues raised by the proposed amendment include: whether current statutory standards for appeal bonds are consistent with constitutional provisions; whether respect

## REFERENDUM C – POST-CONVICTION BAIL

for a jury's decision should be strengthened; and whether the public, rather than the courts, should determine whether offenders convicted of certain violent offenses are a danger to the community and, therefore, shall not be eligible for an appeal bond. However, other issues to be considered are whether current practices by judges result in dangerous violent offenders being released on bail, whether the proposed amendment will affect many offenders, and whether the proposal will enhance the general public's safety.

### **Current Law – Constitutional and Statutory Provisions**

Generally, bail means that a person accused of a crime may be eligible for release from jail pending trial, or pending ultimate disposition of his or her case, by paying a fee set by the court. Pre-conviction bail, as a matter of right, has been recognized in Colorado, and the state constitution establishes the right to bail as being absolute except in circumstances involving capital offenses and crimes of violence, as defined by the General Assembly. The state constitution also establishes the right to bail after conviction except when a person has been convicted of a crime of violence and is appealing the conviction or awaiting sentencing. In these instances, the court must also find that the public would be placed in significant danger if the convicted person were released on bail.

Courts have recognized as legitimate reasons for denying offenders appeal bonds the temptation for the defendant to leave the jurisdiction of the court after conviction, and whether the accused is considered to be a danger to the safety of the community.

By statute, in Colorado, when a person has been convicted of a crime and has sought an appeal, the court must consider the following factors in deciding whether or not an appeal bond should be granted and in determining the amount of bail and the type of bond to be required:

- the nature and circumstances of the offense and the sentence imposed for that offense;
- the defendant's length of residence in the community;
- employment, family ties, character, reputation, and mental condition;
- the defendant's past criminal record and record of appearance at court proceedings;
- any showing of intimidation or harassment of witnesses or potential witnesses, or likelihood that the defendant will harm or threaten any person having a part in the trial resulting in conviction;
- any other criminal charges pending against the defendant and the potential sentences should the defendant be convicted of those charges;
- the circumstances of, and sentences imposed in, any criminal case in which the defendant has been convicted but execution stayed pending appeal;
- the likelihood that the defendant will commit additional criminal offenses during the pendency of such defendant's appeal; and
- the defendant's likelihood of success on appeal.

### **Federal Law**

The proposal is partially patterned after federal law with regard to bail for post-conviction. The federal Bail Reform Act of 1984 allows a judge to order an offender who

## REFERENDUM C – POST-CONVICTION BAIL

has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal, to be detained, unless the judge finds: 1) by clear and convincing evidence that the offender is not likely to flee or pose a danger to the safety of any other person or the community; and 2) the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal or an order for a new trial.

There is no federal constitutional right to bond pending appeal either in state or federal court. The federal courts have consistently held that the primary purpose of bail is the assurance of an accused person's presence at trial. Further, while the United States Supreme Court has not ruled on the direct issue, the federal courts which have ruled are in accord that the Eighth and Fourteenth Amendments do not require the state to grant an appeal bond in all cases as a matter of right. The federal courts have recognized that a state may constitutionally provide that bail be granted in some cases as a matter of right and denied in others, provided that the power is exercised rationally, reasonably, and without discrimination.

*Caselaw.* Several states' statutes denying bail to certain convicted offenders have been upheld by the courts. The most common challenge has been based on the grounds that denying bail to certain convicted offenders, while granting bail for other convicted offenders, violates the right to equal protection. Courts have found that delineating certain crimes in statute for which bail will be denied to convicted offenders is at the discretion of the legislature. The Supreme Court of New Hampshire recently ruled against an equal protection claim. While agreeing that singling out one offense from a class of offenses for denial of bail violated the state and federal constitutions, the court also ruled that, since there is no constitutional right to bail after conviction, whatever right to bail after conviction is at the discretion of the legislature. The court further stated that the legislature's objective in denying post-conviction bail to certain offenders was the protection of the community from dangerous offenders and that their action in doing so was reasonable and not arbitrary.

### **Arguments For**

1) The constitutional provisions adopted by the voters in 1982 may have inadvertently created an absolute constitutional right to post-conviction bail for most types of convicted offenders including some convicted of violent offenses. This constitutional right to post-conviction bail would override any statutory bail law which gives courts the discretion to deny bail. This proposal would make it clear that there is no absolute constitutional right to post-conviction bail and that bail will not be allowed for any offender convicted of certain violent offenses as specified in the proposal.

2) There is no federal constitutional right to an appeal bond upon conviction. States are free to define the offenses that areailable and those that are not. Courts have continually upheld the right of legislatures to deny bail to persons appealing their conviction.

3) The proposal will give further credence to jury decisions. Once an offender is convicted, there is no longer a presumption of innocence. The public has the right to expect that, when convicted, violent offenders will be punished and not released on bail, and that other non-violent offenders will be required to justify why they should be released on bail.

## REFERENDUM C – POST-CONVICTION BAIL

4) In its review of a sample of case records provided by the Judicial Department, the Office of the Attorney General found that the sample did not accurately reflect the population of defendants who were convicted, sentenced, applied for, and granted an appeal bond. It has been the experience of prosecuting attorneys that many convicted offenders sentenced to incarceration apply for appeal bond and that numerous offenders, including some convicted of violent crimes, have been released on bail pending appeal.

5) The fact that courts have denied appeal bonds does not remove the underlying constitutional issue of whether the 1982 amendments created a right to post-conviction bail, thereby removing the court's discretion to deny post-conviction bail under the bail bond statute. The legal availability of appeal bonds needs to be clarified for the future.

6) Society can tolerate the release on bail of non-violent convicted offenders who demonstrate the grounds to contest their convictions on appeal, the lack of any danger if released, and their availability for punishment should their appeal go against them. What society cannot tolerate is the release pending appeal of convicted offenders who have committed crimes, which by their violent nature, indicate the offenders are a danger to the community.

### **Arguments Against**

1) The proposal is unnecessary because the 1982 amendment adopted by the voters achieved what the voters intended: to prohibit dangerous offenders from being released on appeal bond to prey on the general public. A statistical sample of case records provided by the Judicial Department, at the request of Legislative Council Staff, shows that current constitutional provisions result in very few offenders being released on appeal bond. Further, it is the experience of defense attorneys that very few offenders request appeal bonds and even fewer offenders are released on appeal bond. In addition, current constitutional provisions which prohibit appeal bonds for certain violent offenders at the judges' discretion, already include the offenses listed in the proposed amendment.

2) Judges should retain the discretion to look at the specific circumstances in each individual case before deciding to grant or deny bail. The amendment removes a judge's discretion to grant an appeal bond, upon conviction, for certain offenses. Current law lists factors judges must consider in deciding whether or not an appeal bond should be granted and in determining the amount of bail and the type of bond to be required. Current law adequately provides that judges not release dangerous offenders on appeal bond after conviction, and provides that they may use their discretion in releasing offenders whose convictions were obtained under questionable circumstances.

In addition, the proposal removes a judge's discretion to continue bond upon conviction and prior to a sentencing hearing for certain offenses. Under current statutory law, judges may continue bail after conviction for some comparatively minor offenses such as felony menacing, a class 5 felony. Under this proposal, judges would be required to revoke bail at conviction and while awaiting the sentencing hearing. This has the potential to increase overcrowding in some county jails and may increase taxpayer expense for the cost of incarcerating these offenders.

3) The amendment sets broad, inflexible public policy in order to deal with a few specific cases which have not jeopardized the safety of the general public. The voice of the victim should be a consideration in setting public policy, but public policy, especially

**AMENDMENT 1 – TOBACCO TAXES**

changes to the state's constitution, should not be set solely to satisfy a few victims. Because there is a small number of offenders who are granted, and then actually post, an appeal bond, this kind of change in public policy may be unwise.

4) By singling out violent offenders as ineligible for appeal bonds, the amendment highlights the inequities in the sentencing structure. For instance, there are some class 4 felonies, such as sexual assault in the third and fourth degrees for which a judge could not grant a convicted offender an appeal bond. Also, there are class 2 felonies, a more serious class of crime, such as a second offense of selling or dispensing controlled substances, for which a judge could grant an appeal bond.

**AMENDMENT 1 – TOBACCO TAXES**

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**Ballot Title:** STATE TAXES SHALL BE INCREASED \$132.1 MILLION ANNUALLY BY AN AMENDMENT TO THE COLORADO CONSTITUTION TO INCREASE TOBACCO TAXES 2.5 CENTS PER CIGARETTE AND 50% OF THE MANUFACTURER'S LIST PRICE OF OTHER TOBACCO PRODUCTS, AND TO REPEAL THE STATE SALES AND USE TAX EXEMPTION FOR CIGARETTES, EFFECTIVE JULY 1, 1995; TO REQUIRE APPROPRIATION OF THE REVENUES PRIMARILY FOR HEALTH CARE, EDUCATIONAL PROGRAMS TO REDUCE TOBACCO USE, AND RESEARCH CONCERNING TOBACCO USE AND TOBACCO-RELATED ILLNESSES; AND TO AUTHORIZE MUNICIPALITIES AND COUNTIES TO IMPOSE CIGARETTE AND TOBACCO TAXES, SUBJECT TO ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION.

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**The proposed amendment to the Colorado Constitution would:**

- place an additional 25 mills per cigarette (50 cents per pack) tax on the sale of cigarettes by wholesalers;
- place an additional statewide tobacco products tax on the sale, use, consumption, handling, or distribution of tobacco products other than cigarettes by distributors at the rate of 50 percent of the manufacturer's list price;
- designate the annual new revenue as follows:

<b>50 percent</b>	for programs which promote and provide health care to people who need such care, but are unable to afford the cost, with the funds divided equally between programs for children and pregnant women and programs for other persons;
<b>30 percent</b>	for school and community programs and educational campaigns to prevent and reduce tobacco use;
<b>10 percent</b>	for research concerning tobacco related illnesses and strategies for the prevention and cessation of tobacco use;
<b>5 percent</b>	for health related economic development;
<b>4 percent</b>	for municipalities and counties to be distributed and proportioned in the same manner as the revenues attributable to the statewide cigarette tax that existed as of January 1, 1993; and
<b>1 percent</b>	for administration of the new citizens' commission which is created by the proposal;

- allow municipalities and counties to adopt local laws to impose licenses or fees on businesses for the privilege of selling cigarettes and tobacco products and to allow municipalities and counties to impose taxes on such businesses or to place

## AMENDMENT 1 – TOBACCO TAXES

additional taxes on the sale, use, or consumption of cigarettes and tobacco taxes, subject to voter approval, spending limit, and other requirements of Amendment 1, the Taxpayer's Bill of Rights;

- end the state sales tax exemption for cigarettes and specify that municipalities and counties receive 27 percent of the aggregate state proceeds from such repeal; and
- establish an 11-member Citizens' Commission on Tobacco and Health within the State Department of Health to administer the distribution of revenues to qualified programs. The initiative details the appointment of commission members, their geographical requirements for appointment, length of terms, and political party representation.

### **Background**

Cigarette taxes are imposed by all 50 states and the federal government. The current rate in Colorado is 20 cents per pack. State tax rates range from a low of 2.5 cents per pack in Virginia to a high of 75 cents per pack in Michigan. The proposed 70 cents per pack tax rate would make Colorado's cigarette tax the third highest among the states. Currently, Colorado's cigarette tax rate is the tenth lowest among the states. Cigarette tax rates per pack in neighboring states are as follows: Wyoming, 12 cents; Arizona, 18 cents; New Mexico, 21 cents; Oklahoma, 23 cents; Kansas, 24 cents; Utah, 26.5 cents; and Nebraska, 34 cents. The federal tax rate is 24 cents per pack.

Taxes on tobacco products are imposed on products other than cigarettes such as cigars, pipe tobacco, snuff, and chewing tobacco. Forty-two states, including Colorado, impose a tax on tobacco products other than cigarettes. The methods of taxing tobacco products vary. The tax rate in Colorado is 20 percent of the manufacturer's list price. Other states impose a flat rate tax on a percentage of the wholesale or retail price and others have different taxes on different tobacco products. This proposal would make Colorado's tax rate for tobacco products, other than cigarettes, 70 percent of the manufacturer's list price. Each of Colorado's neighboring states, except Wyoming, imposes a tax on other tobacco products.

*History of tobacco taxes in Colorado.* Cigarettes were subject to the state sales and use tax prior to being exempted in 1959. There were no state imposed taxes on cigarettes between 1959 and 1964. In 1964, the state began taxing cigarettes as a general fund revenue source at the rate of 3 cents per pack. Prior to the state cigarette tax and until 1973, many Colorado municipalities imposed their own cigarette taxes. In 1973, however, in an effort to simplify cigarette tax administration, local governments agreed to repeal all local cigarette taxes and refrain from enacting new cigarette taxes in exchange for a share of state cigarette tax revenues. In 1986, Colorado's cigarette tax was raised to its current rate of 20 cents per pack. Cigarettes remain exempt from the state sales tax; other tobacco products are not exempt.

*Additional tax revenues under the proposal.* Colorado's cigarette and other tobacco products taxes generated approximately \$63.0 million in net revenue in fiscal year 1993-94. The proposed tax increase is expected to raise an additional \$132.1 million for the first year of operation (fiscal year 1995-96). Of this amount, \$128.6 million is attributable to the additional state tax on cigarettes and other tobacco products and such revenue would be administered by the Citizens' Commission on Tobacco and Health. The repeal

## AMENDMENT 1 – TOBACCO TAXES

of the state sales and use tax exemption would net \$3.5 million in additional general fund revenue.

The projected \$128.6 million in revenue from the increased tobacco taxes would be distributed as follows: \$64.3 million for health care programs for persons who cannot afford such care; \$38.6 million for school and community programs and educational campaigns to reduce and prevent tobacco use; \$12.9 million for research of tobacco related illnesses and the prevention and cessation of tobacco use; \$6.4 million for economic development; \$1.3 million for administration of the commission; and \$5.1 million for distribution to counties and municipalities in the same manner that tobacco tax revenues are currently distributed.

The proposal grants authority to municipalities and counties to impose licenses, fees, and taxes on the business, occupation, or the privilege of selling cigarettes and tobacco products, and on the sale, use, or consumption of these products. These local actions are subject to voter approval for new taxes, tax increases, and other requirements under Amendment 1, the Taxpayer's Bill of Rights. The proposal states that no law could penalize a municipality or county by withholding the statewide tax distributions if that governmental unit were to adopt such fees, taxes, or regulation.

**Health care programs.** The proposal specifies that one-half of the revenues, an estimated \$64.3 million, from the additional tax on cigarettes and other tobacco products will go toward state programs to promote and provide health care to people who need such care but who are unable to afford the cost. The proposal does not list health care programs that might receive the funds but currently there are several such programs in Colorado. The Citizens' Commission on Tobacco and Health is authorized to direct revenues from the increased tobacco taxes.

**Administration.** The Citizens' Commission on Tobacco and Health is created, consisting of 11 members who serve 3-year terms. Nine members are appointed by the Governor, and one each by the President of the Colorado Senate and the Speaker of the Colorado House of Representatives. The commission is to have representation from each congressional district, and no more than six of the 11 members shall be from any one political party.

The proposal states that the commission shall be placed in the state Department of Health but, since there was a reorganization of three different state departments in 1994, the commission will be placed in the Department of Public Health and Environment. Although placed within this department, the commission will have the authority to exercise its powers independent of the head of the department. Current law provides that references to the Department of Health shall be taken to mean the Department of Public Health and Environment.

### **Arguments For**

1) The latest figures from the U.S. Centers for Disease Control indicate that cigarettes kill more than 400,000 Americans each year, including more than 4,000 in Colorado. An increase in tobacco taxes will cause smoking and other tobacco use to decline throughout the population, particularly among adolescents. Projections of usage, based on previous tax increases, indicate that there could be a decrease in tobacco

consumption of approximately 14 percent as a result of the increased taxes contained in this proposal.

It is estimated that 80 to 90 percent of regular smokers start smoking by age 18. Reducing teenage tobacco consumption, through increased taxes and educational programs, will decrease the future incidence of diseases associated with tobacco use.

2) Smokers should pay a larger portion of the health care costs associated with their tobacco use. Cigarette use produces an estimated \$3.86 per pack in medical costs and lost productivity, including 89 cents per pack paid by taxpayers to treat diseases caused by smoking. The initiative will increase the tobacco tax to make needed funds available to assist in treating tobacco related diseases and remove some of the burden of financing such care from the non-smoking taxpayer.

3) An estimated 500,000 Colorado citizens have no health insurance. The proposal will provide increased access to health care programs through the additional revenues designated for these purposes. Some of the programs that could receive additional funding are programs which assist persons who are employed but whose pay is low and whose job benefits do not include health insurance or who have only limited health insurance benefits. One major health problem in such a family could result in financial problems that would cause the family to enter the social welfare system.

4) Increasing the tobacco tax to help compensate for the costs and health risks associated with tobacco use is not an infringement on a person's freedom to smoke. Smokers are not being prohibited from smoking, but rather are being asked to take greater responsibility for their actions. Non-smoking taxpayers should not have to pay for self-inflicted tobacco related illnesses that smokers have been warned about and which significantly contribute to the nation's health care costs.

#### **Arguments Against**

1) The state tax increase will take approximately \$130 million in taxes from a single group of individuals, those who use cigarettes and other tobacco products. It is a dangerous trend for the majority of voters to impose a tax to be paid only by a minority. A one pack per day smoker would pay an additional \$180 per year in tobacco taxes. This money is taken from the tobacco users and does not allow these people to spend it in the way they choose. The money instead is to be used in the way an independent governmental agency determines.

Additional fees, licenses, and taxes are authorized for cigarettes and other tobacco products for municipalities and county governments, subject to voter approval, spending limitations, and other restrictions. The new fees and taxes may be placed on businesses as well as on the consumers. The proposal places an unequal tax burden on cigarettes and tobacco products for the financing of local government and increased funding for state health policies.

