

Amendment 67 Definition of Person and Child

1 **Amendment 67 proposes amending the Colorado Constitution to:**

- 2 ♦ specify that the terms "person" and "child" in the Colorado Criminal
3 Code and the state wrongful death statutes include unborn human
4 beings.

5 **Summary and Analysis**

6 Amendment 67 creates a constitutional provision stating that the terms "person"
7 and "child" in the Colorado Criminal Code and the state wrongful death statutes must
8 include unborn human beings. The measure does not define the term "unborn human
9 beings."

10 **Colorado Criminal Code.** The Colorado Criminal Code contains criminal
11 offenses in state law. It currently defines a "person," when referring to the victim of a
12 homicide, as a human being who had been born and was alive at the time of the
13 criminal act. The code excludes a human embryo, a fetus, and an unborn child at any
14 stage of development prior to live birth from the definition of "person." The Colorado
15 Criminal Code does not uniformly define "child;" the definitions vary based on different
16 offenses.

17 **State wrongful death statutes.** State wrongful death statutes allow surviving
18 spouses, families, and estates to seek compensation for negligent actions resulting in
19 the death of a person. These statutes do not define "person" or "child."

20 **Laws concerning offenses against pregnant women.** Colorado law defines an
21 unlawful termination of a pregnancy as the termination of a pregnancy by any means
22 other than birth or a medical procedure with the woman's consent. Under Colorado
23 law, it is a crime to intentionally, knowingly, or recklessly cause an unlawful
24 termination of a woman's pregnancy, including vehicular unlawful termination of a
25 pregnancy. Unlawful termination of a pregnancy and offenses against a person are
26 categorized in separate sections of the law and may carry different penalties. If a
27 person commits an offense against a pregnant woman that results in the loss of her
28 pregnancy, the offender can be charged with at least two crimes — the offense
29 against the woman and the unlawful termination of the pregnancy. The law exempts
30 pregnant women and health care providers from criminal prosecution for acts related
31 to a woman's pregnancy.

32 Colorado law also allows a woman to seek compensation from any person who
33 intentionally, knowingly, or recklessly causes an unlawful termination of her
34 pregnancy. Colorado law states that a woman is not liable for damages for acts she
35 takes with respect to her own pregnancy, nor is a health care provider for providing
36 services. Additionally, the law excludes a human embryo, fetus, and an unborn child
37 at any stage of development prior to live birth from the definition of "person."

1 **Effect of Amendment 67 on abortion and reproductive health care.** The
2 measure does not specify how its provisions will apply to health care providers or
3 medical procedures. Depending on how the term "unborn human being" is defined or
4 interpreted, the measure may impact the availability of abortions under Colorado law.
5 It may also impact the availability of other medical procedures, devices, and
6 medications, such as certain forms of birth control or in vitro fertilization.

For information on those issue committees that support or oppose the measures on the ballot at the November 4, 2014, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

7 **Arguments For**

8 1) One of government's responsibilities is to protect its citizens from harm.
9 Amendment 67 protects pregnant women and unborn children by making it illegal to
10 kill or otherwise harm an unborn human being and holds perpetrators both criminally
11 and civilly liable. Crimes against unborn human beings should be subject to the same
12 legal penalties as crimes against human beings who have been born. Under
13 Amendment 67, a person who kills an unborn human being could be charged with
14 homicide.

15 2) By including unborn human beings in the definition of "person," the measure
16 may establish the legal foundation to protect the unborn by ending the practice of
17 abortion in Colorado. If the Colorado Constitution recognizes an unborn human being
18 as a person, the measure may allow a district attorney to prosecute abortion as
19 homicide or child abuse and could limit the willingness of health care providers to
20 perform abortions in Colorado.

21 **Arguments Against**

22 1) Amendment 67 is unnecessary and unclear. There are already laws in place
23 to protect pregnant women endangered by the criminal acts of others, while respecting
24 the personal medical decisions of a woman and her health care provider. The term
25 "unborn human being" has no established legal or medical definition in Colorado law,
26 and could apply at the earliest stages of pregnancy. The measure could have far-
27 reaching consequences, including making pregnant women and health care providers
28 criminally and civilly liable for a pregnancy that does not result in a live birth.

31 2) Amendment 67 allows government intrusion into the personal health care
32 decisions of individuals and families and makes no exceptions for the privacy of the
33 doctor-patient relationship. The measure could make abortion a crime, including
34 those for victims of rape or incest. It may prevent doctors, nurses, and pharmacists
35 from providing certain types of medical care to a woman, including some forms of birth

1 control such as emergency contraception and intra-uterine devices, and treatment for
2 miscarriages, tubal pregnancies, cancer, and infertility.

3 **Estimate of Fiscal Impact**

4 Amendment 67 has no immediate impact to state or local government revenues or
5 expenditures. The measure does not require any new action or additional services,
6 nor does it impose any new fines or charges. Depending on how the measure is
7 interpreted and applied by the courts, or whether the state legislature adopts specific
8 legislation, this may result in new criminal offenses and penalties being created or
9 applied in certain situations when a pregnancy is terminated. These potential criminal
10 penalties may increase costs for state and local law enforcement agencies, the courts,
11 and the Department of Corrections for the investigation and incarceration of
12 individuals committing offenses. The potential costs cannot be determined at this time.

Last Draft as Mailed to Interested Parties

Amendment 67 Definition of Person and Child

1 **Amendment 67 proposes amending the Colorado Constitution to:**

- 2 ♦ specify that the terms "person" and "child" in the Colorado Criminal
3 Code and wrongful death statutes include unborn human beings.

4 **Summary and Analysis**

5 Amendment 67 creates a constitutional provision stating that the terms "person"
6 and "child" in the Colorado Criminal Code and the wrongful death statutes must
7 include unborn human beings. The measure does not define the term "unborn human
8 beings."

9 **Colorado Criminal Code.** The Colorado Criminal Code contains criminal
10 offenses in state law. It currently defines a "person," when referring to the victim of a
11 homicide, as a human being who had been born and was alive at the time of the
12 criminal act. The code excludes a human embryo, fetus, and an unborn child at any
13 stage of development prior to live birth from the definition of "person." The Colorado
14 Criminal Code does not uniformly define "child;" the definitions vary based on different
15 offenses.

16 **State wrongful death statutes.** State wrongful death statutes allow surviving
17 spouses, families, and estates to seek compensation for negligent actions resulting in
18 the death of a person. These statutes do not define "person" or "child."

19 **Laws concerning offenses against pregnant women.** Colorado law defines an
20 unlawful termination of a pregnancy as the termination of a pregnancy by any means
21 other than birth or a medical procedure with the woman's consent. Under Colorado
22 law, it is a crime to intentionally, knowingly, or recklessly cause an unlawful termination
23 of a woman's pregnancy, including vehicular unlawful termination of a pregnancy.
24 Unlawful termination of a pregnancy and offenses against a person are categorized in
25 separate sections of the law and may carry different penalties. If a person commits an
26 offense against a pregnant woman that results in the loss of her pregnancy, the
27 offender can be charged with at least two crimes — the offense against the woman
28 and the unlawful termination of the pregnancy. The law exempts pregnant women and
29 health care providers acting with the consent of a pregnant woman from criminal
30 prosecution for acts related to a woman's pregnancy.

31 Colorado law also allows a woman to seek compensation from any person who
32 intentionally, knowingly, or recklessly causes an unlawful termination of her
33 pregnancy. Colorado law states that a woman is not liable for damages for acts she
34 takes with respect to her own pregnancy, nor is a health care provider for providing
35 services. Additionally, the law excludes a human embryo, fetus, and an unborn child
36 at any stage of development prior to live birth from the definition of "person."

Last Draft as Mailed to Interested Parties

1 **Effect of Amendment 67 on abortion and reproductive health care.** The
2 measure does not specify how its provisions will apply to health care providers or
3 medical procedures. Depending on how the term "unborn human being" is defined or
4 interpreted, the measure may impact the availability of abortions under Colorado law.
5 It may also impact the availability of other medical procedures, devices, and
6 medications, such as certain forms of birth control or in vitro fertilization.

*For information on those issue committees that support or oppose the
measures on the ballot at the November 4, 2014, election, go to the
Colorado Secretary of State's elections center web site hyperlink for ballot
and initiative information:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

7 **Arguments For**

8 1) One of government's responsibilities is to protect its citizens from harm.
9 Amendment 67 protects pregnant women and unborn children by making it illegal to
10 kill or otherwise harm an unborn human being and holds perpetrators both criminally
11 and civilly liable. Crimes against unborn human beings should be subject to the same
12 legal penalties as crimes against human beings who have been born. Under
13 Amendment 67, a person who kills an unborn human being could be charged with
14 homicide.

