

Law Lib.
KFC
RECEIVED

.L4
JAN 22 '85 no. 288

UNIVERSITY OF DENVER
LAW LIBRARY

**LEGISLATIVE COUNCIL
OF THE
COLORADO GENERAL ASSEMBLY**

*Colorado General Assembly, Legislative
" Council.*

**AN ANALYSIS OF
1984 BALLOT PROPOSALS**

**Research Publication No. 288
1984**

Law Lib.
KFC
1820
.L4
no. 288

NON-CIRCULATING

COLORADO GENERAL ASSEMBLY

OFFICERS

SEN. TED L. STRICKLAND
Chairman
REP. CARL B. "BEV" BLEOSOE
Vice Chairman
STAFF
LYLE C. KYLE
Director
DAVID F. MORRISSEY
Assistant Director



MEMBERS

SEN. MARTHA M. EZZARD
SEN. REGIS F. GROFF
SEN. DON MACMANUS
SEN. DAN O. NOBLE
SEN. RAY POWERS
SEN. RONALD K. STEWART
REP. FRANK DEFILIPPO
REP. CHARLES W. HEIM
REP. JERRY KOPEL
REP. BOB MARTINEZ
REP. DAVID E. SKAGGS
REP. RONALD H. STRAHLE

LEGISLATIVE COUNCIL

ROOM 48 STATE CAPITOL
DENVER, COLORADO 80203
866-3521
AREA CODE 303

LETTER OF TRANSMITTAL

August 17, 1984

This analysis of statewide measures to be decided at the 1984 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*. Four proposed constitutional measures and one statutory measure are analyzed in this publication.

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

Amendment No. 4 is an initiated statute. If approved by the voters, this initiative may be changed by passage of a bill by the Colorado General Assembly.

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,
/s/ Senator Ted L. Strickland
Chairman
Colorado Legislative Council

Law Lib. KFC 1820 .L4
no. 288
Colorado, General Assembly.
Legislative Council.

An analysis of 1984 ballot
proposals

UNIVERSITY OF DENVER COLLEGE OF LAW

**AMENDMENT NO. 1 BY CONSTITUTIONAL AMENDMENT
PROPOSED BY THE GENERAL ASSEMBLY**

An amendment to article IV of the constitution of the state of Colorado, concerning the appointment of the commissioner of insurance by the governor with the consent of the senate, and exempting the commissioner from the state personnel system.

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution states:

The governor shall nominate and, by and with the consent of the senate, appoint the commissioner of insurance to serve at his pleasure, and the state personnel system shall not extend to the commissioner of insurance.

Comments

The commissioner of insurance is responsible for the regulation of a \$3.0 billion industry (based on premiums written) including almost 1,500 insurance companies, 69 preneed funeral contractors, 32 endowment care cemeteries, 20 motor clubs, four nonprofit hospital and health service corporations, four prepaid dental care plans, seven health maintenance organizations, six life care centers, and two local government self-insurance pools. In fiscal year 1982-83, the commissioner collected about \$52 million in insurance premium taxes, license fees, and penalties. During this period well over 30,000 insurance agencies, brokers, agents, salesmen, and adjusters were licensed in Colorado.

To ensure that agents and companies conduct their business in conformance with state law, the commissioner of insurance is responsible for the examination and regulation of all insurance companies licensed to do business in this state. This includes reviewing the records, financial condition, rates, and management of these companies. Other responsibilities include evaluating resources, reserves, and the general fitness of insurance companies applying for certification; reviewing the qualifications of agents requesting licensure; approving and rejecting rates charged for certain types of insurance; determining whether a company or its agents are involved in deceptive trade practices; and taking necessary disciplinary action against licensees.

Classified employee. Pursuant to the provisions of article XII, section 13, Colorado Constitution, the commissioner of insurance is a classified employee within the personnel system (civil service) of state government. Such employees hold their respective positions during efficient service or until mandatory retirement. Dismissal, suspension, or discipline may occur only upon written findings of: (a) failure to comply with the standards of efficient service or competence; (b) willful misconduct; (c) willful failure or inability to perform duties; or (d) final conviction of a felony or offense involving moral turpitude. These written findings are subject to appeal to the state personnel board and to the courts.

Department head. Presently, the governor, with the consent of the senate, appoints the executive director of the department of regulatory agencies. Generally, the executive director appoints the commissioner of insurance from a list of three persons scoring the highest on a competitive test administered under the state personnel system. The authority of the executive director to supervise the activities of the division of insurance is restricted by the provisions of the "Administrative Organization Act of 1968." Under this act, the insurance commissioner exercises nearly all statutory powers, duties, and functions, including rule-making, licensing, registration, and promulgation of rates, independently of the department head. The departmental executive director, however, supervises budget, planning, and purchasing services for the division of insurance.

Insurance board. In 1978, the general assembly adopted legislation establishing a six-member insurance board consisting of five members appointed by the governor with the consent of the senate plus the commissioner of insurance who serves as the nonvoting chairman. The commissioner may break a tie vote of the members of the board. The governor's appointees serve five-year terms which are staggered. Section 10-1-103.2, *Colorado Revised Statutes*, provides that the board may confer

Appointment of Insurance Commissioner

with the commissioner and make recommendations for modification of any order or rule promulgated by the commissioner. Any rate decision or order by the commissioner is subject to concurrence by the board but only to the extent that the board acts within forty-five days and prior to the time the rate becomes effective.

