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0206 An Analysis of 1974 Ballot Proposals

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LEGISLATIVE COUNCIL
OF THE
COLORADO GENERAL ASSEMBLY

AN ANALYSIS OF
1974 BALLOT PROPOSALS

Research Publication No. 206
1974

COLORADO GENERAL ASSEMBLY



LEGISLATIVE COUNCIL

ROOM 46 STATE CAPITOL
DENVER, COLORADO 80203
892-2285
AREA CODE 303

LETTER OF TRANSMITTAL

September 10, 1974

This analysis of measures to be voted upon at the 1974 general election has been prepared by the Colorado Legislative Council as a public service to members of the General Assembly and to the general public pursuant to 63-4-3, Colorado Revised Statutes 1963.

The provisions of each proposal are set forth, along with general comments on their application and effect. Careful attention has been given to arguments both for and against the various proposals in an effort to present both sides on each issue. While all arguments for and against the proposed amendments may not have been included, major ones have been set forth, so that each citizen may decide for himself the relative merits of each proposal.

It should be emphasized that the Legislative Council takes no position, pro or con, with respect to the merits of these proposals. In listing the ARGUMENTS FOR and the ARGUMENTS AGAINST, the council is merely putting forth the arguments most commonly offered by proponents and opponents of 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 council sentiment.

Respectfully submitted,

/s/ Senator Fred Anderson
Chairman

FA/mp

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AMENDMENT NO. 1 -- INITIATED PROPOSAL

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| Ballot Title: | An act to amend Articles XIV and XX of the Constitution of the State of Colorado concerning the annexation of property by a county or city and county, and prohibiting the striking off of any territory from a county without first submitting the question to a vote of the qualified electors of the county and without an affirmative vote of the majority of those electors. |
|---------------|---|

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the State Constitution would:

1. Delete from the constitution the present requirement that annexation proceedings of the City and County of Denver be conducted under the general annexation laws applicable to all municipalities in the state ("The Municipal Annexation Act of 1965").
2. Require that annexation proceedings of the City and County of Denver be conducted under the general annexation and consolidation statutes applicable to the other 62 counties in the state.
3. Permit the General Assembly, by law, to revise procedures for changing all county boundaries, including those of the City and County of Denver, and thereby eliminate the constitutional requirement of a vote by the qualified electors of those counties from which territory is proposed to be stricken.

Comments

At the general election in 1902, Colorado voters approved Article XX of the State Constitution, which established Denver as both a city and a county and which required that the boundaries of Denver's school district be coterminous with the boundaries of the city and county. Thus, under Article XX, a Denver annexation affects county and school district boundaries and affects the planning, utilization, and development of school and county facilities in the area to be annexed.

Under the proposed amendment to Article XX, any annexation by the City and County of Denver would have to be approved at a general election in the county from which territory is to be annexed. This requirement would apply until new procedures were adopted by the General Assembly to provide alternate means for the annexation of lands by the City and County of Denver, including annexation without a vote of the electors of those counties involved.

Possible Implications of the Proposal. It is difficult to predict or forecast the ultimate effect of the proposal if it is approved by the voters. The General Assembly has offered an alterna-

Denver Annexations to Follow County Procedures

tive constitutional amendment (Amendment No. 5) for consideration by the voters. Both proposals amend Section 1 of Article XX. If both amendments are approved by the voters, the language of each could be added to the constitution. This might mean that annexations by the City and County of Denver would have to comply with the general annexation laws applicable to all counties, as well as receive the approval of a proposed boundary control commission.

The ballot title for the amendment is incomplete. It states, in part, that the proposal prohibits "...THE STRIKING OFF OF ANY TERRITORY FROM A COUNTY WITHOUT FIRST SUBMITTING THE QUESTION TO A VOTE OF THE QUALIFIED ELECTORS OF THE COUNTY AND WITHOUT AN AFFIRMATIVE VOTE OF THE MAJORITY OF THOSE ELECTORS". In actuality, however, this language already appears in Section 3 of Article XIV of the constitution, and the amendment places the following qualification on the language: "EXCEPT AS OTHERWISE PROVIDED BY STATUTE". Thus, the General Assembly would no longer be required to submit a county annexation question to the voters, in spite of what is implied by the ballot title.

Popular Arguments For

1. The amendment would place suburban counties on a more equal footing with the City and County of Denver in regard to annexation. Any annexation by Denver would have to be approved by the voters in the county or counties from which any territory is to be stricken, at least until such time as new procedures are enacted into law by the General Assembly. This is a reasonable requirement that would allow the electorate of affected counties to participate in the annexation process.

2. The annexation policies of the City and County of Denver have been a source of friction between the central city and its suburban neighbors. The effect of the amendment may be to forestall further annexations and force metropolitan cooperation.

3. With the exception of Denver annexations, municipal annexations in this state do not affect county or school district boundaries. Annexations by the City and County of Denver, on the other hand, have an adverse effect on the ability of surrounding school districts and counties to adequately plan for and provide needed governmental services to residents of their communities. The existing constitutional and statutory framework does not provide a basis through which adequate consideration is given to the problems of counties and school districts from which land is stricken and added to Denver. The amendment may force consideration of these issues.

4. Annexations disrupt land use planning in the Denver metropolitan area. Unreasonable pressures may be placed on communities to reclassify lands when landowners are able to utilize annexation as a lever to obtain local government authorization for development activity. Uncontrolled annexations are one factor contributing to urban sprawl.

Denver Annexations to Follow County Procedures

5. The amendment would allow the General Assembly to establish procedures for revision of county boundaries without the necessity of a vote of the electorate of the county or counties from which territory is stricken. This provision would permit much more flexibility in providing for logical county boundaries, particularly in the mountainous areas of the state. Some small communities, for example, do not have direct highway access to their respective county seats because of rugged terrain.

Popular Arguments Against

1. The amendment will eliminate the constitutional guarantee that voters of a county from which territory is proposed to be stricken be given an opportunity to vote on the issue and could result in a smaller number of counties.

2. The Denver metropolitan area is a single interdependent economic entity. Maintaining the vitality of the central city is essential not only to the health of the metropolitan community but to that of the entire state. Denver needs room to grow in order to ensure a viable tax base in the future. The amendment, in effect, would curtail further annexations by the city and county and cut off its only opportunity for growth. No other municipality in the state is handcuffed by such a restriction.

3. If supporters of the amendment were sincere about the impact of Denver annexations on suburban school districts, the amendment would have addressed this problem directly, rather than attempting simply to isolate the central city. The amendment could have separated the city annexation issue from the school district annexation question.

4. The amendment, for purposes of annexation, equates the City and County of Denver with counties rather than with municipalities. This is fallacious and misleading, since no county government in the state is in the business of providing urban services such as water, sewer, and fire protection. These services are provided either by municipalities or by special service districts. Denver is basically a city and, as such, provides essential urban services, and the annexation question should be directed to this issue. The so-called disruptions to the planning process and provision of governmental services in the suburban areas (supposedly caused by Denver's annexations) could be minimized by a more positive attitude on the part of suburban officials.

5. The freezing of Denver's boundaries (which is the goal of the sponsors of this proposal) would place Denver in the same economic and social position as other central cities in the United States. New industries, new communities, and the most productive tax bases are developing outside the central cities. At the same time, the aged, the handicapped, and the poor are locating in the central cities where low-cost transportation and other social services are available. The inevitable result is a declining tax base and rising

Denver Annexations to Follow County Procedures

costs for central cities. Thus, any reduction in Denver's economic vitality will result in an increase in need for state assistance to Denver and in added burdens for all Colorado Taxpayers.

AMENDMENT NO. 2 -- REFERRED BY GENERAL ASSEMBLY

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| Ballot Title: | Shall the death penalty be imposed upon persons convicted of class 1 felonies where certain mitigating circumstances are not present and certain aggravating circumstances are present? |
|---------------|---|

Provisions of the Proposed Statute

The proposal would reinstate the death penalty in Colorado. The death penalty, however, would only be imposed under the limited circumstances outlined below.

Separate Sentencing Hearings. A person convicted of an offense for which the death penalty may be imposed would be given a sentencing hearing separate from the trial at which his guilt had been determined. The hearing would be before the trial jury, or before the judge if trial by jury had been waived or if the defendant had pleaded guilty.

At the sentencing hearing, information relevant to the existence of any "aggravating" or "mitigating" factors could be presented by the prosecution or by the defense, subject to the rules governing admission of evidence at criminal trials. The jury, or the judge, would announce findings as to the existence of any mitigating or aggravating circumstances.

Mitigating Circumstances. Mitigating circumstances are: (1) the defendant was under the age of 18 at the time of the crime; (2) the capacity of the defendant to distinguish right from wrong was significantly impaired; (3) the defendant was under "unusual and substantial duress" at the time of the crime; (4) the defendant was involved in the capital offense, which was committed by another, but his participation was relatively minor; or (5) the defendant could not reasonably have foreseen that the offense would cause, or create a grave risk of causing, a death.

