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0326 An Analysis of 1988 Ballot Proposals

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**LEGISLATIVE COUNCIL
OF THE
COLORADO GENERAL ASSEMBLY**

**AN ANALYSIS OF
1988 BALLOT PROPOSALS**

**Research Publication No. 326
1988**

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LETTER OF TRANSMITTAL

August 16, 1988

This analysis of statewide measures to be decided at the 1988 general election has been prepared by the Colorado Legislative Council as a public service to members of the General Assembly and the general public pursuant to section 2-3-303, *Colorado Revised Statutes*. Eight proposed constitutional measures are analyzed in this publication.

Amendments 2, 3, 4, and 5 were referred by the General Assembly. Amendments 1, 6, 7, and 8 are initiated measures. If approved by the voters, these eight constitutional amendments could only be revised by a vote of the electors at a subsequent general election.

Initiated measures may be placed on the ballot by petition of the registered electors. Initiated measures require the signature of registered electors in an amount equal to five percent of votes cast for Secretary of State.

The provisions of each proposal are set forth, 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 of each issue. While all arguments for and against the proposals may not have been included, major arguments 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 arguments relating to each proposal. The quantity or quality of the FOR and AGAINST paragraphs listed for each proposal is not to be interpreted as an indication or inference of council sentiment.

Respectfully submitted,

A handwritten signature in cursive script that reads 'Ted L. Strickland'.

Senator Ted L. Strickland
Chairman
Colorado Legislative Council

AMENDMENT NO. 1 — CONSTITUTIONAL AMENDMENT INITIATED BY PETITION

Ballot Title: An amendment to the Colorado Constitution to declare that the English language is the official language of the State of Colorado.

Provisions of the Proposed Constitutional Amendment.

The proposed amendment to the Colorado Constitution would amend Article II by the addition of a new section 30 to read as follows:

SECTION 30. The English language is the official language of the State of Colorado.

This section is self executing; however, the General Assembly may enact laws to implement this section.

Comments

The proposed "English as the official language" amendment consists of two provisions. The first provision is a declaration that "the English language is the official language of the State of Colorado." Proponents argue that this provision of the proposal by itself could be a legal basis to support challenges in the courts to any government programs in the state which circumvent its intent and meaning, or to invalidate any attempts by government to mandate the use of non-English, except where health, safety and justice or federal laws require the use of non-English languages.

The second provision states that the amendment is self-executing and does not require the General Assembly to adopt implementing legislation. This means that local governmental entities and school districts may adopt implementing ordinances and regulations within their statutory authority upon passage of the amendment.

The legislature and the courts, in interpreting the meaning and intent of the proposal, may be guided by the statements of intent expressed by the proponents. Those expressions of intent and those laws which may be affected by the proposal are reviewed below.

Meaning of the term "official." The term "official" is not defined in the proposed amendment. An "official" language, as described by the proponents, is the language of record, of the Constitution and legislature, of instruction in our schools, and of our courts. It means a language used in the business of government (legislative, executive, administrative, and judicial) and in the performance of the various other functions of state and local governments. Proponents have stated it is not the intent of the proposal to prohibit the use of a language other than English at home, in private business, in religious ceremonies, cultural functions, as an academic subject, or when public safety requires the use of another language.

Education — instruction in public schools. Prior to 1919, the laws of Colorado required that public schools be taught in the English language, but did provide for the teaching of the curriculum in German and Spanish under certain circumstances. In 1919, the law was changed to provide that instruction was to be conducted in the English language only. In 1969, the law was amended to encourage school districts to provide for transitional bilingual education. The "Bilingual and Bicultural Education Act," which established such programs in grades kindergarten through third grade, was enacted in 1975. This act was repealed in 1981 and replaced with the "English Language Proficiency Act," which requires that school districts provide transitional programs for students in kindergarten and grades one through twelve whose dominant language is not English. The emphasis of the transition program is on the learning of English and facilitating the rapid acquisition of English.

The United States Congress enacted the "Bilingual Education Act" in 1968, which provided federal funds to address the needs of children whose English-speaking ability is limited. In 1974, the United States Supreme Court ruled in *Lau v. Nichols* that, under title VI of the Civil Rights Act of 1964, school districts must take affirmative steps to provide a meaningful education to children with English language deficiencies. Congress also adopted section 1703 (f) of the "Equal Educational Opportunities Act of 1974," which obliges school districts to provide fair and effective assistance to meet the special educational needs of language minority students. The goal of such assistance is the learning of English.

English as Official Language

Voting and election requirements. In 1975, Congress observed that language minority citizens are excluded from the electoral process through the use of English-only election materials. The "Voting Rights Act of 1965" was amended in 1975 to explicitly require distribution of bilingual voting materials in any jurisdiction where more than five percent of the citizens of voting age are members of a single language minority and where the percentage of such persons who have not completed the fifth primary grade is higher than the national rate. "Language minorities" is defined to mean persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.

Twelve counties in Colorado provide registration or voting notices, forms, instructions, ballots, assistance or other information relating to the electoral process in Spanish. Colorado law also provides that if any registered elector declares under oath that, by reason of difficulties with the English language, he is unable to prepare his ballot or operate the voting machine without assistance, he shall be entitled to receive such assistance.

Statutory provisions requiring use of English. Colorado law provides that all written proceedings in a court or before a judicial officer shall be in English. Furthermore, prospective jurors must be able to read, speak, and understand the English language and are subject to disqualification if they are unable to do so.

Several Colorado statutes provide that applicants for professional licenses must be able to read and write English while other statutes provide that examinations for certification to practice a profession shall be in English.

State programs which use a language other than English. The use of languages other than English in some federally-funded state-administered programs, such as migrant and community health centers, alcohol abuse and treatment programs, and the Refugee Assistance Program, are required by federal law. Interpreters for witnesses and litigants in all civil and criminal litigation are also required by federal law. These federal requirements preempt any local or state law.

Some state programs also use languages other than English in providing services to the public. For example, the Workers Compensation "notice to employees" poster, public information materials explaining emergency response procedures, the driver's license manual and driver's test book, materials printed for the International Trade Program, and notices and handouts about contraband in correctional institutions are printed in English and Spanish. Some materials are printed in other languages.

Arguments For

1) Colorado has always prided itself on the unity it has achieved in a pluralistic, diverse society. A common language is one of the strongest bonds that tie us together. Government functions through the use of words in town meetings, councils, committee hearings, legislative debates and public speeches. Government can only survive if we talk to each other directly in a common language, without an interpreter. English is our strongest unifying common language. It is therefore proper that the importance of the English language be officially recognized in the Colorado Constitution.

2) In recent years, the public sector (legislative, judicial and administrative) has recognized other languages, and we are slowly adopting the custom of running our society in more than one language. Legal attempts to claim that the use of non-English language, in other than private contexts, is a "language right" to be protected by existing law are possible. For this reason English as our official language deserves a measure of legal recognition and protection. Only a constitutional amendment can prevent future legal challenges to our common language. The proposal will halt the drift toward official bilingualism, a drift which may become irreversible. A one-language system provides a level playing field for all citizens of non-English speaking backgrounds.

3) To declare English the official language of the state is not to imply that any other language is inferior to English nor to mandate that only English be spoken or written. It simply assures that the business of the state, including units of local government, will be conducted in English. The legal steps necessary to insure that English is the official language of Colorado would be left to the

English as Official Language

legislature and the courts through the enactment of laws and the interpretation of the law in future court cases.

4) One language for government use prevents translation, printing and distribution costs. States which have adopted English as their official language have not experienced increased, costly litigation.

5) Language deficits are not permanent — the learning of English is open to anyone who cares to make the effort. New immigrants, like other immigrants before, are free to learn English. The proposal does not discriminate against any specific non-English speaking group. Official English does not mean “correct,” “perfect” or “pure” English. English, like other major languages and by its very nature, is a growing language, ever borrowing and assimilating vocabulary and other features from other languages. The proposal does not eliminate foreign words which have been assimilated into English.

Arguments Against

1) The primacy of the English language is not in danger and there is no evidence of the alleged loss of unity or stability in our society. It is true that language is a common bond of our society, but it is not the only one nor is it the most important. Colorado citizens also share common political bonds; the belief in a democratic form of government, in freedom, and in equality of opportunity. These beliefs are more significant and more strongly unite us than the language in which they are expressed. The proposal is a repudiation of the essential ideals of tolerance and respect for diversity that underlie democracy. The debate should focus on ways to ease linguistic assimilation while neither threatening the identity of language minority groups nor undermining the supremacy of English language.