15 2) By including unborn human beings in the definition of "person," the measure
16 may establish the legal foundation to protect the unborn by ending the practice of
17 abortion in Colorado. If the Colorado Constitution recognizes an unborn human being
18 as a person, the measure may allow a district attorney to prosecute abortion as
19 homicide or child abuse and could limit the willingness of health care providers to
20 perform abortions in Colorado.
21

22 **Arguments Against**

23 1) Amendment 67 is unnecessary and unclear. There are already laws in place to
24 protect pregnant women endangered by the criminal acts of others, while respecting
25 the personal medical decisions of a woman and her health care provider, and the
26 measure adds unnecessary confusion to this issue. The term "unborn human being"
27 has no established legal or medical definition in Colorado law, and could apply at any
28 stage of pregnancy. The measure could have far-reaching consequences, including
29 making pregnant women and health care providers criminally and civilly liable for a
30 pregnancy that does not result in a live birth.

31 2) Amendment 67 allows government intrusion into the personal health care
32 decisions of individuals and families and makes no exceptions for the privacy of the
33 doctor-patient relationship. The measure could make abortion a crime, including
34 those for victims of rape or incest. It may prevent doctors, nurses, and pharmacists
35 from providing certain types of medical care to a woman, including some forms of birth

Last Draft as Mailed to Interested Parties

1 control such as emergency contraception and intra-uterine devices, and treatment for
2 miscarriages, tubal pregnancies, cancer, and infertility.

3 **Estimate of Fiscal Impact**

4 Amendment 67 has no immediate impact to state or local government revenues or
5 expenditures. The measure does not require any new action or additional services,
6 nor does it impose any new fines or charges. Depending on how the measure is
7 interpreted and applied by the courts, or whether the state legislature adopts specific
8 legislation, this may result in new criminal offenses and penalties being created or
9 applied in certain situations where unborn human beings are harmed. These potential
10 criminal penalties may increase costs for state and local law enforcement agencies,
11 the courts, and the Department of Corrections for the investigation and incarceration
12 of individuals committing offenses. The potential costs cannot be determined at this
13 time.

Last Draft Comments from Interested Parties

Amendment 67 Definition of Person and Child

Drew Hymer, representing Personhood USA as a proponent:

As a preliminary matter, I note that you have accepted virtually none of our many suggested edits to your second draft, despite our attempts to explain in great detail the reasons for the suggested changes and how your draft was either unclear or unfair. I hope that you will at least allow us some freedom to revise the Arguments For section, since we are the proponents of the Amendment, I have some additional suggestions to make regarding that section, in order to make it more responsive to the Arguments Against and to assist the voters.

The Arguments Against already claims that A67 will make abortion illegal and it makes that claim in merely seven words. Why should the Arguments For waste 70 words on the point? A67 proponents should be allowed to state the point just as briefly in order to have more space for truly defending the amendment.

Recommendation: **Remove second paragraph (page 2, lines 16-21).**

Recommendation: Page 2, line 13 should read:

“Under Amendment 67 a person who kills, whether through abortion or another violent criminal act, an unborn human being could be charged with homicide.”

The Arguments Against contains several philosophical claims regarding “personal medical decisions”, “personal health care”, “government intrusion” and “privacy”. The Arguments For should be allowed to address these philosophical claims. Homicide isn’t a personal decision nor is it a private act because there’s a victim. Intervening to prevent homicide is not intrusion.

Recommendation: The second paragraph of the Arguments For should include:

“Harming or killing another human being is not a personal or private decision nor is it health care.”

Recommendation: In order to address the claim regarding “government intrusion”, the second sentence of the Arguments For (page 2, line 8) should read:

“Therefore, the government should intervene to protect people from harm.”

The Arguments Against also contains ambiguous claims regarding “some forms of birth control, such as emergency contraception and intra-uterine devices” and “prevent[ing]... treatment for... infertility”. A67 opponents do not tell the voter that only devices that kill or harm a living human being could possibly be affected by A67. The Arguments For should be allowed to address this ambiguity, and the Council’s refusal to allow the

Last Draft Comments from Interested Parties

Drew Hymer, representing Personhood USA as a proponent: (Cont.)

proponents of A67 to fairly address the Arguments Against is itself unfair both to the proponents and to the citizens who must consider and ultimately decide this matter.

Recommendation: The second paragraph of the Argument For should include:

“Amendment 67 will not affect any birth control devices or infertility treatments that do not harm or kill another living human being.”

The Arguments Against also falsely claims that A67 will prevent “treatment for miscarriages, tubal pregnancies, [and] cancer.” In an earlier response, I explained that the Colorado Criminal Code allows for life saving acts (which includes medical treatment) even when the act results in the death of a person (C.R.S. 18-1-702 – 704). The Council refused to include these proposed amendments. A67 does not in any way change the criminal code’s allowance for life-saving acts such as life-saving medical treatment. The Council’s failure to note this fact is misleading to the voters and unfair to the proponents of A67. The Arguments For should be allowed to counter the lies contained in the Arguments Against:

Recommendation: The second paragraph of the Arguments For should include:

“Amendment 67 continues to allow for life-saving medical treatment, including treatment for miscarriage, tubal pregnancy and cancer.”

In summary, the Arguments For should be allowed to fairly rebut the philosophical, ambiguous and false claims contained in the Arguments Against. How can the voter make an informed decision if both sides are not equally represented? I’ve coalesced my suggested recommendations. The Arguments For should read:

One of government's responsibilities is to protect its citizens. Therefore, the government should intervene to protect its people from harm. Amendment 67 protects pregnant women and unborn children by making it illegal to kill or otherwise harm an unborn human being and holds perpetrators both criminally and civilly liable. Crimes against unborn human beings should be subject to the same legal penalties as crimes against human beings who have been born. Under Amendment 67, a person who kills, whether through abortion or another violent criminal act, an unborn human being could be charged with homicide.

Harming or killing another human being is not a personal or private decision nor is it health care. Amendment 67 will not affect any birth control devices or infertility treatments that do not harm or kill another living human being. Amendment 67 continues to allow for life-saving medical treatment, including treatment for miscarriage, tubal pregnancy and cancer.

Thank you for your consideration,

Drew Hymer
303-456-2800

Last Draft Comments from Interested Parties

Drew Hymer, representing Personhood USA as a proponent: (Cont.)

Mr. Hymer also resubmitted his comments from Draft #2, as follows:

Summary and Analysis

Page 1, lines 5-7 purport to summarize Amendment 67. However, this summary fails to provide any background or context for the Amendment. The Council is required by law to provide the voters “a fair and impartial analysis” of the measure. The Council also seeks “to include any other information that will assist the reader in understanding the purpose and effect of the measure.” (Quoting letter from the Council soliciting comments, dated July 11, 2014). In order to understand the purpose and effect of Amendment 67, a fair and impartial summary of Amendment 67 should include a brief explanation of the background leading up to the Amendment. After all, how can voters reasonably weigh the need for and reasonableness of the Amendment without understanding the context in which it is presented?

Recommendation: Delete existing summary, and replace with the following:

“In the case of *People v. Lage*, 232 P.2d 138 (Colo. App. 2009), a woman 8½ months pregnant was hit head-on by a fleeing felon. An emergency caesarean section was performed, and the child was delivered alive. However, he died one hour and nine minutes later. The defendant was charged with numerous criminal violations, seven of which involved the death of the child. The homicide statutes defined “person” as requiring that the victim be “a human being who had been born alive and was alive at the time of the homicidal act.”

Consequently, the court held that the defendant could not be charged with homicide for the child’s death. One judge noted that this area of the law ‘cries out for new legislation.’

In response, the citizens of Colorado have proposed Amendment 67, which creates a constitutional provision stating that the terms “person” and “child” in the Colorado Criminal Code and the wrongful death statutes must include unborn human beings.”

Colorado Criminal Code

Page 1, lines 9-15 contain a very brief explanation of the current state of the criminal code that leaves something to be desired. Once again, it fails to set forth the context of the Amendment and its role in responding to the legislature’s failure to act in the wake of *People v. Lage*.

Recommendation: Insert the following sentence on line 12 after “criminal act:”

“Although ‘human being’ is not defined in the current homicide statute, either, the court in *People v. Lage* had no trouble discerning its meaning and finding it ‘clear and unambiguous’ and declaring that it ‘could not be any clearer.’” 232 P.2d at 139.

Last Draft Comments from Interested Parties

Drew Hymer, representing Personhood USA as a proponent: (Cont.)

Unlawful Termination of Pregnancy

Page 1, lines 19-21 reflect a clearer and more concise summary of existing Colorado law regarding offenses against women than the first draft. We appreciate the improvement. Nevertheless, we suggest that further revisions are still needed.

Page 1, lines 25-28 is misleading insofar as it speaks of two criminal offenses with which one who commits an offense against a pregnant woman may be charged. The crime of “unlawful termination of a pregnancy” is not classified as a homicide, even though it results in the death of the child in the womb. We therefore suggest a revision to make this point clear.

Recommendation: On line 28, after the end of the sentence regarding the two crimes, add the following:

“Under existing law, the defendant cannot be charged with a homicide, however.”