2) The proposal is not specific as to the health care programs and educational programs which will receive additional revenues through the increased tobacco tax. Therefore, the voters are being asked to approve an issue in which the distribution of revenue has not been clarified in the proposal. The proposal does not clearly define "health care programs" and the result is that the voters have no guarantee that the individuals most deserving of health care will benefit from the additional revenue.

## AMENDMENT 11 – WORKERS' CHOICE OF CARE

3) It is not sound policy to earmark funds. The new funds generated will not correspond to the extent of the problem being addressed. Using the tobacco tax, a revenue source that is projected to decline, to fund expanded care for persons unable to afford such care could eventually shift the burden of funding these programs to the state general fund. Funding may be increased to a level that cannot be maintained by tobacco taxes. Funding and expanding government programs through support from a declining revenue source, while program costs continue to increase, will create the need for additional revenue to continue the programs.

4) The Citizens' Commission on Tobacco and Health is not held accountable to the public through the election process and is not subject to the supervision of a member of the governor's cabinet. Yet, the commission is responsible for the distribution of \$128.6 million, an amount that equates to a 68.7 percent increase in the current budget for the Department of Public Health and Environment. There is no budgetary control by the General Assembly over the use of new funds since the percentages of appropriation to the health care and educational programs are established in the proposal. The proposal is not specific as to which health care and educational programs are to receive additional funding, and the criteria for health care program funding will be determined by the commission. The Citizens' Commission on Tobacco and Health is an appointed group that will make the decisions in distributing the new tobacco tax revenue.

5) Since the tobacco tax levels in states neighboring Colorado would be much lower, ranging from 34 to 58 cents per pack lower, the chances for bootlegging cheaper tobacco products into Colorado will increase. The bootlegging problem cuts into the tax receipts that would be received by the state, counties, and municipalities from cigarette and tobacco tax products.

## AMENDMENT 11 – WORKERS' CHOICE OF CARE

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**Ballot Title:** AN AMENDMENT TO THE COLORADO CONSTITUTION TO SPECIFY THAT WORKERS' COMPENSATION BENEFITS INCLUDE ALL REASONABLE AND NECESSARY TREATMENT, TO ALLOW INJURED WORKERS TO CHOOSE HEALTH CARE PROVIDERS AND TO SUBJECT PROVIDER FEES TO STATE REGULATION.

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### **The proposed amendment to the Colorado Constitution would:**

- provide that benefits to an injured worker include all reasonable and necessary treatment for work related injuries;
- allow injured employees to select their own health care providers; and
- subject fees charged by such health care providers to regulation by the State of Colorado.

### **Background**

Currently in Colorado, the Workers' Compensation Act declares that the intent of the act is to "assure the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers, without the necessity of any litigation." The act further states that, regardless of the employer's method of insurance, every employer "must furnish such medical, surgical, dental, nursing, and hospital treatment, medical, hospital, and surgical supplies, crutches, and apparatus as may reasonably be

needed at the time of a work-related injury or occupational disease," and, during the period of disability, cure and relieve the employee from the effects of the injury. The Division of Workers' Compensation in the Colorado Department of Labor and Employment administers all statutory requirements of the Workers' Compensation Act and is responsible for developing rules and regulations to implement the workers' compensation system.

Colorado law requires that insurers and self-insured employers pay for all care related to an on-the-job injury. However, insurers and self-insured employers are not liable to pay for care unrelated to a compensable injury, or for services which are not reasonably necessary or appropriate according to accepted professional standards. A utilization review process exists which provides a mechanism to review services rendered which may not be reasonably necessary or appropriate according to accepted professional standards.

**Choice of physician.** Employers or insurers are permitted to select the physician that employees must use in the case of a work-related injury or occupational disease. Physician means a medical doctor, a dentist, a podiatrist or a chiropractor. If the employer or insurer does not select a physician at the time of injury, the employee may choose a physician. Current law also provides that, after a claim is filed, the insurance company may request that the employee be examined by another doctor of its choice and at its expense. If the employee refuses to participate in the examination, the insurance company may ask for a hearing to stop benefits.

An employee may change physicians by writing a letter to the insurance company adjustor or self-insured employer requesting permission to change. The insurance company or employer must respond to the request within 20 days. If no decision is made within 20 days, the employee may choose a different physician. If the insurance carrier or employer refuses to allow a change of physician, the employee may ask for a hearing before an administrative law judge to request a different physician.

The Division of Workers' Compensation is required to promulgate medical treatment guidelines for work-related injuries. These guidelines provide a system of evaluation and treatment for the most common and most expensive types of occupational injuries and diseases to assure appropriate medical care at a reasonable cost. Physicians and chiropractors providing treatment for work-related injuries adhere to these treatment guidelines.

**Medical fees.** The Division of Workers' Compensation has established rules concerning a "relative value schedule" for medical fees. The relative value schedule establishes maximum levels of payment to physicians for services rendered to the injured worker under the Colorado Workers' Compensation Act.

**Other states.** The Workers' Compensation Research Institute (WCRI), a nonpartisan, not-for-profit public policy research organization funded by employers and insurers, reviewed medical cost containment strategies for workers' compensation in all 50 states and the District of Columbia. WCRI indicated that 40 jurisdictions designate certain practitioners as "treating providers" and require that services from other practitioners be ordered by a treating provider. The other 11 jurisdictions do not define the term "treating provider."

All jurisdictions that do define treating providers include medical doctors and osteopaths. These jurisdictions also include other providers, such as dentists, chiropractors, podiatrists, optometrists, and psychologists. Less common treating providers are physical and occupational therapists, nurses, acupuncturists, spiritual healers, and Christian Science practitioners. WCRI claims that limiting the employee's choice of health care providers is the most common cost containment strategy utilized by states for workers' compensation.

The American Insurance Association reviewed statutes and rules and regulations in all 50 states and the District of Columbia. The research reported: 23 states allow for initial employer or insurer choice of physician or provider; 10 states allow for employee choice of physician or provider from within a managed care plan provided by the employer; 13 states and the District of Columbia allow the employee to make the initial choice of physician or provider; and 5 states allow the employee unlimited choice of physician or provider.\*

### **Arguments For**

1) Control over the health care provided under the workers' compensation system should be a right of workers. This amendment will allow workers to select and be treated by a health care provider whom they know and trust, and whose only interest is helping the injured employee recover and return to work. A provider selected by the employer or insurer may not provide adequate care, such as diagnostic and follow up treatment, and may return an employee to work prematurely, thus potentially causing additional injuries and unnecessary reinjury. Providers designated by the insurers and companies may provide evaluations that unfairly reduce the employee's disability benefits. Allowing the employee to select a provider gives control to the one individual most directly affected by the care being provided, and prevents an employer from having undue influence over the treatment process.

2) This initiative should not raise costs for the workers' compensation system. The amendment provides that the state will determine the level of reasonable medical fees. The state will continue to have the authority to set rules and regulations concerning the quality and quantity of care. In addition, employers and insurance companies currently have the right to evaluate what medical care is reasonable and necessary for any case. This right will be retained.

3) A study conducted by Dr. Silvana Pozzenbon, Assistant Professor of Industrial and Labor Relations at the Ecole des Hautes Etudes Commerciales, in Montreal, Canada, indicates that states with mandatory restrictions on initial provider selection or subsequent provider changes, have average medical benefit expenditures that are 24 percent higher than jurisdictions not using these cost containment approaches. The information used in the study covers the period from 1979 to 1987 and involves 17 states overall. Colorado was not included in the study. The study indicates that states that limit initial choice of provider have health benefit payments that are 5 percent to 15 percent higher than jurisdictions which do not impose such restrictions. In addition, states that restrict the employee's ability to change the treating provider show costs that are 7 percent to 15 percent higher than states that do not limit change in treating provider.

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\* Arizona allows for employer choice in cases where the employer is self-insured, and initial employee choice in cases where the employer is insured by a third party.

4) The Tillinghast study directed by the Insurance Commissioner, cited by the opponents, is considered insufficient because the authors of the study have cautioned against extrapolating results of the study and applying them industry-wide based on the limitations inherent in a closed claim study.

5) Allowing injured employees to choose their own health care providers will eliminate some inefficiencies and expenses in the system. Requesting a change in health care provider causes administrative delays and incurs costs for the system and the employee. Obtaining a second opinion takes employee time and money. An injured worker may petition the administrative law judge to secure a different provider but this procedure also takes time and may be costly to all parties to the dispute and to the state.

**Arguments Against**

1) Giving employees the choice of medical provider will increase workers' compensation total costs. In 1994, Tillinghast, a Towers Perrin Company, conducted a study of resolved permanent injury cases under the direction of the Insurance Commissioner. The study concludes that, of the claims examined, the designation of the medical provider is significantly correlated to the size of the claim. It was further stated that both indemnity and medical average costs are higher on claims for which the employee designates the medical provider.

A cost analysis of the proposed amendment, conducted by the National Council on Compensation Insurance (NCCI), evaluated three recent studies including the Tillinghast study, in addition to NCCI's Colorado-specific data and national data. The analysis concludes that increases in workers' compensation costs will have significant effects on the economy at large. Besides raising the prices for goods and services, such increases in the cost of workers' compensation premiums will affect employers' decisions to hire and expand businesses as well as influence relocation decisions by out-of-state companies. NCCI estimates that, under this amendment, Colorado workers' compensation costs will increase by \$53.4 million to \$85 million annually. This 10 to 16 percent increase in costs to the system could be expected to result in a similar increase in rates. NCCI also estimates that this increase in costs could reduce employment in Colorado by between 16,000 and 26,500 jobs.

2) The opponents consider the Pozzenbon study, cited by the proponents of this measure, inaccurate for the following reasons: the study does not take into account whether employers actually used their authority to select the physician - many employers waive this right; it does not correctly categorize some of the states in the study in regards to whether they are employer choice states; and the study, covering the period from 1979 to 1987, does not reflect current conditions.

3) This amendment will increase litigation costs. The amendment does not provide a definition of "reasonable and necessary treatment" for work-related injuries. The combination of allowing any health care provider to treat an injured employee and determining whether that treatment is reasonable and necessary will increase the need for attorney involvement and litigation. Cases involving litigation are more expensive.

4) Cost control for workers' compensation medical expenses will be difficult to achieve under this amendment. Allowing the employee to choose any "health care provider" will make setting reasonable fees and utilization review of medical services

AMENDMENT 12 – ELECTION REFORM

nearly impossible because of the many types of alternative health care available. The amendment allows any type of health care provider to administer services regardless of whether the provider is licensed by the state. "Any willing provider" laws take away the ability of managed care entities to offer volume in exchange for discounts, and make the overhead associated with contracting, credential reviews, and utilization and quality monitoring extremely expensive. The Division of Workers' Compensation and insurance companies will have difficulty identifying the many types of health care providers, determining what type of care they administer, and deciding whether the care provided is reasonable and necessary.

5) Under this proposal, health care providers who are not qualified to treat certain injuries or occupational diseases may begin to advertise that they can cure work-related injuries. The extent to which injured workers will visit unqualified providers will represent additional costs to the system and will only delay the worker's recovery and return to work. The present system provides effective screening mechanisms which operate to restrict the use of fraudulent or questionable health care providers.

6) The care provided by a physician selected by the employer may be superior to the care provided by a physician chosen by the employee. Many employers send employees to specialists experienced in the treatment of industrial or occupational injuries, whereas an employee tends to visit a family physician who may not have the necessary background to treat certain injuries. Therefore, diagnosis, treatment, and recovery is expedited by use of employer designated specialists.

AMENDMENT 12 – ELECTION REFORM

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**Ballot Title:** AN AMENDMENT TO THE COLORADO CONSTITUTION TO ALLOW STATE ELECTIONS ON ANY SUBJECT IN ODD-NUMBERED YEARS; TO ALLOW INCREASES IN ELECTED OFFICIALS' COMPENSATION ABOVE 1988 LEVELS ONLY BY VOTER APPROVAL OR BY INFLATION AFTER 1994; TO LIMIT THE FUTURE PARTICIPATION OF ELECTED OFFICIALS IN STATE AND LOCAL GOVERNMENT PENSION PLANS WITHOUT VOTER APPROVAL; TO ENACT A TAX CREDIT FOR INDIVIDUALS WHO MAKE CASH GIFTS TO NEW CAMPAIGN COMMITTEES THAT PLEDGE TO TAKE DONATIONS ONLY FROM HUMAN BEINGS; TO LIMIT CONTRIBUTIONS THAT POLITICAL CANDIDATES, ELECTED OFFICIALS, OR THEIR CAMPAIGN COMMITTEES MAY ACCEPT FROM SPECIFIED SOURCES; TO RESTRICT PUBLIC RESOURCES USED IN BALLOT ISSUE CAMPAIGNS; TO REQUIRE A MANDATORY FINE FOR WILLFUL VIOLATIONS OF THE CAMPAIGN CONTRIBUTION, PUBLIC EXPENDITURE, AND PETITION PROVISIONS; TO EXTEND PETITION POWERS TO RESIDENTS OF ALL POLITICAL JURISDICTIONS; TO ALLOW JUDGES TO BE RECALLED AND BAR RECALLED JUDGES FROM ANY FUTURE JUDICIAL POSITION; TO LIMIT PETITION BALLOT TITLES TO 75 WORDS AND TO REVISE OTHER PROCEDURAL AND SUBSTANTIVE PETITION PROVISIONS FOR THE INITIATIVE, REFERENDUM, AND RECALL; TO LIMIT THE ANNUAL NUMBER OF BILLS THAT GOVERNMENTS MAY EXCLUDE FROM REFERENDUM BY PETITION; TO LIMIT THE REASONS FOR INVALIDATING PETITION SIGNATURES; TO REPEAL CHANGES IN STATE PETITION LAWS OR REGULATIONS ADOPTED AFTER 1988 UNLESS VOTER-APPROVED; TO PREVENT ELECTED OFFICIALS FROM CHANGING CERTAIN VOTER-APPROVED LAWS; AND TO AUTHORIZE INDIVIDUAL, CLASS ACTION, OR DISTRICT SUITS TO ENFORCE THE AMENDMENT.

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**The proposed amendment to the Colorado Constitution would:**

***General Provisions/Legal Challenges***

- supersede conflicting state constitutional, state statutory, charter, or other local provisions;

## AMENDMENT 12 – ELECTION REFORM

- allow individual, class action, or district enforcement suits to be filed within three years of an alleged violation of the amendment's provisions;
- subject factual issues to a jury trial;
- allow successful plaintiffs costs and reasonable attorney fees;
- allow defendants costs and reasonable attorney fees only when a lawsuit is ruled frivolous;

### *Limitations on Elected Officials' Compensation*

- provide that changes in state and local elected officials' compensation made after 1994 may exceed 1988 levels only by voter approval or by adjustments for inflation applied after 1994 (compensation includes salary, fringe benefits, expense and travel accounts, and any cash payments or reimbursements);
- provide that elected officials with compensation first set or voter approved between 1989 and 1994 may use that year as the base (instead of 1988) when calculating the above limit;
- require governing bodies (such as the General Assembly and local boards) to use their combined compensation for purposes of the limitation;
- terminate elected officials' participation in state or local government pension plans at the end of their current terms of office, to be replaced by Social Security, unless participation in the Colorado plans is approved by the voters;
- terminate any tax-exempt, non-pension compensation to elected officials at the end of their current terms, unless required by federal law or approved by the voters;

### *Campaign Contribution Limitations*

- allow campaign committees formed after the passage of this amendment to voluntarily restrict themselves to accept donations only from human beings (donations include cash or cash equivalents, loans, or substitute purchases but does not include in kind contributions or donations of service);
- establish an income tax credit for individuals making donations to such campaign committees (a maximum of \$50 or \$100, depending on income tax filing status);
- establish a \$50 per year per donor limit on the amount that all candidates, elected officials, or their campaign committees may accept from business groups, unions, corporations, political action committees, paid lobbyists, certain utilities, and organizations doing business with the government. The \$50 limit includes gifts not for campaign use;
- establish mandatory civil monetary penalties for the receipt of illegal donations;

### *Restrictions on Districts' Use of Funds*

- prohibit a district (the state or any local government, including enterprises, authorities, and all its other activities) from belonging to or donating to any organization of districts that uses the organization's name or spends at least \$50 per year to support or oppose a ballot issue or to create or distribute material discussing a ballot issue;

## AMENDMENT 12 – ELECTION REFORM

- prohibit an elected official or district employee from using more than \$50 of district paid employees' time or resources to create or distribute materials on ballot issues, except for election notices and certain other materials;
- prohibit elected officials from voting for any district statement that refers to a ballot issue;
- establish mandatory civil monetary penalties for the illegal use of district resources;

### ***Recall Provisions***

- allow for the recall of justices and judges and permanently bar any justice or judge who has been recalled from holding any other judicial position;
- allow petitioners and the elected official who is subject to the recall election to make statements of up to 250 words on the recall ballot;
- prohibit districts from making campaign reimbursements to an elected official whose recall is sought, whether or not recalled;
- limit the number of recall elections that an elected official may undergo to one per term;

### ***Petition Provisions***

- define ballot issues as any referred measure or petition on any subject or subjects whatsoever for the purposes of this amendment and for Amendment 1, the Taxpayer's Bill of Rights;
- prohibit the infringement of the right to petition peaceably on district owned property in a place then open to the public;
- grant petition powers in all districts as to district matters, not including appropriations for district support. ("Districts" include counties, school districts, special districts, enterprises, and authorities which do not now have the initiative and referendum);
- extend the period for filing a petition from six to nine months;
- limit petition ballot titles to no more than 75 words;
- allow state district courts to set ballot titles (in addition to the state and local title setting boards);
- prohibit the ballot title setting board from providing a summary or a financial comment (fiscal note) on a proposal;
- require districts to print and deliver the petitions at district expense;
- permit proponents to print additional petitions and specify that proponents shall not be penalized for petition printing errors of the district;
- eliminate any provisions that require petitioner identity cards, badges, licensing, or registration;
- require districts to use the 1988 state petition forms unless changed by the voters;
- allow signers or petitioners to cross out invalid entries on petition forms;
- eliminate certain requirements, such as ZIP codes and street compass directions, on petitions and eliminate certain grounds for challenging such entries;

## AMENDMENT 12 – ELECTION REFORM

- provide that entries or petitions may be found invalid only within ten days of filing and only if invalid on their face, unless a private party has submitted a protest;
- require private parties who protest a petition to itemize their protest, file it within ten days after the petition is filed, and thereafter prove beyond a reasonable doubt that any challenged signature or petition is invalid;
- provide that a person who signs a petition which is later verified or notarized is presumed to be a registered elector whose entry is valid until disproved;
- modify the signature review process, including the timelines for court review and proof of invalid signatures;
- establish personal liability of \$5,000 by any nonjudicial employee or elected official to the petition campaign committee for willful violation of these petitioner rights;
- prohibit the use of any poll or survey data in a challenge to or application of any voter-approved petition;
- restore state petition laws of 1988 if consistent with this proposal and with the state and federal constitutions;
- require advance voter approval of future state or local changes in petition laws, unless such changes are adopted as non-emergency measures within 90 days after the election approving this amendment;

### ***Limitations on Governing Bodies***

- limit the General Assembly and each local government to six bills each year that can be enacted as emergency measures (measures not subject to a possible referendum petition). Appropriations for district support and maintenance are excluded from this limitation;
- require a two-thirds vote of each house of the General Assembly or governing body to declare a measure an emergency;
- allow non-emergency state measures to become effective no sooner than 91 days after final adjournment of the General Assembly and such local measures to become effective no sooner than 91 days after final publication;
- prohibit elected officials, without voter approval, from re-adopting measures rejected by the people in a referendum election;
- require elected officials to obtain voter approval to amend, supersede, or repeal past or future voter-approved measures; and
- require a four-fifths majority vote of each house of the General Assembly or of the governing body to refer to the voters measures that amend, supersede, or repeal a petitioned constitutional or charter amendment.