In general, the board has limited authority over the actions of the commissioner. The board does not have authority to review orders issued by the commissioner which discipline any agent or company for financial reasons or trade practices and does not review actions against a company whose financial condition requires remedial or corrective action short of liquidation.

Arguments For

(1) Colorado is the only state in which the agency responsible for regulation of the insurance industry is under the direction of a civil service employee. The commissioner is an appointed official in 38 states and elected in 11 states. Since 1921, there have been five commissioners of insurance in Colorado, and four of the commissioners served a total of 63 years. With the dramatic changes occurring in this complex industry, steps should be taken to assure that leadership of the state's insurance division does not become complacent because the personnel system permits removal of a commissioner only for malfeasance in office and after a lengthy appeals process. Also, the long-term association of a civil service administrator with the regulated industry may tend to jeopardize the independence of the regulatory process.

(2) The amendment would place ultimate responsibility for regulation of the insurance industry in Colorado with the governor rather than with a classified employee in the state civil service system. The electorate cannot hold a governor responsible for the performance of the division of insurance if the position of commissioner of insurance is isolated from the governor's control by the civil service system. By giving the governor authority to nominate and dismiss a commissioner of insurance, Colorado voters would be assured that the administration of the division of insurance would be consistent with the overall policies of the elected chief executive. Furthermore, confirmation of the appointment of a commissioner of insurance by the senate is an additional safeguard for making the commissioner accountable to the political process and ultimately to the electorate.

Arguments Against

(1) The amendment would politicize insurance regulation in Colorado. A career administrator, selected on the basis of merit and fitness, would be replaced by a temporary patronage appointee. In states with appointed commissioners, the average length of service is less than three years. Such frequent reshuffling of administrators tends to weaken a regulatory system. The amendment would encourage special interest groups to attempt to influence the governor on the selection and retention of an insurance commissioner and the state senate on the confirmation of a governor's appointee. This politicizing of the appointment of a commissioner could ultimately result in a more rapid turnover in the office of insurance commissioner. A short-term appointee would have to be more cognizant of career objectives. This could mean that the position of commissioner would become a stepping stone for those seeking career advancement. Such a scenario might not foster an independent regulatory system.

(2) The present organization and structure of state government provides adequate checks and balances necessary to achieve public accountability in the administration of insurance laws in Colorado. The general assembly establishes broad legislative policy and reviews the rules and regulations promulgated by the division of insurance for compliance with that policy. The commissioner of insurance serves under and is appointed by the executive director of the department of regulatory agencies. Oversight of the commissioner's activities also is provided by an insurance board. Any organizational problems that may exist can be addressed by changes in the statutes. Both the department head and the insurance board could be given substantial new authority to direct the activities of the insurance division.

Law Lib. KFC 1820 .L4
no. 288
Colorado. General Assembly.
Legislative Council.

An analysis of 1984 ballot
proposals

AMENDMENT NO. 2 — CONSTITUTIONAL AMENDMENT

PROPOSED BY THE GENERAL ASSEMBLY

Title: An amendment to articles IV, XIV, XX, and XXI of the constitution of the state of Colorado.

providing that a person must be a registered elector in order to vote for state elected executive officers, to vote for removal of a county seat, to vote on the striking off of county territory, to sign a petition for or to vote on county home rule, to vote on the formation, merger, election of members of governing bodies, and the functions of service authorities, to vote on a franchise relating to any street, alley or public place of a home rule city, to sign a petition for or to vote on municipal home rule, to sign a petition for or to vote on recall of state and local elective public officers, and applying to registered electors the percentage for determining the number of signatures on home rule petitions.

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would substitute the term "registered elector" for "qualified elector" in a number of sections of the constitution. In general, this modification would mean a change in signature requirements for initiating, amending, or repealing a county or municipal home rule charter and for the recall of state, county, and municipal officers. A petition to adopt, amend, or repeal a municipal home rule charter would require signatures of five percent of the registered electors, rather than qualified electors. A similar change would be made in the section relating to the adoption, amendment, or repeal of county home rule.

Petitions for the recall of elected state officers would have to be signed by registered electors, rather than qualified electors. The number of signatures required to initiate a recall election would remain at 25 percent of the entire vote cast for the respective office in the last election. A similar change from qualified to registered electors also would be applicable for recall of county and municipal officials. Reference in the constitution to the maximum number of signatures required to initiate a recall election for a municipal official would remain at 25 percent of the vote cast for the applicable office at the last election.

Other technical changes in which the term "registered elector" would be substituted for "qualified elector" include those relating to the casting of votes for:

- candidates for state office (governor, lieutenant governor, attorney general, secretary of state, and treasurer);
- changing the location of a county seat;
- changing county boundaries;
- formation and merger of service authorities, the election of the governing body thereof, and for the approval of the functions, services, and facilities of service authorities;
- adoption, repeal, or amendment of a county or municipal home rule charter;
- recall of state elected officials; and
- recall of county and municipal elected officers.

Finally, the proposal would amend section 4 of article XX, Colorado Constitution, to require that "registered electors," rather than "qualified taxpaying electors," would have to approve franchises relating to any street, alley, or public place in a home rule municipality. Although section 4 refers to only "the city and county of Denver," the ballot title points out that section 4 applies to all home rule municipalities. Section 6 of article XX grants the powers in section 4 to all home rule municipalities.