2) English is already the language of government, the language used in our courts and in our schools, and the language of the marketplace. Non-English speaking people in Colorado clearly recognize that mastery of English is essential to full participation in our society. This is in itself a strong incentive to learn English, and that incentive is not lessened by the availability of programs for the limited English proficient. If compelling non-English speakers to learn English is the goal of this proposal, how is the possible elimination of these services substantially related to this goal? These services do not discourage the assimilation of language minorities into Colorado society but are essential to a substantial minority of Colorado residents. The proposal will not result in any individual learning English any faster or better than he or she does now. The proposal will actually discourage the assimilation of new language minorities into society.

3) The proposal leaves many meanings to be interpreted by the courts. This could lead to extensive and costly litigation which will eventually be borne by the taxpayer. Proponents have stated that the proposal would not affect language services that promote public health and safety. Yet, nowhere in the proposal is that statement included. Proponents have stated that the proposal would not affect advertising in other languages by private businesses, but the proposal does not specifically state this exception. Nothing in the proposal excludes private businesses operating in Colorado. The only implicit exemptions to the measure are those covered by federal law. If the legislature or the courts determine that public expenditures for programs for the limited English proficient are contrary to the intent of the proposal, even those services aimed at the protection of public health and safety could be eliminated.

4) International relations, commerce, and politics require that Americans be proficient in languages other than English. Declaring English to be the official language of the State is contrary to the reality of our interdependent world. The proposal could jeopardize Colorado's efforts to attract international trade, business, and investments.

5) The proposal is insensitive to our state's ethnic diversity. The proposal will cause resentment among many language minority Coloradans who view it as an effort to legislate cultural superiority of native English-speaking people and may increase racial and ethnic tension in Colorado. The difficult problems of assimilating language minorities into our society cannot be solved simply by granting English constitutional protection. The ultimate effect will be an on-going atmosphere of divisiveness and hostility to language minorities, sanctioned by the Colorado Constitution.

AMENDMENT NO. 2 — CONSTITUTIONAL AMENDMENT PROPOSED BY THE GENERAL ASSEMBLY

Ballot Title: An amendment to Section 4 of Article XXI of the Constitution of the State of Colorado, making the provision on reimbursement of recall expenses from the state treasury applicable only to state elective officers, providing that the General Assembly establish procedures for said reimbursement, and authorizing the General Assembly to establish procedures for the reimbursement of recall expenses of local elective officers by local governmental entities.

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

- provide that reimbursement from the state treasury of expenses incurred in a recall election shall apply only to state elective officers whose recall is sought but who are not recalled; and
- provide that the General Assembly may establish procedures for the reimbursement by a local government entity of expenses incurred by an incumbent elective officer of such governmental entity whose recall is sought but who is not recalled.

Comments

In 1912, the voters of Colorado adopted an initiated constitutional amendment which added the present Article XXI concerning recall from office. The article sets forth the procedures necessary to effect the recall of elective public officers. In Section 4 of the article a provision allows any public officer who is not recalled to recover from the state treasury any money actually expended by him in the recall election. This applies to state elective officers and every officer of units of local government.

In 1979, the General Assembly enacted a law which authorized reimbursement of expenses to local government officials who successfully retain their offices in recall elections. The statute limited the total amount of the reimbursement to a sum equal to ten cents per voter. The ten cents per voter limit was based on a recommendation from the Office of the Secretary of State. In the case of *Passarelli vs. Schoettler*, (September 1987), the Colorado Supreme Court declared the statute unconstitutional as violating the provisions of Article XXI, Section 4, of the Colorado Constitution.

In the Passarelli case, a Trinidad councilman sought reimbursement for expenses he incurred in a recall election in April of 1977 that resulted in his retention. He incurred expenses of \$6,970.14 during his campaign. His request for reimbursement was denied by the Secretary of State on the ground that specific enabling legislation was necessary for implementation of the constitutional provision. No enabling legislation existed at that time. Following passage of the 1979 legislation, the General Assembly appropriated \$170 to reimburse the councilman. Although this sum was accepted, he reserved the right to institute legal proceedings for the balance of his expenses. Those proceedings resulted in the Colorado Supreme Court decision in September, 1987. Following this decision, legislation was adopted this year which appropriated \$16,500 to satisfy the judgment plus interest.

The purpose of the proposed amendment is to limit reimbursement of recall expenses from the state treasury to state elective officers only. The proposal stipulates that the General Assembly may provide by law for the manner in which such officers may be reimbursed. The proposal further provides that the General Assembly may establish procedures for the reimbursement by a local governmental entity of expenses incurred by an elective officer of such entity whose recall is unsuccessfully sought.

Arguments For

1) Reimbursement of expenses from the state treasury for a recall election in a local unit of government is not sound public policy. If the citizens of the state who do not reside in the local unit of government where the recall election is held cannot vote in such election, they should not be required to use their tax dollars to help reimburse the elective officer for such expenses. Those expenses should be paid by the citizens of the local unit of government wherein the recall election occurs and who have a vote in such recall election. The proposal would allow only state-elected officials, not mayors, city council members, or county commissioners, to collect recall expenses from the state treasury.

Recall Expenses

2) Without the proposal, there is no limitation on the amount of public monies a local elected public official, subject to a recall election, may spend to finance a campaign. Since the Colorado Supreme Court decision invalidated prior limiting legislation, the present provision grants an incumbent a blank check with which to wage a campaign against a recall effort. The proposal is necessary to prevent such possible abuses. The proposal will allow local units of government or the General Assembly to establish requirements for the reimbursement of recall expenses of local elected officials from local resources.

Arguments Against

1) The present constitutional provision balances the right of citizens to seek a recall election if they have legitimate grievances, and the need for a responsible system of government that protects elected officials from frivolous recall efforts. The reimbursement provision assists in assuring that incumbents commit the resources necessary to challenge a recall election and to publish their views, thus promoting an environment in which the voters are capable of reaching an informed decision. The constitutional provision ensures that public officials who face recall elections will not be deterred from seeking to continue their governmental responsibilities because of the prospect of having to pay campaign expenses even if retained in office. Officials should be free of campaign expenses once they are elected.

2) The proposal, if enacted, does not guarantee that the General Assembly will enact implementing legislation nor does the proposal provide that such legislation, if implemented, will guarantee that incumbents facing recall elections are entitled to collect adequate sums for reimbursement of reasonable and necessary recall election costs. This might cause incumbents who face recall elections to simply resign from office or not to fight the recall. The proposal will discourage able public servants from serving in elective offices.

AMENDMENT NO. 3 — CONSTITUTIONAL AMENDMENT PROPOSED BY THE GENERAL ASSEMBLY

Ballot Title: An amendment to Section 7 of Article V of the Constitution of the State of Colorado, providing that the regular sessions of the General Assembly shall not exceed one hundred twenty calendar days.

Provisions of the Proposed Constitutional Amendment

The proposed amendment would amend Article V, Section 7 of the Colorado Constitution. Section 7 states in part that "The general assembly shall meet in regular session at 10 o'clock a. m. on the first Wednesday after the first Tuesday of January of each year . . . Regular sessions of the general assembly convening in even-numbered years shall not exceed one hundred forty calendar days." The proposal would amend this language in Section 7 to read as follows:

The general assembly shall meet in regular session at 10:00 a.m. no later than the second Wednesday of January of each year . . . Regular sessions of the general assembly shall not exceed one hundred twenty calendar days.

Comments

From statehood until the early 1950's, the constitution prescribed biennial sessions for the General Assembly (state legislature). Regular sessions of the General Assembly occurred only in odd-numbered years and convened in January. At the 1950 general election, Colorado voters approved a constitutional amendment which added sessions in even-numbered years. The amendment, however, limited the subject matter that could be considered in even-numbered years to items designated by the Governor (the so-called Governor's "agenda" or "call"), and revenue raising and appropriation bills.

At the 1982 general election, Colorado voters approved another constitutional amendment which eliminated the Governor's authority to set the legislative agenda in even-numbered years. The amendment also limited the number of days the General Assembly could be in session in even-numbered years to one hundred forty calendar days. There is no constitutional limit on the

Limitations on Legislative Sessions

length of sessions in odd-numbered years. If the proposed amendment is adopted, sessions in both odd-numbered and even-numbered years will be limited to one hundred and twenty days.