### **General Provisions/Legal Challenges**

The amendment is to be applied in such a manner as to "reasonably strengthen citizen control of government the most." The amendment's provisions supersede conflicting state constitutional, state statutory, charter, or other state or local provisions.

The amendment allows individual, class action, or district enforcement suits to be filed within three years of an alleged violation of the amendment's provisions. The plaintiffs in these lawsuits, if successful, may collect costs and reasonable attorney fees. Defendants — for example, government officials or candidates or campaign committees — cannot recover costs and attorney fees unless the suit is ruled frivolous. Defense costs cannot be paid by the governmental entity, even if the claim does not prevail.

### **Limitations on Elected Officials' Compensation**

The proposed amendment limits changes to the compensation of state and local elected officials. Compensation is defined as the "district cost in salary, payroll fringe benefits, expense and travel accounts, and any cash payments and reimbursements to an elected official." The term "district" means "the state or any local government, including enterprises, authorities, and all its other activities."

The amendment limits elected officials' compensation to the 1994 level plus allowable inflation (applied after 1994 to the 1988 compensation level). Any changes beyond allowable inflation require voter approval. The amendment replaces elected officials' participation in state or local government pension plans with Social Security, unless participation in the state or local plan is approved by the voters.

In addition, the amendment ends any tax-exempt compensation for elected officials (including health, dental, and life insurance, travel, living expense, and mileage reimbursements), unless such compensation is made taxable within the amendment's limit or is approved by the voters. Elected officials could increase the taxable portion of their compensation to offset a decline in their tax free compensation. Assuming these forms of compensation are not made taxable or approved by the voters, the amendment would end such items as a rural legislator's expense allowance, not presently taxable. A rural legislator, would have to use his/her own money for a local residence and in traveling to and from the state capitol during the session. In addition, all legislators would have to spend their own money when traveling throughout their district to attend to legislative matters. At the local level, county commissioners and members of city councils would be required to pay their own travel when attending board meetings or when on official business.

### **Campaign Contribution Limitations**

The amendment includes several provisions which relate to campaign donations. The term "donation" includes "cash or cash equivalents, loans, or substitute purchases, but not contributions in kind or services."

***Voluntary campaign restrictions.*** The amendment allows local, state, or federal campaign committees formed after the passage of the amendment to pledge to the Secretary of State to accept donations only from human beings. The amendment provides a state income tax credit to human beings who donate to committees which have made this pledge. The maximum tax credit available under the amendment is either \$100 for an individual or a married couple filing jointly or \$50 per person for a married couple filing separately. The tax credit is a maximum amount for donations to all such committees combined and cannot exceed the donor's tax liability or amount donated.

***Contribution limitations.*** Under the amendment, district candidates, elected officials, or their campaign committees may not accept any donation with a retail value over \$50 per calendar year per donor from:

- any utility with rates or service regulated by that district;
- any group receiving over five percent of its annual gross receipts from that district; or
- a business group, corporation, employee group, union, political action committee other than a political party, or paid lobbyist who is not a relative.

This \$50 limit per calendar year marks a significant change from present law which only limits currency contributions and contributions from lobbyists made during the regular legislative session.

## AMENDMENT 12 – ELECTION REFORM

***Application of the limitations.*** The amendment's limits on contributions apply specifically to candidates, elected officials, and their campaign committees. There are no contribution limits for ballot issue campaigns. Thus, a candidate for public office would be required to abide by these limits, whereas a campaign to support or oppose a ballot issue would not.

The amendment's definition of donation is not limited to contributions made for campaign purposes. Loans made with a donative intent to an elected official may be subject to donation limitations to avoid the money being converted for use in a campaign. Because the definition of donation is not restrictive, such gifts or loans made to an elected official may be subject to the donation limitations.

***Contributions in kind.*** The definition of donation specifically excludes contributions in kind or services. The term "contributions in kind" is not defined in the proposal. Current law defines contributions in kind to include gifts or loans of real or personal property, other than money, made to or for any candidate or for the purpose of influencing the passage or defeat of any issue. An example of a contribution in kind would include donating office space for a campaign committee or printing flyers for a candidate. If this definition is used, a corporation, for example, would be limited to \$50 per year in monetary donations to a particular candidate, but would not be limited in the amount of non-monetary donations it could make. Thus, a corporation could potentially donate office space, computers, and office supplies to a candidate and not violate the campaign limits. Many campaigns, however, are interested in cash contributions in order to purchase advertising from radio, TV, or newspapers.

The amendment also includes the term "substitute purchases" in the donation limitations. This term is not defined in the proposal nor in current law. Substitute purchases may be seen as the purchase of material and services by third-parties to be given to a candidate.

***Donations from human beings and political parties.*** The amendment does not limit the amount of donations that may be received from human beings, except from paid lobbyists. This encourages candidates, elected officials, and their campaign committees to solicit donations from citizens. The amendment also excludes political parties from the contribution limits.

### **Restrictions on Districts' Use of Funds**

The amendment prohibits governments from belonging to or donating to any organization of governments that uses its name or spends at least \$50 per year on ballot issues. It appears that this provision would prohibit municipal governments from belonging to an organization like the Colorado Municipal League or county governments from belonging to Colorado Counties, Inc., if these organizations continue to spend over \$50 per year in creating and distributing materials discussing ballot issues. To avoid losing their membership, these organizations would need to stop providing information about ballot issue campaigns.

The amendment also prohibits an elected official or government employee from using government paid employee time or resources with a retail value over \$50 to create or distribute materials on ballot issues. Under this provision, the General Assembly would be prohibited from creating and distributing this voter information booklet. In addition, local governments would be prohibited from dispensing materials about ballot issue campaigns. This prohibition differs from current law which allows the General Assembly to prepare a factual summary. This summary must include arguments both for and against the proposal, on statewide ballot proposals. Election notices will continue to be mailed on ballot issues. This information includes the text of the measure and

arguments of up to 500 words each on each side of the question derived from citizen comments.

The amendment prohibits elected officials from voting for any statement made by a district which refers directly or indirectly to a ballot issue. For example, a member of the General Assembly could not vote for a resolution stating that the General Assembly supports a particular ballot issue. Similarly, a member of a city council could not vote for a statement that declares that the city government opposes a particular ballot issue. This differs from current law which allows the state or political subdivision thereof to adopt a resolution or take a position of advocacy on any issue before the electorate.

**Penalties.** The penalty provisions of the amendment expand the personal liability of elected officials and employees. Under the amendment, any willful violator of the donation limitations or the restrictions on the use of government funds is personally liable for damages of \$5,000 to the district and \$5,000 to all opposing campaign committees as a group. In addition, the violator is liable to these entities for the retail value of district resources and illegal donations. Ten percent annual simple interest accrues on the penalties. Districts are required to withhold half of the net pay of violators employed by them until the penalties are paid. Districts are prohibited from funding legal aid, even if no violation is found, and from paying the violator's penalty. The penalties are mandatory and are not suspendable. Obeying a supervisor or ignorance of the law are not allowable defenses.

#### **Recall Provisions**

**Recall of judges and justices.** The amendment includes three provisions regarding the recall of elected officials. First, the amendment allows for the recall of justices and judges. Judges are nominated by local commissions which forward the names of no more than three individuals to the Governor for appointment. Justices and judges are subject to retention elections at the end of their terms and there is no provision for their recall. Terms range from four years for county judges to ten years for Supreme Court justices. Commissions on judicial performance review those judges and justices up for retention and make recommendations to the public regarding their retention. In the 1990 and 1992 elections, a total of 182 judges and justices were up for retention. The commission recommended that 173 be retained and that four not be retained. Five were given a no opinion statement. One judge out of those 182 judges was not retained by the voters.

In addition to retention elections, judges or justices may be removed from office for willful misconduct in office, failure to perform their duties, intemperance, or violation of any canon of the Colorado Code of Judicial Conduct. A state Commission on Judicial Discipline, established in 1966, is responsible for conducting investigations on complaints regarding the conduct of the 264 judges and justices who serve the state court system. The commission conducts an investigation which may result in a recommendation to the Colorado Supreme Court for the removal, retirement, suspension, or discipline of a judge or justice.

The commission has reviewed 2,246 complaints during its 27 years of existence and has taken action on 198 of these complaints. The remaining complaints were dismissed on findings that they were appellate in nature or did not constitute misconduct. The 198 actions consisted of 18 orders for retirement (not the same as expulsion from office), 142 private letters of admonition or reprimand, and one public reprimand issued by the Colorado Supreme Court. During action on the remaining 37 complaints, the judges resigned or retired thereby ending commission investigation.

It is important to note that the commission has no jurisdiction over magistrates, Denver county court judges, or the more than 300 full-time and part-time municipal court

judges. In most municipalities, complaints against these judges are submitted to and investigated by the city council or the mayor. The Denver county court judicial performance commission serves as the disciplinary commission for that court.

In addition to retention elections and removal through the commission, judges and justices may be impeached by the legislature. This process has rarely been used and has never resulted in the removal of a judge.

**Other recall provisions.** In addition to providing for the recall of judges, the amendment alters existing recall provisions for other public officials. Petitioners, in stating the reasons for the recall, and the official, in making a statement of justification, would each be allowed 250 words on the ballot. The amendment also eliminates the current constitutional requirement that districts reimburse elected officials whose recall is sought but who are not recalled. Finally, the amendment limits the number of times an elected official may be subjected to a recall to once per term. Currently, some districts allow more than one recall petition during an elected official's term.

**Petition Provisions**

The amendment includes several provisions pertaining to petitions for initiated and referred measures. The following paragraphs provide a summary of current law and a discussion of the amendment's petition provisions.

**Current law.** The Colorado Constitution, since 1910, has reserved to the people the power of initiative and the power of referendum. The power of initiative allows the people, by petition, to initiate a change or addition to any part of the state constitution, state statute, or municipal charter or ordinance. The power of referendum petition allows the people to refer to the voters any legislative act (excluding emergency measures and appropriations to run the government) or part of any law adopted by a legislative body.\* These powers apply at both the state and municipal levels of government.

Currently, persons wishing to place an initiated or referred measure on the ballot must submit their proposed measure to the designated election official. The state or local ballot title setting board then sets a ballot title and, at the state level, prepares a ballot summary and a fiscal note. Once the title setting process is complete, petitions containing the ballot title may be printed at the expense of the petitioners. The proponents of the measure must then obtain the requisite number of signatures and submit them within a specified time period.

The election official then reviews the signatures to ensure that they are valid. If it is determined that the petitioners do not have enough valid signatures, the petitioners may cure the deficiency during a cure period. Once the election official certifies that a petition contains the necessary number of valid signatures, the measure is placed on the ballot.

Petitioners may submit a state ballot issue on any subject during even-numbered, general election years. Legislation enacted in 1993 stated that ballot issues pertaining to measures arising under Amendment 1, the Taxpayer's Bill of Rights, are the only state issues that may be submitted in an odd-numbered year and stated that, for tax, debt, or spending issues only, districts must mail certain information to the household of every registered elector eligible to vote on that issue. The materials are to include an election notice, a financial information report, a summary statement for the proposal written by supporters or petition sponsors, and a summary statement against the proposal developed from statements submitted by the measure's opponents.

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\* The term "referendum" is also used to describe measures referred by the General Assembly to the voters. In the context of this discussion, however, "referendum petition" describes the power of the people to refer acts of the General Assembly to the voters.

**Definition of ballot issue.** The proposed amendment defines ballot issue as "any pending state or local referred measure or non-recall petition as soon as a ballot title is initially set; and on any subject or subjects whatsoever for purposes of this [amendment] and Article X, Section 20" (Amendment 1). Under this definition, ballot issues on any subject are allowed in odd-numbered years. In addition, all ballot issues will be subject to the election notice provisions of Amendment 1. The amendment conflicts with proposed Referendum A (discussed on page 2), which limits ballot issues to a single subject, because this proposal allows ballot issues to be on any subject or subjects.

**Extension of petitioner and initiative rights.** The amendment contains several provisions regarding petitioner rights. The amendment provides the right to petition peaceably at all government locations open to the public, including county buildings, libraries, parks, sidewalks, school lobbies, and polling places on government property. Petition powers are granted to voters in counties, school districts, special districts, enterprises, and authorities, entities which, under the constitution, do not currently have initiative and referendum powers.

**Title setting.** The amendment makes three changes to the initiative title setting process. First, the amendment provides an alternative to ballot title setting boards by allowing petitioners to submit their measures to state district courts for title setting. Second, the amendment limits petition ballot titles to 75 words. There is currently no word limitation on ballot titles. Third, the amendment prohibits the ballot title setting board from providing a summary or fiscal note on a proposal. Summaries and financial impact statements concerning the cost of ballot issues are currently provided for state initiated measures. The amendment also sets forth the required wording for referendum titles. Referendum titles are not subject to appeal.

**Petition printing and signature gathering.** The amendment requires the state or local government to print and deliver, at government expense, petitions for every ballot issue and for recall elections. The quantity of petitions to be printed shall be at least twice the minimum number of required signers. Errors in printing petitions will not invalidate the petitions. Current law leaves the responsibility of printing petitions to the sponsors of the ballot issue. Upon receiving the printed petitions, the sponsors of the ballot issue have nine months to gather signatures. Under current law, petitioners have six months to gather signatures.

**Signature review.** The amendment eliminates some specific requirements for signatures on petitions and removes certain grounds for challenging such signatures. Entry of the year is not required on petitions, nor is a listing of street or avenue, apartment, compass direction, postal ZIP code, county, or ink color. Printed name, address, city, date, and signature are still required. These provisions relax the restrictions in obtaining verifiable signatures.

The amendment provides a ten day time period for the election official to itemize and review petition signatures. Signatures may be found invalid by the election official only if invalid on their face. This marks a significant change from current procedures. For example, the Secretary of State currently has 30 days to review signatures on the petition. Private challenges and appeals may now extend past the date for printing ballots or even past the election. While the Colorado Constitution and local ordinances contain a presumption that petition signers are registered electors, the Secretary of State or local election official is authorized by law to examine each name and signature on the petition to ensure that the signer is a registered voter in the state. Under the proposed amendment, the Secretary of State or local election official would have ten days to review the signatures and would be prohibited from checking the signatures against a master voter registration list. Only a private party may file a protest against a petition within ten days

of the petition filing and check signatures against a master voter list. The protestor then must prove beyond a reasonable doubt that the signatures itemized in the protest are invalid.

**1988 petition laws.** The amendment requires districts to use the 1988 state petition forms unless changed by the voters. In addition, the amendment restores the petition laws of 1988 to the extent that they are consistent with the amendment and with the federal and state constitutions. Significant amendments to the petition laws made since 1988 that would be repealed under this provision include, but are not limited to:

- authorizing the Secretary of State to match entries on petitions with names on the voter rolls;
- placing the burden of proof on the party protesting a decision of the Secretary of State;
- requiring identification badges to be worn by petition circulators;
- extending the election officials' deadline for review of petition signatures from 21 days to 30 days;
- instituting a random sampling procedure for signature verification, but allowing verification of each signature;
- requiring the title setting board to set clear ballot titles so that a "yes" vote is in favor of the proposal and a "no" vote is against the proposal;
- allowing certain persons to receive assistance when signing a petition; and
- encouraging use of ink by petition signers.

The final three items do not appear to conflict with provisions of this amendment so these provisions could be reenacted by the General Assembly within 90 days of the 1994 election, if Amendment 12 is approved.

#### **Limitations on Governing Bodies**

**Emergency measures.** The amendment limits the General Assembly and each local government to six bills or ordinances each year that may be enacted as emergency measures, defined as actions to protect the health, safety, and welfare of the public. At least a two-thirds vote of each house of the General Assembly or the governing body is required to declare a measure an emergency. Emergency measures are not subject to the referendum nor are appropriations for operating the government. By limiting the number of emergency measures to six, the amendment allows for possible referendum petitions on the remaining state and local measures.