Page 1, lines 29-30 address Colorado criminal law regarding “Unlawful Termination of Pregnancy” (C.R.S. 18-3.5-101 et seq.). But while the ballot analysis repeatedly (and misleadingly) represents Amendment 67 as vague or ambiguous, it represents the criminal law here as unambiguous when it is not. The analysis states that “the law exempts . . . health care providers **acting with the consent of a pregnant woman** from criminal prosecution for acts related to a woman's pregnancy.” (Analysis at p. 1) (emphasis added). But C.R.S. 18-3.5 appears to exempt health care providers from prosecution even when they act **without** the consent of the pregnant woman:

“Nothing in this article shall permit the prosecution of a person for any act of providing medical, osteopathic, surgical, mental health, dental, nursing, optometric, healing, wellness, or pharmaceutical care; furnishing inpatient or outpatient hospital or clinic services; furnishing telemedicine services; or furnishing any service related to assisted reproduction or genetic testing.”
C.R.S. 18-3.5-102(1).

This exclusion contains no limitations whatsoever; a person who performs a medical procedure that results in the death of the unborn child, with or without the consent of the woman, shall not be prosecuted under this article. Period. While a future court could conceivably interpret this exclusion more narrowly, on its face it does not appear to allow for such narrowing. At the least, then, the ballot summary should mention this problematic language.

In addition, the plain language of the exclusion also seems to mean that such medical providers cannot be held criminally accountable even when they act recklessly or with gross negligence or incompetence, and serious harm to an unborn child results.

Recommendation: Lines 28-30 should be revised as follows: “The law exempts pregnant women and health care providers ~~acting with the consent of a pregnant woman~~ from criminal prosecution for acts, including acts of gross negligence or recklessness, related to a woman's pregnancy.”

Last Draft Comments from Interested Parties

Drew Hymer, representing Personhood USA as a proponent: (Cont.)

Page 1, lines 35-36 correctly state the law, but it may be misinterpreted by the voter in the context in which this appears. It fails to explain the significance of the exclusion.

Recommendation: Delete the existing sentence, and replace it with the following:

“However, because the law explicitly excludes a human embryo, fetus, and an unborn child at any stage of development prior to live birth from the definition of ‘person’, neither the woman nor the health care provider is liable even when their actions result in the death of the child in the womb.”

Effect of Amendment 67 on abortion and reproductive health care

Page 2, lines 1-6 reflect an improvement over the previous draft, but again we suggest it could be improved yet more. In particular, the new draft fails to clarify that the only forms of “medical procedures, devices, and medications” that could be affected by the Amendment are those that would kill or cause great bodily harm to the child in the womb. Additionally, the phrasing of the language (“Depending on how the term ‘unborn human being’ is defined or interpreted” (p.2 lines 3-4)) again improperly implies some sort of ambiguity or vagueness. But that is not true.

It is uniformly recognized under Colorado law that when a phrase is not defined by the law or statute, courts “must assume” that it was intended that the “phrase be given its usual and ordinary meaning.” *Enright v. City of Colorado Springs*, 716 P.2d 148 (Colo.App. 1985) (citing *Stanske v. Wazee Electric Co.*, 690 P.2d 1291 (Colo.App.1984)). See also *Carlson v. Ferris*, 85 P.3d 504 (Colo. 2003) (courts must interpret laws to give effect to the drafter’s intent, which “is best achieved by looking at the language of the statute and giving the words their plain and ordinary meaning”). Indeed, the very case giving rise to the need for this Amendment in the first place, *People v. Lage*, recognized this basic proposition: “To determine the legislature’s intent, we first look to the plain language of the statute.” 232 P.2d 138, 140 (citing *C.S. v. People*, 83 P.3d 627, 634 (Colo. 2004)).

In addition, the construction for the Civil Penalties for Unlawful Termination of Pregnancy Act (HB14-1388), referenced several times in the draft, specifically states that the Act does not “confer the status of person upon a human embryo, fetus, **or unborn child at any stage of development prior to live birth**” while the legislative declaration recognizes this formulation to mean “a human being at any time prior to birth”. (Emphasis added.) In exactly the same way, HB 13-1154, which became C.R.S. 18-3.5, also recognizes the phrase “a human embryo, fetus, **or unborn child at any stage of development prior to live birth.**” to mean “**a human being at any time prior to live birth.**” (Emphasis added.) The meaning of “unborn human being,” then, could not be clearer.

Last Draft Comments from Interested Parties

Drew Hymer, representing Personhood USA as a proponent: (Cont.)

Recommendation: Delete the existing paragraph, and insert the following in its place:

“The measure does not specify precisely how its provisions will apply to health care providers and medical procedures. Because the measure will protect children in the womb, it may impact the availability of medical procedures, devices, and medications, such as certain forms of birth control or in vitro fertilization, but only to the extent they operate to cause harm or death to an unborn child. Those procedures, devices and medications, including birth control, that do not harm an unborn child will not be affected by the Amendment.”

Medical Treatment

Page 3, lines 1-2 falsely claims that A67 “may prevent... treatment for miscarriages, tubal pregnancies, [and] cancer.” Lifesaving medical treatment, even when it results in the death of a person (which A67 recognizes includes an unborn baby), is not a criminal offense. This is made plain in C.R.S. 18-1-702 (1) and C.R.S. 18-1-704 (2).

C.R.S. 18-1-702

(1) Unless inconsistent with other provisions of sections 18-1-703 to 18-1-707, defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is **justifiable and not criminal when it is necessary as an emergency measure to avoid an imminent public or private injury** which is about to occur by reason of a situation occasioned or developed through no conduct of the actor, and which is of sufficient gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue. (Emphasis added)

C.R.S. 18-1-704

(2) **Deadly physical force may be used** only if a person reasonably believes a lesser degree of force is inadequate and: (a) The actor has reasonable ground to believe, and does believe, that **he or another person is in imminent danger of being killed or of receiving great bodily injury** (Emphasis added)

To emphasize the point, Amendment 67 does not alter the Colorado Criminal Code which allows that “conduct... is justifiable and not criminal when it is necessary to avoid an imminent... private injury....” Going further, “Deadly physical force may be used... [if a] person is in imminent danger of being killed or of receiving great bodily injury.”

Therefore, Amendment 67 will not disturb the availability of any life-saving medical treatment for pregnant mothers, including treatment for tubal pregnancy, miscarriage or cancer.

Last Draft Comments from Interested Parties

Drew Hymer, representing Personhood USA as a proponent: (Cont.)

Recommendation: The false claims regarding treatment for tubal pregnancy, miscarriage and cancer should be removed.

Pregnancy that does not result in a live birth

Page 2, lines 29-30 falsely claim: “The measure could have far-reaching consequences, including making pregnant women and health care providers criminally and civilly liable for a pregnancy that does not result in a live birth.” This claim appears calculated to instill fear in the voters in order to keep them from voting for the Amendment. In fact, however, miscarriages are very common and do not provide probable cause or even reasonable suspicion of a crime or civil tort. Furthermore, before the Supreme Court’s decision in *Roe v. Wade*, women and health care providers were never wrongly charged or sued over miscarriages. Passage of Amendment 67 would result in a similar situation to the one that prevailed before *Roe v. Wade* was decided.

It is also worth repeating that life-saving medical treatment, even when it results in the death of the child (not “a live birth”), is specifically protected under the above quoted C.R.S. 18-1-702 - C.R.S. 18-1-704. This false claim should therefore be removed.

Certain Forms of Birth Control

Page 2, line 6 and page 2, line 35 are ambiguous because they say that “certain forms of birth control”, and “some forms of birth control” will be banned without specifically identifying which particular forms of birth control will be banned. Without such specificity, the voter won’t be able to determine if he supports the measure, and may be deceptively led to conclude that *all* forms of birth control may be banned. The ambiguity biases a voter against the measure. In fact, the only forms of birth control that could possibly be affected are those that actually cause the death of a living human being. Therefore, page 2, line 6 should say “abortion-causing birth control” instead of “birth control.” Similarly, page 2, line 35 should say “abortion-causing forms”.

Emergency “Contraception”

Page 3, line 1 falsely claims that A67 would prohibit or limit access to “emergency contraception”. The word “contraception” indicates that the drug or device stops conception; that is, it stops a new human from coming into existence. A67 does not affect true contraception in the least, so the statement is misleading.

There may be some drugs or devices that act as contraceptives but may also cause abortions. It is the abortion-causing property of these drugs or devices that A67 would prohibit. In light of this fact, the phrase “emergency contraception” in page 3, line 1 should be changed to “abortion-causing pills” or perhaps “abortion-causing emergency contraception” (although technically such a phrase is self-contradictory).

Last Draft Comments from Interested Parties

Drew Hymer, representing Personhood USA as a proponent: (Cont.)

Arguments For

Page 2, line 8 correctly states that “One of government's responsibilities is to protect its citizens from harm.” To clarify how Amendment 67 furthers that laudable goal, additional revision is needed.