Comment

The Colorado Constitution contains numerous references to the terms "elector," "qualified elector," and "registered elector." In general, a qualified elector means every person who on the date of the next ensuing election has attained the age of 18 years, is a citizen of the United States, and has resided in this state and a certain precinct thirty-two days immediately preceding the election. In order to vote in a general election, a qualified elector must first register with the county clerk. Registration includes affirming citizenship and residency and signing the registration form. Therefore, all legally registered electors are qualified electors, but not all qualified electors are registered electors.

Voting — registered electors. Election practices have not always reflected the manner in which the terms "qualified" and "registered" elector have been used in both the constitution and the statutes. For example, article IV, section 3, Colorado Constitution, provides that certain state officers "shall be chosen . . . by the qualified electors of the state." In actual practice, however, only registered electors may vote at general elections because article VII, section 11, Colorado Constitution, instructs the general assembly to secure the purity of elections against abuse of the election franchise. Shortly after the turn of the century, registration was made a condition for voting at general elections. Registration was

Qualified Electors

upheld in *People v. Earl*, 42 Colo. 238, 94 P. 294 (1908) by the Colorado Supreme Court. Amendment Number 2 makes revisions to the constitution to eliminate the inconsistent use of the term "qualified elector."

Petitions — registered electors. The Colorado Supreme Court has drawn a distinction between requirements for voting and requirements for signing petitions for certificates of nomination and for initiatives. Generally, the court has held that constitutional provisions permitting qualified electors to sign certificates of nomination or petitions may not be narrowed by statute to require signatures of registered electors without a constitutional change — see *Colorado Project Common Cause v. Anderson*, 178 Colo. 1, 495 P. 2d 220 (1972). In 1980, Colorado voters approved an amendment to the Colorado Constitution which requires that a person signing a statewide or municipal initiative or referendum petition must be a registered elector rather than a qualified elector.

Arguments For

1) The proposed amendment would be consistent with the changes approved by Colorado voters in 1980. Signatures on recall and home rule charter petitions would have to be signed by registered electors in the same manner that initiative petitions must be signed by registered electors. Other sections of the constitution would be updated and made consistent with current practices by changing "qualified" elector to "registered" elector. The likelihood of fraudulent signatures on petitions for home rule charters and for recall of public officers would be reduced by requiring the signature of registered electors on such petitions. Both petitioners and persons challenging petitions could verify the authenticity of signatures by making comparisons with the names and addresses contained in the voter registration books maintained by the county clerks and recorders. Under present law, it is difficult to challenge the signatures of qualified electors, because there is no list of qualified electors.

2) The amendment would reduce the number of signatures required on petitions to initiate, amend, or repeal a home rule charter. By requiring that five percent of the registered electors sign such petitions rather than five percent of the qualified electors, a smaller number of signatures would be required because there are fewer registered electors than qualified electors. The current requirement that signatures of five percent of the qualified electors are necessary to initiate home rule is not realistic because the actual number of qualified electors cannot be determined. Estimates are usually based on census data which may be obsolete. By providing that petitions must be signed by registered electors, reference would be made to an identifiable number of electors. Data would be current and a list of registered voters prepared by the county clerk and recorder could be obtained.

3) Allowing persons who are not registered to vote to sign petitions for recall of public officers makes little sense. Why should a person who is not registered to vote be entitled to request a recall election? Requiring the signatures of registered electors on recall petitions is not an unreasonable burden. Statistics indicate that very few signatures are required to initiate a municipal recall election in Colorado, because the number of signatures required is based on voter turnout. Historically, many municipal elections attract only a small percentage of registered electors. The change on signature requirements from qualified to registered would reduce the workload and costs to municipal clerks and the courts for verifying recall petitions. Furthermore, registration is accessible for most persons. A few months prior to each general election, the county clerks may open branch registration booths in shopping centers and other convenient locations. Registered electors may also register other qualified family members who reside at the same residence.

Arguments Against

1) Qualified electors should not be prohibited from signing home rule and recall petitions simply because they are not registered to vote. Registration is not a qualification but simply a convenient way for government to keep a record of persons who are allowed to cast votes on election day and for other purposes such as selection of juries. Under current law, the names of persons who do not vote in a general election can be purged from the registration books following notification by the county clerk and recorder. Citizens should not lose their right to sign petitions because they did not vote at a given election or because they failed to complete a reregistration form which they may or may not have received in the mail.

2) It is not in the public interest to make it more difficult for citizens to initiate the recall of elected public officials. The amendment would require that persons circulating recall petitions would have to obtain the same number of signatures of registered electors as now required for qualified electors. Approximately one-third of persons 18 and over in Colorado have not registered to vote. By requiring that recall petitions for state offices must contain signatures of registered electors in a number equivalent to 25 percent of the vote cast for all candidates, the amendment would make recall unduly difficult. Petition circulators would have to verify signatures on petitions against the registration list of the county or petitioners would have to collect additional signatures in sufficient numbers to ensure that petitions contain the names of the required number of registered electors.