Aggravating Circumstances. Aggravating circumstances are: (1) the defendant had previously been convicted of an offense for which a sentence of life imprisonment or death was imposed or could have been imposed; (2) the offense was committed after previous conviction.

Death Penalty

tion of the defendant for a class 1, 2, or 3 felony and at the time he was serving a sentence imposed for the prior conviction; (3) the defendant intentionally killed a person he knew to be a peace officer, fireman, or correctional officer; (4) the defendant intentionally killed a person kidnaped or held as hostage by him or by anyone associated with him; (5) the defendant was a party to an agreement to intentionally kill the victim; (6) the defendant committed the offense while lying in ambush or by using a bomb or incendiary device; (7) the defendant intentionally caused the death of the victim while committing a class 1, 2, or 3 felony or during immediate flight from such a felony; (8) while committing the offense, the defendant knowingly created a grave risk of death to another person in addition to the victim; or (9) the defendant committed the offense in an especially heinous, cruel, or depraved manner.

Imposition of Penalty. If the jury, or the judge, determines that one or more mitigating factors existed at the time of the offense, the court must impose a sentence of life imprisonment. If it is determined that no mitigating factors existed and that one or more aggravating factors did exist, the court must impose the death penalty. If the determination of a jury as to the existence of aggravating or mitigating circumstances is not unanimous, the court must sentence the defendant to life imprisonment.

Comments

On June 29, 1972, the United States Supreme Court, in a 5-to-4 decision, overturned the imposition of the death penalty in three cases, two in Georgia and one in Texas. (The decision is cited as Furman v. Georgia.) While the decision did not rule the death penalty unconstitutional in itself, it did determine that the penalty as applied in Georgia and Texas constituted a "cruel and unusual punishment" in violation of the Eighth and Fourteenth Amendments to the United States Constitution.

The court's decision in Furman v. Georgia is brief. The decision is followed by nine separate explanatory opinions, one filed by each Justice of the Supreme Court. Supporters of the death penalty have turned to these nine separate opinions for clarification as to how the death penalty might be constitutionally imposed.

Options. In responding to the Supreme Court's decision in Furman v. Georgia, and to the explanatory opinions of the Justices of the Supreme Court in that case, states have generally selected one of two methods for retaining the death penalty. The first method is to leave absolutely no discretion to juries in the imposition of the death penalty, but rather to mandate capital punishment for narrowly defined capital offenses. The second method provides a sentencing hearing separate from the trial at which guilt or innocence is determined. The death penalty may be imposed at that hearing depending on the presence or absence of aggravating and mitigating circumstances.

Death Penalty

The Colorado Criminal Code. Until effectively overturned by the United States Supreme Court in its capital punishment decision, the Colorado Criminal Code provided a maximum penalty of death and a minimum sentence of life imprisonment for conviction of a class 1 felony. Basically, the code gave discretionary power to the courts to impose the death penalty. The following are class 1 felonies: (1) murder in the first degree; (2) kidnaping (although no person may suffer the death penalty if the person kidnaped was liberated alive prior to conviction of the kidnaper); (3) aggravated assault by an inmate attempting to escape from a correctional institution, provided the inmate had been convicted of a class 1 felony; and (4) treason.

The proposed law does not make any changes in the list of crimes subject to the death penalty under the Colorado Criminal Code. The proposal does establish procedures and conditions to be followed by juries and judges in imposing the death penalty.

If the proposal is adopted and subsequently declared unconstitutional, any person sentenced to death under the provisions of the proposal would be resentenced to life imprisonment.

Popular Arguments For

1. The State of Colorado may lawfully establish punishments for purposes of retribution and deterrence. Punishments should be graduated to fit offenses, with the most serious crime calling for the maximum penalty. The drafters of the United States Constitution determined that this maximum penalty should be the death penalty. They did not consider the death penalty to be cruel and unusual punishment. (The Fifth Amendment to the United States Constitution contains two specific references to the death penalty. This amendment to the constitution was adopted on the same day in 1791 on which the Eighth Amendment, prohibiting cruel and unusual punishments, was adopted.)

2. The proposed death penalty law meets the standards of the Supreme Court's decision in Furman v. Georgia. The law would not provide unqualified discretion to judges and juries in imposing the death penalty. The death penalty could not be arbitrarily imposed under the law. It could only be imposed after the determination of whether aggravating or mitigating circumstances exist, and this determination must be made according to specific standards.

3. The proposal would require the death penalty to be imposed only for the most serious or heinous crimes.

4. The death penalty acts as a deterrent against capital crimes. In particular, law enforcement officials and prison guards are vulnerable to murder by criminals or prison inmates. A criminal being pursued by a law enforcement official would be more hesitant to attempt to kill his pursuer if he knew that he might receive the

Death Penalty

death penalty as a result. The death penalty may be the only deterrent against capital crimes by felons already serving sentences of life imprisonment.

5. There are no clear indications that capital punishment is offensive to the moral standards of society in the United States today. On the contrary, prior to the United States Supreme Court decision in Furman v. Georgia, 40 states employed statutory death penalties. Colorado voters approved retention of the death penalty in 1966 by a vote of more than two to one. On four occasions since 1961, Congress has added to the list of federal crimes punishable by death.

6. Because of the parole process, a number of persons sentenced to life imprisonment are eventually released from prison and returned to society. The imposition of the death penalty in a case of capital crime is the only way in which society can be assured that a second capital offense will not be committed by the same criminal.

Popular Arguments Against

1. In spite of the fact that capital punishment laws are intended to operate equitably, national studies of the imposition of the death penalty reveal that judges and juries have discriminated, at least in a statistical sense, by sex, race, and economics. A homicide analysis reveals that men kill between four and five times more frequently than do women, but the execution rate for men is more than 100 times as great as it is for women. No woman has ever been executed in Colorado. National statistics also reveal that the rate of execution among blacks is higher than would be expected from examination of relative crime rates. Furthermore, the defendant with money is able to have his case presented in court by experts, and he is more likely to escape capital punishment than a poor defendant. Thus, the death penalty is historically incompatible with the Fourteenth Amendment constitutional guarantee of equal protection of the laws.

2. Two issues of paramount importance raised in the opinions of the Supreme Court Justices in Furman v. Georgia are that:

- (a) the death penalty has been inflicted arbitrarily; and
- (b) only a small number of criminals have been executed.

Both factors are considered important in determining whether capital punishment is a cruel and unusual punishment and prohibited by the Eighth Amendment to the United States Constitution.

Regardless of the intent of the proposal to eliminate arbitrary sentencing practices, discretion must continue to be exercised by both judges and juries in the determination of aggravating and

Death Penalty

mitigating circumstances. Furthermore, the limitations contained in the proposal on imposing capital punishment will inevitably result in even fewer judges and juries imposing the death sentence. Both of these situations raise serious constitutional questions of equal protection of the laws.

3. Statistical studies demonstrate that there is no correlation between the murder rate and the presence or absence of capital punishment. The penalty is now so infrequently imposed that the threat of execution is too attenuated to be of substantial service to criminal justice.

4. In terms of dollars and cents, capital punishment laws do not represent a savings to the taxpayer. Because of long and bitterly contested trials, post-trial legal maneuvering, and other administration-of-justice costs in these cases, the expense involved is often higher than in those cases in which the death penalty is not a consideration.

5. Factors which should determine whether a sentence of death is an appropriate penalty in a given case are likely to be precluded from consideration by the proposed law. The list of mitigating and aggravating circumstances is not adequate to cover the infinite variety of circumstances which may arise in a given crime. The circumstances of any given crime may be too complex to be compressed into a simple formula.

6. There is no reason to believe that capital punishment serves any penal purpose more effectively than imprisonment. The death penalty is a uniquely and immorally severe punishment utilized as a primitive tool to gain revenge.

AMENDMENT NO. 3 -- REFERRED BY GENERAL ASSEMBLY

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| Ballot Title: | An amendment to Section 12 of Article X of the Constitution of the State of Colorado relating to state moneys and reports of the State Treasurer and deleting the requirement for listing and publishing the number and amount of each warrant paid by the State Treasurer. |
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Provisions of the Proposed Constitutional Amendment

The proposed amendment would revise an 1876 provision of the State Constitution relating to public funds in the hands of the State Treasurer and the quarterly reports which he is required to publish. The proposal would delete from the constitution the requirement that there be listed in the quarterly report of the State Treasurer "the number and amount of every warrant received, and the number and amount of every warrant paid therefrom during the quarter".

Publication of State Warrants

Comments

During the last fiscal year, nearly two million warrants were paid by the treasurer, almost half of which represented refunds of the sales tax on food. If all the warrants paid were listed by number and amount, the quarterly report of the State Treasurer would consist of endless pages of figures. Publication of the warrant numbers and amounts in a newspaper would entail at least one hundred pages consisting solely of figures. A detailed quarterly report of warrant amounts and numbers was last prepared in 1958, and the report required 84 pages of print.