Since 1967, the length of legislative sessions has averaged 145.3 days. Odd-year session lengths have ranged from 132 days to 185 days for that same period averaging 162.4 days. Even-year session lengths have ranged from 83 days to 143 days averaging 128.2 days.

Twelve states have no constitutional or statutory limits on the length of legislative sessions. Thirty-nine states convene on an annual basis and eleven states meet on a biennial basis. However, three states that meet biennially have legal provisions which allow convening every year. States may also use other methods to limit the legislative session length, such as, self-imposed rules, limiting the number of bills introduced, limiting the subject material of one session, and restricting legislators' salary, per diem, and travel allowances. Three states currently limit the subject matter of one session per biennium.

Arguments For

1) The proposal is necessary to maintain the "citizen legislature" which has existed since statehood. A legislature composed of citizens willing to take time from their private lives to serve the public good has been our basic instrument of representative government. A variety of professional and occupational backgrounds, and the social and demographic composition of the various communities should be reflected in the legislature if it is to function effectively. A broad range of vocations and occupations allow a greater diversity of viewpoints to impact the formulation of state policy. Legislators returning to and living among their constituents provide better insight for representing districts. A constitutional limitation on the length of sessions will ensure a part-time legislature and best maintain the "citizen legislature" concept.

2) The lengthening legislative sessions are changing the "citizen legislature" in Colorado. Over the past number of years the number of legislators who claim the legislature as their full-time career or sole occupation has increased. The time requirements of legislative office make it difficult for many legislators to maintain a business or occupation and still participate fully in the legislative process. The trend toward increasing legislative activity both during legislative sessions and during interim periods challenges the tradition and the desirability of a "citizen legislature." A growing number of legislators who have resigned recently have stated that the increasing time commitment was a principal consideration of their leaving office. The salary level was also given as a consideration in reasons for resigning or not seeking reelection. The proposal will guarantee adjournment of the legislature on a date certain so that part-time citizen legislators can plan for the time necessary to participate in the legislative process.

3) The proposal will ensure that the limitation cannot be changed by statute or legislative rule. The 120-day limitation will require the legislature to adjust its procedures to utilize time and resources more efficiently. State legislatures in other states of comparable or greater population are in session fewer days per year than Colorado and appear to meet their responsibilities. Critical or important issues can be considered and acted upon within this time limitation. State emergencies which may arise in the legislative interim can still be addressed through special sessions convened by the Governor or by two-thirds vote of both houses of the General Assembly.

Arguments Against

1) A constitutional provision limiting the length of legislative sessions to 120 days is unnecessary. The legislature currently has the power to limit the number of days they are in session by legislative rule or by statute. If the legislature determines that its work can be accomplished in 120 days or less, it has the power to limit the session length.

2) The proposal is too restrictive and inflexible. Establishing the 120-day limitation in the constitution does not allow the legislature the flexibility to respond if important issues arise that require legislative action after the 120-day session and could prevent effective legislative response to the growing needs and demands of the citizens. It could deny citizens access to their strongest instrument for effective state government — the state legislature. The proposal could limit the number of issues that may be considered; limit the time necessary for thorough consideration of the issues; restrict public testimony and input on major issues; reduce the time

Limitations on Legislative Sessions

necessary to exercise the legislative function of overseeing the operations of state government; and increase the power of the legislative leadership in setting the course and agenda of the session. If the legislature can not respond to citizen problems, the citizens may turn to other sources to find responses to their needs. The legislature itself should be allowed to determine the length of time it needs to meet to conduct its business.

3) The proposal is unwise and undesirable. A 120-day limitation in the constitution will not reduce the workload of the legislature. The quantity and complexity of issues confronting a highly technical, rapidly changing, society in competition with world markets demand quick responses from individuals willing to commit personal time and effort to formulate good public policy. The issues will not go away and will need to be addressed. The proposal would result in more meetings outside of the regular session and allow the Governor to set the agenda for any legislative action after the 120 days expire (thus giving the Governor more control of the legislative agenda). Persons elected to legislative office knowingly hold a position of public trust which should be upheld for the duration of their elected term. The proposal will not ensure a more competent, efficient or well-informed legislature.

AMENDMENT NO. 4 — CONSTITUTIONAL AMENDMENT PROPOSED BY THE GENERAL ASSEMBLY

Ballot Title:	An amendment to Articles V, VII, VIII, and X of the Constitution of the State of Colorado concerning the maximum eight-hour workday applicable to persons who are employed in certain occupations, conforming the age qualifications for electors to that required by the Constitution of the United States, and concerning the deletion of obsolete provisions relating to suffrage for women, selection of the seat of government of the state, appropriations for the Capitol Building, and state support for the 1976 Winter Olympics.
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Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

— add language to allow the General Assembly to establish whatever exceptions it deems appropriate to the constitutional limit on hours of employment to a maximum of eight hours during any 24-hour period for underground miners and other persons employed in any industry or labor that the General Assembly considers injurious or dangerous to health, life, or limb;

— amend the constitution to correspond with the U.S. Constitution regarding the requirement that an elector be 18 years of age to vote; and

— delete obsolete provisions relating to suffrage for women, selection of the seat of government of the state, appropriations for the Capitol Building, and state support for the 1976 Winter Olympics.

Comments

Technical changes. This proposal would eliminate four provisions of the constitution that are overly specific, obsolete, and no longer serve the purpose for which they were adopted. The proposal would also amend the constitution to conform with the U.S. Constitution regarding age requirements for voter eligibility. These proposed changes appear to be noncontroversial and technical in nature.

The first proposed change would amend the constitution to correspond with the U.S. constitutional provision (the 26th Amendment) which grants eighteen-year-olds the right to vote. Although Colorado ratified this amendment to the U.S. Constitution in 1977 and eighteen-year-olds vote in Colorado, the constitution has never been amended to conform with the provisions of the U.S. Constitution. The second proposed change would repeal a section of the constitution that extends the right to vote to women. The U.S. Constitution fully authorizes women to vote, and the Colorado provision is obsolete and unnecessary. The third proposed change would repeal constitutional language that provides for selection of the state capitol site. The constitutional

Eight-hour Workday Requirements

provision which states that there shall be no appropriation to the capitol until the location of the seat of government of the state is determined would also be repealed under this proposal. And last, the proposal would repeal the constitutional section which was added by constitutional initiative in 1972 declaring that no state support would be used to aid the 1976 Winter Olympic Games.

Eight-hour workday. The proposal would also amend the constitutional limitation on employment hours for underground miners and other persons employed in similar industries. This part of the proposal is somewhat contentious and is more fully explained below. The constitution now states:

Section 25a. **Eight-hour employment.** (1) The general assembly shall provide by law, and shall prescribe suitable penalties for the violation thereof, for a period of employment not to exceed eight (8) hours within any twenty-four (24) hours (except in cases of emergency where life or property is in imminent danger) for persons employed in underground mines or other underground workings, blast furnaces, smelters; and any ore reduction works or other branch of industry or labor that the general assembly may consider injurious or dangerous to health, life or limb.

The proposed additional language to this section would read:

(2) The provisions of subsection (1) of this section to the contrary notwithstanding, the general assembly may establish whatever exceptions it deems appropriate to the eight-hour workday.

History of eight-hour workday. In the late 19th century, in response to abuse of laborers in the mining and smelting industries, the General Assembly attempted to enact legislation establishing an eight-hour workday for laborers employed and working in mines and smelters. Such attempts were struck down by the courts as a violation of the constitutional inhibition against legislation directed toward a particular class or group of people ("class legislation"), and because such legislation violated the right of parties to make their own contracts. The General Assembly was without authority to single out the mining and smelting industries and impose upon them restrictions regarding the work hours of their employees from which other employers are exempt (*In Re Eight Hour Bill* (1895) and *In Re Morgan* (1899)). During this period there was much controversy over the eight-hour workday question. In response, the General Assembly submitted the constitutional amendment to the voters in 1901. The amendment was approved and adopted on November 4, 1902. This amendment provided specific authority for the General Assembly to enact laws to help protect the health of workers in mines and smelters by establishing an eight-hour workday limitation. In 1905, the General Assembly passed a law providing for an eight-hour day in mines and other similar industries. The 1905 act was repealed and reenacted in 1913 and is now in Article 13 of Title 8, Colorado Revised Statutes.