**AMENDMENT NO. 3 — CONSTITUTIONAL AMENDMENT
INITIATED BY PETITION**

Ballot Title: Shall there be an amendment to article V of the Colorado Constitution prohibiting use of public funds by the state of Colorado or any of its agencies or political subdivisions to pay or reimburse, directly or indirectly, any person, agency, or facility for any induced abortion, but permitting the general assembly, by specific bill, to authorize and appropriate funds for medical services necessary to prevent the death of a pregnant woman or her unborn child if every reasonable effort is made to preserve the life of each?

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution states:

No public funds shall be used by the state of Colorado, its agencies or political subdivisions to pay or otherwise reimburse, either directly or indirectly, any person, agency or facility for the performance of any induced abortion, provided however, that the General Assembly, by specific bill, 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.

Comments

The federal public health center for disease control estimates that over 1.5 million legal abortions were performed in the United States in 1982. In Colorado, 16,685 abortions were recorded by the Colorado Department of Health for the same period.

The state of Colorado participates in two programs which provide funds for 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. In fiscal year 1983, the federal government provided \$35,978 for 156 abortions in Colorado in which the life of the woman was endangered. The state of Colorado paid 100 percent of the costs of 1,677 abortions at a cost of \$423,812 or an average cost of \$269 per abortion.

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. The medically indigent program financed about 700 abortions at Denver General and approximately 300 abortions at the health sciences center.

In 1973, the U.S. Supreme Court in *Roe v. Wade*, 410 U.S. 113, held that certain state statutes restricting the capacity of a woman to terminate her pregnancy were in violation of constitutional guarantees. The court determined that a 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 could assert interests, such as safeguarding the health of the woman, maintaining adequate medical standards, and 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 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.

Prohibit Public Funding of Abortions

With regard to the medical judgment of the attending physician, the 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 judgment. 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 attached the "Hyde Amendment" to an appropriation bill. This amendment denied the use of federal funds for all abortions except when the life of the mother would be endangered. Congress has debated the issue annually since that time and, for a period, modified the original Hyde Amendment to include a few circumstances when federal funds for abortions were permitted. In 1981, Congress again limited medicaid funding for abortion to those cases necessary to save the life of the pregnant woman. A majority of states have restricted the availability of public funds for abortions in the same manner as Congress.

In *Harris v. McRae*, 488 U.S. 297 (1980) and *Williams v. Zbaraz*, 488 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.

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 of the woman, 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 also was permitted in cases involving rape or incest. These conditions for abortion were voided as a result of the U.S. Supreme Court decision in *Roe v. Wade* in 1973.

Since 1969, the Colorado Department of Social Services has reimbursed physicians for the costs of medical abortion services 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 1977, 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 has been upheld by the Colorado Court of Appeals in *Dodge v. the Department of Social Services*, 657 P.2d 969 (1982). State appropriations now account for well over 90 percent of total medicaid monies spent for abortion services.

Indirectly. In part, the proposed amendment prohibits the use of public funds to pay or otherwise reimburse, ". . . either directly or indirectly. . ." any person or agency for the performance of any induced abortion. A question exists as to whether the quoted language of the amendment would have implications beyond that of precluding the use of medicaid and medically indigent funds for most abortions. For example, would the word "indirectly" prohibit the state or its political subdivisions from appropriating funds for a medical insurance program or plan for their respective employees if such a plan authorized abortion services? Would the state and its political subdivisions be prohibited from contracting for services with any agency or institution which provides abortion services? Would Denver General and other publicly operated hospitals be prohibited from authorizing abortion services in their respective hospitals? Would the University of Colorado Health Sciences Center be prohibited from conducting any courses in abortion procedures?

Specific bill. The only exception provided in the amendment to the exclusion of public funds for abortions is that ". . . the General Assembly, by specific bill, 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. . ." Would this limitation prohibit local communities from appropriating funds for emergency medical services involving an abortion to prevent the death of a woman?

Arguments For

1) The amendment would set forth a public policy for the state of Colorado that public funds are not to be spent for the destruction of prenatal life through abortion procedures but that public funds may be spent to protect both the life of a pregnant woman and her unborn child. A fundamental principle of western civilization is the sanctity of life. A goal of good government is to be an advocate for human life and to maximize the opportunity for human development. These objectives cannot be met when current public policy permits the use of public funds for abortion.

Prohibit Public Funding of Abortions

2) The proposed amendment would place Colorado with a majority of states which limit public funds for abortions. The United States Supreme Court has ruled that states are not required to pay for medically necessary abortions for which federal reimbursement is not available under Title XIX of the Social Security Act — see *Harris v. McRae* (1980). Currently, 34 states restrict medicaid funds for abortions, and 30 of the 34 states permit such expenditures only when the life of the woman is endangered.

3) The United States Supreme Court has ruled that the 1973 *Roe v. Wade* abortion decision does not prevent a state from making a value judgment favoring childbirth over abortion and implementing that judgment by the allocation of public funds — see *Maher v. Roe*, 432 U.S. 464 (1977). The merits of the proposed prohibition on public funds for abortions should not hinge on the short-term economic costs of birth versus abortion. First, the value of human life cannot be measured. Second, the immediate public costs associated with indigent births must be placed in the context of the potential contributions to the family and to society that each individual may make in his lifetime. Third, even if all publicly financed abortions under the state medicaid program were carried to term, the costs of delivery, support, and prenatal and postnatal costs would only amount to a small fraction of the entire state budget.