Current law places no limit on the number of emergency measures that a governing body may adopt. The General Assembly may adopt any number of emergency measures by a majority vote. In practice, nearly every bill introduced in the General Assembly since 1932 has been declared an emergency in order to expedite the bill's implementation. The law is somewhat different for cities and towns. In order for a legislative body of a city or town to adopt an emergency ordinance, the ordinance must currently state in a separate section the reasons why it is necessary and receive the affirmative vote of three-fourths of all the members elected to the legislative body. Actions at the local level, such as adopting the mill levy or calling a special election, are not subject to the referendum petition.

**Effective dates and referenda.** Under the amendment, state measures open to possible referendum petitions become effective 91 days after the final adjournment of the General Assembly. Since the General Assembly usually adjourns during the second week

of May, measures would not become effective until the second week of August. The amendment mandates an effective date for local ordinances, including those of home rule cities, of 91 days after final publication. During the 90-day period, a referendum petition on the state legislation or local ordinance may be filed with the required number of signatures, in which case the implementation of the measure is delayed until an election on the referendum or until a final decision of petition insufficiency. If sufficient signatures are not filed, the law or ordinance goes into effect the next day.

***Voter approval.*** The amendment prohibits elected officials from amending, superseding, or repealing past or future voter-approved petition measures, unless the measure allows such changes. The General Assembly or the governing body of a local government must obtain a four-fifths majority vote of each house in order to refer to the voters measures that amend, supersede, or repeal a constitutional or charter amendment initiated by petition. The amendment requires voter approval for the adoption of measures or parts of measures previously rejected by the voters in a referendum petition.

#### **Arguments For**

1) ***General.*** The public should be allowed a greater role in the policy-making process. Currently, the public's ability to affect policy is limited by government's use of such tactics as emergency clauses and unnecessarily stringent petition signature requirements. For example, the state legislature limits the public's ability to challenge legislation by attaching an emergency clause to virtually every bill that is enacted. The emergency clause eliminates the public's use of the referendum petition, which is used to refer bills to the public for final approval or disapproval. In addition, the rules on petition signatures are so stringent that entire petitions may be discounted due to technical errors such as misspelling, typographical mistakes, and missing middle initials. The government's extreme restriction on the people's participation in policy-making must end. This amendment ensures that people are allowed to influence the process and, thus, restores balance to a system that is currently skewed toward excessive power by elected officials.

2) ***Limitations on elected officials' compensation.*** Pay increases above inflation for elected officials should be determined by the public, not by elected officials. Elected officials disguise their total compensation with such tax free "add-ons" as travel and lodging expenses, mileage allowances, and expense allowances. This amendment does not roll back salaries, but requires voter approval for future changes in elected officials' total 1994 compensation that exceed inflation applied to the 1988 compensation base. By eliminating non-taxable travel expenses and expense allowances, the amendment assures that elected officials' compensation does not receive special treatment. The proposal allows a loss of tax free income to be replaced with taxable income. The amendment assures that the people are in control and are informed about elected officials' compensation. Voter approval will be needed for future compensation changes for elected officials such as increases above inflation, Colorado pensions (otherwise, Social Security is required), and tax free benefits.

3) ***Campaign contribution limitations.*** This amendment reduces the powerful influence of political action committees and special interest groups on public policy. Political action committees and special interest groups contribute in large part to the high cost of campaigns. Current state law contains no regulations on the amount of money that such groups may contribute to candidates. The largest percentage of donations to incumbents comes from political action committees; this amendment will end that influence.

The state legislature has failed on several occasions to adopt campaign finance reform legislation. As a result, the public must take action and establish strict cash

contribution limits that decrease the influence of special interest groups and increase the importance of individuals. Through a \$50 per year per donor contribution limit on political action committees, corporations, lobbyists, and special interest groups, this proposal effectively decreases the influence of such groups. The amendment allows unlimited donations from individuals and provides limited tax credits to individuals who choose to contribute to new campaign committees refusing all group gifts. Thus, the proposal increases the importance of individual contributions, offsets the advantage of incumbents and wealthy candidates, and provides strong incentives for individuals to become part of the volunteer political process.

4) ***Restrictions on districts' use of funds.*** Taxpayer money should not be used by elected officials and governing bodies to tell the public how to vote on ballot issues. Currently, taxpayer money is used to create and distribute materials on ballot questions. Many governing bodies, like county commissioners and city council members, belong to associations which spend tax money on ballot issue material. This amendment frees ballot issue elections from governmental control and bias.

5) ***Recall of judges.*** The public should have an alternative method for removing judges and justices who are not properly performing their duties. The current retention elections occur too infrequently, and the public is not given adequate information about the performance of judges and justices to know whether or not they should be retained. The Commission on Judicial Discipline, which reviews complaints filed against judges and justices, has limited jurisdiction and its meetings are closed to the public. The commission generally investigates only the facts of a specific complaint and does not conduct an overall review of a judge's performance. By allowing the recall of judges and justices, this amendment provides the public with a strong tool for removing those judges and justices who are viewed as not following the law, have not exhibited proper conduct while in office, or in whom the public has lost confidence.

6) ***Petition provisions.*** This measure restores the public's right to petition, a right which elected officials have severely limited through legislation and regulations. The amendment affirms petitioner rights to annual ballot issue elections, as approved by voters in 1992. It provides initiative and referendum powers in local governments and enhances the right to circulate a referendum petition on a new law. In addition, the amendment ends the current petition checking procedures which are unnecessarily stringent and based on legal technicalities. As a result, people will be able to initiate petitions with less hassle on an annual basis, as intended by the Colorado Constitution.

A governmental agency should not be both the policeman and judge in petition disputes. Criminal and civil fraud penalties for violation of the petition process remain in effect; however, the current time period for state issues of 30 to 60 days for checking signatures and conducting hearings, plus subsequent appeals, allows legal disputes to delay petitions until the election is over or is too imminent to mount an effective campaign.

7) ***Limitations on governing bodies.*** Governing bodies, primarily the General Assembly, have abused the use of emergency declarations. Virtually every new state law has been declared an emergency since 1932. As a result, citizens are prevented from exercising their referendum petition rights. This amendment restores the peoples' right to the referendum petition by limiting the number of emergency measures that a governing body may adopt each year. Additional limits on governing bodies, such as prohibiting them from making changes to voter-approved measures, further strengthen the public's role in the policy-making process and the tradition of checks and balances. Government credibility will not improve as long as elected officials continue these abuses of power.

**Arguments Against**

1) *General.* The amendment will substitute a new form of government for Colorado's traditional system in which many policies are decided by popularly elected public officials and the initiative and referendum powers are utilized sparingly. Voters will face lengthy ballots containing many more issues. Information on the effect of ballot issues will be skewed by advertising from the interests which can afford to mount a campaign. Objective information will be kept from the public by the amendment's restrictions on dissemination of information by governmental agencies. At the request of a single registered elector, taxpayers will have to pay for printing of petitions. A few disgruntled citizens will be able to delay government action on virtually any new law. Following this delay, taxpayers will be forced to pay for an election on whether the new law will be allowed. Fringe groups interested in delaying decisions of the majority can use this device to delay governmental decisions for up to two years. In smaller counties, municipalities, school districts, and special districts a small group of registered electors can cause delays, force expensive elections, and generally delay policies desired by the majority.

2) *Limitations on elected officials' compensation.* The proposal's limits on elected officials' compensation represent micro-management of elected officials' pay and will discourage dedicated citizens who cannot afford to assume voluntary positions from serving as elected officials. The proposal eliminates all non-pension forms of tax-exempt compensation, such as travel and living expense accounts and participation in health/life insurance, unless made taxable or approved by the voters. If these forms of compensation are considered taxable, an increase in health insurance premiums above inflation would mean that elected officials must take a corresponding decrease in salary or go to a vote of the people for approval of the resulting increase in total compensation in excess of inflation. Such questions trivialize the election process.

3) *Campaign contribution limitations.* Because of its many loopholes, the amendment's donation limitations will be ineffective in changing campaign finance. The definition of donation specifically excludes contributions in kind or services. As a result, corporations, political action committees, and lobbyists will merely shift the form of their contributions from cash to contributions in kind. Further, these groups are not restricted in making independent expenditures, monies spent for candidates without going to the campaign committees. In addition, there is no limit on the amount of contributions that a wealthy individual may make to a candidate. Thus, individual officers of a corporation could each make unrestricted donations from their own funds to a candidate, who would be fully aware of the affiliation of the individuals with a particular company. There are no limitations on donations to ballot issue campaigns.

4) The proposal creates an indirect governmental subsidy for political and ballot campaigns by providing tax credits to individuals who make donations to qualifying campaign committees. The amendment effectively diverts money that would otherwise go for taxes to political races and ballot issue campaigns. As a result, these funds will not be available for needed governmental programs such as education, corrections, law enforcement, and public health.

5) *Restrictions on districts' use of funds.* The restrictions on districts' use of funds impedes the public from being informed about ballot issues. State and local governments will not be able to make their own analysis of ballot issues, either for internal use or for distribution to the public. The amendment eliminates state or local government distribution of factual summaries of ballot issues apart from election notices and publication of the text in newspapers. For example, a school board would be prohibited from publicly endorsing and providing information regarding its own bond issue. Petition

## INTRODUCTORY REMARKS — LIMITED GAMING

ballot titles are limited to 75 words and fiscal notes on the financial effects of a measure are prohibited. Thus, the amendment effectively eliminates governmental presentation of ballot information and limits voters in understanding complex ballot issues.

6) *Recall of judges.* Allowing for the recall of judges and justices destroys the independence and integrity of the judicial branch. With no legal violations required for a recall, a judge may be recalled because of an unpopular decision. Good judges will resign or be recalled because they followed the law; judges who make decisions based on public opinion will end up on the bench. A judge's action should be determined exclusively on the basis of the facts and law presented in a particular case; it should not be based on popular appeal.

7) *Petition provisions.* The amendment removes many protections of the petition process and invites fraud. Numerous specific signature requirements are removed and several grounds for challenging signatures are eliminated. The election official is prohibited from checking the petition signatures against a master voter list to determine whether the signers are registered voters, and is given only ten days to review the signatures. Private parties have the same ten days in which to protest petition signatures, leaving verification of registration to interest groups that have the money to challenge signatures. By eliminating requirements for information with petition signatures, the petition process is open to abuses by persons seeking signatures. A process so vital to the people's participation in government should be protected from, not an invitation to, abuse of the system.

8) *Limitations on governing bodies.* The amendment's limits on governing bodies inhibit the ability of government at all levels to implement new laws in a reasonable time frame and severely restrict the ability of governing bodies to address emergency situations. For example, the governing body may have already used the six emergency measures to which it is limited. Since non-emergency measures cannot become effective until 91 days after final adjournment of the General Assembly for state measures or final publication for local measures, it will be difficult for governing bodies to respond quickly. In addition to limiting the ability to implement decisions in a timely manner, the amendment prohibits governing bodies from changing voter-approved petitions, even if technical flaws are evident.

Businesses, public agencies, and individuals need to have certainty that, when a legislative act is passed, it has some finality. Private entities and public agencies often need to make other decisions based on legislative acts. For example, businesses may make decisions based on legislation relating to economic development, tax policy, or local zoning ordinances. The extent to which these decisions can be delayed and possibly repealed, pending a referendum petition and possible election, makes it difficult for businesses, other public agencies, and individuals to make their decisions in a timely manner.

## INTRODUCTORY REMARKS — LIMITED GAMING

(APPLICABLE TO BOTH AMENDMENT 13 AND AMENDMENT 14)

### Background

The Colorado Constitution as adopted in 1876 prohibited gambling. Over time, certain forms of gambling have been legalized by the voters and by the General Assembly. These include limited gaming, pari-mutuel betting (greyhound and horse racing), lottery and lotto, and games of chance (bingo and raffles). At this time, two initiatives to further expand limited gaming are proposed: Amendment 13, concerning

INTRODUCTORY REMARKS — LIMITED GAMING

limited gaming in Manitou Springs and the operation of slot machines in public airports, and Amendment 14, regarding limited gaming in Trinidad.

**Legalization of limited gaming.** In 1990, Colorado voters approved a constitutional amendment permitting limited gaming in the commercial districts of Black Hawk, Central City, and Cripple Creek. Limited gaming includes slot machines, blackjack, and poker, with a single maximum bet of five dollars.

The 1992 general election ballot contained four initiatives that proposed the expansion of limited gaming in various forms to 27 cities and 6 counties in Colorado. These initiatives were rejected by Colorado voters. In 1992, however, voters approved a measure to require that limited gaming be decided through a local election in any city that was granted the authority to conduct limited gaming by a statewide vote. Since this measure was not in effect in 1991, the statewide approval of limited gaming in Black Hawk, Central City, and Cripple Creek was granted without a local vote. In accordance with the local vote requirement, the Trinidad initiative requires a local vote of approval. The Manitou Springs initiative provides for an exemption from the local vote requirement.

**Limited gaming control commission.** Limited gaming is administered by the Limited Gaming Control Commission which consists of five members appointed by the Governor and approved by the Colorado Senate. The commission is responsible for administering limited gaming operations, issuing licenses to casinos, collecting device fees, and determining the annual tax rate on gaming revenues. Currently, each gaming device is annually assessed a \$100 state fee. In addition, each municipality assesses a device fee ranging from \$800 to \$1,255.

**Tax rate on limited gaming revenue.** The adjusted gross proceeds (AGP, which is defined as wagers minus payouts to players) from limited gaming are taxable by the state. The maximum tax rate established by the Colorado Constitution is 40 percent of AGP. For October, 1993, through September, 1994, the commission established the following four-tiered tax rate:

Amount of AGP Per Month	Tax Rate
\$3 million or more	18 percent
\$2 million to \$3 million	15 percent
\$1 million to \$2 million	8 percent
Up to \$1 million	2 percent

**State revenue from limited gaming.** State tax revenue from Colorado casino operations has steadily increased since limited gaming began in October, 1991. For fiscal year 1993-94, the state received \$39.8 million in gross tax revenue, an increase of 31 percent over the fiscal year 1992-93 collections of \$30.1 million. In FY 1993-94, the amounts generated in state gaming tax revenue were: Black Hawk – \$20.9 million, Central City – \$10.1 million, and Cripple Creek – \$8.7 million.

**Current distribution of limited gaming revenue.** Moneys collected from the taxation of AGP are deposited in the state Limited Gaming Fund. Moneys in the fund, less the administrative expenses of the Limited Gaming Control Commission and a two month reserve, are distributed as outlined on the following page:

**AMENDMENT 13 – LIMITED GAMING  
IN MANITOU SPRINGS AND PUBLIC AIRPORTS**

50 percent	State General Fund, including: Minimum of 9 percent – Contiguous County Impact Fund 2 percent – Municipal Impact Fund .2 percent – Tourism Promotion Fund
28 percent	State Historical Fund
12 percent	Gilpin and Teller Counties
10 percent	Municipalities of Black Hawk, Central City, and Cripple Creek

Monies in the contiguous county impact fund are used for additional services in counties contiguous to those in which limited gaming is authorized. The municipal impact fund was created in 1994 to assist non-gaming communities within Gilpin and Teller Counties for expenses incurred in response to limited gaming.

Since October 1991, the Colorado Historical Society has awarded preservation grants totaling \$9.5 million from the State Historical Fund. Eighty percent of the fund is allocated for restoration projects statewide and 20 percent is designated for projects in Black Hawk, Central City, and Cripple Creek.

**Limited gaming on Indian Reservations.** The Ute Mountain Ute tribe and the Southern Ute Indian tribe of southwestern Colorado operate casinos on reservation lands in accordance with federal law. Because tribal sovereignty supersedes state law, such operations are exempt from state taxation and supervision. Each tribe operates one casino with a maximum bet of five dollars.

**AMENDMENT 13 – LIMITED GAMING  
IN MANITOU SPRINGS AND PUBLIC AIRPORTS**

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**Ballot Title:** AN AMENDMENT TO ARTICLE XVIII OF THE COLORADO CONSTITUTION TO GIVE CERTAIN GOVERNMENTAL ENTITIES THE OPTION TO PLACE SLOT MACHINES IN PUBLIC AIRPORTS WITHOUT A LOCAL VOTE; TO LEGALIZE LIMITED GAMING IN CERTAIN AREAS OF THE CITY OF MANITOU SPRINGS WITHOUT A LOCAL VOTE; TO LIMIT THE MAXIMUM TAX ON THE PROCEEDS OF LIMITED GAMING IN MANITOU SPRINGS TO 15%; TO LIMIT THE TOTAL NUMBER OF LIMITED GAMING DEVICES OR TABLES IN MANITOU SPRINGS TO 10,000; TO ALLOCATE TAX AND FEE REVENUES FROM LIMITED GAMING IN MANITOU SPRINGS AND FROM AIRPORT SLOT MACHINE OPERATIONS; AND TO EXEMPT GAMING REVENUES FROM THE LIMITATIONS OF ARTICLE X, SECTION 20 OF THE STATE CONSTITUTION (THE 1992 "AMENDMENT 1").