The proposed amendment would permit the General Assembly to establish exceptions to the eight-hour workday law when it deems such exceptions to be appropriate. Implementation of any changes in the eight-hour workday law will depend entirely on future legislative action. The proposal does not require that any exceptions be made, but leaves any changes to the sole discretion of the General Assembly without any restrictions or limitations. Questions arise as to whether any legislation providing exceptions to the eight-hour requirement would violate the provision of our constitution forbidding class legislation (Article V, Section 25). Would the proposed amendment create the situation as it existed prior to 1902 wherein the General Assembly was without authority to impose work restrictions? Does the proposal effectively nullify the eight-hour limitation? Could the General Assembly repeal all laws restricting certain laborers to an eight-hour workday?

Arguments For

1) In today's competitive economy, the constitutional eight-hour workday provision presents a roadblock to the economic well-being of the mining industry in Colorado, since some other states do not have similar requirements. Allowing for change in the eight-hour workday requirement would be advantageous for both operators and workers. Workers could seek working hours to correspond with their lifestyles and operators could set working schedules to be

Eight-hour Workday Requirements

more competitive. Government ought not to stand between workers and employers in contracting for labor unless necessary to protect workers. The necessity for government intervention may no longer exist (as far as the eight-hour workday restriction) in given occupations, and the General Assembly should have the ability to respond to these changing needs.

2) A constitutional requirement for an eight-hour workday for miners and others who work in industry or labor which is considered injurious or dangerous to health, life or limb is no longer necessary or appropriate. Federal and state labor laws and governmental safety standards now prevent those abuses that occurred in the past. The critical health and safety concerns which existed around the turn of the century no longer exist, since health and safety requirements protect workers and modern technology has found methods to avoid the hazards once experienced in dangerous occupations. The General Assembly should have the authority to change work hour laws when necessary to correspond with existing market and work conditions. Today's work world requires flexibility to meet the demand for adaptable work hours, condensed work weeks, overtime compensation, and other variances which enhance the lifestyle and opportunities available to these workers. This proposal would give the General Assembly the necessary flexibility to respond to the needs of people working in today's labor market.

Arguments Against

1) Problems which may arise from a workday longer than eight hours may outweigh the potential advantages of the proposal. A regular working day of more than eight hours would be detrimental to workers' health and well-being, particularly for underground miners and others working in related occupations. With mining and other physically demanding occupations, fatigue and strain can lead to a diminished quality of work, a greater risk of occupational accidents, reduced outputs and perhaps increased absenteeism. The effects of mental exhaustion on the worker produce negative results at all levels particularly in the worker's relations with his supervisors, his colleagues, his family, and the community in which he lives.

2) The proposal makes the constitution neutral on the issue of the eight-hour workday. The state should not neutralize a long established provision which has provided sound policy direction in the important area of workers' hours. The General Assembly will be entrusted with this authority; however, there is no guarantee that allowing for exceptions to the constitutional limit on the number of working hours will not lead to abuse.

AMENDMENT NO. 5 — CONSTITUTIONAL AMENDMENT PROPOSED BY THE GENERAL ASSEMBLY

Ballot Title:	An amendment to Section 3 of Article X of the Constitution of the State of Colorado, creating an exemption from property taxation for nonproducing unpatented mining claims.
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Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

— exempt from property taxation nonproducing unpatented mining claims, which are possessory interests in real property by virtue of leases from the United States of America; and

— allow Senate Bill 134, passed during the 1988 legislative session, to go into effect which establishes a fee for the recording with the county clerk and recorder of an affidavit of annual labor regarding nonproducing unpatented mining claims.

Comments

Definitions. A "mining claim" is defined as a lode, placer, millsite, or tunnelsite claim, whether entered for patent, patented, or unpatented, regardless of size or shape. A "nonproducing mine" is defined as any mine whose gross proceeds during the preceding calendar year are five thousand dollars or less. An "unpatented mining claim" is defined as a claim occurring on federally-owned land. The owner of an unpatented mining claim holds a possessory interest in the federal land, which permits him to occupy the land, search for and remove mineral deposits within the stated boundaries of the claim and to employ people to work the claim. Ownership of

Property Tax Exemption — Unpatented Mining Claims

the land resides with the federal government. An "affidavit of annual labor" is defined as a document which sets forth the following information pertaining to a mining claim: 1) location; 2) owner(s); 3) dollar value of work or improvements made to the mining claim; 4) the period of time during which the work was done or the improvements made.

Current law. Current state law requires the discoverer of a placer or lode claim to file within a specified period from the date of discovery a certificate of location with the office of the county recorder. A copy of this certificate also must be filed with the federal Bureau of Land Management.

On a year-to-year basis, rights to a nonproducing unpatented mining claim are maintained by filing with the Bureau of Land Management an affidavit of annual labor or a notice of intention to hold the claim. This must be done by December 30 of each year or rights to the claim are deemed abandoned. Current state law does not require owners of nonproducing unpatented mining claims to file either document with the clerk and recorder in the county in which the claim is located. However, most companies and some individual claim owners elect to do so.

On January 1 of each year the county assessor is required to list on ad valorem tax rolls all mining claims and mines located within his county. For unpatented mining claims, the assessor's valuation of assessment is based upon the claim owner's possessory interest, which is subject to taxation. On May 24, notices of valuation are mailed to those individuals having filed certificates of location or affidavits of annual labor with the county clerk and recorder and to individuals whose names have been taken from Bureau of Land Management records. Tax bills are mailed after January 1 of the following year. Taxes are due by April 30 unless the taxpayer elects to pay in two installments, in which case the second payment is due July 31. Claim owners are notified when their tax payments have become delinquent. Such taxes are a debt due from the claim owner and are recoverable by the county treasurer by direct action in district court. The treasurer may also collect such debt as if the property were personal property and auction the claim at a tax lien sale.

Effect of Proposed Amendment. The proposal would discontinue the payment of property taxes by owners of nonproducing unpatented mining claims. This session the General Assembly enacted Senate Bill 134, which will become effective only if this amendment is approved by the voters. The new law would:

- allow the county clerk and recorder to collect a five dollar fee for recording an affidavit of annual labor for a nonproducing unpatented mining claim;
- require the county clerk and recorder, on a monthly basis, to pay to the county treasurer all fees collected for the recording of affidavits of annual labor for nonproducing unpatented mining claims; and
- require the county treasurer to credit all such fees paid to him to the general fund of his respective county.

Arguments For

1) The proposal will eliminate a cumbersome, time consuming and nonproductive process. The maintenance of an accurate list of active, nonproducing unpatented mining claims is difficult. Claim owners are not presently required to file affidavits of annual labor with the county clerk and recorder's office. As a result, county assessors must appeal to the Bureau of Land Management for a list of owners maintaining claims from one year to the next. This process usually results in at least a one year delay in the mailing of tax bills for such claims.

2) It is not cost effective for county treasurers to pursue delinquent taxes on nonproducing unpatented mining claims. For delinquent individuals and small companies, the amount of money expended by a county treasurer in collecting such taxes usually exceeds revenues received as a result of those efforts. This is due to relatively low assessed values on such claims. Some individual claims yield as little as \$0.60 in tax revenues to the county, which clearly prevents the cost-effective pursuit of the delinquent taxes.

3) The current system penalizes those counties listing such claims on their tax rolls. Revenue shortfalls occur as a result of the uncollectable taxes on nonproducing unpatented mining claims. As a result, some counties elect not to list such claims on their tax rolls.

Property Tax Exemption — Unpatented Mining Claims

4) Assessments of valuation, meant to be based on the possessory rights associated with the claim, are usually based on the size (acreage) of the claim. These estimates of valuation vary widely from county to county. Passage of the proposal and the subsequent enactment of the five dollar recording fee would provide statewide consistency in the treatment of nonproducing unpatented mining claims.

Arguments Against

1) The five dollar fee will go into effect at a time when the mining economy is depressed and will cause hardship for many claim holders. Although it is true that for some claim holders the five dollar fee will be a reduction in annual charges, many claim holders will experience as much as a tenfold increase in fees if this proposal passes. The five dollar recording fee will not increase the level of services provided by the county clerk's and recorder's offices. If a portion of the five dollars stayed within the county clerk's and recorder's offices a better recording system could be developed and maps of existing claims could be made available to interested parties.

2) The five dollar assessment for recording the affidavit of annual labor could be interpreted as a tax. Taxing powers in county government are vested in the boards of county commissioners. The five dollar tax cannot lawfully be collected by the county clerk and recorder.