Popular Arguments For

1. The costs of preparing quarterly reports listing hundreds of thousands of warrants by number and amount, and the cost of publishing such lists in a newspaper, is substantial and should not be required.

2. A daily list of all warrants drawn by the State Controller is available in the State Treasurer's office, and the statutes provide that "...such lists shall be open during regular business hours for the inspection and examination of every person desiring to inspect or examine the same". Any interested person may now examine the daily lists of all warrants issued and paid.

Popular Arguments Against

1. The amendment could affect the people's "right to know". Although there may be no obvious reason at present for the detailed publication of information relating to state warrants, such published information may be needed at some time in the future. One of the safeguards of responsible government is convenient access to public information.

AMENDMENT NO. 4 -- REFERRED BY GENERAL ASSEMBLY

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| Ballot Title: | An amendment to Section 2 of Article XI of the Constitution of the State of Colorado, concerning the supplying of energy and providing that cities and towns may become subscribers or shareholders in any corporations or companies and joint owners with any persons, corporations, or companies in order to effect the development of energy resources after discovery, or production, transportation, or transmission of energy. |
|---------------|--|

Joint Development of Energy Resources

Provisions of the Proposed Constitutional Amendment

The proposal would amend the State Constitution to allow a city or town to participate, as a joint owner or shareholder, with private or public entities in the development, production, and transmission of energy resources. The proposal would prohibit municipal participation in the exploratory stage of energy resource development.

Comments

In a number of Colorado communities, current and expected shortages of electricity and natural gas have caused municipal and utility company authorities to express concern over provisions of the State Constitution which, in effect, restrict alternative methods of financing the development, production, and transmission of energy. Energy is presently supplied to consumers by investor-owned companies, federal projects, and municipalities. However, municipal leaders and utility companies assert that, without joint projects between utility companies and government, necessary facility size and development capital cannot be obtained.

The constitution currently authorizes Colorado communities to cooperate or contract with other local governments, with the federal government, or with private persons, associations, and corporations to provide basic governmental services. Cities and towns may not, however, become subscribers or shareholders in, or joint owners with, any corporation or company (unless ownership accrues to the community by donation, forfeiture, or purchase).

The proposal would alter this prohibition by permitting a city or town, for energy resource development only, to become a subscriber or shareholder in any public or private corporation or company, or a joint owner with any public or private person, company, or corporation. The constitution would continue to prohibit the participation of county governments and state government in such joint projects.

Funding of Projects. Financing of a municipality's share of a joint project would come from traditional revenue sources, such as funds derived from utility fees and charges, and from the sale of revenue bonds. Although the proposal does not specifically prevent the sale of general obligation bonds, the issuance of these bonds is subject to other constitutional and local charter provisions which usually require elections and limit total debt.

Joint ownership agreements could provide that each participant supply funds for its share of a power project, with each using its own method of financing. Participants' tax liabilities would also be separate. The proposal would not alter the present constitutional prohibition against cities and towns lending or pledging credit to any public or private person, company, or corporation, or becoming responsible for any debt or liability of such an entity.

Joint Development of Energy Resources

Popular Arguments For

1. The energy crisis is so acute a problem that the knowledge and capital resources of government and industry must be combined to meet increasing demands for power. Over 30 municipalities in Colorado currently operate their own utility systems to provide electricity to their communities. However, several of these cities and towns are depending on the adoption of this proposal to meet the kind of immediate or long-range energy needs which each community, acting independently, cannot meet.

2. Contemporary developments are making joint action between private and municipal utilities necessary. Environmental laws and pressures are restricting the options for obtaining electrical energy supplies, creating a need for a smaller total number of generating plants which are much larger in capacity than most existing plants.

3. The proposal would permit a municipality to pay for its own share of a joint production rather than incur the greater expense of a separate facility. It is less costly for a city to have a 50 megawatt share of a jointly-owned 500 megawatt plant than to be the sole owner of a 50 megawatt facility. Without a joint development effort between business and government, necessary economies of scale in energy development cannot be attained. As a result, a lower price to the energy consumer will not be realized.

Popular Arguments Against

1. Private industry now provides for much of the development, production and transmission of energy resources in Colorado. The proposal would substantially broaden the kind of ownership interest a community may hold. This grant of authority is an extension of governmental responsibility. A city could buy majority stock in a private utility, oil company, coal company or other energy company.

2. The proposal does not provide for enactment of additional state guidelines for municipal participation with private or public entities in the development of energy resources.

3. Municipalities should be authorized only to join in business ventures with clearly established utility businesses. Instead, the proposal provides a much broader authorization for joint ventures between a city or town and any person, any corporation, or any company.

AMENDMENT NO. 5 -- REFERRED BY GENERAL ASSEMBLY

Ballot: An amendment to Article XX of the Constitution of
Title: the State of Colorado, concerning the modernization
of annexation and consolidation proceedings in the
Denver metropolitan area, and creating a boundary
control commission with powers related thereto.

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the State Constitution would:

1. Create a six-member boundary control commission composed of three county commissioners, one each from Adams, Arapahoe, and Jefferson Counties, and three elected officials of the City and County of Denver. The boundary control commissioners from Adams, Arapahoe, and Jefferson Counties would be appointed by the respective boards of county commissioners, and the boundary control commissioners from Denver would be appointed by the mayor.
2. Require that any future annexations by the City and County of Denver be approved by a majority of the six-member boundary control commission prior to initiation of presently required proceedings under the "Municipal Annexation Act of 1965".
3. Permit the commission to de-annex any territory validly annexed to the City and County of Denver during the period from March 1, 1973, to the effective date of the amendment.
4. As of July 1, 1975, automatically detach any land annexed to the City and County of Denver, the City of Lakewood, or the City of Aurora between April 1, 1974, and the date of certification of approval by the voters of the proposal, unless such annexation is ratified by the commission.
5. Prohibit the City and County of Denver from annexing any territory in counties other than Arapahoe, Jefferson, and Adams without a unanimous vote of approval by the board of county commissioners of the county from which the land is to be annexed. Denver, of course, could only annex lands contiguous to itself, and such annexations would have to be approved by the proposed boundary control commission, as noted above.

Comments

The General Assembly is offering this amendment as an alternative to Amendment No. 1, an initiated proposal. Both proposals are designed to provide recourse for suburban counties opposing annexations by the City and County of Denver. If both amendments were adopted, the provisions of Amendment No. 1 would require that Denver annexations comply with the general annexation laws applicable to

Boundary Control Commission

counties rather than to cities, while Amendment No. 5 would impose an additional condition that annexations by the City and County of Denver be approved by a boundary control commission.

Many of the general arguments concerning annexation policies in the Denver metropolitan area presented in the analysis of Amendment No. 1 are applicable to this proposal. These arguments have not been repeated here.

Popular Arguments For

1. The annexation issue is only one symptom of the overall problems of the Denver metropolitan area. Some of the basic issues facing metropolitan Denver are housing, particularly the opportunity for all economic levels to obtain housing throughout the metropolitan community; equal educational opportunities; an equitable distribution of the costs of government, such as services provided by the central city which are of benefit to the entire metropolitan community; and a fair distribution of resources such as water. Amendment No. 5 has been offered as part of a total legislative package to deal directly with these issues and to alleviate Denver-suburban discord.

2. The proposed boundary control commission would serve as a forum for identification of all the issues involved in annexations by the City and County of Denver. The commission would provide an opportunity to balance the question of viability of suburban governments with the problems and needs of the central city. Thus, the amendment would encourage understanding between Denver and the suburbs. The Denver-suburban relationship has been strained in the past, at least in part because of Denver's unilateral annexing powers, which exist under present constitutional and statutory provisions. Resolution of the annexation question in a more cooperative atmosphere would enhance the possibility for metropolitan cooperation in solving other problems.

3. The boundary control commission would be a positive step in the development of a more effective growth plan for the metropolitan community. The commission may be able to reduce the pressures that private developers exert on local governments in the metropolitan area, particularly by playing one local government against another. In other words, if a private land developer has the option of annexing a potential development to Denver, he may be able to force Denver and a suburban jurisdiction to compete for that development, pressing unwarranted demands for rezoning and other governmental services.

4. The membership of the commission as proposed in the amendment (three members from Denver and three members from the suburban counties) is equitable. The General Assembly, in considering amendments to the referred measure, rejected the idea of a seven-member commission. A seventh member on the commission would have unreason-

Boundary Control Commission

able power in breaking tie votes between Denver and the suburbs. An even balance is essential if an effective program of metropolitan cooperation is to be achieved, and the commission should not be able to act on an annexation unless there is general support of the action by both Denver and suburban commissioners.