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**The proposed amendment to the Colorado Constitution would:**

- permit certain forms of limited gaming at public airports, in the City of Manitou Springs, by certain charitable organizations, and by amending some of the existing constitutional provisions pertaining to gaming in Colorado;

**Public Airports**

- legalize, on and after May 1, 1995, the operation of slot machines in qualifying public airports;
- exempt the proposed slot machine operations from the constitutional local vote requirement approved by Colorado voters in 1992;
- limit airport slot machines to a single maximum bet of \$5.00 and permit the operation of airport slot machines 24 hours per day, seven days per week;

**AMENDMENT 13 – LIMITED GAMING  
IN MANITOU SPRINGS AND PUBLIC AIRPORTS**

- provide for the following annual distribution of the adjusted gross proceeds from airport slot machines, after administrative and operational costs and expenses have been paid:

Percent	Recipient/Fund	Purpose
75%	State School Fund	Monies to support education in each public school district according to the annual school finance formula
20%	Public airport operator authorizing the slot machines	Use of monies is unrestricted
5%	State Limited Gaming Fund	Monies to pay state administrative and operational costs

- authorize the Limited Gaming Control Commission to administer limited gaming in public airports;

***Manitou Springs***

- legalize, on and after May 1, 1995, limited gaming in the form of slot machines and the card games of blackjack and poker;
- exempt the proposed limited gaming activity from the constitutional local vote requirement approved by Colorado voters in 1992;
- restrict limited gaming to the commercially zoned areas in Manitou Springs, as defined by city ordinance on September 24, 1975;
- exempt any moneys derived from the proposed limited gaming activities from the revenue and spending limitations of Amendment 1, the Taxpayer's Bill of Rights, approved by Colorado voters in 1992;
- grant the private company, ARPRT,LLC, the right to assign operational permits for up to 10,000 limited gaming devices;
- limit to \$100 the fees imposed Manitou Springs on annual licenses for casinos and for each limited gaming device;
- distribute state tax revenue from limited gaming in Manitou Springs according to the following formula, which differs from the formula used for existing limited gaming communities:

Percent	Recipient/Fund	Purpose
75%	State General Fund	Monies to pay state administrative and state related expenses
15%	City of Manitou Springs Limited Gaming Trust Fund	Monies to 1) replace revenue derived from ad valorem taxation; 2) balance the city's annual General Fund budget; and 3) any remaining funds would be unrestricted once the municipal mill levy is reduced to zero
5%	El Paso County General Fund	Use of monies is unrestricted
5%	Manitou Springs Chamber of Commerce	Monies to fund area advertising, promotion, and community development capital expenditures

**AMENDMENT 13 – LIMITED GAMING  
IN MANITOU SPRINGS AND PUBLIC AIRPORTS**

- prohibit El Paso County from imposing licenses or fees on limited gaming operations in Manitou Springs;
- provide for a maximum allowable state tax of 15 percent on the adjusted gross proceeds from limited gaming;
- provide for monthly distribution of state limited gaming tax revenue to Manitou Springs;
- prohibit limited gaming in Manitou Springs between the hours of 2:00 a.m. and 6:00 a.m. and within 500 feet of any school;
- allow limited gaming in local establishments licensed to sell alcoholic beverages;
- conform to the existing constitutional limit by allowing a maximum single bet of \$5.00;
- authorize the Limited Gaming Control Commission to administer limited gaming in Manitou Springs; and

***Charitable Organizations***

- allow nonprofit charitable organizations to periodically host charitable limited gaming activities in casinos according to the guidelines established by the General Assembly.

**Arguments For**

1) Limited gaming in Manitou Springs may enhance the local economy in a variety of ways. The development of a year-round tourist season, as opposed to the current seasonal economy, may expand the sales tax base through increased business activity. Limited gaming may result in the development of new service businesses and new opportunities for construction and casino and related employment. As in other Colorado limited gaming communities, local property values are likely to increase.

2) The residents of Manitou Springs may benefit from the limited gaming tax proceeds designated to replace revenue currently collected through ad valorem property taxes. Limited gaming receipts may be used to reduce the city's property tax. Only the municipal property tax, which accounts for a portion of the overall local property tax, will be affected. Another local benefit is the allotment of five percent of the limited gaming tax proceeds to the Manitou Springs Chamber of Commerce for promotion of the local area and for community development. The state General Fund will receive up to 11.25 percent of the adjusted gross proceeds from limited gaming in Manitou Springs. The General Assembly's use of moneys remaining in the fund after administrative expenses is unrestricted.

3) Limited gaming in Manitou Springs may strengthen the tourist economy in the surrounding area. The added attraction of limited gaming will complement existing local tourist sites such as Pikes Peak, Garden of the Gods, and the U.S. Air Force Academy. The enhanced diversity of tourist attractions may draw additional tourists to the area thereby benefitting casino operations as well as tourist related businesses. Manitou Springs is favorably situated as a gaming city due to its proximity to the Colorado Springs Municipal Airport and Interstate 25, and its location on U.S. Highway 24.

4) The proceeds from airport slot machines will provide the state with an additional source of money for public schools. Seventy-five percent of all slot machine proceeds, after operational expenses, will be allocated to the financing of the state's 176 school districts. Cities or other public airport operators that approve the operation of slot

**AMENDMENT 13 – LIMITED GAMING  
IN MANITOU SPRINGS AND PUBLIC AIRPORTS**

machines will receive 20 percent of the adjusted gross proceeds from slot machine earnings which may be used for any purpose.

5) Airports in urban centers are a good location for the placement of slot machines because of the steady flow of travellers who will be potential slot machine players. Allowing limited gaming in rural airports will provide residents throughout the state with the opportunity to play slot machines without having to travel to the current gaming communities, which are located in the central portion of the state.

**Arguments Against**

1) A statewide vote to approve limited gaming in Manitou Springs will override the previously expressed choice of local voters. In 1991, voters in Manitou Springs, with 78 percent in favor, amended the city charter to prohibit limited gaming in their city. Their sentiment was reemphasized in 1993 when 88 percent of the electors expressed their disapproval, through an advisory vote, of any limited gaming in Manitou Springs. (Of all registered voters in Manitou Springs, 66 percent participated in the 1991 election, and 50 percent in 1993.) Colorado voters, in 1992, approved a constitutional amendment to guarantee the right of local approval for communities approved for limited gaming through a statewide election. However, this initiative exempts itself from that constitutional provision.

2) A private company, ARPRT,LLC, will have exclusive jurisdiction, with constitutional protection, over the assignment of rights to operate gaming devices in Manitou Springs. The specific designation in the state constitution of a single private company creates a barrier to access for other interested investors. In effect, ARPRT,LLC will receive special rights and will have protected status that is not available to other corporations.

As a private company, ARPRT,LLC will not be subject to requirements for public meetings, open public records, or accountability through the election process. The proposal does not set forth qualification criteria, application fees, or permit fees for applicants to qualify for approval by ARPRT,LLC to operate gaming devices. Applicants approved by ARPRT,LLC will need final approval by the Limited Gaming Control Commission.

3) In the event that a qualifying commercial airport chooses to authorize the operation of slot machines, it may not be able to comply with the mandatory distribution formula of the initiative. The 17 airports that qualify to operate slot machines are required by federal regulation to use any revenues generated by the airport authority for aviation purposes. Therefore, the diversion of 75 percent of the adjusted gross proceeds (AGP) through the state school finance formula and five percent of AGP to the state limited gaming fund could be interpreted as a violation of federal regulation. The receipt of future federal funds for airports may be jeopardized under these circumstances. To avoid these federal restrictions, an airport authority could lease space to a private slot machine operator.

4) If an airport authority leases space to a private slot machine operator, the proceeds to be distributed to public schools may be insignificant. Depending on how a lease contract is structured, limited gaming administrative and operational costs and expenses could consume most of the proceeds. The initiative does not define costs and expenses. It might be difficult for the state, through regulation or legislation, to limit the amount of slot machine proceeds that are accounted for as operational costs and expenses.

5) The economy of Cripple Creek may be adversely affected by the establishment of limited gaming in Manitou Springs. Much of the customer base for Cripple Creek's

**AMENDMENT 14 – LIMITED GAMING IN TRINIDAD**

limited gaming either resides in the vicinity of Manitou Springs or passes through Manitou Springs when traveling to Cripple Creek. Many of those who now travel to Cripple Creek may have no reason to travel further than Manitou Springs.

6) Adequate revenue may not be raised to pay for the impact of gaming since the taxes and fees applicable to casinos in Manitou Springs are capped at substantially lower rates than those on other casinos in the state. While casinos in Black Hawk, Central City, and Cripple Creek are subject to a maximum tax rate of 40 percent of adjusted gross proceeds, those in Manitou Springs can only be taxed up to 15 percent. Similarly, the current gaming communities assess fees on casinos that range between \$800 and \$1255 per device, per year. In contrast, the annual device fee on casinos in Manitou Springs will be limited to a maximum of \$100 per year.

**AMENDMENT 14 – LIMITED GAMING IN TRINIDAD\***

**Ballot Title:** AN AMENDMENT TO THE COLORADO CONSTITUTION TO PERMIT LIMITED GAMING, SUBJECT TO A FUTURE LOCAL VOTE, IN ORIGINAL OR RECONSTRUCTED HISTORIC BUILDINGS IN THE NATIONAL HISTORIC DISTRICT OF THE CITY OF TRINIDAD AND TO ALLOCATE TAX AND FEE REVENUES FROM SUCH LIMITED GAMING.

**The proposed amendment to the Colorado Constitution would:**

- legalize limited gaming in Trinidad effective 210 days after approval in the statewide election, if approved in a local vote which is to be conducted within 150 days after the statewide election;
- confine limited gaming to the commercial area within the boundaries of the Corazon de Trinidad National Historic District;
- restrict limited gaming to commercial buildings which existed prior to World War I (1914 or earlier) and that reflect their original architecture as determined by the governing body of Trinidad;
- extend the existing constitutional provisions allowing limited gaming in Colorado to include limited gaming in Trinidad;
- include Trinidad's limited gaming revenue in the distribution formula currently outlined in the Colorado Constitution for proceeds from the present gaming communities:

Percent	Recipient/Fund	Purpose
50%	State General Fund	Use of monies by the General Assembly is unrestricted
28%	State Historical Fund	80% - Preservation of historical sites statewide 20% - Preservation of historical sites in all four gaming communities
12%	Las Animas, Gilpin, and Teller Counties	Use of monies is unrestricted
10%	Cities of Trinidad, Black Hawk, Central City, and Cripple Creek	Use of monies is unrestricted

\* This proposal is subject to a hearing in Denver District Court on October 6 and 7, 1994. The decision in this case could result in removal of this proposal from the ballot.

- authorize the Limited Gaming Control Commission to administer limited gaming in Trinidad; and
- require that the General Assembly act to implement provisions of this amendment within 30 days after voter approval at the local election.

**Arguments For**

1) Trinidad is in need of economic diversity and limited gaming may contribute to such diversity. Previous efforts to redevelop businesses in Trinidad have not been successful. The introduction of limited gaming may create a viable business community in the historic district which currently contains many vacant and under utilized buildings and properties. New business development may increase land values thereby strengthening the property tax base. Expanding the variety of commerce within the local community may boost new employment. In addition, Trinidad will receive revenue from its 10 percent allocation of state tax revenue, the collection of gaming device fees from casino owners, and the enhanced sales tax base.

2) Due to the attraction of limited gaming in Trinidad, tourists from the neighboring states of New Mexico, Texas, Oklahoma, and Kansas may have more reason to stop in the city for a few hours or for an extended stay. This may result in an overall increase in new tourist revenue to the local and state economies. As a new attraction in the southeastern portion of the state, limited gaming may help establish a year-round tourist economy for the area. The existing infrastructure (water and sewage system, roads, parking, etc.) of Trinidad, population 8,500, can accommodate new tourists and residents without requiring additional development.

3) Historic sites in Trinidad and statewide will be eligible for preservation funds from the 28 percent allocation of limited gaming tax revenue to the Colorado Historical Society. Of that allocation, 20 percent will be used to restore and maintain historic buildings in Trinidad and in other limited gaming cities. Since 1993, preservation funds have financed numerous restoration projects in the current limited gaming communities and statewide.

4) Should this initiative pass statewide, registered voters in Trinidad will be given the opportunity to vote on whether to allow limited gaming in their city at a local election. This will ensure that the final decision on limited gaming will be made by the people who are directly affected by the measure.

**Arguments Against**

1) If limited gaming revenues are insufficient to meet the additional costs brought about by limited gaming, Trinidad may have difficulty meeting the increased demand for services such as law enforcement and traffic control. In addition, if the costs to Las Animas County are in excess of the 12 percent allocation of limited gaming tax revenue to the county, the county may be burdened with the increased need for court services, public safety, traffic control, and social services.

2) The long term impact of limited gaming should be evaluated before expanding the limited gaming industry. The experience in existing gaming communities has been that land speculation prevents the development of non-gaming tourist attractions and commercial enterprises. Retail business owners have been forced out of operation to make room for casinos.

Trinidad's attempts to develop a local economy with long term viability may be limited by a focus on limited gaming. To develop itself as a thriving destination site for tourists, Trinidad will need a broad spectrum of other attractions. To this point, limited

AMENDMENT 15 – CAMPAIGN AND POLITICAL FINANCE

gaming has not generated the development of additional recreational attractions or tourist related businesses within Black Hawk, Central City, or Cripple Creek. Limited gaming is an adult oriented activity and, consequently, tourists with families will not be attracted to Trinidad since the atmosphere will not be suitable for children. This lack of diversification is also attributable to economic limitations inherent in limited gaming, for example, high operating costs and a relatively low bet limit. These limitations may hamper Trinidad's efforts to diversify the tourist economy beyond the limited gaming industry.

3) In addition to the economic costs of limited gaming in Colorado, the social costs and changes affecting a small community should not be overlooked. The quality of life of this small city may be compromised due to demographic changes and issues such as increased alcohol related incidences, congestion, and petty offenses. Such changes will result in additional burdens on social service providers.

**Amendment 15 – Campaign and Political Finance**

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**Ballot Title:** AN AMENDMENT TO THE COLORADO CONSTITUTION TO LIMIT THE AMOUNT OF CAMPAIGN CONTRIBUTIONS, INCLUDING IN-KIND CONTRIBUTIONS, THAT MAY BE ACCEPTED BY CANDIDATE COMMITTEES, POLITICAL COMMITTEES, AND POLITICAL PARTIES; TO REQUIRE CANDIDATE COMMITTEES TO RECEIVE AT LEAST SIXTY PERCENT OF THEIR CONTRIBUTIONS FROM NATURAL PERSONS; TO PROHIBIT A CANDIDATE COMMITTEE FROM MAKING A CONTRIBUTION TO OR ACCEPTING A CONTRIBUTION FROM ANOTHER CANDIDATE COMMITTEE; TO PROHIBIT A POLITICAL PARTY FROM ACCEPTING CONTRIBUTIONS THAT ARE INTENDED TO BE PASSED THROUGH TO A CANDIDATE COMMITTEE; TO LIMIT THOSE PERSONS WHO MAY CONTRIBUTE TO A CANDIDATE COMMITTEE TO NATURAL PERSONS, POLITICAL PARTIES, AND POLITICAL COMMITTEES; TO TREAT UNEXPENDED CAMPAIGN CONTRIBUTIONS HELD BY A CANDIDATE COMMITTEE AS CONTRIBUTIONS FROM OTHER THAN NATURAL PERSONS IN A SUBSEQUENT ELECTION; TO REQUIRE NOTICE AND DISCLOSURE OF INDEPENDENT EXPENDITURES IN AN ELECTION; TO REQUIRE REPORTING TO THE SECRETARY OF STATE BY CANDIDATE COMMITTEES, POLITICAL COMMITTEES, AND POLITICAL PARTIES OF CONTRIBUTIONS, EXPENDITURES, AND OBLIGATIONS; TO CREATE THE CAMPAIGN AND POLITICAL FINANCE COMMISSION WITH JURISDICTION OVER THESE PROVISIONS; TO PROVIDE CIVIL AND CRIMINAL SANCTIONS FOR VIOLATIONS OF THE PROPOSED AMENDMENT; AND TO PROVIDE THAT A CANDIDATE FOUND GUILTY OF A CRIMINAL VIOLATION FORFEITS THE RIGHT TO HOLD ANY ELECTED PUBLIC OFFICE.

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**The proposed amendment to the Colorado Constitution would:**

***General Statement***

- establish limits on campaign contributions that may be made to a partisan candidate committee, and limit campaign contributions by persons and political committees. "Contribution" is defined as a "gift, loan, pledge, or advance of money or guarantee of a loan...for the purpose of influencing the nomination, retention, recall, election, or defeat of any candidate." "Person" means a natural person, partnership, committee, association, corporation, labor organization, political party, or other organization or group of persons;

***Specific Limits on Contributions***

- prohibit natural persons and political committees from making, and candidate committees from accepting, aggregate contributions for a primary or general election in excess of:
  - \$500 (per candidate) for Governor;
  - \$250 (per candidate) for Lieutenant Governor, Secretary of State, State Treasurer, or Attorney General;
  - \$100 (per candidate) for state Senate and House of Representatives, State Board of Education, or Regent of the University of Colorado;

AMENDMENT 15 – CAMPAIGN AND POLITICAL FINANCE

- set a maximum of \$250 that political committees may receive in a two-year period from any person.
- place the following limitations or requirements on **candidate committees**:
  - prohibit the acceptance of, or the making of, contributions to another candidate committee;
  - permit the acceptance of contributions only from natural persons, political parties, and political committees;
  - require that at least 60 percent of campaign contributions to a candidate committee be from natural persons;
  - allow the receipt of loans under certain conditions, the amounts of which are not restricted by the proposed amendment.
- place the following restriction on "**persons**":
  - prohibit persons from acting as a "conduit" for contributions, meaning that an individual may not transmit more than one contribution directly to a candidate or candidate committee from another person. "Conduit" does not include certain named positions such as campaign treasurer, volunteer, or professional fund raiser.
- place the following restrictions on **political parties**:
  - prohibit acceptance of contributions that are intended or designated to be passed through the party to another candidate committee;
  - prohibit acceptance of aggregate contributions from any person that exceed \$2,500 per year;
  - limit contributions from political parties to not more than:
    - \$5,000 per election cycle to a candidate for state Senate and House of Representatives, State Board of Education, or Regent of the University of Colorado;
    - \$25,000 to any one candidate for Governor, Secretary of State, State Treasurer, or Attorney General;
    - no contributions to Lieutenant Governor campaign committees.

***Unexpended Campaign Funds***

- provide that contributions held by a candidate committee more than 30 days after a general election cannot be counted as contributions from natural persons in subsequent elections regardless of how they were originally classified.

***Independent Expenditures***

- require that persons who make independent expenditures in excess of \$500 to influence the outcome of a campaign are to report these expenditures to the Secretary of State and to affected candidates. "Independent expenditure" is defined as an expenditure of funds without the control, coordination, or consultation with a candidate or the candidate's agent.