Page 2, lines 9-14 do not adequately describe to the voter the difference between the current statutes and A67. One difference is that A67 allows mothers civil and criminal remedy when a health care provider, through gross incompetence, kills or harms her unborn baby.

Recommendation: Arguments For (page 2, lines 8-21) should be replaced with the following:

“1) Harming or killing a human being is not a personal, private, or medical decision nor is it health care. The government should intervene to protect people from harm. Therefore, Amendment 67 protects pregnant women and unborn children by making it illegal to kill or otherwise harm an unborn child and holds perpetrators both criminally and civilly liable for homicide or assault. Crimes against unborn human beings should be subject to the same legal penalties as crimes against human beings who have been born. Under Amendment 67, a person who kills an unborn human being could be charged with homicide. Also unlike current law, Amendment 67 allows a woman civil and criminal recourse when a health care provider recklessly or negligently kills her unborn child.

2) Amendment 67 allows for life-saving medical treatment for any life-threatening condition, including tubal pregnancy, miscarriage and cancer. It does not affect commonly used forms of birth control, emergency contraception or infertility treatments that do not harm unborn children.”

Fofi Mendez, representing NO on Personhood as an opponent:

August 12, 2014

Dave DeNovellis
Amendment 67
Team Lead
Colorado Legislative Council
dave.denovellis@state.co.us

Dear Mr. DeNovellis,

Please accept the following comments on the third draft of the Legislative Council Ballot Analysis for Amendment 67. These comments have been compiled from a number of organizations working with the NO on Personhood Issue Committee, a

Last Draft Comments from Interested Parties

Fofi Mendez, representing NO on Personhood as an opponent: (Cont.)

registered issue committee doing business as Vote No 67 Campaign, which opposes this initiative.

The format we have chosen to submit our comments include identification of the “issue,” “rationale for change,” and suggested language.”

Additionally, attached you will find a redline document where the organizations collectively have used the “review” tools in Microsoft Word to identify our recommended changes.

Issue 1: General references to additional legislation being implemented post adoption of Amendment 67

The Vote No 67 Campaign disagrees with any assertion that *any* legislative action would occur in the wake of the adoption of Amendment 67, which makes abortion a felony. Defining the term “person” to include “unborn human being” in the Colorado Criminal Code *means* an abortion is a homicide offense as defined in the Colorado Revised Statutes. The language that appears throughout the Blue Book stating the legislature would have to further define “person,” “child,” or “unborn human being,” is inaccurate and misleading. Once Amendment 67 passes, there would be nothing more the General Assembly would be required to do.

Issue 2: Effect of Amendment 67 on Abortion and Reproductive Health Care

Rationale for Change:

Defining the term “person” for purposes of the Colorado Criminal Code to include fertilized eggs *means* that an abortion is a homicide offense as defined in Title 18, Article 3. There is nothing more the General Assembly would be required to do.

Suggested Language:

Page 2, lines 1 to 6

Change to the following:

Effect of Amendment 67 on abortion and reproductive health care. The measure does not specify how its provisions will apply to health care providers or medical procedures. The measure would ban abortions under Colorado law. It would also impact the availability of other medical procedures, devices, and medications, such as certain forms of birth control and in vitro fertilization.

Issue 3: Arguments For

Rationale for Change:

The proponents have made it clear their intent is the criminalize all abortions therefore the word “could” should be changed to “would.”

Suggested Language:

Page 2 line 17:

By including unborn human beings in the definition of “person,” the measure would establish the legal foundation to protect the unborn by ending the practice of abortion in Colorado.

Last Draft Comments from Interested Parties

Fofi Mendez, representing NO on Personhood as an opponent: (Cont.)

Issue 4: Arguments Against

Rationale for Change:

The phrase in 1), “and the measure adds unnecessary confusion to this issue” makes the sentence read poorly and does not add to the substance or clarity of the discussion. Additionally, in paragraph 1), the statement “could apply at any stage of pregnancy” would be stronger – and more accurate – to state “and would apply at the earliest stages of pregnancy.”

Suggested Language:

Page 2, Lines 23 to 30,

1) Amendment 67 is unnecessary and unclear. There are already laws in place to protect pregnant women endangered by the criminal acts of others, while respecting the personal medical decisions of a woman and her health care provider. The term "unborn human being" has no established legal or medical definition in Colorado law, and would apply at the earliest stages of pregnancy. The measure would have far-reaching consequences, including making pregnant women and health care providers criminals and responsible for any damages for any pregnancy that does not result in a live birth.

Issue 5: Arguments Against

Rationale for Change:

The ballot wording is clear that Amendment 67 would bestow legal rights to the earliest stage of pregnancy. There is no doubt that the result would be a criminal ban on abortions

Suggested Language:

On Page 2, Line 33, replace the sentence, “The measure could make abortion a crime, including those for victims of rape or incest” to read, “The measure criminalizes all abortions performed at any stage of pregnancy, even those for victims of rape or incest.”

Issue 6: Estimate of Fiscal Impact

Rationale for Change:

By redefining the crime of murder to include all abortion procedures, Amendment 67 subjects the state to additional investigations, prosecutions, and incarceration. In addition, there would be costs related to the Office of the State Attorney General, which would be required to defend this constitutional provision in the likelihood of a legal challenge.

Suggested Language:

On Page 3, replace Lines 4 to 14 with the following:

Estimate of Fiscal Impact

By redefining the crime of murder to include all abortion procedures, Amendment 67 would result in additional investigations, prosecutions, and incarcerations. The additional criminal penalties will increase costs for state and local law enforcement agencies, the courts, and the Department of Corrections for the investigation and incarceration of individuals committing new offenses

Last Draft Comments from Interested Parties

Fofi Mendez, representing NO on Personhood as an opponent: (Cont.)

under Amendment 67. Women and health care professionals charged with crimes stemming from any pregnancy that does not result in a live birth will incur costs for their own defense. In addition, the state would incur costs by the Attorney General, who would have to defend this constitutional provision. The costs to the State of Colorado, which include state and county courts, state and local law enforcement, the Attorney General, and the Department of Corrections, cannot be determined at this time.

Sincerely,

Fofi Mendez
Campaign Director
NO on Personhood
P.O. Box 181941
Denver, CO 80218

Ms. Mendez also submitted a redline version of the analysis that included her suggestions for the draft changes (Attachment A).

Amendment 67

Definition of Person and Child

- 1 Amendment 67 proposes amending the Colorado Constitution to:
- 2 . specify that the terms "person" and "child" in the Colorado Criminal
- 3 Code and wrongful death statutes include unborn human beings.

4 Summary and Analysis

- 5 __Amendment 67 creates a constitutional provision stating that the terms "person"
- 6 and "child" in the Colorado Criminal Code and the wrongful death statutes must
- 7 include unborn human beings. The measure does not define the term "unborn human
- 8 beings."

- 9 __Colorado Criminal Code. The Colorado Criminal Code contains criminal
- 10 offenses in state law. It currently defines a "person," when referring to the victim of a
- 11 homicide, as a human being who had been born and was alive at the time of the
- 12 criminal act. The code excludes a human embryo, fetus, and an unborn child at any
- 13 stage of development prior to live birth from the definition of "person." The Colorado
- 14 Criminal Code does not uniformly define "child;" the definitions vary based on different
- 15 offenses.

- 16 __State wrongful death statutes. State wrongful death statutes allow surviving
- 17 spouses, families, and estates to seek compensation for negligent actions resulting in
- 18 the death of a person. These statutes do not define "person" or "child."

- 19 __Laws concerning offenses against pregnant women. Colorado law defines an
- 20 unlawful termination of a pregnancy as the termination of a pregnancy by any means
- 21 other than birth or a medical procedure with the woman's consent. Under Colorado
- 22 law, it is a crime to intentionally, knowingly, or recklessly cause an unlawful
- 23 termination of a woman's pregnancy, including vehicular unlawful termination of a
- 24 pregnancy. Unlawful termination of a pregnancy and offenses against a person are
- 25 categorized in separate sections of the law and may carry different penalties. If a
- 26 person commits an offense against a pregnant woman that results in the loss of her
- 27 pregnancy, the offender can be charged with at least two crimes — the offense
- 28 against the woman and the unlawful termination of the pregnancy. The law exempts
- 29 pregnant women and health care providers acting with the consent of a pregnant
- 30 woman from criminal prosecution for acts related to a woman's pregnancy.
- 31 Colorado law also allows a woman to seek compensation from any person who
- 32 intentionally, knowingly, or recklessly causes an unlawful termination of her
- 33 pregnancy. Colorado law states that a woman is not liable for damages for acts she
- 34 takes with respect to her own pregnancy, nor is a health care provider for providing
- 35 services. Additionally, the law excludes a human embryo, fetus, and an unborn child
- 36 at any stage of development prior to live birth from the definition of "person."