Popular Arguments Against

1. A six-member commission with membership equally divided between Denver and the suburban counties may result in frequent three-to-three votes. This potential for stalemate leaves little chance for serious consideration of Denver's annexation proposals. Furthermore, the composition of the commission should not be "frozen" into the State Constitution, as provided by the amendment. Approval of the amendment by the voters would seriously handicap the General Assembly in the development of meaningful laws to resolve the Denver annexation issue.

2. Although the commission would have to ratify any annexation by the City of Lakewood or the City of Aurora for the period from April 1, 1974, to the effective date of the amendment, it would not have any authority to consider annexations by these two cities or other suburban municipalities initiated after implementation of the amendment. Further, the commission is not entrusted with the review of special district formation and extension of services. Thus, the commission would not be effective in dealing with the problems of competing tax jurisdictions, urban sprawl, and overlapping local governments which now confront the Denver metropolitan area.

3. Opponents of the proposal believe that the evenly balanced six-member commission may encourage a "tradeoff" between the central city and one of the suburban counties, to the detriment of the two other suburban counties. If one suburban member of the proposed commission votes with the central city, Denver could continue with an annexation program in the other two counties, seriously jeopardizing the viability of local school districts and county government in the county or counties involved in the annexations. Such an occurrence, of course, would lead to further erosion of metropolitan cooperation.

4. The most critical impact of Denver's annexations involves changes in suburban school district boundaries. The amendment affects this issue directly, but does not ensure that educational considerations will play a part in the deliberations of the boundary control commission. The amendment should address the issue of school district boundary changes with regard to educational considerations and should not simply attempt to forestall logical growth patterns for Denver's municipal government.

AMENDMENT NO. 6 -- REFERRED BY GENERAL ASSEMBLY

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| Ballot Title: | An amendment to Articles IV, V, and XII of the Constitution of the State of Colorado concerning the revision of functions and procedures of the executive and legislative departments of the State of Colorado, providing for filling vacancies in state offices, and relieving the Lieutenant Governor of legislative duties. |
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Provisions of the Proposed Constitutional Amendment

The proposed constitutional amendment would provide that:

1. The Lieutenant Governor would become Governor in the event of a permanent vacancy in the office of the Governor (this provision, in itself, is not a change from the present procedure).

2. If a permanent vacancy should occur in the office of Lieutenant Governor, the Governor would nominate a candidate to fill the office, subject to confirmation by majority votes in both houses of the General Assembly.

3. Simultaneous permanent vacancies in the offices of Governor and Lieutenant Governor would be filled by a line of succession among certain legislative leaders, provided that the individual filling a vacancy is a member of the same political party as the Governor and Lieutenant Governor. The line of succession for such simultaneous vacancies would be in the following order: first, President of the Senate; second, Speaker of the House; third, Minority Leader of the Senate; and fourth, Minority Leader of the House.

4. A temporary vacancy in the office of the Governor would be filled by the Lieutenant Governor.

5. A temporary vacancy in the office of the Lieutenant Governor or a simultaneous temporary vacancy in the offices of Governor and Lieutenant Governor would be filled according to the legislative line of succession detailed above.

6. Mental or physical disability of the Governor or Lieutenant Governor, and the resultant vacancy of either office, would be determined in either of the following ways:

- (a) a voluntary written declaration of disability by the Governor or Lieutenant Governor; or
- (b) a determination of disability by the Colorado Supreme Court, which determination could be made only at the request of two-thirds of the members of each house of the General Assembly.

The Supreme Court could, on its own initiative, determine that a state of disability of the Governor or Lieutenant Governor has ceased.

Gubernatorial Succession and Executive and Legislative Procedures

7. For a Governor-elect or for a Lieutenant Governor-elect, succession procedures and procedures for determination of disability would be the same as if the oath of office had been taken.

8. The Senate would elect one of its own members as presiding officer, who would be called the President of the Senate. The Lieutenant Governor would no longer serve in this capacity. The office of President pro tempore of the Senate would be abolished. The only present function of the latter is to serve as Lieutenant Governor in the event of a vacancy in that office.

9. Gubernatorial appointments to fill vacancies in the offices of State Treasurer, Secretary of State, or Attorney General would be subject to Senate confirmation.

10. Members of the General Assembly would be able to enact legislation to establish or change their legislative expense allowances at any time. Furthermore, they would receive the same mileage rate for official travel to which state employees are entitled. The present constitution prevents members of the General Assembly from receiving mileage rate increases during their terms of office.

11. In addition to the regular session that occurs each year, the General Assembly would be permitted to call itself into special session upon the written request of two-thirds of the members of each house. Only those subjects specified in the request could be considered during the special session. At present, only the Governor can call the General Assembly into special session, and the business of the special session is limited to that named in the Governor's proclamation.

12. A member of the General Assembly would be permitted to accept appointment to another civil office "under this state", provided that he resign from his legislative seat. Present language of the constitution prohibits a state legislator from accepting appointment to such an office during the term for which he has been elected.

13. A maximum deviation of five percent from the mean legislative district population, or an actual maximum deviation of 10 percent, would be allowed between the populations of the most and the least populous legislative districts. (In this provision, and in certain other respects, the proposal is in direct conflict with Amendment No. 9, an initiated proposal. This conflict is more fully discussed in the analysis of Amendment No. 9 elsewhere in this publication.)

14. The existing provision that the State Auditor may serve no more than two consecutive five-year terms would be removed from the constitution. The proposal would also eliminate the constitutional prohibition against the State Auditor holding public office during the two years subsequent to his service as State Auditor. The proposal would allow the General Assembly, by law, to permit

Gubernatorial Succession and Executive and Legislative Procedures

the State Auditor to serve on a board or commission or to hold other public office during his term.

15. The General Assembly would be permitted to enact legislation to allow old, uncollectable debts to be written off. This practice is presently prohibited.

16. The State Treasurer would be allowed to adopt new procedures, such as issuing checks, for disbursement of state funds. At present, state funds may be paid out only on warrants drawn on the State Treasury.

In addition to the provisions discussed above, a number of minor "housekeeping" or nonsubstantive amendments are proposed to revise the order and language of the constitution pertaining to practices, processes, and operations of the legislative and executive branches of state government.

Comments

The proposal would make several changes in the constitution in order to resolve questions that have arisen in the past concerning the filling of permanent or temporary vacancies in the offices of Governor and Lieutenant Governor. The major goals of these proposed changes are to provide greater permanence in the process of succession and to increase executive control over succession procedures. The proposal would also establish a mechanism through which the General Assembly could request the Supreme Court to determine whether a Governor or Lieutenant Governor is unable to carry out the duties of his office.

Disbursement of State Funds. The proposal would permit the State Treasurer to disburse state funds in some other manner than by warrant drawn on the treasury. On occasion, the treasurer receives federal funds for distribution to local governments. The constitutional requirement for issuance of warrants in such an instance is cumbersome and time-consuming. Disbursements, such as flow-through money to local governments, could be expedited through the adoption of either a simplified checking system or a simplified warrant system.

Uncollectable Accounts. It has been reported by the state Legislative Audit Committee that uncollectable debts, totaling over one million dollars, have been carried by the state as accounts receivable for many years. This must be done because Section 38 of Article V of the constitution prohibits "writing off" such uncollectable accounts. An amendment to this section is proposed which would allow the General Assembly to establish a statutory policy for release of uncollectable accounts in order to reduce costs associated with recording such bad debts.

Gubernatorial Succession and Executive and Legislative Procedures

Popular Arguments For

1. The present method of gubernatorial succession is inadequate, particularly when viewed in terms of continuity of programs of a Governor and Lieutenant Governor who are elected as a team. The proposal would enable the Governor to appoint a successor Lieutenant Governor in the event of a vacancy in that office, and the amendment emphasizes that others in line of succession must be of the same political party, reflecting voter preference for a party at the last election.

2. Government in the United States is based upon a doctrine of separation of powers. A strong, independent legislative branch is an essential part of this doctrine. Two steps are taken by the amendment to strengthen the independence of the General Assembly from the executive branch of state government. First, the Senate would elect its own presiding officer. Second, the General Assembly would be permitted to call itself into special session.

3. Present restrictions placed on the State Auditor precluding his election to state office for two years following his service as auditor and prohibiting him from serving in any other capacity of state government during that service are unwarranted. The auditor, in particular, has a unique opportunity to develop familiarity with many areas of state government, and his knowledge and expertise should not be wasted. The constitutional limitation on tenure also reduces flexibility in hiring the most qualified applicant for State Auditor.

Popular Arguments Against

1. Detailed provisions of gubernatorial succession and provisions for determining gubernatorial disability belong in the state statutes rather than in the constitution. The amendment should have been written to permit the General Assembly to establish the line of succession by law.

2. The liaison that the executive branch now has with the General Assembly would be greatly diminished if the Lieutenant Governor were to be removed from his position as President of the Senate. Furthermore, the Lieutenant Governor's only remaining constitutional obligation under the proposal would be to succeed the Governor. The proposal should have either abolished the office of Lieutenant Governor or assigned additional duties to that office.