3) School districts, special districts, and other taxing entities will lose revenues as a result of the county treasurer crediting recording fees to the county's general fund. Under the current system, the county assessor designates the tax areas, e.g., school districts and special districts, to receive tax revenues. The proposed amendment eliminates from the process the county assessor and substitutes a five dollar recording fee, which is deposited into the county's general fund without being earmarked for specific uses.

AMENDMENT NO. 6 — CONSTITUTIONAL AMENDMENT INITIATED BY PETITION

Ballot Title:	An amendment to Article X of the Colorado Constitution to require voter approval for certain increases in state and local government tax revenues, to restrict property, income, sales and other taxes, and to limit the rate of increase in state spending.
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Provisions of the Proposed Constitutional Amendment.

The proposed amendment to the Colorado Constitution would:

— apply to state government and to all local governments and become effective December 31, 1988, except where otherwise specified;

— require, except in emergencies and except for adjustment of annual mill levies which are regulated in another way, state or local governments to obtain majority voter approval in a tax election prior to imposing a new tax, tax rate increase, or a change in government policy if such change in policy would result in a net gain in tax revenues, and require two-thirds voter approval prior to incurring a debt that extends past the fiscal year;

— allow emergency taxes to be imposed by elected officials, in certain circumstances, until the next available election and provide that the failure of voters to approve the emergency tax would void the tax retroactively;

— limit, except for voter-approved debt, the maximum annual tax imposed on residential real property to one percent of the last assessed market value (reassessments are to occur every two years based on the market value two years earlier unless there is a change in the property's physical condition);

— restrict annual mill levies to ensure that the revenue raised shall not exceed that raised in the prior year plus an adjustment for annual Denver/Boulder CPI changes, with an annual limitation of five percent on inflationary increases, plus revenues attributable to new construction and to voter approved measures, plus, for school districts only, an adjustment for changes in the student enrollment, with all unapplied increases to carry forward;

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— provide a single state income tax rate, effective with 1989 taxes, not to exceed ninety percent of the 1987 individual rate except pursuant to a tax election;

— limit, effective July 1, 1990, the annual percentage increase in state spending, including reserves but excluding federal funds and debt, to the total of the percentage change in state population and the consumer price index for the prior calendar year, except for net changes in voter approved revenue after June 30, 1990, (a negative percentage total requires reduced spending) and require that revenues in excess of spending limits are to be refunded;

— require majority voter approval for the enactment of future special tax benefits such as exemptions, deductions, credits, or deferrals, other than across-the-board income tax credits as allowed for the return of excess revenue, and require voter approval for the enactment or increase of any license, permit, or fee, if the rate of increase is more than the net change, since January 1, 1989, in the Denver/Boulder consumer price index for all Denver urban consumers;

— repeal any new tax or tax rate increase initially imposed in 1988 unless voter approval was previously obtained;

— repeal existing recording or transfer taxes on real property and prohibit their future enactment;

— create, effective with 1989 taxes, a personal property tax credit and filing waiver of \$250 per tax schedule location, annually adjusted for any Denver/Boulder CPI changes;

— require that state and local governments reserve at least three percent of their budgets for emergencies, beginning July 1, 1989, with emergencies defined to exclude revenue shortfalls, economic conditions, or the effects of the proposed amendment;

— provide that, effective July 1, 1990, excess revenues are to be refunded in the next year by an income tax credit proportionate to each income tax overpayment;

— allow local governments, after July 1, 1990, to cut or end spending programs, other than public elementary and secondary education, which are delegated to them by the state legislature for administration under state guidelines but not fully funded by the state;

— extend the initiative and referendum powers for cities to all local governments, effective July 1, 1989;

— allow enforcement by providing that any party may file individual or class action lawsuits which shall receive first judicial priority;

— provide that if a suit is successful the governmental unit shall within sixty days, and with ten percent annual interest, refund any illegal revenue and reimburse the plaintiff for costs including attorney fees;

— require any tax election to be held on the state or local government's "general election" date, or if one is not scheduled within 12 months, on the first Tuesday in November; and

— provide that a notice of election to raise taxes shall be mailed to every elector residence listing, among other things, the next fiscal year's estimated revenue with and without the tax, the spending totals of the past five budgets, what groups would pay more taxes, an outline stating how the money would be spent, and a summary of any criticisms, and further provide that if five percent or more of the new revenue is diverted from the use designated in the notice, the tax must be reduced by that amount.

Comments on the Proposed Amendment

Several provisions of the proposal may be subject to varied interpretations. Discussed below are practical and legal questions concerning the implementation of those provisions.

General provisions. The proposal states that "supplemental state statutes" require a two-thirds vote of the membership of each house of the legislature. This apparently means that any legislation implementing the provisions of the proposal requires a two-thirds vote of each house. Does this also mean that any taxation legislation, whether or not having to do with a tax increase or a new tax, requires a two-thirds vote of each house? Can a party bring suit even in instances where the party does not reside within the geographical boundaries of a taxing district?

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Tax election requirements. Could elections for revenue increase issues be conducted simultaneously on the same day in the numerous overlapping units of government without inconvenience to the voter? Each unit of government could have a different polling place. The proposal could possibly create a need for multiple ballots. While the proposal may allow ballots to contain a comprehensive package of the proposed tax changes, providing such ballots for numerous overlapping jurisdictions could be a complicated procedure.

Emergencies — reserves. Under the proposal, taxes may be raised in emergency situations if the district meets all of the following requirements: 1) it seeks funds only for the difference between reserves, plus state and federal funds available, and its estimated emergency costs until the next available tax election date; 2) the emergency is declared and defined by two-thirds of the membership of the elected district board or of each house of the state legislature; 3) funds raised are used only for emergency purposes; and 4) a tax election on the next available date secures voter consent of the tax.

Does the district have to entirely spend the three percent reserve provided for before it can impose taxes to meet the emergency? If not, what is the purpose of the reserve? If the tax is voided, are the revenues from the emergency tax to be refunded? If new revenues are raised for an emergency and expended for those emergency purposes and the tax is voided, would such revenues have to be refunded from other revenue sources?

Debt elections. Does the term "debt" include the use of lease-purchase arrangements, long-term leases, or installment sales contracts for acquiring capital projects? Does the term "debt" include "refunding bonds"?

Program shifts. Local districts may end their financial participation in partially state supported programs and retain the local revenues. How will these provisions affect existing programs which have always been implemented through a combination of state and local funds?

Revenue shifts — licenses, permits, and fees. This provision will impact every state and local agency that uses revenue generated through licenses, permits and fees to offset the cost of operating programs and providing services. Any increase in the cost of licenses and permits or an increase in fees beyond the inflation rate will have to be submitted to the voters for their approval. If each of the measures were submitted individually, would the cost of referring the question to the voters offset any gain to be achieved by seeking voter approval?

Spending limitations. Spending increases by local governments are not limited by the proposal, however, the property tax revenue growth limitation may effectively limit local government spending increases.

Taxes repealed. The proposal would repeal all recording or transfer taxes on real property and prohibit their future enactment, even if approved by the voters. Approximately ten municipalities have adopted real estate transfer taxes and these taxes would be repealed. The proposal would also repeal any new tax or tax rate increase first effective in 1988 without voter consent. Is this retroactive repeal provision contrary to Article V, Section 1 of the Colorado Constitution, which states that initiated constitutional amendments take effect from and after the date of the official declaration of the vote thereon by proclamation of the Governor? Examples of some new local taxes or tax rate increases that could be repealed by the proposal include:

- Colorado Budget Review Board (BRB) revenue base increases granted to 45 school districts for a total of over \$18 million in additional property tax revenues in 1988;
- most sales and use tax increases authorized by homerule cities first effective in 1988;
- any occupation taxes increased without voter approval first effective in 1988; and
- lodger's taxes and admissions taxes authorized without voter approval for implementation in 1988.

Income tax reduction. It appears that the proposal means that the rate shall be 90 percent of the five percent individual income tax rate set in 1987. The Office of State Planning and Budgeting estimates that, beginning with the 1989 calendar year, the state would lose approximately \$120.6 million in individual income tax as a result of the implementation of the 90 percent rate. This essentially rolls back the 1987 "windfall" income tax increase which was collected this spring.