3rd Draft

1 __ Effect of Amendment 67 on abortion and reproductive health care. The
2 measure does not specify how its provisions will apply to health care providers or
3 medical procedures. Depending on how the term "unborn human being" is defined or
4 interpreted, The measure may would ban abortions under Colorado law.
5 It may would also impact the availability of other medical procedures, devices, and
6 medications, such as certain forms of birth control, and in vitro fertilization.

For information on those issue committees that support or oppose the measures on the ballot at the November 4, 2014, election, go to the Colorado Secretary of State's elections center [web site](http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html) hyperlink for ballot and initiative information:
<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

7 Arguments For

8 __1) One of government's responsibilities is to protect its citizens from harm.
9 Amendment 67 protects pregnant women and unborn children by making it illegal to
10 kill or otherwise harm an unborn human being and holds perpetrators both criminally
11 and civilly liable. Crimes against unborn human beings should be subject to the same
12 legal penalties as crimes against human beings who have been born. Under
13 Amendment 67, a person who kills an unborn human being could be charged with
14 homicide.

15
16 __2) By including unborn human beings in the definition of "person," the measure
17 may would establish the legal foundation to protect the unborn by ending the practice of
18 abortion in Colorado. If the Colorado Constitution recognizes an unborn human being
19 as a person, the measure may allow a district attorney to prosecute abortion as
20 homicide or child abuse and could limit the willingness of health care providers to
21 perform abortions in Colorado.

22 Arguments Against

23 __1) Amendment 67 is unnecessary and unclear. There are already laws in place
24 to protect pregnant women endangered by the criminal acts of others, while respecting
25 the personal medical decisions of a woman and her health care provider, and the
26 measure adds unnecessary confusion to this issue. The term "unborn human being"
27 has no established legal or medical definition in Colorado law, and would apply at any
28 stage of pregnancy, the earliest stages of pregnancy. The measure would have far-reaching
consequences, including
29 making pregnant women and health care providers criminals and responsible for any
damages for any
30 pregnancy that does not result in a live birth.

31 __2) Amendment 67 allows government intrusion into the personal health care
32 decisions of individuals and families and makes no exceptions for the privacy of the
33 doctor-patient relationship. The measure could make abortion a crime, including
34 those for victims of rape or incest. The measure criminalizes all abortions performed at any
stage of pregnancy, even those for victims of rape or incest or when the life of the mother is
endangered. It may prevent doctors, nurses, and pharmacists
35 from providing certain types of medical care to a woman, including some forms of birth

– 21 control such as emergency contraception and intra-uterine devices, and treatment for
2 miscarriages, tubal pregnancies, cancer, and infertility.

Fofi Mendez 8/12/14 5:09 PM
Formatted: Strikethrough, Highlight

Cara DeGette 8/12/14 4:32 PM

Deleted: the

Fofi Mendez 8/12/14 5:09 PM

Deleted: impact the availability of

Fofi Mendez 8/12/14 5:09 PM

Formatted: Strikethrough, Highlight

Fofi Mendez 8/12/14 5:12 PM

Formatted: Strikethrough, Highlight

Fofi Mendez 8/12/14 5:10 PM

Deleted: or

Fofi Mendez 8/12/14 5:12 PM

Formatted: Strikethrough, Highlight

Cara DeGette 8/12/14 1:37 PM

Deleted: ;

Fofi Mendez 8/12/14 5:14 PM

Formatted: Strikethrough, Highlight

Cara DeGette 8/12/14 7:26 PM

Deleted: c

Fofi Mendez 8/12/14 5:14 PM

Formatted: Strikethrough, Highlight

Fofi Mendez 8/12/14 5:16 PM

Formatted: Strikethrough, Highlight

Cara DeGette 8/12/14 1:40 PM

Deleted: ;

Fofi Mendez 8/12/14 5:16 PM

Deleted: could

Fofi Mendez 8/12/14 5:17 PM

Deleted: criminally

Fofi Mendez 8/12/14 5:17 PM

Deleted: civilly liable

Fofi Mendez 8/12/14 5:19 PM

Formatted: Strikethrough, Highlight

Fofi Mendez 8/12/14 5:22 PM

Deleted: -

... [1]

3 Estimate of Fiscal Impact

4. ~~By redefining the crime of murder to include all abortion procedures, Amendment 67 would result in additional investigations, prosecutions, and incarcerations,~~

5. ~~Amendment 67 has no immediate impact to state or local government revenues or~~

6 expenditures. The measure does not require any new action or additional services,

7 nor does it impose any new fines or charges. Depending on how the measure is

8 interpreted and applied by the courts, or whether the state legislature adopts specific

9 legislation, this may result in new criminal offenses and penalties being created or

10 applied in certain situations where unborn human beings are harmed. ~~The additional~~

11 potential

12 criminal penalties ~~may will~~ increase costs for state and local law enforcement agencies,

13 the courts, and the Department of Corrections for the investigation and incarceration

14 of individuals committing new offenses under Amendment 67. Women and health care

professionals charged with crimes stemming from any pregnancy that does not result in a

live birth will incur cost for their own defense. In addition, the state would incur costs by the

Attorney General, who would have to defend this constitutional provision. ~~The costs to the State~~

of Colorado, which include state and county courts, state and local law enforcement, the

Attorney General, and the Department of Corrections, cannot be determined at this

time.

Fofi Mendez 8/12/14 5:34 PM

Deleted: costs

Fofi Mendez 8/12/14 5:29 PM

Formatted: Strikethrough, Highlight

Fofi Mendez 8/12/14 5:29 PM

Formatted: Strikethrough, Highlight

Fofi Mendez 8/12/14 5:34 PM

Deleted: These

Fofi Mendez 8/12/14 5:29 PM

Formatted: Strikethrough, Highlight

Fofi Mendez 8/12/14 5:29 PM

Formatted: Strikethrough, Highlight

Cara DeGette 8/12/14 3:27 PM

Deleted:

Fofi Mendez 8/12/14 5:53 PM

Deleted: potential

Fofi Mendez 8/12/14 5:53 PM

Deleted: ing

**DEFINITION OF PERSON AND CHILD
AMENDMENT 67
CONTACT LIST**

Richard Brown
9032 East Amherst Drive
Denver, CO 80231
Phone: 303-695-6388
Email: dickscuba@gmail.com

Leslie Chomic
League of Women Voters
Email: colosongbird@gmail.com

Athena Dalton
Policy Director
Senate Republicans
Phone: 303-866-4867
Email: athena.dalton@state.co.us

Michael Dohr
Office of Legislative Legal Services
Room 091 State Capitol
Denver, CO 80203
Email: michael.dohr@state.co.us

Gualberto Garcia Jones
Email: seville1978@gmail.com

Drew Hymer
Personhood USA
341 Quebec St., Suite 1000
Denver, CO 80207
Email: Drew@personhoodusa.com

Peggy Loonan
Executive Director
Life and Liberty for Women
P.O. Box 271778
Fort Collins, CO 80527
Phone: 970-416-6872
Email: info@lifeandlibertyforwomen.org

Fofi Mendez
Mendez Consulting
1120 Lincoln Ave., Suite 804
Denver, CO 80203
Phone: (303) 863-7777
Cell Phone: (720) 530-6914
Email: fofi@mendezconsultinginc.com

Michael J. Norton
Alliance Defending Freedom
7951 E. Maplewood Ave., Suite 100
Greenwood Village, CO 80111
Phone: 720-689-2410
Cell Phone: 303-818-6811
Email: mjnorton@alliancedefendingfreedom.org

Lisa Radelet
Boulder Valley Women's Health Center
2855 Valmont Road
Boulder, CO 80301
Phone: 303-440-9320 ext. 19
Email: lisa@bvwhc.org

Senator Pat Steadman
1257 Corona Street
Denver, CO 80218
Email: pat.steadman.senate@state.co.us

Heather Surovik
8795 Ralston Rd., Suite 1
Arvada, CO 80002
Phone: 303-456-2800
Email: keith@personhoodusa.com

Amendment 67
Definition of Person and Child

1 **Ballot Title:** Shall there be an amendment to the Colorado constitution protecting pregnant
2 women and unborn children by defining "person" and "child" in the Colorado criminal code and the
3 Colorado wrongful death act to include unborn human beings?

4 *Be it Enacted by the People of the State of Colorado:*

5 In the constitution of the state of Colorado, Article XVIII, **add** (17) as follows:

6 **Section 17. Protection of Pregnant Mothers and Unborn Children**

7 **(1) Purpose and findings.** IN 2009, JUDGES OF THE COLORADO STATE COURT OF APPEALS IN
8 PEOPLE V. LAGE 232 p.3d 138 (COLO. APP. 2009) CONCLUDED THAT:

9 (a) "THERE IS NO DEFINITION OF 'PERSON' OR 'CHILD' OF GENERAL APPLICABILITY IN THE CRIMINAL
10 CODE" (MAJORITY OPINION BY JUDGE ROY); AND

11 (b) "THIS IS AN AREA THAT CRIES OUT FOR NEW LEGISLATION. OUR GENERAL ASSEMBLY, UNLIKE
12 CONGRESS AND MOST STATE LEGISLATURES, HAS PRECLUDED HOMICIDE PROSECUTIONS FOR KILLING THE
13 UNBORN" (JUDGE CONNELLY CONCURRING IN PART AND DISSENTING IN PART).