***Reporting Contributions***

- require that candidate committees, political committees, and political parties report contributions received to the Secretary of State if they exceed 20 dollars. Contributions and expenditures made and obligations of these entities must also be reported to the Secretary of State. The reports must be made quarterly in odd numbered years, and in even numbered years, monthly, in the period May through October and 14 as well as 7 days before an election.

***Commission***

- create a seven-member Campaign and Political Finance Commission to be appointed by the Governor, President and Minority Leader of the Senate, Speaker and Minority Leader of the House of Representatives, and the Chief Justice of the Colorado Supreme Court. The Chief Justice appoints two members.
- grant the commission "exclusive original" jurisdiction over provisions of the constitutional amendment. The commission's duties include, but are not limited to: the handling of investigations, complaints, and hearings; biennial adjustment of contribution limits and disclosure limits for inflation; and the disposition of all matters addressed in the article. The commission is given the power to subpoena witnesses and documents, to take evidence, to hire staff, to promulgate rules, to utilize state hearing officers, and to retain fines imposed for violation of the amendment.

***Penalties***

- provide that violation of the provisions of the amendment regarding contribution limits and independent expenditures shall be a class 3 misdemeanor; that violators of the contribution limits are liable to the commission for penalties equal to double the amount of the contribution made or received; that candidates shall be personally liable for fines imposed against the candidate's committee; and that candidates found guilty in a criminal action for a violation of provisions of this amendment shall permanently forfeit their right to hold any local, state, or federal elected public office in Colorado.

***Background***

Campaign reform efforts in the states are concentrated in the areas of limitations on contributions to campaigns, reporting of campaign finances to public officials, strengthening enforcement of laws governing campaign activities, and public financing of campaigns. Twenty states prohibit campaign contributions from corporations, while 17 other states limit these contributions. Nine states prohibit contributions from unions, 20 states limit these contributions. No state prohibits campaign contributions from political action committees (PAC), but 25 states limit PAC contributions. Twenty-nine states limit contributions by individuals, eight states offer tax credits or deductions for campaign contributions, and 30 states have some form of independent election agency to oversee campaign finance. Every state, including Colorado, has enacted reporting requirements for contributions to campaigns.

According to the Colorado Secretary of State, total expenditures in the 1990 election (both primary and general) for Governor/Lt. Governor were \$1.3 million. This expenditure level was substantially lower than the expenditure level of \$6.5 million in the 1986 gubernatorial race. Total funds spent (by all candidates seeking a seat) in 1992 Colorado Senate races averaged \$39,192. Total funds spent (by all candidates seeking a seat) in 1992 Colorado House races averaged \$31,894.

***Impact of the Amendment on Current Law***

***Reporting.*** Current Colorado law requires candidates, political committees, and persons making independent expenditures in excess of \$100 to report information on contributions and expenditures to the Secretary of State or to the appropriate local official. The amendment would make this reporting more frequent.

Colorado law requires any person making an independent expenditure of \$500 or more, within 16 days of an election, to file a report within 24 hours of making the

expenditure. The person must also provide a copy of the report to the affected candidate or political committee concurrent with that filing. Advertisements generated by independent expenditures must disclose the identity of the person making the independent expenditure. A violation of the independent expenditure requirement is a misdemeanor. Under the amendment, the reporting requirement for an independent expenditure in excess of \$500 would apply to the duration of a campaign rather than be limited to the 16 days preceding an election.

**Contribution limits.** Colorado law places monetary or in kind limits on contributions to candidates, political committees, or political parties. Campaign contributions in cash exceeding \$100 are prohibited. Also, lobbyists are prohibited from making campaign contributions to races for legislative seats and for the Governor's office while the General Assembly is in session. The amendment places numerous limitations on campaign contributions.

**Administration.** Existing law gives jurisdiction for overseeing and implementing campaign finance law to the Colorado Secretary of State and to county and municipal clerks. These statutes allow the Secretary of State the power to conduct hearings and require the Secretary of State to notify the Attorney General of any violations of the law. The Attorney General may institute civil actions for relief in district courts when the law has been violated.

The amendment creates the Campaign and Political Finance Commission to oversee campaign finance practices in the specified Colorado campaigns. The commission is given the power to adopt rules and regulations and is given "exclusive original" jurisdiction over the provisions of the amendment. The commission is given subpoena and other investigative powers.

**Unexpended campaign contributions.** Colorado statutes allow unexpended contributions to partisan candidates to be contributed to other political committees and political parties, and to nonprofit and charitable organizations. These contributions may also be used for political education, the establishment of postsecondary educational scholarships, mailings and constituent communications, or they may be retained for use in a subsequent campaign.

The amendment provides that unexpended campaign contributions held by a candidate committee 30 days following the election shall not be counted as contributions from natural persons in any subsequent election. In short, all unexpended campaign contributions are converted to non-natural person donations 30 days after the election, regardless of the source of the donations. By the end of the next election cycle the funds would need to be matched by contributions from natural persons, to the extent necessary, to meet the requirement that at least 60 percent of contributions come from natural persons.

Several issues may be raised by this provision. For example, what an incumbent who chooses not to run again could do with unexpended campaign contributions is not specified. The amendment is silent on whether the funds could be spent for purposes now permitted by Colorado law, including for scholarships and non-profit and charitable organizations, at any time during the next election cycle. The use of funds during the year following an election, for noncampaign purposes, such as a legislative survey of constituent opinion or other communications with constituents, is not addressed.

An incumbent who has unexpended contributions from the previous campaign will be in violation of requirements of this proposal unless that candidate raises sufficient contributions from individuals to meet the 60-40 percent match. Persons who have run for office and have campaign funds remaining after the campaign will have incentives to

either spend or give away unexpended contributions prior to the 30th day following the general election so that they may start with a fresh slate to meet the amendment's contribution limitations for the next election. A candidate who is not running a subsequent campaign for office, in order to avoid violating the law, would be required to spend or give away any remaining campaign contributions and dissolve the candidate's campaign committee, before the 30th day after the subsequent election.

**Arguments For**

1) Special interest groups make large contributions to candidates with the intention of influencing legislation to their own benefit. The high cost of seeking office increases the power and importance of special interest money. Contribution restrictions included in the measure will reduce the influence of special interests.

2) Oversight of campaign finance laws should be given to an independent commission. The Campaign and Political Finance Commission is designed to be as nonpartisan as possible. More than half of the states have created commissions to oversee campaign finance laws and ensure aggressive enforcement of the law. Change in campaign practices will not occur without aggressive enforcement of campaign finance laws.

3) For truly competitive elections, the incumbent should have the same burden of campaigning as does the challenger. Incumbents now receive most of the campaign funding available from special interests. The initiative requires that all affected candidates gather 60 percent of their campaign contributions from individuals and prevents candidates from relying on "war chests", (i.e., money held by incumbents left over from prior campaigns) or relying on special interest contributions. This 60 percent requirement will encourage numerous small contributions to candidates, rather than large lump sums from individuals or PACs, and will reduce the influence of money left over from prior campaigns. Candidates will be forced to broaden their support base.

4) Comprehensive campaign contribution limits have not been enacted in Colorado. The proposed amendment to the Colorado Constitution should be enacted to put these provisions into the law and to ensure the permanence of campaign finance reform. Colorado is one of only seven states in the nation that imposes no limits on contributions to candidates. Because campaign finance has an important influence on public policy, it is critical that it be regulated in the public interest. Current Colorado law permits unlimited campaign contributions from individuals, candidates, a candidate's family, corporations, labor unions, PACs, and political parties. This proposal will put contribution limits in place for numerous state offices and diminish the influence of money in the electoral process.

5) The measure includes provisions that will bring about fundamental change at the heart of Colorado politics. The low limits on contributions will force a different kind of political campaign for those offices that are affected. Candidates for office will be forced to spend much more time soliciting contributions from individuals, relying on volunteer workers, and contacting voters personally.

6) Voters who are fully aware of the campaign finance practices of candidates for public office may make better decisions in electing individuals to fill these offices. More frequent reporting of campaign contributions will cause the electorate to be better informed about the sources of funds for a candidate's campaign. The donations that are accepted by a candidate oftentimes make a statement about that candidate's political ideology. The reporting requirement for independent expenditures will allow the public and the affected candidate to know, in a timely manner, how independent expenditures will be spent.

**Arguments Against**

1) The measure may contain loopholes that work against the amendment's intent with the result that there could be less disclosure of the sources of campaign funding than under current law. Under current law, there are no limits on campaign contributions or loans, so all such contributions are disclosed to the Secretary of State. Under the proposed amendment, since campaign contributions are limited, but a candidate's contributions to his/her own campaign are not, an incentive may be created for personal gifts to be made to a candidate rather than to the candidate's campaign. For this reason, it may be difficult to establish whether the contribution came from the candidate's personal funds or from a personal gift made to the candidate by a third party. In other words, if a personal gift were given to a candidate or if the candidate's loan were repaid by a third party, these funds may be impossible to distinguish from the candidate's own personal funds. In order to enforce the contribution limits, the commission will have to show that a gift or loan made to a candidate, as an individual, was for the benefit of the candidate's campaign.

2) The commission created by this proposal is contrary to the American tradition of checks and balances. The people of Colorado have never before created a commission which is a political committee appointed by elected officials, accountable to no entity that could act as a check on this grant of authority, is responsible to no one and exercises such broad powers including the power to remove sitting elected office holders. The Secretary of State is currently responsible for enforcing election laws. This commission is a duplication of that authority at the expense of the taxpayer. This new powerful bureaucracy will be unique in Colorado government in that it will be funded first before all other agencies, including education, prisons, and highways. This commission is given the power to conduct audits of anyone in Colorado without probable cause. In addition, the power of the bureaucracy will grow because it is the only one of 328 boards and commissions that is empowered to keep all of the fines that it generates for itself. The commission is given the power to act as judge, jury, and enforcement authority. Many of the enforcement powers given to the commission are excessive. Investigations made by the commission may result in court action which could bar an individual from holding any elected public office in the future. This prohibition against holding public office applies to any public office, including those not covered by the amendment's contribution limits. The amendment permits the commission to levy fines and to retain the fines for its own purposes. This arrangement creates a financial incentive for the commission to seek out violations of the amendment and find parties guilty.

3) The initiative does nothing to address the situation of a candidate using great personal wealth in campaigns for public office. Some states have addressed this situation through programs which include voluntary expenditure limits and public financing of campaigns. No provision is contained in the initiative which would help to reduce the importance of money in races between candidates of modest means and those who can use personal resources. The measure enhances the disparity between the wealthy candidate and the candidate of modest means. The initiative will cause the gap to be wider. Also, campaign contribution limits favor incumbents because challengers must typically outspend incumbents to overcome name recognition of the incumbent by the voters as well as other advantages of office.

4) Contribution limits set in the proposed amendment will be easily circumvented by PACs. Organizations that are composed of numerous local chapters in Colorado will be able to circumvent the contribution limits by having each of their local chapters form a PAC. An organization with 30 local chapters that formerly had only one PAC will be able to form 30 PACs. Another means by which a PAC will be able to circumvent the

## AMENDMENT 16 – OBSCENITY – FIRST AMENDMENT

limits will be by choosing to make independent expenditures rather than direct campaign contributions. In this case, the PAC would only be required to report the expenditure to the appropriate official and give notice of the expenditure to the affected candidate. Also, when PACs make independent expenditures rather than giving directly to a candidate committee, the candidate who is affected by the independent expenditure loses control over the advertised message that results. This situation will cause candidates to be less accountable for the campaign advertising and unable to influence its content.

5) The limitations placed on donations are among the lowest in the country. Some states with low limits have ultimately supplemented candidate campaigns through public financing. If public financing occurs, taxpayers will pay for the campaigns of those candidates that they do not support.

6) The proposal will strengthen the power of the incumbent, the wealthy, and special interests. Low income and minority candidates will be hurt the most by this proposal. Because there is no limit on how much money a person can give to his or her own campaign and spend for advertising, the advantage for the wealthy will increase if this measure becomes law. In those states which have enacted very low spending limits, the average rate of success for incumbents staying in office has actually increased. The influence of special interests through the independent expenditures and through the "loans" made possible under this amendment could actually increase.

## AMENDMENT 16 – OBSCENITY – FIRST AMENDMENT

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**Ballot Title:** AN AMENDMENT TO THE COLORADO CONSTITUTION STATING THAT THE STATE AND ANY CITY, TOWN, CITY AND COUNTY, OR COUNTY MAY CONTROL THE PROMOTION OF OBSCENITY TO THE FULL EXTENT PERMITTED BY THE FIRST AMENDMENT TO THE U.S. CONSTITUTION, AND THEREBY PREVENTING THE COLORADO COURTS FROM INTERPRETING THE RIGHT OF FREE EXPRESSION MORE BROADLY UNDER THE COLORADO CONSTITUTION THAN UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION IN THE AREA OF OBSCENITY.

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### **The proposed amendment to the Colorado Constitution would:**

- amend Article II, Section 10, of the Colorado Constitution to allow the control of the promotion of obscenity by the state and any city, town, city and county, or county within the unincorporated area of a county to the full extent permitted by the First Amendment to the United States Constitution.

### **Background**

This ballot proposal is presented to voters because the Colorado Supreme Court has interpreted the Colorado Constitution as providing broader protection for freedom of expression, including sexually explicit materials\*, than required under the First Amendment of the U.S. Constitution.

The Colorado obscenity statute incorporates the following three-part test for obscenity that was developed by the United States Supreme Court. "Obscene" means material or performance that:

- 1) the average person, applying contemporary community standards, would find that, taken as a whole, appeals to the prurient interest in sex;
- 2) depicts or describes patently offensive representations or descriptions of [sexual or physical conduct]; and
- 3) taken as a whole, lacks serious literary, artistic, political, or scientific value.

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\* "Materials" or "expression" in this discussion include printed material, performances, speech, videos, film, radio and television broadcasts, electronic productions, etc.

The term "patent offensiveness" is further defined in the statute as "so offensive on its face as to affront current community standards of tolerance."

The constitutionality of state statutes may be tested under the Colorado Constitution or the U.S. Constitution. In considering the state's obscenity statute, the Colorado Supreme Court interpreted the Colorado Constitution as offering broader protection for freedom of expression than offered by the U.S. Constitution. Because of that interpretation, Colorado statutory and case law requires a standard for the determination of what is "obscene" that protects sexually explicit materials more than is required by the U.S. Constitution, as interpreted by the U.S. Supreme Court. Under the proposed amendment, the people of Colorado will decide whether they prefer the Colorado Constitutional standard for obscenity law or the U.S. Constitutional interpretations of obscenity law.

Both the U.S. and Colorado Supreme Court decisions have settled the issue that "obscene expression" is not protected by the First Amendment of the U.S. Constitution. However, pornography can be expression that is protected by the First Amendment. Although the words "pornography" and "obscenity" are often used interchangeably, "obscenity" has a special judicial meaning derived from U.S. Supreme Court case law. Since the proposed amendment refers to a First Amendment standard, it is important to understand how the U.S. Supreme Court has interpreted the First Amendment in the area of obscenity. It is also important to understand how the Colorado Supreme Court has concluded that the Colorado Constitution provides broader free speech protection than the First Amendment. Following is a summary of these interpretations.

#### **U.S. Supreme Court Case Law**

*1973 – Miller v. California, 413 U.S. 15.* In this landmark case, the defendant was convicted of mailing unsolicited sexually explicit materials in violation of the California obscenity statute. In this decision, the court limited the scope of a state's power to regulate obscenity to works that depict or describe "hard core" sexual conduct that is specifically defined by state law. The court also established the following three-part test for determining whether material is obscene:

- 1) **Appeals to prurient interest.** Whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to a prurient interest in sex.
- 2) **Patently offensive.** Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by applicable state law.
- 3) **Lacks serious value.** Whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

*Miller* also stated that requiring obscenity proceedings to establish national "community standards" would be futile: "It is neither realistic nor constitutionally sound to read the First Amendment as requiring that the people of Maine or Mississippi accept public depiction of conduct found tolerable in Las Vegas, or New York City." Subsequent U.S. Supreme Court cases have elaborated on the standards set forth in *Miller*.

*1974 – Jenkins v. Georgia, 418 U.S. 153.* The court held that under the First Amendment, a state is permitted to define the relevant community as the state or as a smaller geographical area within the state.

*1977 – Smith v. United States, 431 U.S. 291.* The U.S. Supreme Court held that "contemporary community standards must be applied by juries in accordance with their own understanding of the tolerance of the average person in their community..." The district court in this case had instructed the jury that contemporary community standards

were set by what is in fact accepted in the community as a whole. The *Smith* court did not specifically address the meaning of the terms "tolerance" or "acceptance," nor which term was preferable. Regardless, a number of federal courts have adopted the proposition that *Miller's* "community standards" portion of the test for obscenity should be based on what the community as a whole accepts, rather than tolerates.

*1987 – Pope v. Illinois, 481 U.S. 497.* The U.S. Supreme Court held that the first two parts of the *Miller* test — "prurient interest" and "patent offensiveness" — are to be judged by "contemporary community standards" but that the third part (whether a work lacks serious literary, artistic, political or scientific value) was to be evaluated by an "objective" or "reasonable person" standard. Moreover, the court said the ideas that a work represents can merit protection without the approval of the majority in a community. The value of that work does not vary from community to community based on the degree of local acceptance it has won.

#### **Colorado Supreme Court Case Law**

*1976 – People v. Tabron, 544 P. 2d 380.* *Tabron* determined that, under the state obscenity statute, a statewide standard for the determination of obscenity was required. The court held that the state statute could not be construed differently in various local jurisdictions of the state.

*1985 – People v. Seven Thirty-Five East Colfax, Inc., 697 P. 2d 348.* This case considered the constitutionality of Colorado's obscenity statute, which defined "patently offensive" as "so offensive . . . as to affront current community standards of decency." Colorado's "decency" standard was declared unconstitutional. The court concluded that the Colorado Constitution provides broader free speech protection than the First Amendment and that a tolerance standard was required, at a minimum, to determine whether material is "patently offensive" in Colorado.