3. Prohibiting members of the General Assembly from accepting appointments to civil office (during the terms for which they have been elected) is essential to maintaining the integrity of a part-time citizen legislature. Appointment to public office during a legislative term could create a situation of conflict of interest. Similarly, restrictions presently imposed on the State Auditor, providing a maximum of two five-year terms and prohibiting appoint-

Gubernatorial Succession and Executive and Legislative Procedures

ment to another public office for two years following a term in office should be retained.

AMENDMENT NO. 7 -- REFERRED BY GENERAL ASSEMBLY

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| Ballot Title: | An amendment to Article X of the Constitution of the State of Colorado, removing the proceeds of the motor fuel tax on aviation fuel from the Highway Users Tax Fund. |
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Provisions of the Proposed Constitutional Amendment

The proposal would eliminate the present constitutional requirement that revenue from excise taxes on aviation fuel be used only for public highway purposes. Instead, any revenue from excise taxes on aviation fuel (if levied at some time in the future) could only be used for aviation purposes. The proposed amendment would apply to fuels used in both commercial and general aviation.

Comments

Since 1935, the State Constitution has required that all revenue from excise taxes on gasoline or other liquid motor fuel be used only for public highway purposes. This constitutional requirement applies to all excise taxes on aviation fuel. Colorado does not, however, impose any kind of aviation fuel tax at the present time. Consequently, the proposed elimination of the requirement that aviation fuel tax revenue be used for highway purposes would not have a financial impact on Colorado highway revenue.

Historically, public airport facilities in Colorado have been financed from a variety of revenue sources, including landing fees, rentals, various agreed-upon charges levied primarily on scheduled airlines, and so-called "fuel flowage fees", "gallongage fees", or "royalties". These aviation fuel fees have been levied by local governments on general aviation (non-commercial, privately-owned aircraft).

Popular Arguments For

1. Colorado's Highway Users' Tax Fund system is based on a user-benefit tax theory. Under this system, the highway motorist provides the basic financial support for the state and local highway systems. In regard to aviation fuel, however, the present Highway Users' Tax Fund system violates this user-benefit theory. The present language of the constitution prevents revenue from aviation

Aviation Fuel -- Allocation of any Future Tax

fuel excise taxes from being used to benefit aviation interests. The proposed constitutional amendment would remove this inequity from the state's Highway Users' Tax Fund system.

2. "Fuel flowage fees", "gallongage fees", and "royalties" on aviation fuel are being collected and used by local governments to develop public airport facilities in Colorado. The present language of the constitution provides that excise taxes on liquid motor fuel must be used for highway purposes. Thus, it could be argued that the proceeds from local charges on aviation fuel must be allocated for highways rather than for airports. The proposed amendment would clarify that the revenue from fuel taxes now levied on general aviation by local governments be utilized for aviation purposes.

3. The proposal does not in itself impose an excise tax on aviation fuel, nor does it divert funds from the state Highway Users' Tax Fund for aviation purposes. (Revenue presently collected from local charges on aviation fuel is not part of the Highway Users' Tax Fund.)

Popular Arguments Against

1. The state's transportation tax program should be flexible and should not be restricted by unnecessary constitutional limitations. The present practice of constitutionally "earmarking" certain sources of tax revenue for specific governmental purposes (highway construction for example) is a serious limitation on the ability of the General Assembly to develop a flexible transportation tax program. The proposed amendment to the constitution would place an equally serious restriction on the ability of the General Assembly to fund total transportation needs of the community.

2. The existence or construction of airports creates demands for new, improved, or redesigned roads and highways. The users of airports should pay for these airport-related roads and highways. Therefore, any revenue from excise taxes on aviation fuel should be available for use for highway as well as aviation purposes.

3. The proposal is likely to lead to the imposition of a new type of state tax, an excise tax on aviation fuel. A state tax would result in higher costs to the consumer of aviation services, and particularly to the user of scheduled air transportation. In addition, this type of tax would be unfair to the owners and users of the 98 privately-operated airports in the state, since fuel taxes paid at those private airports would be used to benefit publicly-owned airports. In the same sense, it would be unfair to place an excise tax on aviation fuel used by scheduled air carriers in order to generate revenue for airports and aviation facilities not required by the carriers.

AMENDMENT NO. 8 -- INITIATED PROPOSAL

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| Ballot Title: | An amendment to Section 8 of Article IX of the Constitution of the State of Colorado, to prohibit the assignment or the transportation of pupils to public educational institutions in order to achieve racial balance of pupils at such institutions. |
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Provisions of the Proposed Constitutional Amendment

The proposed amendment to the State Constitution would prohibit the assignment or transportation of children to any public school for purposes of achieving racial balance. The amendment would apply to public but not to privately-operated schools.

Comments

The "Brown" Decisions. It is important to recall the landmark United States Supreme Court decisions of 1954 and 1955 in Brown v. Board of Education. In the first of these decisions, the court struck down the legal doctrine of "separate but equal" school systems (dual systems) by stating that separate educational facilities for school children of different races were "inherently unequal".

In the second Brown decision, it was held that all provisions of federal, state, or local law requiring or permitting racial discrimination through separate educational facilities must yield in providing remediation of the inherent inequality of the segregated situation. In a subsequent case, the court articulated the final purpose of the second Brown decision: "the transition to a unitary, nonracial system of public education was and is the ultimate end to be brought about..." (Green v. County School Board).

The Denver Desegregation Case. Court action in the Denver desegregation controversy was initiated in June of 1969. The Denver federal district court issued a preliminary injunction in the case in July of that year, and a decision was entered by the court in 1970. This 1970 decision found that, for nearly a decade, racial segregation of the Park Hill schools in Denver had been achieved through manipulation of school attendance zones and through use of mobile classroom units, new school construction, teacher assignments, and other means. The court also concluded that segregated "core city" schools were educationally inferior to predominately Anglo schools. The court then adopted plans to remedy these situations.

The 1970 federal district court decision was appealed to the Tenth Federal Circuit Court of Appeals. The court of appeals affirmed the Park Hill segregation ruling, but reversed the decision with regard to so-called "core city" schools.

Prohibit Transportation of Students for Racial Balance

Review of the Controversy by the Supreme Court. The Denver desegregation case was eventually reviewed by the United States Supreme Court, which modified the decision of the court of appeals. The Supreme Court remanded the case to the Denver federal district court, stating, in effect, that unless the school segregation which had been proven to exist in the Park Hill area had occurred isolated and remote from the rest of the Denver school system, such segregation indicated that the entire school district was unconstitutionally segregated. If so, the Denver Board of Education would have to be directed by the federal district court to desegregate the entire system "root and branch".

Subsequent Findings of the Federal District Court. In December of 1973, pursuant to the directive of the Supreme Court, the Denver federal district court made a determination that the situation of intentional segregation in the Park Hill schools was not isolated or remote from the rest of the school system. Thus, the entire system was declared by the court to be an unconstitutionally dual school system, and, in April of 1974, the court mandated a plan of desegregation for the entire district.

Provisions of the Desegregation Plan. The desegregation plan mandated by the federal district court is estimated to affect pupil transportation and assignment in the Denver school system for the 1974-1975 school year as outlined below. (It should be noted that the four aspects of the plan outlined below do not comprise its entirety; they are, however, the major components of the plan as of July, 1974.)

- (a) Busing. It is estimated that between 24,500 and 27,500 children (out of a total enrollment of 80,000) are to be bused under the plan. During the 1973-1974 school year, approximately 15,000 children were bused.
- (b) Attendance Areas. In the implementation of the desegregation plan, the attendance areas of all but four of the schools in the Denver school district have been altered. Some of these attendance area changes have been minor, while some represent substantial departures from past boundaries.
- (c) Pairing. A classroom "pairing" system involving 37 elementary schools has been designed. According to this plan, a pupil will, on alternate days, attend a "paired" school for at least half of his class time and will attend his neighborhood school for the remainder of the day.
- (d) Satellite Attendance Areas. The "satellite" school concept involves the assignment of students from schools with concentrated minority or Anglo enrollments for purposes of integrating other schools. Twenty-six elementary schools, 13 junior high schools, and six high schools

Prohibit Transportation of Students for Racial Balance

will be integrated by receiving students from "satellite" attendance areas.

Conflict Between the Proposal and the Denver Desegregation Plan. The provisions of the proposed amendment to the State Constitution are in apparent conflict with the desegregation plan ordered into effect for the Denver schools in April of 1974. The proposed amendment would prohibit both the transportation and the assignment of pupils to achieve racial balance. Pupil assignment and transportation according to race, however, have been determined by the court to be essential to the implementation of the desegregation plan.

Popular Arguments For

1. Adoption of the proposed amendment would reinforce the existing language of the Colorado Constitution which prohibits "any distinction or classification of pupils...on account of race or color". Its adoption would reaffirm that Colorado voters do not want public policy decisions made on the basis of racial distinctions.