14 **(2) Definitions.** IN THE INTEREST OF THE PROTECTION OF PREGNANT MOTHERS AND THEIR
15 UNBORN CHILDREN FROM CRIMINAL OFFENSES AND NEGLIGENT AND WRONGFUL ACTS, THE WORDS
16 "PERSON" AND "CHILD" IN THE COLORADO CRIMINAL CODE AND THE COLORADO WRONGFUL DEATH ACT
17 MUST INCLUDE UNBORN HUMAN BEINGS.

18 **(3) Self-executing, and severability provision.** ALL PROVISIONS OF THIS SECTION ARE
19 SELF-EXECUTING AND ARE SEVERABLE.

20 **(4) Effective date.** ALL PROVISIONS OF THIS SECTION SHALL BECOME EFFECTIVE UPON OFFICIAL
21 DECLARATION OF THE VOTE HEREON BY PROCLAMATION OF THE GOVERNOR PURSUANT TO SECTION 1(4)
22 OF ARTICLE V.

Amendment 68 Horse Racetrack Casino Gambling

1 **Amendment 68 proposes amending the Colorado Constitution to:**

- 2 ◆ permit casino gambling at horse racetracks in Arapahoe, Mesa, and
3 Pueblo counties, limited to one racetrack in each county; and
- 4 ◆ distribute new casino gambling tax revenue to K-12 public schools.

5 **Summary and Analysis**

6 ***Horse racetrack casino gambling.*** Amendment 68 expands legal gambling in
7 the state by permitting limited-stakes casino gambling at horse racetracks in
8 Arapahoe, Mesa, and Pueblo counties. One racetrack in each county may offer
9 casino gambling, which may include slot machines, the card games of blackjack and
10 poker, and the games of roulette and craps. Current laws that regulate horse racing
11 and betting on horse races are unchanged by the measure.

12 Before obtaining a limited gaming license, each racetrack must host 30 or more
13 live horse race days per year for at least five consecutive years and be licensed to
14 allow betting on horse races. Within the first 30 days of operating casino gambling,
15 each horse racetrack must pay a \$25 million one-time fee to the state. A local
16 government may impose a one-time impact fee and ongoing annual impact fees; the
17 fee amount must be negotiated and be reasonably related to the local government's
18 expenses that occur as a result of allowing casino gambling at the racetrack.

19 Arapahoe County has one existing horse racetrack, Arapahoe Park, which could
20 be licensed for casino gambling in 2015. Because Mesa and Pueblo counties do not
21 currently have an operational horse racetrack, casino gambling in those counties
22 could not begin until at least 2019.

23 Once approved, each racetrack is authorized to have 2,500 slot machines, or more
24 if approved by the Limited Gaming Control Commission in the Colorado Department of
25 Revenue. No restrictions are placed on the number of tables for card games, roulette,
26 or craps. Hours of operation are limited to 8:00 a.m. to 2:00 a.m. the following day,
27 unless the local government in which the racetrack is located approves extended
28 hours. Only adults 21 years of age and older may gamble, and no single wager may
29 exceed \$100.

30 ***K-12 public school funding.*** Once a new horse racetrack casino opens,
31 Amendment 68 will generate new funding for public schools. In addition to the
32 one-time \$25 million fee, each racetrack must pay 34 percent of its adjusted gross
33 proceeds (AGP) to the state. AGP includes all revenue from casino gambling at the
34 racetrack less the amount paid to winners. New gambling tax revenue, and the
35 \$25 million one-time fee, are deposited in the newly created K-12 Education Fund and
36 distributed on a per-pupil basis to public school districts and to a state agency that

1 authorizes public charter schools. Funding from the new gambling tax revenue must
2 be used to address local education issues and may not replace existing funding for
3 public schools.

4 Because of its location in the Denver metropolitan area, a new casino at Arapahoe
5 Park could provide up to \$114.5 million each year for public schools, or about
6 \$132 per student beginning in budget year 2016-17. For the 2014-15 school year,
7 public schools received about \$7,021 per student. If new racetrack casinos open in
8 Mesa and Pueblo counties, public schools could receive additional funding in the
9 future. State and local tax revenue from casino gambling at horse racetracks is
10 exempt from constitutional limits on government revenue and spending.

11 **Current casino gambling in Colorado.** Gambling in Colorado may only take
12 place in areas that have received constitutional authority through a statewide vote,
13 except for casinos on Indian reservations, which are not regulated by the state.
14 In 1990, voters statewide approved limited-stakes gambling in Central City and
15 Black Hawk in Gilpin County, and Cripple Creek in Teller County.

16 In 1992, the state's voters approved a referred constitutional amendment requiring
17 a local vote in favor of gambling in any city, town, or county granted constitutional
18 authority for gambling in a statewide vote. In 2008, state and local voters approved an
19 expansion of limited-stakes gambling in Gilpin and Teller counties, including higher bet
20 limits and extended hours of operation. Amendment 68 authorizes the same type of
21 expanded gambling at horse racetracks in three counties, without requiring a local
22 vote to affirm that authority.

23 **State tax revenue from current casino gambling.** Tax revenue from gambling
24 in Central City, Black Hawk, and Cripple Creek, after administrative expenses are
25 paid, totaled \$93.9 million in state budget year 2013-14. This revenue is deposited in
26 the Limited Gaming Fund and distributed each year to community colleges, counties,
27 cities, historic preservation, economic development programs, and other state
28 purposes. Taxes and license fees paid by existing casinos cover the cost incurred by
29 the state to regulate gambling in the mountain communities.

*For information on those issue committees that support or oppose the
measures on the ballot at the November 4, 2014, election, go to the
Colorado Secretary of State's elections center web site hyperlink for ballot
and initiative information:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

1 **Arguments For**

2 1) Amendment 68 provides additional money for public schools without raising
3 income, property, or sales taxes on individuals or businesses. Investing in public
4 education is an important way to ensure a strong Colorado economy capable of
5 competing in today's global marketplace. The recent recession required public
6 schools to reduce programs and cut budgets, and most public schools received less
7 state funding than in previous years. Amendment 68 increases the state's investment
8 in public education by providing up to \$114.5 million annually to school districts and
9 charter schools beginning in 2016, and diversifying the sources of funding for public
10 schools.

11 2) This measure will add jobs and increase economic activity in host communities.
12 In the short term, improving the Arapahoe Park racetrack will create new construction
13 jobs. Once a horse racetrack casino is operational, more permanent jobs will put
14 additional money into the regional economy. For example, the U.S. Census Bureau
15 reports that the average casino employed about 200 people in 2012. In the longer
16 run, new gambling opportunities may create additional jobs in other hospitality sectors,
17 such as hotels and restaurants, and help maximize tourism spending in the state.

18 **Arguments Against**

19 1) The measure directly benefits only a single commercial interest for the next
20 five years, undermines the economies in existing gambling communities, and puts
21 dedicated tax revenue for important state programs in jeopardy. Until 2019, only
22 Arapahoe Park can receive a new limited gaming license. Existing legal gambling in
23 Black Hawk, Central City, and Cripple Creek depends on customers from the Front
24 Range metropolitan areas. When mountain communities lose customers to the new
25 casino in Arapahoe County, these mountain communities lose economic activity and
26 pay less in gambling taxes. This existing tax revenue helps support historic
27 preservation, community colleges, tourism promotion, economic development, and
28 other state and local services. Amendment 68 places this funding at risk.

29 2) Amendment 68 does not give local voters the option to decide if gambling
30 should be authorized in their communities. In 1992, voters passed a constitutional
31 requirement that local communities conduct a separate election. Large commercial
32 attractions such as casino gambling can have negative impacts that increase pressure
33 on governmental services in both the host and surrounding communities. These
34 services include law enforcement, court services, traffic control, and road repair. In
35 addition, voter approval will not be required for the casino to expand its hours of
36 operation. This measure may burden local communities with negative consequences
37 without providing those communities the opportunity to decide the issue in a separate
38 election.

1 **Estimate of Fiscal Impact**

2 **State revenue.** Amendment 68 increases state revenue to the K-12 Education
 3 Fund by up to \$81.9 million in budget year 2015-16, and up to \$114.5 million in budget
 4 year 2016-17, the first full budget year of implementation. The amendment requires
 5 that all new gambling tax revenue be allocated to K-12 public schools. Based on state
 6 projections of student enrollment, new revenue will equate to about \$96 more funding
 7 per student for the 2015-16 school year, and about \$132 more funding per student
 8 beginning with the 2016-17 school year.