*1989 – People v. Ford, 773 P. 2d 1059.* The Colorado Supreme Court again considered the constitutionality of the "tolerance" standard. The court acknowledged that both federal and state courts had approved definitions of "patently offensive" which incorporate community standards of "decency," "acceptance," or "tolerance." Nonetheless, the court again concluded that a tolerance standard better protects freedom of expression and was the only standard of the three which would satisfy the Colorado Constitution. The decision stated, "When a tolerance standard is employed, material is not offensive unless the community cannot **endure** it". [Emphasis added].

#### **State Law – Local Authority**

State statutes also authorize counties and municipalities to enact ordinances to regulate the promotion of obscene material and performances, as defined in state law. Thus, any local ordinance would be subject to the same limitations as the state statute under the Colorado Constitution as interpreted by the Colorado Supreme Court.

#### **Arguments For**

1) The Colorado Supreme Court has interpreted the Colorado Constitution as providing greater protection to expressive activity, including obscenity, than under the First Amendment. Furthermore, the Colorado court has interpreted the *Miller* standard (for judging obscenity by community standards) to require that material cannot be "endured." In criminal cases involving obscenity, the prosecutor must establish the "endurance" standard beyond a reasonable doubt. Given that requirement, the standard is almost impossible to prove. The proposed amendment seeks to eliminate the "endurance" standard.

2) Colorado is one of a small number of states in which the state supreme court has protected expression that in another state might be found obscene. As contemplated by *Miller*, only "hard core" pornography is prosecuted in other states. Thus, the experience with obscenity laws in other states is useful in predicting the effect of the proposed amendment.

3) Allowing a community to define "patent offensiveness" according to its own standards is not a limitation on freedom of speech. Freedom of speech is protected by the First Amendment to the U. S. Constitution, yet certain forms of speech — such as libel, slander, criminal conspiracy, and false advertising — are not protected by the First Amendment. The Supreme Court has repeatedly held that obscenity is not protected speech. Furthermore, citizens of one community are not required to consider the attitudes of the citizens of another community in the determination of obscenity because the U. S. Constitution does not require a statewide obscenity standard.

4) Allowing a community to define "patent offensiveness" according to its standards is not censorship. The law defines censorship in terms of "prior restraint," which limits expression before it is disseminated. Moreover, a local standard for judging what is obscene can only regulate to the extent provided by federal case law. Under the proposed amendment, sellers of sexually explicit material would not be subject to any prior restraint; they would remain free to offer their materials, including pornography, for sale at any time. However, once pornography is offered for sale in a community, that community has the right to apply the *Miller* test and determine whether the material meets the narrow legal definition of obscenity.

5) Local control would not lead to types of censorship such as "book banning" that sometimes occurs in a local school. Colorado law grants school boards the power to exclude publications that, in the judgment of the board, are of "immoral or pernicious nature." This is by no means the same as a prosecution under an obscenity statute, which, as contemplated by *Miller*, deals only with "hard-core" pornography. Materials distributed by libraries, booksellers, theaters, and educational organizations would be protected from censorship by the third part of the *Miller* test, which requires that materials in question must "lack serious literary, artistic, political or scientific value" to be found obscene. Prosecutors will know that they have to present an obscenity case to a jury consisting of a cross section of the community which will apply the *Miller* test.

6) Some research supports the argument that "hard core" pornography contributes to violence against women and children and to the treatment of women as objects and as second class citizens in our society. The final report of the 1986 U.S. Attorney General Edwin Meese's Commission on Pornography concluded that pornography harms both the individual and society. The Meese Commission report linked pornography and violence against women and children and concluded that sexually violent material increases the likelihood of aggression towards women. According to the Meese Commission report, sexually violent material fosters and perpetuates the "rape myth" (the notion that every woman actually enjoys being raped); degrades the class and status of women; encourages a modeling effect (once a viewer sees specific activities portrayed, he tends to act them out); and causes aggression toward women. The report also concluded that hard core pornography is not the only cause of sexual violence against women and children, but it is a significant factor.

7) The proposed constitutional amendment would not affect the right of adults to read or watch sexually explicit materials in the privacy of their own homes. The amendment allows communities to control the "promotion of obscenity," simply meaning the distribution of obscenity by any means. In the 1968 case of *Stanley v. Georgia*, the U.S. Supreme Court ruled that the states could control the commercial distribution of

obscenity but that the state could not control the private possession of sexually explicit materials. Although obscenity laws do not affect what people do in the privacy of their own homes, privacy rights do not extend into the marketplace. The U.S. Supreme Court has decided in numerous cases that the distribution of obscenity is not protected by the U.S. Constitution.

### Arguments Against

1) The intent of the proposed amendment is to narrow and restrict the protection currently afforded free expression in Colorado. State courts will be prohibited from interpreting rights of free expression in the area of obscenity more liberally than they may be interpreted under the First Amendment to the U. S. Constitution. Regardless of the intent to restrict state court interpretations in this area of law, the proposed amendment may create false expectations in the minds of voters because it may not change the prosecution of obscenity in Colorado.

How cases will be interpreted under a "First Amendment standard" is speculative. While the *Miller* test, as clarified by later cases such as *Smith*, *Jenkins*, and *Pope*, provides the basic framework for analyzing obscenity cases under the First Amendment, lower federal courts have reached a number of different conclusions regarding key decisions, particularly regarding "community standards." Should juries be instructed to consider "community standards of decency," "community standards of tolerance," or "community standards of acceptance"? Do "acceptance" and "tolerance" mean the same thing? Alternatively, is the emphasis on these terms misleading (as one federal circuit court opinion has suggested) and should juries simply judge the impact of material on their community based upon the individual juror's background? The U.S. Supreme Court has yet to answer these questions directly, and there is no guarantee that Colorado's current statutory "tolerance standard" would be found unconstitutional under this proposal.

2) States have certain powers reserved to them under the U.S. Constitution. According to the Tenth Amendment of the U.S. Constitution, states may exercise those powers as long as they do not conflict with rights guaranteed under the U.S. Constitution. The adoption of this proposal is inconsistent with the current trend of state challenges to federal authority over what have traditionally been state and local issues.

3) The proposed constitutional amendment is unnecessary. Under state law, local school boards have the right to determine what materials are used in schools and placed in school libraries. State statutes already authorize counties and municipalities to enact ordinances to regulate the promotion of obscenity. Child pornography is illegal under state and federal law, communities often pressure pornography shops to close, and special interest groups sometimes get books taken off public library shelves. Businesses have already made decisions about whether to sell certain publications, based on prevailing community standards. Colorado citizens can utilize zoning laws in efforts to restrict or encourage certain kinds of businesses. Further, as individuals they can do what most Colorado citizens do: simply choose not to purchase obscene material. The amendment encourages more government interference in the private lives of Colorado citizens in order to "protect" them from materials no one is forcing them to use in the first place.

4) The proposed amendment may have a "chilling" effect on free expression in the state. Local option for the prosecution of obscenity will be legal, and statewide distributors of materials may not know whether they are risking prosecution for promoting "obscenity" in any particular community. The prosecution of obscenity will be based on a local standards, rather than a statewide standard. The result of this amendment may be prior censorship of certain materials due to the fear of prosecution. For example, a local library district may serve several towns, and the librarians must consider the strictest of standards in each community. Will the library be breaking the law if it moves books from

## AMENDMENT 17 – TERM LIMITS

one town to another to satisfy a patron request? Book dealers, video store owners, film distributors and movie theater owners must, on a daily basis, try to determine what material appeals to potential customers without breaking the laws of obscenity. Since a criminal defense can cost tens of thousands of dollars, businesses and libraries will be forced to conform to the most restrictive standard enacted by a local government.

In addition, health organizations which distribute information about AIDS, birth control, abortion, or human sexuality will become more vulnerable to legal challenges regarding sexually explicit educational and instructional materials. Although such challenges may eventually be defeated in court, the court challenges would cost time and money and could be used by opponents of health organizations as harassment.

5) The proposed amendment will allow political subdivisions to assess whether material is obscene, based on local community standards rather than a statewide standard. These aspects of the proposed amendment raise critical issues. First, the result will be a patchwork of local ordinances in the state, and determining the constitutionality of the local ordinances could require years of court action. Second, the strictest local standard could, in effect, become the statewide standard because libraries and other distributors of materials may not be willing to risk criminal prosecution by testing variations in obscenity standards from place to place.

6) The proposed amendment may result in censorship. The dictionary defines a censor as "an official who examines books, plays, news reports, motion pictures, radio and television programs, letters, cablegrams, etc, for the purpose of suppressing parts deemed objectionable on moral, political, military, or other grounds." In other words, censorship is the limitation by government of what people can read, see, and hear: it is a substitution of judgement by the government. A second definition of censor is "any person who supervises the manners or morality of others." The proposed amendment is both kinds of censorship.

7) No link between pornography and violence against women and children has been proven. The final report of the 1986 U.S. Attorney General Edwin Meese's Commission on Pornography has been criticized for its predetermined bias in favor of censorship, which many observers believe led to a predetermined conclusion. A Meese Commission member who wrote the draft report stated in a separate commentary that he did not make the claim, nor did the Meese Commission report, that a causal relationship exists between sexually explicit materials and acts of sexual violence. The commission member also wrote that he considered the deregulation of sexually explicit materials "only quite sensible." Furthermore, some experts believe that pornography provides a release for sexual urges that otherwise could take the form of inappropriate sexual conduct. A constitutional amendment to limit free speech, to deny adults access to certain materials, and to create a "chilling" effect for book dealers and video store owners would be inappropriate, given the lack of consensus concerning the effect of viewing pornography.

### Amendment 17 – Term Limits

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**Ballot Title:** AN AMENDMENT TO THE COLORADO CONSTITUTION TO LIMIT THE NUMBER OF CONSECUTIVE TERMS THAT MAY BE SERVED BY A NONJUDICIAL ELECTED OFFICIAL OF ANY POLITICAL SUBDIVISION OF THE STATE, BY A MEMBER OF THE STATE BOARD OF EDUCATION, AND BY AN ELECTED MEMBER OF THE GOVERNING BOARD OF A STATE INSTITUTION OF HIGHER EDUCATION AND TO ALLOW VOTERS TO LENGTHEN, SHORTEN, OR ELIMINATE SUCH LIMITATIONS OF TERMS OF OFFICE; AND TO REDUCE THE NUMBER OF CONSECUTIVE TERMS THAT MAY BE SERVED BY THE UNITED STATES REPRESENTATIVES ELECTED FROM COLORADO.

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**The proposed amendment to the Colorado Constitution would:**

- amend the term limitation provisions adopted by the voters of Colorado as a constitutional amendment in 1990 specifying the maximum consecutive terms of office, beginning January 1, 1995, as follows:
  - United States House of Representatives* – reduce the number of consecutive terms from six to three consecutive terms, or from 12 to six years.
  - Local elected officials* – establish a new limit of two consecutive terms of office, unless this limitation is changed by the voters of that political subdivision. (Includes elected officials of counties, municipalities, school districts, service authorities, and other political subdivisions.)
  - Other state elective offices* – establish a new limit of two consecutive terms for members of the State Board of Education and the University of Colorado Board of Regents, a total of 12 years.
- allow the voters of a political subdivision to lengthen, shorten, or eliminate the limitations on terms of office imposed by this amendment;
- allow the voters of the state to lengthen, shorten, or eliminate the terms of office for the two state education boards included in this proposal;
- state that the people of Colorado, in adopting this amendment, are in support of a nationwide limitation of terms of not more than two consecutive terms for members of the U.S. Senate and three consecutive terms for members of the U.S. House of Representatives and that public officials of Colorado are instructed to use their best efforts to work for such limits; and
- state that the intent of this measure is that federal officials elected from Colorado will continue to voluntarily observe the wishes of the people as presented in this proposal in the event that any provision of this proposal is held invalid.

**Background**

As defined in existing law, "consecutive terms" means that terms are considered consecutive unless they are four years apart. Also, any person appointed or elected to fill a vacancy in the U.S. Congress and who serves at least one half of a term of office shall be considered to have served one full term in that office.

The term limits now in place in Colorado would not be changed by this proposal:

*U.S. Senators* – two consecutive terms or 12 years

*State elected officials (Governor, Lieutenant Governor, Attorney General, State Treasurer, Secretary of State)* – two consecutive terms or eight years

*Colorado General Assembly* –

*Senators* – two consecutive terms or eight years

*Representatives* – four consecutive terms or eight years

*Term limits in other states.* Colorado was one of the first states to adopt term limitations for elected officials when it approved an initiated proposal in 1990. Fifteen states have adopted term limits for their members of the U.S. House of Representatives: Arizona, Arkansas, California, Michigan, Montana, Oregon, Washington, and Wyoming allow members to serve three terms; Florida, Missouri, Nebraska, and Ohio limit members to four terms; and Colorado, North Dakota, and South Dakota allow their members a total of six terms.

## AMENDMENT 17- TERM LIMITS

***Term limits for local governments.*** At the present time, no states have constitutional limits on the number of consecutive terms local officials may serve. This issue will be on the ballot in five states in 1994 with each state providing a two consecutive term limitation. The states voting on this issue in 1994 are Colorado, Idaho, Nevada, Nebraska, and Utah. In Colorado, home rule cities may establish their own term limits, either through a referred or initiated amendment to the city charter. Colorado Springs, Lakewood, Greeley, and Wheat Ridge are among the cities that have adopted term limits.

***Terms of members of the U.S. House of Representatives.*** Fourteen persons from Colorado have served in the U.S. House of Representatives since 1970. Of these 14 members, the number of terms served ranged from a high of three members serving 12, 11, and 10 terms down to two members serving one term each. Including the terms served by these members before 1970, there were a total of 59 terms served by these 14 members, an average of 4.2 terms per member.

Term limits began for Colorado members of the U.S. House of Representatives beginning on January 3, 1991. With six consecutive terms permitted, present members of the U.S. House of Representatives could serve until January, 2003. This proposal provides that the new term limitations are to begin on January 1, 1995. With three consecutive two-year terms, a member elected to the U.S. House of Representatives this November could serve consecutive terms until January, 1999.

The ability of a state to impose term limitations on elected federal offices such as members of Congress is subject to challenge. Limitations on terms of members of Congress have been challenged in at least two other states, Arkansas and Washington. The courts ruled against the term limits for members of Congress in both states. There is no pending litigation involving the Colorado provisions on term limitations. The U.S. Supreme Court has agreed to hear the Arkansas case in its 1994-95 term, with a decision expected in 1995.

The principal reason for holding congressional term limits unconstitutional is the "qualifications clause" of the U.S. Constitution. The courts in the Arkansas and Washington decisions held that the U.S. Constitution requires only three things as qualifications for members of Congress: 1) to be 25 years of age; 2) to be a U.S. citizen; and 3) to be a resident of the state from which the member is elected. Any other limitations on eligibility of service, including the number of terms served, would represent an unconstitutional imposition of an additional qualification on candidates for federal office. Thus, the constitution of the United States, not a state constitution, would need to be amended to accomplish term limitations for federal offices.

Proponents of term limits at the congressional level argue that restrictions on ballot access are permissible as matters of state consideration under the concept of federalism. States, under the Ninth and Tenth Amendments of the U.S. Constitution, have powers reserved to them that include the ability to regulate elections for federal offices.

***Term limits for education board members.*** This amendment adds term limits for two elected state boards, the State Board of Education, a seven-member board, and the University of Colorado Board of Regents, a nine-member board. These officers may not serve more than two consecutive terms, a total of 12 years.

### **Arguments For**

1) Voters in Colorado adopted the concept of term limits in 1990 as a method of keeping elected officials from viewing their positions as lifetime or career jobs. By forcing turnover, new people will be able to enter the political scene and bring fresh ideas into the legislative branch of the government and to local governments.

Extending term limits to local officials, reducing the consecutive terms permitted for members of the U.S. House of Representatives, and limiting terms of the two elected state boards represents the completion of the term limit concept in Colorado.

2) A reduction in the number of consecutive terms from six to three terms for the U.S. House of Representatives will provide more competitive races for these seats in almost every election. Stronger candidates will emerge if a real possibility of winning an election is seen. Political parties will work harder at finding serious candidates when an election race is competitive and not looked at as a "throwaway" campaign. With a three-term limit, each of the elections can be vigorously contested. The problem with the six-term limit is that the first and last elections may be competitive but, in many instances, the elections in between will not be as competitive because of the advantages of incumbency. Re-election of members of Congress is almost automatic, challengers rarely defeat incumbents.

3) By implementing term limits, service in the U.S. Congress will be regarded as public service, not as a career. The three-term limit will provide the opportunity for the House of Representatives to become a citizen legislature. Many qualified individuals will be interested in serving four or six years in Washington and then returning to their home state to resume their previous careers. The turnover in representation resulting from term limitations, especially a three-term limit, will bring more "real world" private sector experience to the decisions made by Congress.

4) Primary goals of the term limitation movement are to begin to restructure the U.S. Congress and restore the idea that the U.S. House of Representatives is a legislative body of the people that acts as a barometer of public concern. A six-term House limit does nothing to change congressional incumbency because the average number of years served in the U.S. House of Representatives is 10.1 years. For Colorado members who have served since 1970, as shown on page 54, the average is 8.4 years. Thus, a six-term limit (12 years) is longer than the average stay of House members.

This proposal is a means of changing the methods by which Congress operates and of elevating the public perception of Congress as an institution. As more states adopt term limits, there will be a reduction in the importance of the seniority system. Legislators will no longer need to serve multiple terms in order to be influential.

#### **Arguments Against**

1) An additional reduction in the terms that members of the Colorado delegation to the U.S. House of Representatives may serve from six to three consecutive terms would mean that Colorado's already limited influence in that chamber would be further weakened. This would occur until other states, particularly the largest states, adopt a similar limitation. The prospect of other states doing this may be some years away. While 15 states have adopted term limits for their members of the U.S. House of Representatives, 35 have not yet acted. By adopting a three-term limit, the Colorado delegation will be subject to more severe limitations than are found in 41 states. It may be appropriate to have a limit on consecutive terms that is equivalent to two terms (12 years) of U.S. Senators, but not to have a limit that would equate to only one term of a Senator.