4) The amendment would not prohibit a woman from exercising her private right to an abortion as provided by the United States Supreme Court in its 1973 abortion decisions. 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*, 488 U.S. 297 (1980). Thus the court has ruled that taxpayers are not required to subsidize abortions. However, this does not prevent fund raising by private sources to pay for abortions.

Arguments Against

1) In 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, governmental policy should ensure that essential medical services are available to both women who choose to continue their pregnancy and for those who select abortion. The amendment, however, would deny publicly funded medical care to a small percentage of economically disadvantaged women who attempt to exercise the same rights to select abortion services as that provided for other women in the state. Government should not use public finance as a lever to encourage birth when a woman or family is unable to provide the necessities of life, where rape or incest may cause an environment in which the woman is not psychologically or emotionally prepared to give birth, or where other circumstances exist in which normal human development either is not possible or highly unlikely. It is unreasonable for government to impose a single standard when the circumstances of each pregnancy may be vastly different.

2) The amendment would mean an increase in public expenditures for the support of indigent persons. The average cost for a medicaid-funded abortion in Colorado in 1983 was \$269. A woman who lacked the money to pay for an abortion would not be able to pay for prenatal care and delivery. In fiscal year 1983, such services cost approximately \$1,800 per delivery. In addition, families qualifying for aid to families with dependent children averaged 17 months on public assistance rolls. During this period, cash benefits for two-person families average \$265 per month plus medical expenses in excess of \$2,000. Thus, for a 17-month period, public assistance costs per woman could be in excess of \$8,000, roughly half of which must be paid by the state.

3) Recent 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. The amendment could prohibit the performance of such abortions in a publicly funded state, county, or special district hospital. Not only would the amendment place unreasonable restrictions on the ability of poor women to exercise a choice in such circumstances but all women could be denied services in a publicly supported hospital. Public policy should not be structured in a manner that would encourage a couple to have a genetically defective child when abortion would permit another opportunity for the birth of a healthy, normal child.

4) Regardless of an individual's view on the issue of abortion, the proposed constitutional amendment should be opposed because the language of the amendment is vague and the ultimate impact of the amendment is unknown. This proposal could only be changed by action of the voters at a future general election. By raising legal and financial roadblocks for poor women, that could not be revised by amendment to the statutes by the general assembly, the amendment would have an unfair impact on those women and families who are the most dependent on public funds and public institutions.

AMENDMENT NO. 4 — PROPOSED STATUTE INITIATED BY PETITION

Ballot Title: Shall an act be adopted to provide for additional voter registration of qualified electors applying for a driver's license; to allow voter registration up to 25 days before an election; to provide that registered electors not voting in one general election will retain their registration, but may be placed on an "inactive" status if it appears they have moved from their address of registration; and to provide for the purging or making current of "inactive" voter registrations?

Provisions of the Proposed Statute

The proposed statute would make three major changes in voter registration laws in Colorado: 1) procedures for purging or removing electors from the registration books would be revised; 2) qualified electors would be given an opportunity to register to vote at state driver licensing stations operated by the Colorado Department of Revenue; and 3) voter registration would be permitted up to 25 days before any general, primary, or other election for which registration is required.

Following a general election, each county clerk would be required to mail a notice to each registered elector who did not vote at the election. The notice would be to inform the elector that unless the elector requested to be withdrawn from registration his name would be continued on the registration book. Such mailings would be marked "DO NOT FORWARD. RETURN TO SENDER."

If a continuation of registration notice were returned as not deliverable, the county clerk would classify such elector as "inactive." An "inactive" elector who failed to vote in the next general election or who failed to make current his registration would have his name purged from the registration book. The "inactive" designation would be removed if the elector appeared at a registration site or poll before, or at, any election up to and including the subsequent general election. The "inactive" elector would then be eligible to vote after taking the proper oath.

Beginning July 1, 1985, the proposed statute would require that driver's license examination facilities permit qualified electors to apply to register to vote at the time application is made for a driver's license, renewal of a license, correction of a license, or for the issuance of an identification card. [A qualified elector could make application to register to vote at any driver's license facility regardless of his county of residence.] A single application form for both driver licensing and voter registration would be provided for those persons wishing to register to vote. An automatic change of residence procedure for voter registration would be established for most persons notifying driver's license officials of a change in address.

Registered electors applying for a driver's license could register family members for voting. To be eligible for registration, family members would have to be qualified electors and would have to live at the same address as the registered elector.

Driver's license officials would be authorized to administer an election oath to those persons applying for voter registration and to those registered electors desiring to register family members for voting. The proposed statute also contains detailed technical provisions relating to voter registration forms, instructions, and deadlines to be followed by county clerks and other procedural matters.

Comment

Current law provides that qualified electors may register 32 days before primary, general, school, and municipal elections. Qualified electors may register at a county or municipal clerk's office, or at any mobile, stationary, or branch site that may be established by the county in which the elector is a resident. Branch registration sites may be established in shopping centers or other locations and are operated at times other than normal business hours. Branch registration facilities are operated on a temporary basis, generally the month prior to the close of registration. Registered electors may also register family members who are qualified electors and who live at the same residence by completing

Voter Registration

necessary forms and taking an oath.