9 New gambling tax revenue will be partially offset by reduced revenue from existing
 10 gambling taxes. Only Arapahoe Park in Arapahoe County can be authorized to
 11 conduct casino gambling in the next five years. Arapahoe Park is expected to attract
 12 some gamblers who would otherwise gamble at casinos in Black Hawk, Central City,
 13 and Cripple Creek. For this reason, gambling tax revenue to the Limited Gaming
 14 Fund will decrease. Reduced revenue to the fund decreases state allocations to
 15 community colleges, counties and cities in which gambling is currently authorized,
 16 historic preservation, economic development programs, and the state General Fund.
 17 Table 1 shows the estimated maximum net change in tax revenue as a result of
 18 Amendment 68.

19 **Table 1**
 20 **Estimated Maximum Tax Revenue Change Under Amendment 68***

	Budget Year 2015-16	Budget Year 2016-17
K-12 Education Fund	\$81.9 million	\$114.5 million
Limited Gaming Fund	(\$14.6 million)	(\$29.5 million)
Total (Net) State Revenue	\$67.2 million	\$85.0 million

26 * This summary shows changes from current law under the measure for each budget year.
 27 Parentheses indicate a decrease in funds.

28 **State spending.** In addition to allocating new gambling tax revenue to public
 29 schools, Amendment 68 also increases state spending to regulate gambling at
 30 Arapahoe Park, and to perform audits of the K-12 Education Fund. Increased state
 31 spending is estimated at about \$800,000 per year beginning in budget year 2015-16.
 32 The state's cost to regulate existing casino gambling was about \$11 million in budget
 33 year 2013-14. The state's cost to regulate casino gambling at horse racetracks will be
 34 covered either with new fees imposed on racetrack owners by the Limited Gaming
 35 Control Commission or from other state funds.

1 **State Spending and Tax Increases**

2 The state constitution requires that the following fiscal information be provided
3 when a tax increase question is on the ballot:

- 4 ♦ the estimated or actual state spending under the constitutional spending
5 limit for the current year and each of the past four years with the overall
6 percentage and dollar change; and
- 7 ♦ for the first full year of the proposed tax increase, an estimate of the
8 maximum dollar amount of the tax increase and of the amount of
9 revenue the state may keep under the constitutional spending limit
10 without the increase.

11 Table 2 shows the dollar amount of state spending under the constitutional
12 spending limit.

13 **Table 2**
14 **State Spending**

	Actual FY 2010-11*	Actual FY 2011-12	Actual FY 2012-13	Estimated FY 2013-14	Estimated FY 2014-15
State Spending	\$9.42 billion	\$10.27 billion	\$11.11 billion	\$11.48 billion	\$12.08 billion
Four-Year Dollar Change in State Spending: \$2.66 billion					
Four-Year Percent Change in State Spending: 28.2 percent					

20 *FY = fiscal year. The state's fiscal (or budget) year runs from July through June.

21 The numbers in Table 2 show state spending from 2010 through 2014 for
22 programs that were subject to the constitutional spending limit during those years.
23 However, the constitution allows a program that operates similarly to a private
24 business to be exempt from the limit if it meets certain conditions. Because the
25 exempt status of some programs has changed during the last five years, the numbers
26 in Table 2 are not directly comparable to each other.

27 Table 3 shows the revenue expected from the new tax, and state fiscal year
28 spending without the tax for FY 2016-17, the first full fiscal year for which the increase
29 would be in place.

30 **Table 3**
31 **Estimated State Fiscal Year Spending**
32 **and the Proposed Casino Gambling Tax**

	FY 2016-17 Estimate
State Spending Without the New Tax	\$XX.XX billion
Revenue from the New Tax	\$114.5 million

Last Draft as Mailed to Interested Parties

Amendment #68 Horse Racetrack Casino Gambling

1 **Amendment 68 proposes amending the Colorado Constitution to:**

- 2 ♦ permit casino gambling at horse racetracks in Arapahoe, Mesa, and
3 Pueblo counties, limited to one racetrack in each county; and
- 4 ♦ distribute new casino gambling tax revenue to K-12 public schools.

5 **Summary and Analysis**

6 ***Horse racetrack casino gambling.*** Amendment 68 expands legal gambling in
7 the state by permitting limited-stakes casino gambling at horse racetracks in
8 Arapahoe, Mesa, and Pueblo counties. One racetrack in each county may offer
9 casino gambling, which may include slot machines, the card games of blackjack and
10 poker, and the games of roulette and craps. Current laws that regulate horse racing
11 and betting on horse races are unchanged by the measure.

12 Before obtaining a limited gaming license, each racetrack must host 30 or more
13 live horse race days per year for at least five consecutive years and be licensed to
14 allow betting on horse races. Within the first 30 days of operating casino gambling,
15 each horse racetrack must pay a \$25 million one-time fee to the state. A local
16 government may impose a one-time impact fee and ongoing annual impact fees; the
17 fee amount must be negotiated and be reasonably related to the local government's
18 expenses that occur as a result of allowing casino gambling at the racetrack.

19 Arapahoe County has one existing horse racetrack, Arapahoe Park, which could
20 be licensed for casino gambling in 2015. Because Mesa and Pueblo counties do not
21 currently have an operational horse racetrack, casino gambling in those counties
22 could not begin until at least 2019.

23 Once approved, each racetrack may have up to 2,500 slot machines, or more if
24 allowed by the Limited Gaming Control Commission in the Colorado Department of
25 Revenue. No restrictions are placed on the number of tables for card games, roulette,
26 or craps. Hours of operation are limited to 8:00 a.m. to 2:00 a.m. the following day,
27 unless the local government in which the racetrack is located approves extended
28 hours. Only adults 21 years of age and older may gamble, and no single wager may
29 exceed \$100.

30 ***K-12 public school funding.*** Once a new horse racetrack casino opens,
31 Amendment 68 will generate new funding for public schools. In addition to the
32 one-time \$25 million fee, each racetrack must pay 34 percent of its adjusted gross
33 proceeds (AGP) to the state. AGP includes all revenue from casino gambling at the
34 racetrack less the amount paid to winners. New gambling tax revenue, and the
35 \$25 million one-time fee, are deposited in the newly created K-12 Education Fund and
36 distributed on a per-pupil basis to public school districts and to a state agency that

Last Draft as Mailed to Interested Parties

1 authorizes public charter schools. Funding from the new gambling tax revenue must
2 be used to address local education issues and may not replace existing funding for
3 public schools.

4 Because of its location in the Denver metropolitan area, a new casino at Arapahoe
5 Park could provide up to \$114.5 million each year for public schools, or about \$133
6 per student beginning in budget year 2016-17. For the 2014-15 school year, public
7 schools received about \$7,021 per student. If new racetrack casinos open in Mesa
8 and Pueblo Counties, public schools could receive additional funding in the future.
9 State and local tax revenue from casino gambling at horse racetracks is exempt from
10 constitutional limits on government revenue and spending.

11 **Current casino gambling in Colorado.** Gambling in Colorado may only take
12 place in areas that have received constitutional authority through a statewide vote,
13 except for casinos on Indian reservations, which are not regulated by the state. In
14 1990, voters statewide approved limited-stakes gambling in Central City and Black
15 Hawk in Gilpin County, and Cripple Creek in Teller County.

16 In 1992, the state's voters approved a referred constitutional amendment requiring
17 a local vote in favor of gambling in any city, town, or county granted constitutional
18 authority for gambling in a statewide vote. In 2008, state and local voters approved an
19 expansion of limited-stakes gambling in Gilpin and Teller counties, including higher bet
20 limits and extended hours of operation. Amendment 68 authorizes the same type of
21 expanded gambling at horse racetracks in three counties, without requiring a local
22 vote to affirm that authority.

23 **State tax revenue from current casino gambling.** Tax revenue from gambling
24 in Central City, Black Hawk, and Cripple Creek totaled \$92.7 million in state budget
25 year 2012-13. This revenue is deposited in the Limited Gaming Fund and distributed
26 each year to community colleges, counties, cities, historic preservation, economic
27 development programs, and other state purposes. Taxes and license fees paid by
28 existing casinos cover the cost incurred by the state to regulate gambling in the
29 mountain communities.

*For information on those issue committees that support or oppose the
measures on the ballot at the November 4, 2014, election, go to the
Colorado Secretary of State's elections center web site hyperlink for ballot
and initiative information:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

Last Draft as Mailed to Interested Parties

1 **Arguments For**

2 1) Amendment 68 provides additional money for public schools without raising
3 income, property, or sales taxes on individuals or businesses. Investing in public
4 education is an important way to ensure a strong Colorado economy capable of
5 competing in today's global marketplace. The recent recession required public
6 schools to reduce programs and cut budgets, and most public schools received less
7 state funding than in previous years. Amendment 68 increases the state's investment
8 in public education by providing up to \$114.5 million annually to school districts and
9 charter schools beginning in 2016, and diversifying the sources of funding for public
10 schools.