2. The proposed amendment represents a referendum on the question of the busing and assignment of school children for purposes of achieving racial balance or integration. The adoption of the amendment would be a mandate against racially-determined busing and pupil assignment which could not be ignored by state and national political leaders. (The Colorado General Assembly has already gone on record as favoring Congressional action against the assignment of school children on the basis of race; in 1974, the General Assembly adopted a resolution urging Congress to propose an amendment to the federal constitution which would prohibit such racially-determined school assignments and which would give Congress the power to enforce the prohibition through legislation.)

3. The proposal is intended to be a clear indication to the judicial branch of government and to local school authorities that racial distinctions are not to be made in decisions relating to pupil assignments and transportation. It is desirable to place these instructions in the State Constitution, since constitutional "ground rules" for pupil assignment and transportation will make it more difficult for courts to make policy decisions for local school authorities relating to these aspects of education. Within the constitutional "ground rules", local school authorities would be free, as they have been in the past, to set policy for pupil assignment and transportation in the communities with which they are familiar and to which they are responsible.

4. The proposed amendment will be instrumental in bringing an end to busing for purposes of racial integration. If it is not curtailed, racially-oriented busing will increase pupil transportation costs in the Denver school system to an unacceptable level. The funds required for busing could be better utilized for educational programs, particularly in core city schools.

Prohibit Transportation of Students for Racial Balance

5. If pupil transportation is used as a tool in achieving racial integration, the practical problems inherent in the busing of school children will be intensified. These problems include delayed arrival at school in bad weather, inflexibility in school scheduling, discipline and safety problems on buses, and traffic safety problems at bus stops and near the schools.

6. Busing of a child away from his home area is contrary to the concept of the "neighborhood school", a concept which is desirable for several reasons. Neighborhood schools permit children to walk to school, to be close to home in case of emergencies, and to return home quickly after school. Neighborhood schools permit participation in extracurricular activities without transportation difficulties or special administrative arrangements. Parental involvement in school activities is enhanced by the neighborhood school. The neighborhood school is particularly important in the early grades. The neighborhood school permits a child to develop and maintain a sense of identity with his local community.

7. Public schools are established for the purpose of educating children without regard to racial, ethnic, or religious considerations. Schools should not be used for solving pervasive societal problems such as racial segregation; these problems go far beyond the realm of education. Further, it is unlikely that the court-ordered desegregation plan will be of any use in actually increasing the educational opportunities of minority children in the Denver school system. The strong public support that schools have enjoyed in the past, particularly in regard to school finance, will decrease if the schools are forced into the role of agents of social change.

Popular Arguments Against

1. The proposal may be without ultimate substance or effect in law. On the basis of the requirement for "equal protection of the laws" contained in the federal constitution, the United States Supreme Court and lower federal courts have assumed jurisdiction in and have ruled in the Denver desegregation controversy. The proposed amendment to the state constitution is in apparent conflict with these federal rulings. If adopted by the voters, the proposed amendment is likely eventually to be ruled unconstitutional, since the federal constitution and the interpretation of the federal constitution by the United States Supreme Court are the "supreme law of the land", "anything in the constitution or laws of any state to the contrary notwithstanding".

The history of the United States Constitution contains many instances in which a state statute or a provision of a state constitution has been ruled invalid because of a conflict with the federal constitution. In one such example relating specifically to school desegregation, an absolute statutory prohibition against pupil assignment and busing to achieve racial balance was invalidated by the United States Supreme Court because it conflicted with the federal

Prohibit Transportation of Students for Racial Balance

constitutional requirement for equal protection of the laws (North Carolina State Board of Education v. Swann). In this case, the court ruled that:

...to forbid...all assignments made on the basis of race would deprive school authorities of the one tool absolutely essential to fulfillment of their constitutional obligation to eliminate existing dual school systems...We likewise conclude that an absolute prohibition against transportation of students assigned on the basis of race ...will similarly hamper the ability of local authorities to effectively remedy constitutional violations.

2. Pupil assignment and busing may not be the ideal means of desegregating a school system, but they are the only practical methods of assuring that the desegregation of the system proceeds in the short run. Desegregation could be more ideally achieved in the long run through changes in housing patterns of minority citizens. This sort of desegregation, however, is not likely to occur, at least in the foreseeable future.

The choice seems to be between: (a) accepting pupil assignment and busing as inconvenient means toward achieving the desired end of integration in public schools; or (b) accepting an unconstitutionally segregated school system. Voluntary attempts to eliminate segregation have been unsuccessful, and implementation of the proposed amendment would have the effect of leaving the minority children in the Denver school system without a remedy for racially discriminatory practices. Pupil assignment and busing for purposes of integration are necessary not because they are to be desired in themselves, but rather because they are more desirable than their alternative.

3. One of the fundamental strengths of this country's form of government is the process through which the judicial branch is responsible for determining when an elective body or an administrative unit has abused one or more of the rights guaranteed to each citizen by the federal or a state constitution. The judicial branch has the further responsibility of initiating a remedy for such a situation. The proposed amendment to the State Constitution is an attempt to prevent the federal court from fulfilling its responsibility in remedying the situation in which Denver citizens have been denied "equal protection of the laws".

4. In its absolute prohibitions against pupil assignment and transportation for purposes of achieving racial balance, the proposed amendment might restrict the ability of a school board or school administrator to plan and conduct even a limited program for interracial contact and educational experience. This would occur if the rather ambiguous term "racial balance" were determined to include limited programs such as walk-in integration (which requires no busing). The amendment implies the perpetuation of racial isolation even in areas of a school system which could be "naturally" integrated.

Prohibit Transportation of Students for Racial Balance

5. The proposal should be rejected because it will have serious negative effects on the education of minority children in the core city school system. In the Denver desegregation controversy, the federal district court found that Denver's segregated schools offered minority students unequal educational opportunities. This finding was based on evidence of lower standards of expectations, higher teacher turnover rates, lower levels of teacher experience, lower student achievement, higher dropout rates, and other disadvantageous factors in the minority schools.

6. The busing of school children is not a real issue in the overall Denver desegregation controversy. The Denver school system was busing more than 11,000 students before the original suit was initiated in the controversy in 1969. Since that time, the system has had five years of limited experience with busing for integration. Increased transportation expenses are a small price to pay for the elimination of racial discrimination in the Denver schools and for the enhancement of educational opportunities for a large number of the district's pupils.

AMENDMENT NO. 9 -- INITIATED PROPOSAL

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| Ballot Title: | An act to amend Article V of the Constitution of the State of Colorado concerning the reapportioning of legislative districts by a body to be known as the Colorado Reapportionment Commission, which shall consist of eleven electors, four of whom shall be appointed by the legislative department, three by the executive department, and four by the judicial department of the state, and adding new requirements to be considered in the creation of legislative districts. |
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Provisions of the Proposed Constitutional Amendment

The proposed constitutional amendment would:

1. Remove from the General Assembly the power to reapportion itself or to revise legislative district boundaries. After each federal census (presently conducted every ten years), an eleven-member commission would assume responsibility for establishing district boundaries for the General Assembly. The commission would consist of: (a) the Speaker and Minority Leader of the state House of Representatives and the Majority and Minority Leaders of the state Senate (or the designees of these legislative leaders); (b) three appointees of the Governor; and (c) four appointees of the Chief Justice of the Colorado Supreme Court.

2. Allow no more than a five percent deviation between the

Reapportionment Commission

most populous and least populous districts in each house of the General Assembly.

3. Require that "...the aggregate linear distance of all district boundaries shall be as short as possible".

4. Encourage the preservation of communities of interest (including ethnic, cultural, economic, trade area, geographic, and demographic factors) within a single district whenever possible, and discourage the splitting of cities and towns between districts.

5. Require publication of a preliminary reapportionment plan and public hearings on this plan in several areas of the state.

6. Provide for automatic review and ultimate approval of the reapportionment plan by the Colorado Supreme Court.

Comments

Present Reapportionment Requirements. The Colorado General Assembly is required by the constitution to reapportion districts upon the availability of information from each federal census. The reapportionment must be conducted in accordance with the following criteria: (1) the state must be divided into single-member districts; (2) legislative districts in each house must have populations as nearly equal as may be required by the Constitution of the United States; (3) each district must be as compact in area as possible; and (4) districts must contain whole counties except when it is necessary to split counties to meet population requirements.

If the General Assembly fails to reapportion within 45 days of the convening of a regular session following the availability of census data, no legislator may succeed himself in office or receive any compensation or expenses until a reapportionment plan has been adopted.

Members of the Proposed Commission. The proposal would establish a reapportionment commission outside of the legislative branch of state government. No more than six of the eleven members of the commission could be affiliated with the same political party. The membership of the commission would be determined at least partially by geographic factors (each Congressional district of the state must be represented on the commission, and at least one member of the commission must reside west of the continental divide).