After each general election, existing law requires county clerks to mail a notice to registered electors who did not vote at the general election. Registered electors are required to complete a form if they wish to maintain their registration. Registered electors who fail to return the form have their names struck from the registration book. Thus, under the present statute, electors must vote, or complete a continuation of registration form, or take action to reregister in order to be eligible to vote in any succeeding election. Conversely, the proposed statute would permit registered electors, who do not change their address, to maintain voting eligibility whether or not they vote at any future general election.

Other states. The *Book of States, 1984-85*, published by the Council of State Governments, provides information on voter turnout, voting population, and persons registered. In 1982, the percentage of persons 18 years of age and older who were registered to vote at the general election in each state ranged from about 48.7 percent in Nevada to 92.7 percent in Minnesota. At this time, Colorado ranked 31st with 65.4 percent of persons age 18 and over registered to vote. A total of eight states registered at least 80.0 percent of the voting age population in 1982 — Alaska, Maine, Minnesota, South Dakota, Mississippi, Michigan, Vermont, and Idaho. In the presidential election in 1980, there were 13 states in which at least 80 percent of the voting age population was registered, and, for Colorado, 67.8 percent of the voting age population was registered. Nevada, again, had the smallest percentage of registered electors with 49.6 percent of the voting age population registered, while Minnesota topped the list with 95.2 percent.

In 1982, only eight states recorded more than 50 percent of the voting age population as actually voting at the general election — Alaska, Minnesota, South Dakota, Montana, North Dakota, Maine, Utah, and Oregon. A total of 26 states including Colorado recorded between 40 and 50 percent of the voting age population as actually voting in 1982. In Colorado, the figure was about 43 percent. For the presidential election of 1980, a much larger percentage of the voting age population actually voted. A total of 36 states recorded more than 50 percent of the voting age population as actually voting, and in eleven states more than 60 percent voted. Colorado ranked 24th with 56 percent of the voting age population actually voting in 1980.

In the 1980 presidential election, at least 60 percent of the registered electors voted in all states requiring registration. Currently, North Dakota does not have a registration requirement and four states — Maine, Minnesota, Oregon, and Wisconsin — permit registration on election day. Colorado ranked second among the states in the percentage of registered electors voting. A total of 36 states recorded more than 70 percent of the registered electors voting in the 1980 presidential election. In 1982, there was a substantial drop in registered electors voting in the off-year election. Only seven states recorded more than 70 percent of the registered electors voting at this time — Hawaii, Nevada, Wyoming, Alaska, Montana, Utah, and Arkansas. In Colorado, 65.7 percent of the registered electors voted in this off-year election.

Arguments For

1) In 1982, about one-third of the persons 18 years of age and older in Colorado were not registered to vote. The present registration system is not convenient and new efforts are needed to encourage citizens to participate in the election process. The proposal offers an efficient and convenient method for registering voters. Nearly all adult Coloradans either obtain a driver's license or identification card from the state motor vehicle division. Since similar information is needed for both driver's license and voter registration, the proposal would allow Coloradans to obtain a new driver's license and register to vote in one procedure. This method of registration has been used in Michigan since 1976. In Michigan, 85.83 percent of persons 18 and over were registered to vote in 1982, compared to 65.44 percent in Colorado. Two other states, Arizona and Ohio, have adopted driver licensing systems for registering electors.

2) The proposed statute would help strengthen the right to vote which is recognized by both the United States and Colorado constitutions. The proposal would provide that persons who have registered to vote and who maintain their status as qualified electors would not be deprived of the right to vote so long as they did not change their place of residence. Procedural regulations imposed under current law require county clerks to strike registered electors from the county registration list for failure to vote at a general election if the elector fails to complete a continuation of registration form. Once registered to vote, a person should not have to reregister unless he has changed his place of

Voter Registration

residence.

3) The proposed statute would move the closing date of registration nearer to respective elections thus allowing registration at a time of increased interest in candidates and issues. Only two states — Arizona and New Mexico — have a longer cutoff period for registration before an election than Colorado. Five states — North Dakota, Oregon, Maine, Minnesota, and Wisconsin — either allow registration on election day or do not have a registration requirement. A number of other states also allow registration within 20 days of a general election. Extending the registration period to 25 days before an election is a reasonable compromise that would increase registrations and still allow adequate time for election officials to prepare precinct registration materials and to detect fraud.

4) Long-term savings in the cost of registering electors would be achieved by the proposed statute. Integration of voter registration with the driver licensing system might allow a substantial reduction in expenditures for mobile and branch registration offices. Branch registration offices are maintained by persons selected by the two major political parties. It now costs county government \$40 per day per branch employee to maintain a branch registration office. Such costs could be greatly decreased over the next few years by the proposal. These cost reductions would also result in a more secure system since persons applying for a driver's license must show identification. This is not now required for persons registering to vote.

Arguments Against

1) The cost of implementing the proposed statute in fiscal year 1985-86 would be about \$400,000, according to the Colorado Office of State Planning and Budgeting. Estimates are based on the new responsibilities that would be assigned to the Colorado Department of Revenue, increased registrations, and other expenses for state and local election offices. Some county clerks believe that registration lists would be inflated by changes made in the proposal relating to the purging of electors. This could make election planning extremely complex in highly urbanized, transient areas, adding to election costs. Some election officials believe that the aforementioned estimates may not adequately reflect the additional costs for voting equipment, judges, and other related expenses deemed necessary because of the inflated registration lists.