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The corporate tax rate for the tax year beginning after July 1, 1988 but before July 1, 1989 is set at five percent on net income of \$50,000 or less and at \$2,500 plus 5.5 percent on net income above \$50,000. Beginning July 1, 1990, a rate of 5.4 percent will apply to income in excess of \$50,000. Each year thereafter, the rate will decrease one tenth of one percent (.1%) until July 1, 1993, when the tax rate is to remain at five percent on corporate income. Since taxable income is to be taxed at one rate, this rate variance depending on income would apparently be invalid. All corporate income would apparently be taxed at the 4.5 percent rate as established for the individual income tax.

Property tax reduction. The constitution now provides that property shall be valued for assessment at a specified percentage of its actual value. The actual value of residential property is presently determined by consideration of the cost and market approaches to appraisal. The proposal will change this to solely the market approach. Does all other property continue to be assessed as currently provided in the constitution? Does this proposal supersede other constitutional provisions relating to property taxation and which confer taxing or spending authority? In adjusting mill levies, how are municipal annexations and special district inclusions to be handled?

The proposal provides that school districts can adjust base revenues upward based on increases in student enrollment and inflation. What effect does a change based on student enrollment have on local governments other than school districts? Which other units of government would have to decrease their levies for schools to get an increase and remain within the one percent limit on residential property? Because residential taxes are limited to one percent of market value, other portions of the tax base may be required to finance allowed revenue increases. Could the new school finance system be harmonized with the residential real property limit in the proposal?

The proposal establishes a personal property tax credit and filing waiver of \$250 per tax schedule location, annually adjusted for consumer price index changes. Is the credit applicable only to businesses or to all taxpayers? Can a taxpayer claim multiple tax credits because the credit is per tax schedule location?

Arguments For

1) The requirement for voter approval of any new taxes or tax rate increase will provide an incentive for public officials to manage tax dollars more responsibly and to be more accountable. As a safeguard, public officials can still raise taxes in an emergency, subject to voter approval at the next general election. Voter approval will reduce some of the pressure on public officials by special interests for more public funds. Consolidation of elections will increase voter participation in questions involving the funding of government and will reduce the cost of holding more frequent special elections. The notice requirements will encourage governments to provide citizens with an understanding of the need for new revenue and will produce a more informed electorate. Voters can be trusted to exercise good judgment on such issues and have the right and duty to decide the size of their government. Revenues will continue to grow as the economy grows, but government's share will increase only if the people approve. The proposal does not determine how the revenue is to be spent, but rather how much government the people choose to afford.

2) The proposal will limit the growth of government revenues generated by the property tax. Property taxes are a significant burden, especially for senior citizens and others on fixed income. The proposal limits the property tax rate on homes to one percent of market value. It also limits future increases in overall property tax revenue to local growth plus inflation, unless the voters agree to an exception. This combination provides stability, flexibility, and peace of mind for property owners.

3) The proposal will control state spending. Future growth in state spending is limited to the combined change in population and inflation. This will allow for government services to an increasing population in inflation-adjusted dollars, but government will not continue to grow at the expense of the private sector unless the voters approve of an exception. The proposal will protect the people from possible economic excesses by government.

Tax Limitation — Voting

4) The proposal contains various safeguards which will maintain a necessary balance in government revenues. Replacing lost tax revenue with higher fees is prevented because fee increases above the inflation rate will require voter approval. Borrowing will be discouraged by the requirement of a two-thirds vote for future government debt. Spending every available dollar will be prohibited by a required reserve (three percent of the budget) in case of emergencies. The state will not be able to make local governments run state programs unless the state pays the full cost. State and local governments will no longer be able to grant special tax breaks because such future enactments will require voter approval. Instead of seeking new sources of revenue, government will be encouraged to consider new sources of savings.

5) Both the private sector and the public sector will benefit from the economic growth the proposal will encourage. The key to a strong economy is a healthy private sector that can provide jobs. Business is reluctant to invest when tax rates are going up regularly. Our economy is in trouble. Business failures and foreclosures are up. Government must also adjust to these economic conditions. By allowing people to keep more of what they earn, productivity and investment will be rewarded. That boost to the economy will also lead to more tax revenue for the public sector.

Arguments Against

1) The proposal will weaken representative government and local control. Colorado has been well served by the process of governance through elected representatives and it is not necessary to replace this with government by referendum on revenue raising issues. Voters presently have control over taxation and spending through their decisions about the persons they elect to serve on governing bodies. Every voter could not or would not become thoroughly informed about the budgetary needs of all units of government. The proposal will require direct voter approval for even relatively minor adjustments to the tax structure. Such process is cumbersome, expensive and not subject to the checks and balances of representative government.

2) Rigid tax and spending limitations placed in the constitution are an inflexible way to govern our society. The proposal will impose restrictions on the ability to reform and modernize the tax structure and to provide equity among taxpayers as changes occur in the state's economy. The ability of state and local governments to improve transportation, maintain quality water services, support education and provide other governmental services critical to promoting economic development and job creation will be weakened. The proposal goes far beyond the purpose of curtailing growth in government. Many governments are already experiencing problems in providing needed services because of revenue shortfalls. These factors have already resulted in reductions in important governmental services. The proposal will result in further reductions in these services. The long range uncertainty of a government's ability to maintain assets and demonstrate revenue growth could have a generally negative impact on the credit quality and the bond rating of governmental units. This will translate into higher interest costs and further inhibit the ability of governments to provide capital projects necessary to accommodate economic growth.

3) The provision that two-thirds of the voters have to approve the issuance of government debt is absolutely contrary to the democratic concept of majority rule. Requiring a two-thirds majority for such approval establishes the principle that the will of the minority can prevail over the will of the majority.

4) Several provisions of the proposal are vague and subject to conflicting interpretations, encouraging scrutiny by the courts. Extensive and expensive litigation may be necessary to resolve the meaning of various provisions of the proposal, plus the lawsuits that may arise as units of government try to abide by the provisions of the proposal. This will have the undesirable effect of involving the courts in the administration of state and local governments, adding many cases to an already overloaded court docket, and increasing the cost of government.

5) The proposal will base the limit of any increase in expenditures and revenues, other than through voter approval, on statistical measures which may not reflect the true need or cost of services. The Denver/Boulder CPI has questionable relevance to either the increased cost of providing public services or to the increased demand for public services which accompanies

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economic growth. Changes in the price of food and other consumer items may be irrelevant for governments whose large expenditure items include such things as labor, machinery, petroleum-based products, chemicals, construction materials, hospital supplies, etc. Restricting total expenditures by a population factor will be harmful to those areas which have been losing population for a number of years. The loss of population does not directly diminish the demand for services.

AMENDMENT NO. 7 — CONSTITUTIONAL AMENDMENT INITIATED BY PETITION

Ballot Title: An amendment to repeal Article V, Section 50 of the Colorado Constitution and to provide instead that the state and its agencies, institutions, and political subdivisions shall not prohibit the use of public funds for medical services for a woman solely because of her choice of whether or not to continue her pregnancy.

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would repeal the existing prohibition on the use of public funds for abortions and replace it with the following language:

The state, its agencies, institutions, and political subdivisions, shall not prohibit the use of public funds for medical services for a woman, solely because of her choice of whether or not to continue her pregnancy.

Comments

Each year, the state of Colorado allocates money to pay for two programs which provide medical assistance to low income persons. First, persons receiving public assistance are eligible for medical assistance through the Medicaid program. This is a federal-state program in which the federal government pays about one-half the cost of medical services. The federal government has limited participation in medical expenditures for abortions to those abortions in which the life of the woman is endangered. Second, the state of Colorado also administers a medically indigent program which provides funds for medical services to low income persons at University of Colorado Health Sciences Center, Denver General Hospital, and other participating hospitals in Colorado.

Prior to 1985, the state had allowed money set aside for medical services to the poor to be used for abortions. In 1984, Colorado voters approved an amendment to the state constitution (Article V, Section 50) which prohibits public funds from being used to provide abortions or to support any institution that provides abortions. Specifically, the amendment forbids the use of public funds by the state or any of its agencies or political subdivisions to pay or otherwise reimburse, directly or indirectly, any person, agency, or facility for any induced abortion. However, the amendment provides that the General Assembly may authorize and appropriate funds to be used for those medical services necessary to prevent the death of either a pregnant woman or her unborn child under circumstances where every reasonable effort is made to preserve the life of each. As a result, medical services for abortion are no longer provided using Colorado Medical Assistance Act funds or Medically Indigent funds except when the life of the pregnant woman or her unborn child is endangered as determined by the attending physician and when every reasonable effort has been made to preserve their respective lives.