Appointments to the commission would be made in three phases; acceptance of service by legislative leaders or designation of alternates for these leaders would occur prior to gubernatorial appointments, and the appointments of the Governor would occur prior to those of the Chief Justice. Thus, the appointment process would be sufficiently flexible to ensure that the proposal's restrictions on party affiliation and requirements for geographic representation on the commission would be met.

Reapportionment Commission

Compactness of Districts. The proposal is intended to clarify the present constitutional requirement for compact districts by providing that the "...aggregate linear distance of all district boundaries shall be as short as possible". The intent of the sponsors is to avoid irregularities in district boundary lines which may be placed in a reapportionment plan for reasons not related to natural boundaries, population requirements, and census and local government boundaries.

Conflict with Amendment No. 6. This proposal would amend two sections of the constitution which are also subject to amendment by Amendment No. 6, which was submitted to the voters by the General Assembly. The sections of the constitution which would be amended in conflicting manners by the two proposals are Sections 46 and 48 of Article V.

In its amendment to Section 46 of Article V, this proposal sets a maximum population deviation of five percent between the most populous and the least populous legislative districts. Amendment No. 6 sets a maximum deviation of five percent from the mean legislative district population, or an actual maximum deviation of 10 percent between the most populous and the least populous districts.

Section 48 of Article V vests power in the Colorado General Assembly to revise and alter legislative district boundaries following each federal census. This proposal would reenact this section, vesting reapportionment powers with the Colorado Reapportionment Commission. Amendment No. 6, on the other hand, would amend Section 48 with the addition of certain technical language concerning federal census information needed for reapportionment. (Amendment No. 6 deals primarily with gubernatorial succession and is not an alternate reapportionment plan.)

According to present Colorado law, if both amendments are approved by the voters, the amendment which receives the greatest number of affirmative votes will be adopted for those sections of the constitution in which these conflicts occur (Sections 46 and 48 of Article V). Thus, the proposal for the creation of a Colorado Reapportionment Commission could be jeopardized if Amendment No. 6 receives a greater number of affirmative votes than this proposal. This matter, however, might eventually be brought to court, and a judicial determination might effectively merge the two proposals, since it may be determined that the content of this proposal is more substantive in certain respects than the technical reapportionment amendments contained in Amendment No. 6.

In the preparation of the proposal, the sponsors made every effort to ensure that the language of the amendment was technically correct and consistent with existing provisions of the constitution. The proposal was submitted to the legislative service agencies of the General Assembly for this purpose. An accurately drafted proposal was then filed with the Secretary of State and provided to the printer. Unfortunately, the subsequently printed copies which were

Reapportionment Commission

actually circulated and signed contained three typographical errors. The most important error involved the deletion of a period in section 47 (2) of the proposal, which tends to cloud the meaning of the section.

Popular Arguments For

1. Colorado is experiencing one of the highest population growth rates in the nation. Most of the growth is occurring in urban centers, while populations in many other areas are stable or declining. With regard to reapportionment, this means that entitlement to legislative seats will increase for some communities, while seats in other areas must be combined. The combination of seats, of course, often results in two or more incumbent legislators being placed in the same legislative district. Thus, there is considerable personal involvement of legislators in the reapportionment process. Establishment of a reapportionment commission would free the General Assembly from the task of reapportioning itself and would reduce the role that personal decisions play in the reapportionment process.

2. The maximum population deviation of five percent between districts is a reasonable standard which will allow greater flexibility in the location of small cities and towns within single legislative districts and which will make it easier to avoid splitting counties between legislative districts. The use of a five percent deviation would also permit more consideration of the ethnic, cultural, economic, and other aspects of reapportionment called for in the proposal. (The standard of a one percent deviation was employed by the General Assembly in 1972 because no court had, at that time, clearly defined the allowable deviation between legislative district populations. It should be noted that the one percent deviation is not likely to be used by the General Assembly in the future, since less stringent deviations have been declared acceptable in court since 1972.)

3. Adoption of the proposal would mean that reapportionment of legislative districts would occur only once every 10 years (unless the federal census is taken more often than every 10 years). Present constitutional provisions do not place such a limit on the General Assembly. This limitation is necessary to prevent major redistricting efforts during the period between censuses (efforts which are likely to occur with changes in party balance), since such efforts divert legislators' attention from other critical matters.

4. The proposal would reduce the impact that partisan politics can have on the drawing of legislative district boundaries, through the placement of the commission outside the legislative branch and through the requirements for appointment of commission members by all three branches of state government. The proposal's more stringent requirements for consideration of communities of interest, for compact districts, and for minimization of the split-

Reapportionment Commission

ting of cities and towns, and the public visibility of the activities of the reapportionment commission would tend to reduce the gerrymandering of legislative districts.

5. The present reapportionment process contributes to endless battles over redistricting and to enmity among state lawmakers. This enmity carries over into other legislative business and is damaging to the effectiveness of the General Assembly in its role of enacting laws in the best interests of Colorado citizens.

Popular Arguments Against

1. In November of 1966, Colorado voters approved a constitutional amendment to take Colorado judges out of politics. The effect of the proposal is to put the Colorado Supreme Court back into politics. The Chief Justice would be required to appoint the final four members of the reapportionment commission. Appointments of the Chief Justice would determine the final geographic and political balance of the commission. Such a duty could place the Chief Justice in an untenable position with regard to the court's review of any plan promulgated by the proposed reapportionment commission. If the Chief Justice disqualifies himself from consideration of any plan, the remaining six justices of the Colorado Supreme Court may be deadlocked in a three-three tie vote on a decision.

2. One of the stated objectives of the sponsors of the proposal is to develop a General Assembly in which members "represent the state as a whole as well as their own districts". However, the requirement of the proposal for the preservation of communities of interest in the drawing of legislative district boundaries may magnify parochialism within the General Assembly rather than encourage responsiveness to overall state needs.

Furthermore, the proposal does not establish clear priorities among the various criteria to be used in the creation of legislative districts. Should the requirement for compact districts take precedence over the requirement for minimizing the splitting of cities and towns? Should cultural and ethnic factors take precedence over economic and trade area factors in the preservation of communities of interest?

3. The sponsors of the proposal are concerned that legislators devote too much time to reapportionment. However, according to the time schedule set forth in the proposal, legislative leaders on the commission could be involved in reapportionment at least from July of the first year until March of the second year following the federal census. Furthermore, the redrawing of United States Congressional districts will continue to be required of the state General Assembly, which will have to devote time and effort to this type of redistricting. Detailed census information and research staff man-hours would thus be needed by both the commission and the General Assembly, adding to the expense of reapportionment.

Reapportionment Commission

4. Reapportionment commission plans in other states provide mechanisms for reappointment or court action when the members of a commission are unable to reach agreement on a plan. Although this proposal provides an odd number of commission members and a deadline to be met for the reapportionment plan, the proposal is silent as to the course of action to be taken when the commission is unable to develop a reapportionment plan within required time limits. On the other hand, existing constitutional provisions penalize Colorado legislators until they adopt a reapportionment plan.

5. There is no provision in the proposal restricting non-legislative members of the reapportionment commission from running for election to the General Assembly following implementation of the redistricting plan. Michigan included such a condition in its reapportionment commission law in order to discourage commission members from being influenced by their own political ambitions.

6. The language and conditions set forth in the proposal depart from the established body of Colorado reapportionment case law. If the proposal is adopted, the Colorado Supreme Court is likely to be called upon to establish new guidelines as to its intent and meaning. The possibility of such litigation of the reapportionment process would complicate the 1980 reapportionment.

AMENDMENT NO. 10 -- INITIATED PROPOSAL

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| Ballot Title: | An act to amend the Constitution of the State of Colorado to establish procedural steps to be complied with prior to the detonation of nuclear explosive devices, requiring prior approval of the detonation by the voters through the enactment of an initiated or referred measure. |
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Provisions of the Proposed Constitutional Amendment

The proposed amendment to the State Constitution would:

1. Prohibit, in Colorado, the detonation (or the placement in the ground for purposes of detonation) of any nuclear device, except when approved by the voters at a general election.

2. Require the Governor to designate a state agency or official to certify that sufficient and secure financial resources exist to compensate for damages to persons or property occurring as a result of any nuclear detonation.

Comments

Chemical explosives have been used for many years in mining, excavation, and conventional oil and gas well stimulation. The "Plowshare" program of the United States Atomic Energy Commission involves the use, when conventional techniques are not adequate, of nuclear explosives for similar purposes (including natural gas stimulation, "in situ" retorting of oil shale, "in situ" leaching of copper, and hazardous waste disposal). Nuclear devices release much more energy per unit of volume than traditional chemical explosives, allowing ease of transportation and placement for detonation.