2) Removing the names of ineligible electors from the registration lists is an essential part of efforts to prevent fraud in elections. The present procedure has been effective and Colorado has not experienced the election irregularities occurring in other states. Under the proposed statute, the names of persons who have not voted at a general election would be carried on the registration books until the U.S. mail returned a notice to the county clerk that the mail is not deliverable. To maintain the names of those residents and members of their families not voting on a registration list for an indefinite period would be unreasonable and could cast doubt as to whether the list is current and accurate.

3) It is estimated that about 67.8 percent of persons 18 and over in Colorado were registered to vote in 1980. Under current law, registration is a simple process and interested qualified electors can register with the county clerk on most weekdays throughout the year. Why change the existing system simply because some persons do not choose to exercise their rights and responsibilities as citizens? By prodding inactive electors to register through a driver license program, it is unlikely that the amendment would result in a more informed or more responsive electorate. A viable democracy requires some participatory effort on the part of its citizens. Two-thirds of the voting age population in Colorado has made the effort to register to vote in past general elections.

**AMENDMENT NO. 5 — CONSTITUTIONAL AMENDMENT
INITIATED BY PETITION**

Ballot Title: Shall the Colorado Constitution be amended to provide for the conduct of casino gaming in Pueblo County as of July 1, 1985; to direct appointment of a commission to regulate and license casino gaming and the sale of alcoholic beverages in conjunction therewith, and to control an adjacent recreation area; to direct payment to the commission of license fees and up to ten percent of gross proceeds from casino gaming and to provide, after deduction of administrative and organizational costs from such payment, for appropriation of the balance for public schools and the medically indigent program; and to require the general assembly to enact laws to implement the amendment?

Provisions of the Proposed Constitutional Amendment

Casino gaming, as defined by the amendment, would be restricted to a designated area of Pueblo County. Persons desiring to conduct casino games in Pueblo County would be licensed by a proposed five-member casino control commission. The commission would be appointed by the governor with the approval of the Colorado senate. Qualifications, compensation, terms of office, and the powers and duties of the commission would be established by the general assembly.

The amendment sets forth a legal description of land owned by the state to be acquired and controlled by the commission for the purpose of casino gaming, including a separate parcel of land to be set aside for the purpose of family recreation. (The land described is part of the old Pueblo Honor Farm.) If the areas designated in the amendment could not be obtained for the aforementioned purposes, the commission would be directed to acquire other land in Pueblo County through eminent domain proceedings.

Persons applying for a gaming license would pay a fee to cover the costs of processing applications. Casino operators would pay license and renewal fees and a tax which could not exceed 10 percent of casino gross receipts. Revenues received by the commission would be distributed in accordance with the following priorities:

- 1) to pay the administrative expenses of the commission;
- 2) to pay for the operation and development of property under the jurisdiction of the commission;
- 3) to repay the state general fund for monies appropriated for start-up costs of the commission; and
- 4) to remit any balance to the state public school fund and the medically indigent program, 70 percent and 30 percent of said balance respectively.

The distribution of revenue under items (1) and (2) above could be revised by subsequent legislation enacted by the general assembly.

Persons obtaining a gaming license issued by the commission would be eligible to sell malt, vinous, and spirituous liquors for on-premise consumption. The proposed casino control commission would have exclusive authority to promulgate and enforce regulations for the sale of alcoholic beverages in the licensed casinos.

Under the terms of the amendment, "casino gaming" would not include the bingo, lotto, and raffles operated throughout the state by charitable organizations, or games authorized pursuant to the "Colorado Liquor Code," or the state lottery.

Finally, the amendment would charge the general assembly with enacting legislation to implement casino gaming, including the appropriation of funds to cover the organizational expenses of the proposed casino control commission.

Casino Gaming in Pueblo

Comments

The 4,213 acre Pueblo Honor Farm lies northwest of the city of Pueblo, between the city and the community of Pueblo West. The Honor Farm is no longer used for correctional purposes, and most of the buildings are totally dilapidated. The city of Pueblo negotiated a lease with the state of Colorado to utilize the Honor Farm for outdoor recreation. The lease extends through 1994 and the city pays \$1.00 per acre per year for the use of the property.

The city of Pueblo has entered into management agreements with nonprofit corporations to permit the establishment of a nature center and to provide motor sport, equestrian, and other activities. The Audubon Society has restored a few of the old buildings for the nature center. The nature center is excluded from the proposed casino and family recreation site designated in the amendment. Neither the state of Colorado nor the city receives any revenue from the management contracts negotiated by the city. Cancellation of the master lease with the city could result in litigation involving the management agreements.

The amendment would divide the Honor Farm tract roughly in half, with one portion set aside for the casino hotels and parking and related activities, while the remainder would be used for the development of a family recreation site. Both of these areas lie outside of the current service area designated by the city of Pueblo. Since this tract is undeveloped, an entire array of urban facilities, functions, and service would have to be provided, including a water and sewer system, streets and traffic control, solid waste collection and disposal, and fire and police protection. In unincorporated areas, such services normally have been provided by special districts and county government. Since the area would be under the control of a proposed casino control commission, the commission would have to be responsible for development of such facilities and services or could contract for such services with the city of Pueblo and other units of government.