2) The proposal unnecessarily imposes term limitations on all local government offices rather than simply authorizing local citizens to impose local limits where needed or desired. The statewide mandate imposes uniform term limits on thousands of elected offices throughout the state. Taxpayers who wish to repeal or modify the state mandated limits must go to the trouble, time, and expense of conducting a separate

election to repeal the limits or substitute appropriate limits tailored to local conditions and desires. While the proposal allows local governmental units to exempt themselves from the term limits, a better course of action would be to simply allow local communities to act on their own if they determine that a problem of incumbency needs to be addressed.

3) The local government officials and members of the two state boards that would be affected by this proposal are not part of the entrenched, privileged groups that have created the term limit issue. For many local governments, the problem is not the long tenure of officials, rather it is a problem of securing interested and qualified individuals to serve. In smaller communities, the pool of talent available for public office is not large and turnover in office is high, not low. Local government positions are not career positions and most local government elected officials receive only a small stipend or none at all. Salaries are paid to the Denver City Council members and to county officers because these positions are considered to have either full-time or substantial part-time commitments. Members of the State Board of Education and the Board of Regents receive no salaries, and only one person on one of the two boards has served more than two consecutive terms since 1970.

4) The beneficial results claimed for term limitations are not yet known and cannot be evaluated at this time. Colorado is still four years away from the first restrictions on elected officials running for re-election. An analysis of the results of term limits should be completed before any further reductions are made, particularly when the state stands to lose influence in the U.S. Congress.

5) In a democracy, people should be able to vote for the candidates they want to have in office without arbitrary limits. Term limitations make our political system less democratic because citizens may be denied equal protection since their right to vote for their preferred candidate is limited. Further, there will be a shift in power from elected officials to lobbyists and nonelected officers, including bureaucrats and congressional staff, because term limits result in a loss of institutional memory and continuity in elected positions.

**AMENDMENT 18 – STATE MEDICAL ASSISTANCE – REPAYMENT**

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**Ballot Title:** AN AMENDMENT TO THE COLORADO CONSTITUTION TO PROVIDE, EFFECTIVE JULY 1, 1995, THAT ANY PAYMENT OF MEDICAL ASSISTANCE BY ANY AGENCY OF THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS TO A BIOLOGICAL PARENT OR THIRD PARTY ON BEHALF OF OR FOR THE BENEFIT OF THAT BIOLOGICAL PARENT'S CHILD BORN ON OR AFTER JULY 1, 1995, FOR ANY MEDICAL ASSISTANCE RENDERED TO THE CHILD SHALL CONSTITUTE A DEBT OWED TO THE AGENCY JOINTLY AND SEVERALLY BY: A) THE BIOLOGICAL PARENT WHO IS NOT THE APPLICANT FOR OR RECIPIENT OF THE MEDICAL ASSISTANCE PAYMENT, UNTIL THE CHILD REACHES FULL AGE, AND B) EACH BIOLOGICAL OR ADOPTIVE PARENT OF A MINOR BIOLOGICAL PARENT OF THE CHILD, UNTIL THE INCOME, PROPERTY AND RESOURCES OF THE PARENT BECOME INSUFFICIENT OR UNTIL THE MINOR BIOLOGICAL PARENT REACHES FULL AGE; TO REQUIRE THAT THE APPLICANT FOR OR RECIPIENT OF ASSISTANCE SHALL ASSIST THE APPROPRIATE AGENCY IN ESTABLISHING THE PATERNITY OF THE CHILD; AND TO EXEMPT FROM THE INCURRED DEBT MEDICAL ASSISTANCE RENDERED TO THE BIOLOGICAL PARENT OR CHILD WHEN SUCH ASSISTANCE IS AVAILABLE TO THE PUBLIC WITHOUT REGARD TO ECONOMIC STATUS.

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**The proposed amendment to the Colorado Constitution would:**

- require that any costs for medical assistance provided by the state, or any of its political subdivisions, to parents receiving medical assistance on behalf of their children born on or after July 1, 1995, shall constitute a debt owed to the state;
- state that medical assistance would include, but not be limited to, prenatal care, birth delivery, and post-partum care;

- require the debt to be repaid:
  - by the parent not receiving the medical assistance (typically an absent parent); and
  - in the event that either the mother or the father of the child is a minor, by the parents of the minor mother and the minor father (the grandparents);
- make the parents of the minor mother and the minor father (the grandparents) liable for the debt until:
  - their income, property, and resources become insufficient to meet the costs of covering medical assistance provided to the recipient; or
  - the minor parent(s) reach full age, whichever occurs first;
- supersede all provisions of Colorado law and the Colorado Constitution which conflict with the intent or the provisions of this initiative, and require the state to seek waivers from federal statutory provisions which conflict with this amendment;
- require the applicant or recipient of such assistance to aid the appropriate agency in establishing paternity of the child when necessary;
- exempt from the debt provisions medical assistance provided that is free or subsidized, and is otherwise made available without regard to economic status;
- require the General Assembly, by May 1, 1995, to enact legislation to implement the provisions of the amendment; and
- require the appropriate agency to promulgate all necessary rules.

**Background**

This amendment requires the biological parent of a child for whose benefit medical assistance was paid, and who did not actually apply for or receive the assistance, typically the absent father, to repay the debt to the state. Also, in the event that a parent is a minor, the minor's parents (the grandparents) have an obligation to repay the debt until their income, property, and resources become insufficient, or until the minor parent reaches full age, whichever occurs first. This debt applies to any state medical assistance received by children born on or after July 1, 1995, until they reach full age. This amendment excludes from the debt provision, free or subsidized care which is made available without regard to economic status. State administered programs that may be affected by the debt provision of this amendment include, but may not necessarily be limited to: the Colorado Medical Assistance Program (Medicaid); Colorado Indigent Care (Medically Indigent); programs funded through the federal Maternal and Child Services Block Grant; and Migrant Health.

**State Administered Programs Impacted**

*Colorado Medical Assistance Program.* The Colorado Medical Assistance Program, also referred to as "Medicaid," is a federal/state funded program. Medicaid funds serve as the primary source for providing medical assistance to the low income population of the state. The population potentially impacted by this amendment includes: 1) welfare recipients, or persons who receive Aid to Families with Dependent Children (AFDC); 2) pregnant women and children who are below a certain income threshold; 3) disabled children receiving supplemental security income; and 4) children in foster care. Medicaid reimburses health care providers for physician services, hospital care, prescriptions, and a variety of other health care services rendered eligible recipients.

Originally, only a limited segment of the population was eligible for Medicaid, but eligibility has expanded since its inception in 1965. During fiscal years 1990 and 1991,

federal mandates resulted in the further expansion of existing Medicaid eligible populations. Eligibility requirements expanded to include additional elderly, disabled, long term care recipients, and pregnant women and children with incomes in excess of the federal poverty level. Additionally, reimbursement rates for Medicaid providers were increased, and national and state economic downturns resulted in an increase in the low income and medically needy populations. During that two year period, there was an average 12 percent Medicaid enrollment increase and an average 28 percent Medicaid expenditure increase. The FY 1994-95 projected Medicaid enrollment has stabilized at a 4.7 percent growth rate, and Medicaid expenditures are anticipated to increase 10 percent. Last year, Colorado's Medicaid program provided health care coverage for approximately 300,000 Coloradans, about 8 percent of the state's citizens. The anticipated total Colorado Medicaid budget for FY 1994-95 was approximately \$1.3 billion, with over \$700 million of that budget federally funded.

Medicaid provides coverage for prenatal care, birth delivery, and neonatal care for one out of three Colorado births. Medicaid services for children include well-care, immunizations, early identification and treatment of disabilities, preventive care, and primary health and dental care. With respect to pregnant women and children, births covered by Medicaid increased from 11 percent of all Colorado births in 1989, to 21 percent in 1990, 31 percent in 1991, and to 34 percent in 1992.

In 1993, there were 18,600 births to women covered by Medicaid; an estimated 1,900 of which were to women under age 18. In that same year, children made up approximately 43 percent of Medicaid enrollment, consuming less than 16 percent of Medicaid expenditures. It is estimated that the Medicaid program will provide ongoing assistance to an average of 139,000 eligible children per month during FY 1994-95.

**Colorado Indigent Care Program.** Low income individuals who do not qualify for Medicaid are eligible to participate in the Colorado Indigent Care Program (Medically Indigent Program). Only one-third of Coloradans who have no health care insurance qualify for Medicaid. The Medically Indigent Program is a state funded program which provides health care services to Colorado's uninsured and underinsured residents. In FY 1992-93, the program served approximately 113,000 residents.

**Maternal and Child Services Block Grant.** The Maternal and Child Services Block Grant, which is a federal/state funded, provides program funding to ensure low income and underinsured mothers and their children access to quality maternal and child health services. The goal of the program is to reduce infant mortality and reduce the incidence of preventable diseases and handicapping conditions among children. Approximately 26,400 pregnant women and children benefit from services provided by the following state programs funded by the grant: the Prenatal Program, Child Health Services, and the Health Care Program for Special Needs Children.

**Migrant Health.** The Migrant Health Program was created to provide primary and preventive care to seasonal workers. This federal/state funded program provides health care to approximately 7,500 seasonal workers, of which approximately 4,100 are women and children.

**Private Health Care Insurance**

Currently, many Colorado minors are covered under their parents' employer-based or private health insurance. However, if a minor has children, these children are not necessarily eligible to be covered under the same insurance.

**Federal Law and Federal Waivers**

States must structure their Medicaid programs in accordance with federal law. When there is a conflict between federal and state law, federal law supersedes unless the state submits and receives approval for a waiver of federal law. Different kinds of waivers may be submitted. This amendment imposes state requirements that may conflict with debt repayment provisions of Title 19 of the Social Security Act (Medicaid), requiring the submission of a "Section 1115 waiver" of federal law. Twenty-one states and the District of Columbia have submitted 33 Section 1115 waivers, 5 of which have been implemented, 4 approved, 4 disapproved, and 20 pending.

Programs which are subject to Section 1115 waivers must be a demonstration or pilot project. The federal government can put additional conditions on a waiver such as limiting the duration of the program, or requiring that the state share the cost of a rigorous program evaluation by the federal government. The federal government has final authority to approve or to deny state requests for waivers. Waivers which are granted may still be challenged on the basis that the federal government lacks the authority to grant the waiver. If a state fails to obtain a waiver, and the conflicting program is implemented, the state could be deemed out of compliance with federal law. Such noncompliance may jeopardize the state's receipt of federal funds.

**Federal and State Law**

Some of the issues in this amendment have been addressed by federal legislation which has been adopted by the State of Colorado. Relevant legislation includes: the Omnibus Reconciliation Act of 1993 (OBRA-93); the Family Support Act; the Child Support Enforcement Act; and the Uniform Parentage Act. These laws encourage programs which establish paternity and enforce child support.

The Family Support Act requires that states meet and maintain a certain percentage of paternity establishment for unwed mothers. The Omnibus Reconciliation Act of 1993 requires hospitals to offer single mothers an opportunity to identify the father for hospital records. The establishment of paternity at birth in Colorado has increased from 94 in 1992, to 1,278 during the first four months of 1994. On June 1, 1994, Colorado's paternity establishment percentage was at 43.1 percent. Annual increases are required until a 75 percent paternity establishment rate is achieved. The number of court cases required to establish paternity has decreased 67 percent since Colorado implemented the hospital based paternity establishment program as required by OBRA-93.

The federal Child Support Enforcement Act requires states to operate a child support program in order to be eligible to receive AFDC funds. The Automated Child Support Enforcement System supports Colorado's 63 county child support enforcement units with paternity establishment, the location of absent parents, the establishment of medical and financial support, and enforcement of child support orders. Congress requires the enrollment of children in medical support programs which are available through the absent parent's employment. Additionally, Colorado's Uniform Parentage Act provides for a judgment or order directing the father of a child to pay the reasonable expenses of the mother's pregnancy and confinement.

**Arguments For**

1) This amendment places financial responsibility with families. Parents and families that can afford to pay for the medical costs associated with childbearing and rearing should not be able to pass that cost on to the state. Taxpayer dollars should be saved by requiring the absent parent and, in the event that a parent is a minor, the minor's

parents (the grandparents) to repay the state for medical assistance received on behalf of a child.

2) The proportion of the state budget devoted to Medicaid has steadily increased over the past several years. This increase has taken funding away from other necessary services. This trend may be partially reversed if some of the monies expended for low income pregnant mothers and children are reimbursed to the state. Further, program costs may be reduced since Medicaid recipients may be more cost conscious about their health care expenditures and may utilize health care services only when necessary.

3) This amendment may decrease teenage pregnancy by making parents more accountable for the reproductive choices of their minor children. Increased communication between parents and their children about sex and birth control should enable parents to be more involved in influencing their children's reproductive choices. Minors may consider the financial consequences of having children if they know that under this law, their parents will be financially liable for any medical services debt incurred related to the birth, and medical care for their child. Teenage pregnancy often results in welfare dependence which, in turn, contributes to a cycle of poverty. Decreasing teenage pregnancy should result in lower welfare and Medicaid costs to the state and better outcomes for children.

4) Opponents argue that the implementation of this amendment could cause Colorado to lose up to \$700 million in federal Medicaid funding. The proponents argue that the proposed amendment is to be implemented only if required federal waivers are granted, or to the extent that there is no conflict with federal law. This amendment provides for the waiver process, as allowed by the federal government, in an effort to reduce the number of Colorado's residents who may abuse the Medicaid system. Twenty-one states and the District of Colombia have already submitted Section 1115 waivers to the federal government to implement state level Medicaid reform. The federal government has shown its support of state level Medicaid reform through the number of waivers which have been approved.

5) This amendment does not bar indigent citizens from receiving Medicaid or other state funding. The state may not charge the parent who applies for or receives medical assistance for repayment, which typically includes mothers with custody of their children. The amendment clearly states that biological or adoptive parents of a minor biological parent will only be required to reimburse the state for funding until their income, property and resources become insufficient, or until the minor parent reaches full age (as to be defined by statute), whichever occurs first. Free medical programs, including immunization clinics offered to citizens regardless of financial need, are also not affected by this amendment. These programs will still be available.

**Arguments Against**

1) The amendment does not specifically provide for what occurs if the state is required to submit a Section 1115 waiver of federal law, the state in fact applies for such a waiver, and the waiver is then denied. It is not clear whether the state must implement the constitutional provision even if it conflicts with federal law. If so, the implementation of the proposed measure may jeopardize the state's receipt of federal funds for the Medicaid program. No federal waiver has ever been granted for the repayment of medical assistance from the parents of minor parents (the grandparents). Failure to obtain a waiver of the federal law may result in the state's loss of up to \$700 million in federal Medicaid funding. Loss of this funding would place at risk federally funded medical services in Colorado, including those for individuals who have developmental disabilities, who are medically needy, elderly, physically or mentally disabled, institutionalized, long term care recipients, and low income pregnant women and children.

Federal law governing the Maternal and Child Services Block Grant and the Migrant Health Programs may also prohibit the recoupment of funds from family members other than a spouse or parent. The implementation of this amendment may jeopardize federal funding for those programs.

2) Medical costs, including those paid by state government, may increase if recipients delay seeking care until the illness or condition is more critical. Requiring typically the absent parent or, in the event that the parent is a minor, the minor's parents (the grandparents) to pay for services is expected to discourage low income women from seeking prenatal care and preventive medical care for their children. Studies have shown that these types of medical services significantly decrease long term medical care costs. In 1991, children born with no prenatal care experienced infant mortality rates of 41.9 per 1,000. By comparison, infant mortality rates for children born with prenatal care was 7.6 per 1,000.

3) The additional financial burden this amendment imposes, all medical costs on top of existing child support obligations, may impoverish those fathers who are already barely able to meet their children's financial needs, and may discourage fathers from coming forward to establish paternity because they will be required to repay full medical costs to the state without regard for their ability to pay. Also, the parents of minor parents may be required to exhaust their resources while repaying the debt, perpetuating the cycle of poverty. In addition, this amendment duplicates some of the family responsibility efforts currently in place, such as federal requirements to establish paternity and medical support.

4) It is likely that most of the debt created would not be collectible from either the absent parent or the parents of minor parents (the grandparents). Only a small percentage of the parents of minor parents (the grandparents) would reimburse the state for medical expenses. In 1985, Wisconsin adopted legislation which made the parents of unmarried minor parents (the grandparents), financially liable for the support of the minor's child. In 1988, Wisconsin's Department of Health and Social Services reported that 10 percent of the parents of minor parents (the grandparents) were actually held financially responsible for supporting their grandchildren. This figure was low because 56 percent of the mothers to these minor parents were on AFDC, two-thirds of the cases involved fathers who were not minors, or the parents of the minor lived out of state, were deceased, or incarcerated. Additionally, the report stated that only seven percent of teens were familiar with the law, that "changes in behavior arising from the law is quite small," and that "the law does not appear to have led to a decline in the number of teen pregnancies."

5) The amendment is based upon incorrect assumptions about human behavior. The amendment overestimates the ability of parents to control the actions of their minor children and assumes that parental control will be enhanced by the threat of financial consequences. In addition, the proposal assumes the ability of those without insurance coverage to pay for medical care.

6) This amendment would establish a new legal responsibility to the parents of minor parents (the grandparents) for medical assistance received on behalf of the child of the minor parent. Medical cost for some children born prematurely, with complications, or with severe disabilities, can be extremely high. The parents of minor parents (the grandparents) would be required to repay these medical costs from their income and/or resources. Some grandparents may have no choice but to repay this debt from money they have saved for their own retirement or the education of their children. Enforcement of this amendment could be financially disastrous to these individuals and their families. Some grandparents and their other children may become eligible for Medicaid themselves due to the loss of their personal resources.