Projects in Colorado to Date. Two joint projects involving the Atomic Energy Commission and private industry have taken place in Colorado under the Plowshare program. Both projects were experimental and designed to provide information on the commercial feasibility of using nuclear explosives to release natural gas trapped in geological formations of very low permeability (tight formations). In such projects, nuclear devices are lowered into deep wells, and the explosions shatter the gas-bearing formations. A completely contained underground explosion results in a "chimney" with a large volume of fractured rock. Additional fracturing also occurs beyond the chimney. The fracturing increases the permeability of the formations, allowing economical extraction of the natural gas.

Project Rulison, the first of these projects, was conducted on September 10, 1969. A 40-kiloton device was detonated at a depth of 8,425 feet southwest of Rifle, Colorado. In Project Rio Blanco, the second project, three 30-kiloton nuclear explosives were placed vertically in a single well bore to fracture gas-bearing sands. The

Underground Nuclear Detonations

detonation phase of Project Rio Blanco occurred on May 17, 1973, in the Piceance Basin of Rio Blanco County, about 50 miles north of Grand Junction. The nuclear devices in the project were placed at depths of 5,840, 6,230, and 6,690 feet.

Factors Involved in Commercial Application. Further experiments are needed before the techniques of nuclear detonation will be ready for industrial application. Resolution of the following technical and non-technical factors would have to occur prior to this application.

1. Nuclear gas stimulation and other Plowshare projects must be technically feasible and economically competitive to ensure a return on capital investment.
2. If a nuclear device is used to develop another energy source such as natural gas, there should be a substantial net gain in useable energy over that which could be obtained if the fissionable materials were used for other purposes such as power reactors.
3. Protection and adequate indemnification of the public, its property, and the environment against possible damage from seismic waves and accidental release of radioactive materials must be assured.
4. Technology should be sufficiently developed not only for Plowshare projects, but also for other non-nuclear alternatives, in order that the benefits, risks, and social costs of nuclear and non-nuclear energy development alternatives may be directly compared.
5. The relative responsibilities and authorities of federal and state government in relation to nuclear detonation programs should be clarified and fully established.

Present State Role. Congress has authorized the Atomic Energy Commission to enter into agreements with states concerning the regulation and control of certain aspects of atomic energy. Specifically, it is the intent of Congress to provide states with some authority to regulate certain radioactive materials to ensure public health and safety. Colorado is one of the states involved in such an agreement.

In the course of Project Rio Blanco, the industrial sponsor of the project applied for and received permits for the detonation of nuclear devices from the Colorado Oil and Gas Conservation Commission and the Colorado Water Pollution Control Commission. Thereafter, suit was brought in state district court alleging that the permits had been improperly issued on various grounds, an allegation which the court found without merit.

One purpose of the suit was to test the state power to regulate Plowshare activities. The private industry contractor sponsoring Project Rio Blanco argued that the state did not have jurisdiction to regulate Plowshare activities because of the doctrine of federal supremacy and preemption. On May 10, 1973, the court ruled

Underground Nuclear Detonations

that the state did have such power, exercised through the state Water Pollution Control Commission, pursuant both to the Atomic Energy Commission's 1968 agreement with the State of Colorado and to the contract between the private industry contractor and the Atomic Energy Commission.

Some unresolved questions remain, however, particularly as to the legal effect the proposed constitutional amendment would have on Plowshare projects. The agreement provisions authorized by Congress and the provisions of the actual agreement between the State of Colorado and the Atomic Energy Commission are limited in application, while the proposal would vest blanket authority in Colorado voters to determine whether any Plowshare projects could be conducted in the state.

Ultimate enforcement of the proposal would probably be conditioned upon court determination as to whether this degree of state regulation of Plowshare projects would be valid under the doctrine of federal supremacy and preemption.

Popular Arguments For

1. The people of Colorado have the right to make the ultimate decision in a matter as important and controversial as a nuclear detonation within the state. Potentially, thousands of commercial detonations are to take place in Colorado in the next few decades. Although programs such as the Plowshare project detonations are extremely technical, Colorado voters do not have to understand nuclear fusion or fission or other engineering processes in order to make a reasonable and informed decision about a nuclear detonation. The public simply needs to know the relative advantages and disadvantages of a program such as nuclear gas stimulation, including comparisons of: (a) alternative methods of extracting the resource; (b) the need for the resource; (c) the availability of substitute materials; (d) environmental risks involved; and (e) assurances that adequate compensation will be made for damages caused by the detonation.

2. There are ample precedents for the State of Colorado to take an active role with respect to the industrial use of nuclear detonations. Adoption of the proposal will force the legislative and executive branches of state government to more clearly delineate procedures which must be followed and conditions which must be met before a nuclear device may be exploded in Colorado. Similarly, approval of the proposal will provide a clear expression to Congress and the Atomic Energy Commission of the concern of Coloradans that further implementation of the Plowshare program in this state be carried out with extreme caution and be based upon vital national interests.

3. Alternatives to nuclear detonations should be further developed. In particular, two non-nuclear methods of natural gas

Underground Nuclear Detonations

extraction should be given priority study to determine their relative effectiveness and environmental consequences. These are the use of chemical explosives and the use of "hydraulic fracturing". The latter involves the injection into the earth of liquids under high pressure. The Atomic Energy Commission and several major industrial concerns, including the industrial sponsor of Project Rio Blanco, have signed a contract to conduct a massive hydraulic fracturing test in the area of Project Rio Blanco to compare this method of natural gas extraction with nuclear stimulation. Non-nuclear recovery of natural gas, if feasible, has several advantages, including the avoidance of potential seismic and radiological hazards, and a more favorable net gain in useable energy.

4. The use of nuclear detonations raises concerns with regard to radiation contamination, possibilities of seismic effects even greater than those caused directly by a nuclear detonation, and problems of security arrangements for transportation of nuclear explosives, among others. The scientific community is far from agreement as to possible implications of nuclear detonation projects, and in view of past technical mistakes, nuclear detonations must be approached with extreme caution.

5. Only a small percentage of the nation's future energy will come from natural gas. Other energy sources which will have greater ultimate impacts on the total United States energy situation should be researched and developed now. The more glamorous Plowshare program is diverting essential economic and human resources from the research and development of these other energy sources.

6. Although the proposal is designed to halt nuclear blasts which would be dangerous to the health and safety of Coloradans, it would still permit nuclear detonations to occur when the people believe that they are essential and safe.

Popular Arguments Against

1. The ultimate effect of the proposal would be to place a moratorium on Plowshare projects in Colorado, under the guise of instituting an election procedure for nuclear detonations. The requirement for a vote on each nuclear application would severely hamper, and possibly eliminate, continued development of the technology. Proponents of a commercial program of nuclear detonation would, prior to conducting an actual detonation, have to obtain over 50,000 signatures authorizing a vote on the detonation, or they would have to have a bill passed through the Colorado General Assembly referring the measure to the people. The uncertainty and difficulty of either procedure would eliminate private investment required for any Plowshare project and prevent development of needed gas supplies by this extraction method, regardless of its safety or effectiveness.

2. The proposed voting procedure would in itself cause an unnecessary cost to the taxpayer. In addition, steps to obtain a

Underground Nuclear Detonations

favorable vote are costly, and the cost of such steps would eventually have to be absorbed by the consumer.

3. All resource development proposals, including the Plowshare projects, involve the careful consideration and screening of scientific data. Elected officials, both at the federal and state levels of government, and the regulatory agencies which they create (consisting of persons with a variety of highly technical skills), are in the best position to carefully evaluate technical information and to develop standards for nuclear detonations which will protect the public health and safety. Review of any commercial Plowshare program is required under the environmental impact statement process of the 1970 National Environmental Policy Act.

The Colorado Department of Health, the Colorado Oil and Gas Conservation Commission, the Atomic Energy Commission, the United States Bureau of Mines, the United States Geological Survey, and other governmental agencies already issue permits for or review nuclear detonations pursuant to specific standards or criteria.

4. Natural gas is the cleanest burning fossil fuel commonly used. The nation is critically short of this fuel, and Colorado is a net importer of natural gas. The reserves of natural gas available in the low permeability formations of the Green River and Piceance Basins cannot be recovered through conventional means. These reserves by any measure, are very large. At a time of growing energy shortages, and when the United States is attempting to achieve energy independence, it is critical for the nation to investigate and develop every available technology for the purpose of releasing gas from these reserves. The proposal, however, would actually preclude employment of nuclear gas stimulation.

5. Plowshare projects are still in the experimental stage. Additional testing is essential before there will be any reasonable assurance that nuclear gas stimulation of a given field will be economically competitive. Furthermore, additional information is necessary before conclusions may be made about other commercial activities under the Plowshare program. No curtailment of such programs should even be considered until all experimental projects have been completed and a careful analysis has been made of all relevant data.

6. The proposal subjects one resource recovery technique to a direct referendum of the voters, while leaving others to regulation by legislative or administrative bodies. The potential damage to the public interest from other energy resource development processes, such as strip mining, may be far greater than that which would occur under commercial Plowshare projects, as evidenced by Projects Rulison and Rio Blanco.

4808