Arguments For

1) The amendment would bring the resources of the state of Colorado and the private sector together in the development of a comprehensive resort complex that would benefit the state by attracting tourists on a year-round basis. This resort complex would utilize casino gaming as the primary attraction but provide multipurpose recreation for family members of all ages. The authorization for casino gaming is essential in order to encourage private investors to provide the capital necessary for development of a multipurpose destination resort.

2) Pueblo and the southern Front Range counties have not shared in the economic and population growth of the Denver Metropolitan Area. While 1982 annual per capita income in the Denver area was \$14,557, the figure for Pueblo County was \$9,821. In most other southern Colorado counties, per capita incomes were below Pueblo's. Unemployment in Pueblo reached 16.6 percent in 1982. For 1983, Pueblo's unemployment dropped but remained in excess of 14 percent, compared to 6.6 percent for the entire state of Colorado. Reno, Nevada, which has a population similar to the city of Pueblo and is isolated from large urban populations, has demonstrated greater economic stability than Pueblo. Reno's casino-based economy generated an average per capita income of \$13,255 in 1982, or 35 percent higher than Pueblo's. Pueblo's economy also would be stimulated by the proposed authorization for casino gaming.

3) A percentage of the gross net proceeds from casino gaming would be made available for elementary and secondary education and the state's medically indigent health care program. The state is now deriving very little revenue from the Honor Farm lease with the city, a little over \$4,000 per year. Not only would the state benefit from a new source of revenue, but the overall economic spinoff from increased tourism would stimulate existing industries in southern Colorado and allow the Pueblo region to make a more effective contribution to the state budget through enhanced sales and income tax revenues.

4) The amendment would limit casino gaming to an area outside the corporate limits of the city of Pueblo and would prohibit casino gaming in other parts of Colorado. By limiting casino gaming to a site owned and regulated by an agency of the state of Colorado, established business and residential communities would not be adversely affected by the encroachment of gambling establishments. Furthermore, there would not be any land speculation involving the location of casinos such as occurred in Atlantic City. Thus, Pueblo residents would not be overly burdened by escalating property values and increases in property taxes. Such changes would only occur as a result of the overall growth of the community.

Casino Gaming in Pueblo

Arguments Against

1) The proposed casino operations would be an attraction for criminal elements. The highly transient populations and large amounts of cash associated with casino gaming would encourage prostitution, drug trafficking, and other criminal activities. Both casinos and businesses providing ancillary services to the casino hotels would be an object for infiltration and takeover by organized crime. Furthermore, the uniform crime statistics prepared by the Federal Bureau of Investigation reveal that casino-based communities have a high violent crime rate. For example, the violent crime rate per 100,000 population in 1982 in Nevada was higher than for the other seven mountain states. Nevada's violent crime index was more than double that for the average of five mountain states with populations most comparable to Nevada — Idaho, Montana, New Mexico, Utah, and Wyoming. Both Arizona and Colorado have substantially higher populations than Nevada, but Nevada's violent crimes per 100,000 were close to 60 percent higher in 1982 than for Arizona and Colorado.

2) Casino gaming would be difficult to control. Major expenditures would be made at state and local levels to regulate the activity. The proposed casino control commission would be responsible for development of the property under its jurisdiction. There is no limit in the amendment as to the financial commitment that could be made by the state legislature and the commission to develop this project. Casino licensees and other interested investors would be concerned with maximizing a return on their investment. For this reason, state officials would be subject to political pressure to ensure the viability of the project. The control of liquor in casinos would be separate from current regulations imposed on all other licensees in the state. Political pressure would be exerted to permit the sale of alcoholic beverages in casinos during hours when other establishments are closed. Casinos operate on a 24-hour per day basis in other states.

3) There is no assurance that casino gaming in Pueblo would generate any revenue for the state of Colorado. The proposal limits the tax rate on gross receipts of casinos but does not establish a minimum tax. Despite the heavy population of eastern seaboard states which help sustain casino gambling in Atlantic City, the annual contribution of these casinos to the New Jersey state budget amounts to only about two to three percent of general fund revenues. The Nevada Gaming Board also reports that two-thirds of the gross gaming revenue in Nevada is generated in Las Vegas. The smaller resort complex of South Lake Tahoe, which would be more comparable to the proposed site, provided only about nine percent of Nevada gaming revenues in 1981 and 1982. Based on the maximum tax on gross receipts permitted by the amendment, state revenues on gaming receipts comparable to the activity in South Lake Tahoe in the early 1980's would range from \$20 to \$25 million dollars annually. Considering the experience of these states, it is likely that very little money would be generated by the proposal for state programs.

4) When casino gaming is introduced into the economic base of a community, it is likely to result in social decay and a deterioration in the quality of life. Casino gaming is the "hardest" form of repetitive gambling and is much more likely to have an injurious effect on the individual and his family than the "softer" forms of gambling now legally authorized in Colorado. In other states, casinos operate 24 hours per day, 365 days per year. This may encourage the compulsive gambler to become so engrossed with gambling that family and personal relationships suffer and earnings, savings, and family resources are lost. In the report, *Gambling in America*, the Commission on the Review of a National Policy Toward Gambling found that there were three times as many probable compulsive gamblers in Nevada than among the population for the nation as a whole.

UNIVERSITY OF DENVER COLLEGE OF LAW LIBRARY