In 1973, the U.S. Supreme Court in *Roe v. Wade*, 410 U.S. 113, held that certain state statutes restricting the right of a woman to terminate her pregnancy by abortion were in violation of constitutional guarantees. The court determined that a fundamental right of personal privacy existed pursuant to the provisions of the Ninth and Fourteenth amendments to the United States Constitution. According to the court, this right of privacy is broad enough to encompass a woman's decision to terminate her pregnancy. The court emphasized that this was not an unqualified right and at some point government may properly assert interests in safeguarding the health of the woman, in maintaining adequate medical standards, and in protecting potential life.

In recognizing the respective interests of the woman's right to privacy and the state's interest in preserving and protecting the health of the pregnant woman as well as protecting the

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potentiality of life, the court attempted to balance the competing interests to determine at what point one interest outweighed the other. The court made the following finding:

(a) For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician.

(b) For the stage subsequent to approximately the end of the first trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health.

(c) For the stage subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

With regard to the medical judgment of the attending physician, the U.S. Supreme court in *Doe v. Bolton*, 410 U.S. 179 (1973), the companion case to *Roe v. Wade*, states:

We agree . . . that the medical judgment may be exercised in the light of all factors — physical, emotional, psychological, familial, and the woman's age — relevant to the well-being of the patient. All these factors may relate to health. This allows the attending physician the room he needs to make his best medical judgement. And it is room that operates for the benefit, not the disadvantage, of the pregnant woman.

After *Roe v. Wade*, Congress and various state legislatures focused attention on the issue of public funding of abortions. In 1976, Congress adopted the "Hyde Amendment" which denies the use of federal funds for all abortions, except when the life of the mother would be endangered by the continuation of the pregnancy. In *Harris v. McRae*, 448 U.S. 297 (1980) and *Williams v. Zbaraz*, 448 U.S. 358 (1980), the United States Supreme Court upheld the funding restrictions of the Hyde Amendment and provided that a state is not obligated under Title XIX of the "Social Security Act" (Medicaid) to continue to fund those abortions for which federal reimbursement is not available. Congress has reenacted this law annually and over two-thirds of the states reacted to the passage of the Hyde Amendment by restricting, in one form or another, the availability of public funds for abortions.

Colorado. Abortions were prohibited in Colorado in the early days of the territorial legislature. This prohibition continued until 1967 when House Bill 1426 was adopted permitting abortions where continuation of the pregnancy would likely result in the death, or serious permanent impairment of the physical or mental health of the woman, or birth of a child with grave and permanent physical or mental deformity. Abortion was also permitted before the sixteenth week of gestation in cases involving rape or incest. In 1973, in all states, including Colorado, the *Roe v. Wade* decision expanded the circumstances under which an abortion could be obtained.

In 1969, the Colorado Department of Social Services began to reimburse physicians for the costs of medical services for abortion from federal Medicaid funds pursuant to Title XIX of the Social Security Act and from state Medicaid appropriations. Following the limitation of federal funds for abortions in 1976, the Colorado State Board of Social Services elected to continue to provide state monies for most abortions pursuant to the general authority granted to the board by the Colorado Medical Assistance Act. This procedure was upheld by the Colorado Court of Appeals in *Dodge v. the Department of Social Services*, 657 P.2d 969 (1982). But, reimbursement for abortion services ended with the passage of the 1984 constitutional amendment, except when death is certifiably imminent for the pregnant woman or the fetus.

The Colorado State Board of Social Services has adopted rules and regulations governing medical services as a result of the passage of the 1984 constitutional amendment and House Bill 1371, of the 1985 legislative session, which was enacted to implement the provisions of the prohibition on the use of public funds for abortions. This act authorizes the use of funds from the state Medicaid program and from the state program of health care for the medically indigent to pay for medical services in these circumstances: the presence of a medical condition which represents a serious and substantial threat to the life of a pregnant woman if the pregnancy continues to term; the presence of a lethal medical condition in the unborn child which would result in the impending death of the unborn child during the term of pregnancy or at birth; and the

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presence of a psychiatric condition which represents a serious and substantial threat to the life of the pregnant woman if the pregnancy continues to term. Likewise, the University of Colorado Health Sciences Center has adopted a policy of reimbursing through Medically Indigent funds only those costs associated with induced abortions for those life-endangering circumstances as specified in House Bill 1371.

According to the Colorado Department of Health's 1986 publication of Colorado vital statistics, a total of 14,144 induced terminations of pregnancy were reported to have occurred in Colorado in 1986, continuing the decline noted in 1985. In 1984, 17,550 induced terminations of pregnancy were reported, decreasing to 15,553 in 1985. Despite the decrease in the number of induced terminations of pregnancy, the Colorado birth rate is down from 17.1 births per 1,000 population in 1985 to 16.7 live births per 1,000 population in 1986.

Arguments For

1) Current state law is unfair because it perpetuates the inequality between women who can afford an abortion and those who cannot. This inequality creates a two-tiered health care system that is punitive and discriminates against poor women by barring those on public assistance from access to the same full range of medical services. With an issue as sensitive as abortion, where physicians, theologians, and philosophers who are equally concerned about the quality of human existence both for the individual and the family hold different views, the law should permit each woman to make her own medically-guided decision about abortion and parenthood. Without this amendment, however, medical care is not available to economically disadvantaged women to the same extent as it is available to other women in the state who elect to exercise their right to abortion services.

2) The present prohibition singles out one medical procedure for non funding. Other than abortion, there is no medical service for which public funds cannot already be used. Pregnancy is a medical condition. Medical services for this condition include pre-natal care, delivery, and abortion, which is a legal medical procedure. Medicaid was designed to equalize the delivery of medical care between people who could afford such care and people who could not. To deny poor women the use of Medicaid funds for abortion defies the intent of the program. Government should not use the withholding of public funds to encourage birth when a woman or family is unable to provide the necessities of life, where rape or incest create a psychologically and emotionally intolerable situation for the pregnant victim, where the health of the woman is endangered, or when the woman is an AIDS (Acquired Immune Deficiency Syndrome) carrier. Governmental policy should remain neutral and ensure that the same full range of medical services are available to those women who choose to continue their pregnancy and for those who select abortion.

3) Advances in medical science such as amniocentesis, cell culture, and enzyme assays have enabled physicians to diagnose severe abnormalities in prenatal life. Such problems, however, may not always be identified in the very early stages of pregnancy. While early abortions may be performed safely in a physician's office, later abortions require hospitalization. Without the amendment, the law will continue to prohibit the performance of such abortions in a publicly funded state, county, or special district hospital. Not only does current public policy place unreasonable restrictions on the ability of poor women to exercise a choice in such circumstances but also all women are presently denied abortion services in a publicly supported hospital. Public policy should not be structured in a manner that would deny reproductive choice in cases of severe fetal deformity, when access to medical services for abortion could allow another opportunity for the birth of a healthy, normal child.

4) A woman who lacks the money to pay for an abortion would not be able to pay for prenatal care and delivery, and may be forced to seek public assistance.

Arguments Against

1) Passage of the amendment would set a public policy for the state of Colorado that public funds can be spent for the destruction of an unborn child through abortion. Public policy should be predicated on the philosophy of protecting human life and maximizing the opportunity for human development, rather than allowing for its destruction. While government often spends money on programs which are objectionable to some individuals, public funds should not be

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used to deliberately destroy an unborn child through abortion.

2) There is no reason to repeal this measure and restore the public funding of abortion, because the prohibition is working as predicted. The number of induced terminations of pregnancy reported to the Colorado Department of Health has declined over 3,000 since public funding for abortions ended. Also, the Colorado birth rate is lower and has not risen as predicted by those who initially opposed prohibiting public funding of abortion.

3) If abortion is a private matter between a woman and her doctor, then abortions should be funded privately. Present law does not prohibit a woman from exercising her private right to decide to have an abortion as provided by the United States Supreme Court in its 1973 decision. However, "a woman's freedom of choice does not carry with it a constitutional entitlement to the financial resources to avail herself of the full range of protected choices" — see *Harris v. McRae*, 448 U.S. 297 (1980). Thus the court has ruled that taxpayers are not required to subsidize abortions.

AMENDMENT NO. 8 — CONSTITUTIONAL AMENDMENT INITIATED BY PETITION

Ballot Title:	An amendment to the Colorado Constitution to require that every measure referred to a committee of reference of the General Assembly be considered by the committee upon its merits, to provide that each measure reported by a committee of reference to the Senate or House shall appear on the calendar of that chamber in the order in which it was reported, and to prohibit members of the General Assembly from committing themselves or other members in a party caucus to vote in favor of or against any matter pending or to be introduced in the General Assembly.
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Provisions of the Proposed Constitutional Amendment

The proposed constitutional amendment would:

— require that all bills referred to a committee of reference be afforded a hearing and vote within appropriate deadlines;

— require that all bills favorably referred to the Committee of the Whole be calendared for floor debate in the order in which they were reported out by a committee of reference, thereby limiting the function of the House Rules Committee;

— prohibit members of the General Assembly from committing themselves or any other member to a certain vote in a party caucus or similar procedure on a bill, appointment, veto, or other measure or issue proposed or pending before the legislature. Members would be allowed to vote in party caucus on matters related to the selection of party caucus officers and leadership of the General Assembly; and

— provide that any action taken in violation of the requirements of the amendment shall be null and void.

Comments

The Colorado General Assembly has come under criticism because of three alleged abuses of the legislative process: 1) the power of a committee chair to withhold action on a bill; 2) the system by which bills are scheduled for debate; and 3) the system of party caucus positions.

Scheduling bills for committee hearing. Rules guiding the course of bills through committees are contained in the *Colorado Legislator's Handbook*. The chair, vice-chair, and a majority of the members of each committee are always members of the majority party appointed by the presiding officer. House and Senate rules give the committee chair the power to determine the measures that will be considered at each meeting. House rules require that each bill assigned to a committee of reference be "set for committee consideration at a scheduled meeting." Likewise, Senate rules require that committees "report upon all matters referred to them". If a bill is not heard seven days after having been referred to the committee, two-thirds of the committee may petition the chair to schedule such bill for a hearing.

House and Senate rules also provide that after a bill is heard by a committee and the committee

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has taken final action, the House chair has three days (five days in the Senate) in which to deliver such report of final action to the Chief Clerk of the House (or the Secretary of the Senate).

These rules have been interpreted by some committee chairpersons to allow the following:

— not scheduling a bill for committee hearing within appropriate deadlines thereby killing the bill (efforts to petition a committee chair to hear a bill are rarely successful because it is difficult to get two-thirds of the members of a committee to agree to petition the chair when the majority of the members of the committee are from the majority party);

— failing to deliver the committee report of final action within appropriate deadlines thereby killing the bill;

— placing bills before the committee "for hearing only," and not taking final action on the bill until after appropriate deadlines have passed; or

— placing bills before the committee and announcing that only one action (usually to defeat the bill) will be accepted.

Four state legislatures have rules requiring that all bills referred to a committee of reference receive a committee hearing.

Scheduling bills for floor debate. The House of Representatives utilizes a Rules Committee which, pursuant to House rules, is charged with scheduling bills for floor debate. The Senate functions without a Rules Committee.

The Rules Committee may choose not to calendar certain bills for floor debate within appropriate deadlines. The effect is these bills die despite favorable action by a committee of reference.

House rules allow Rules Committee members to petition the chair to calendar a bill if it has not been calendared within three days after referral to the committee. Because of the composition of the committee (seven from the majority party, four from the minority), it is highly unlikely that seven members will agree to petition the chair.

Ten other legislatures utilize a rules committee. Two other systems for calendaring bills are used in other legislative bodies. Twenty-six legislative bodies calendar bills for floor debate automatically or in the order in which they were received. The presiding officer or some other leader such as the majority leader or the chief clerk calendars bills in nineteen other legislative bodies.

Caucus votes and positions. Party caucus rules are not defined in either the House of Representatives or Senate rules, the Constitution of Colorado, or in statute. Each party informally sets its own rules for the operation of its party caucus. However, both the House of Representatives and Senate, during the 1988 legislative session, adopted rules regarding caucus votes. House and Senate rules state that a legislator shall not "be compelled by a majority of a political party caucus" to vote for or against any legislative measure.

Party caucuses meet, most often, to consider a position on a bill of major importance, usually involving taxation or expenditures of state funds. Party caucus members often feel compelled to vote with the position decided upon in the party caucus in order to form a majority vote block regardless of personal philosophy. Whether caucus members have been bound to a certain vote or subject to pressure from leadership is a matter of debate. Regardless, the effect of a party caucus position is that floor debate becomes a formality and the arguments of minority party members are rarely given serious consideration. The result is legislators in the minority party do not have a significant part in the decision-making process.

Arguments For

1) Under the proposal, all bills will be afforded a hearing before a committee. While committee chairpersons should have broad powers in setting the agenda for committee hearings, they should not have the option of abusing that power by denying committee members the right to hear and vote on a certain piece of legislation. In addition, citizens should not be denied the right to testify in favor of or against legislation because the committee chair decided the bill was without merit, or not in line with the majority party's political philosophy or his or her own personal political philosophy. A bill without merit would likely not be adopted by the General Assembly if it were afforded committee hearings and floor debate.

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2) Colorado would not be the only state to require all bills go through a committee hearing. Officials in states with this requirement unanimously consider it a necessary part of the legislative process. In those states, the average number of bills introduced and heard in committees of reference is as great or greater than the average of 600 bills introduced in the Colorado General Assembly each session. By instituting measures to make the process more efficient, the General Assembly is capable of hearing and acting on all bills referred to a committee within appropriate deadlines.

3) The scheduling of bills for debate will not be subject to personal or partisan politics. Limiting the function of the Rules Committee in favor of a system by which bills are calendared for debate by the entire House in the order in which they are received will remove the power of the majority party leadership to determine which bills will or will not be debated. The Colorado Senate operates without a Rules Committee. Only eleven other legislative bodies in the nation utilize a rules committee.

4) Legislators will be given constitutional protection from being obligated to vote a certain way because of a party caucus position. The end result will be that the debate and vote on bills will reflect an exchange of ideas between differing ideologies rather than perfunctory floor debate after the necessary votes have been committed through a caucus position.

5) The power base of the leadership of whichever party is the majority party will be reduced. Leadership of both parties has been accused of abusing that power when in control of the legislature. Changes which limit that power will curb those abuses and may limit the ability of a single political party to force its party philosophy on the entire electorate. Legislators may then become more responsive to a greater portion of the electorate rather than that of their political party and thus a smaller portion of the citizenry would be disfranchised.

Arguments Against

1) The proposed changes have already been satisfactorily addressed by the legislature and are unnecessary. The rules of the House of Representatives and Senate require that action be taken on all bills and that a legislator shall not be compelled by a majority of a party caucus to vote for or against any legislative measure. In addition, the Rules Committee functions as a scheduling committee. Some bills not surviving the legislative process fail to do so because they fail to meet legislative deadlines.

2) A requirement that all bills be afforded a hearing would lengthen the legislative session. The General Assembly has difficulty in completing its work within current deadlines. Because of the increased workload and longer session length, several legislators have resigned. An effort is underway to shorten the length of yearly sessions. To require committees to hear all bills assigned may be too much to ask of the General Assembly without allowing extra time. Only four states have this requirement.

3) The caucus system should not be subject to constitutional restrictions. Inherent in the caucus system is the ability to make informal decisions based on party philosophy. It is inevitable that the majority party caucus will be in a position to shape public policy based on its party philosophy. The majority rules in any group forum. No caucus, majority or minority, should be limited in its ability to express its party philosophy.

4) The proposed changes should not be made in the constitution but rather should be made by legislative rule or statute. If any of the provisions are not feasible, it will be very difficult to amend the constitution again to remove that provision. An amendment to the constitution affords almost no flexibility whereas Colorado statutes and legislative rules are easily revised.

5) The language of the proposal is imprecise and will not accomplish the goals intended. The proposal may unnecessarily burden the legislative process. The language will be open to differing interpretations which may ultimately have to be decided by the courts. (For instance, if it were determined that action on a bill was taken in violation of the amendment, the action becomes null and void. The courts may have to determine whether the legislation would therefore be considered adopted or defeated or would have to go back through the process in which the prohibited action occurred.) Even if the proposed changes are adopted, the process will still be open to abuses other than those addressed by the proposed amendment. Either party in the majority will find ways to get around the requirements in order to accomplish its goals.