11 2) This measure will add jobs and increase economic activity in host communities.
12 In the short term, improving the Arapahoe Park racetrack will create new construction
13 jobs. Once a horse racetrack casino is operational, more permanent jobs will put
14 additional money into the regional economy. For example, the U.S. Census Bureau
15 reports that the average casino employed about 200 people in 2012. In the longer
16 run, new gambling opportunities may create additional jobs in other hospitality sectors,
17 such as hotels and restaurants, and help maximize tourism spending in the state.

18 **Arguments Against**

19 1) The measure directly benefits only a single commercial interest for the next
20 five years, undermines the economies in existing gambling communities, and puts
21 dedicated tax revenue for important state programs in jeopardy. Until 2019, only
22 Arapahoe Park can receive a new limited gaming license. Existing legal gambling in
23 Black Hawk, Central City, and Cripple Creek depends on customers from the Front
24 Range metropolitan areas. When mountain communities lose customers to the new
25 casino in Arapahoe County, these mountain communities lose economic activity and
26 pay less in gambling taxes. This existing tax revenue helps support historic
27 preservation, community colleges, tourism promotion, economic development, and
28 other state and local services. Amendment 68 places this funding at risk.

29 2) Amendment 68 does not give local voters the option to decide if gambling
30 should be authorized in their communities. In 1992, voters passed a constitutional
31 requirement that local communities conduct a separate election. Large commercial
32 attractions such as casino gambling can have negative impacts that increase pressure
33 on governmental services in both the host and surrounding communities. These
34 services include law enforcement, court services, traffic control, and road repair. In
35 addition, voter approval will not be required for the casino to expand its hours of
36 operation. This measure may burden local communities with negative consequences
37 without providing those communities the opportunity to decide the issue in a separate
38 election.

Last Draft as Mailed to Interested Parties

1 Estimate of Fiscal Impact

2 **State revenue.** Amendment 68 increases state revenue to the K-12 Education
3 Fund by up to \$80 million in budget year 2015-16, and up to \$114.5 million in budget
4 year 2016-17, the first full budget year of implementation. The measure requires that
5 all new gambling tax revenue be allocated to K-12 public schools. Based on state
6 projections of student enrollment, new revenue will equate to about \$94 more funding
7 per student for the 2015-16 school year, and about \$133 more funding per student
8 beginning with the 2016-17 school year.

9 New gambling tax revenue will be partially offset by reduced revenue from existing
10 gambling taxes. Only Arapahoe Park in Arapahoe County can be authorized to
11 conduct casino gambling in the next five years. Arapahoe Park is expected to attract
12 some gamblers who would otherwise gamble at casinos in Black Hawk, Central City,
13 and Cripple Creek. For this reason, gambling tax revenue to the Limited Gaming
14 Fund will decrease. Reduced revenue to the fund decreases state allocations to
15 community colleges, counties and cities in which gambling is currently authorized,
16 historic preservation, economic development programs, and the state General Fund.
17 Table 1 shows the estimated maximum net change in tax revenue as a result of
18 Amendment 68.

19 **Table 1**
20 **Estimated Maximum Tax Revenue Change Under Amendment 68***

	Budget Year 2015-16	Budget Year 2016-17
K-12 Education Fund	\$80.2 million	\$114.5 million
Limited Gaming Fund	(\$16.4 million)	(\$32.7 million)
Total (Net) State Revenue	\$63.8 million	\$81.8 million

21
22
23
24
25
26 * This summary shows changes from current law under the measure for each budget year. Parentheses
27 indicate a decrease in funds.

28 **State spending.** In addition to allocating new gambling tax revenue to public
29 schools, Amendment 68 also increases state spending to regulate gambling at
30 Arapahoe Park, and to perform audits of the K-12 Education Fund. Increased state
31 spending is estimated at about \$800,000 per year beginning in budget year 2015-16.
32 The state's cost to regulate existing casino gambling was about \$11 million in budget
33 year 2013-14. The state's cost to regulate casino gambling at horse racetracks could
34 be covered with either existing state funds or from new fees imposed on racetrack
35 owners by the Limited Gaming Control Commission.

Last Draft as Mailed to Interested Parties

1 State Spending and Tax Increases

2 The state constitution requires that the following fiscal information be provided
3 when a tax increase question is on the ballot:

- 4 ♦ the estimated or actual state spending under the constitutional spending
5 limit for the current year and each of the past four years with the overall
6 percentage and dollar change; and
- 7 ♦ for the first full year of the proposed tax increase, an estimate of the
8 maximum dollar amount of the tax increase and of the amount of
9 revenue the state may keep under the constitutional spending limit
10 without the increase.

11 Table 2 shows the dollar amount of state spending under the constitutional
12 spending limit.

13 **Table 2**
14 **State Spending**

	Actual FY 2010-11*	Actual FY 2011-12	Actual FY 2012-13	Estimated FY 2013-14	Estimated FY 2014-15
State	\$9.42	\$10.27	\$11.11	\$11.48	\$12.08
Four-Year Dollar Change in State Spending: \$2.66 billion					
Four-Year Percent Change in State Spending: 28.2 percent					

15
16
17
18
19
20 *FY = fiscal year. The state's fiscal (or budget) year runs from July through June.

21 The numbers in Table 2 show state spending from 2010 through 2014 for
22 programs that were subject to the constitutional spending limit during those years.
23 However, the constitution allows a program that operates similarly to a private
24 business to be exempt from the limit if it meets certain conditions. Because the
25 exempt status of some programs has changed during the last five years, the numbers
26 in Table 2 are not directly comparable to each other.

27 Table 3 shows the revenue expected from the increased income tax rate; state
28 fiscal year spending without these taxes for FY 2016-17, the first full fiscal year for
29 which the increase would be in place; and the sum of the two.

30 **Table 3**
31 **Estimated State Fiscal Year Spending**
32 **and the Proposed Casino Gambling Tax**

	FY 2016-17 Estimate
State Spending Without the New	\$XX.XX billion
Revenue from the New Taxes	\$114.5 million

Last Draft Comments from Interested Parties

Amendment 68 Horse Racetrack Casino Gambling

Katy Atkinson, representing Don't Turn Racetracks into Casinos:

All,

Please forgive my tardiness in getting this note to you about the final draft of the Amendment 68 analysis in the 2014 Voter Guide. As you probably assumed, Don't Turn Racetracks Into Casinos, the opposition issue committee, has no suggested changes. We sincerely appreciate the effort you've put into developing a fair analysis. Naturally, we would have written it a little differently, but we think the final draft is balanced and will be helpful to voters.

Thanks again for your patience and hard work.

Best,

Katy Atkinson

Dick Brown, representing himself:

I do not have any comments or suggestions for this draft.

Dick Brown

David Blake, representing the Colorado Department of Law

Hi Juanita

Just a couple of quick comments. If I get anything else I will send it along. At lines 33-35, the analysis states, "The state's cost to regulate casino gambling at horse racetracks could be covered with either existing state funds or from new fees imposed on racetrack owners by the Limited Gaming Control Commission." It is not clear that the existing state funds are General Funds. The estimated cost of regulating the racetrack casino is \$800,000 and we don't think it is likely (or even reasonable) to assume the Gaming Commission could or would impose a license fee on one entity that could cover that amount, so the only realistic source of funds is the General Fund. Existing state funds does not clearly reflect that point.

At lines 23-25, the analysis states, "Once approved, each racetrack may have up to 2,500 slot machines, or more if allowed by the Limited Gaming Control Commission." What the initiative actually says is that the track is authorized to have the greater of 2,500 slot machines or a number requested by the track and determined by the Gaming Commission to maximize revenues to the K-12 fund. So that is essentially an unlimited number subject to approval or really a minimum of 2,500. Thus the language may have up to 2,500 I don't think conveys what the language actually says.

David C. Blake

Deputy Attorney General For Legal Policy and Government Relations

Last Draft Comments from Interested Parties

Shannon Haltiwanger, representing History Colorado:

See Attachment A

David Porter, representing the Colorado Department of Revenue:

Hello,

Thanks for the work you have done preparing the blue book analysis, it does a great job communicating the amendment and it's implications. Thank you also for including the Department in identifying the impact and reviewing your narrative. Although the Department does not have any concerns about the language, there were two minor considerations that came up in our final review of the document:

Page 1, lines 23-25: The current draft may lead the reader to think that the 2,500 limit is a fairly firm cap. The ballot language discusses additional machines being authorized "to maximize revenue to the K-12 education fund." Operationally, this may be a fairly easy target to reach - the racetrack will ask for more machines if they anticipate greater revenue - resulting in casinos that are larger than the reader anticipates. The following modification helps the reader understand the approval criteria:

Once approved, each racetrack may have up to 2,500 slot machines, or more if requested by the racetrack and determined to maximize K-12 Education fund revenue by the Limited Gaming Control Commission.

Page 4, line 34: The state spending is identified as being either "... existing state funds or from new fees..." To keep the reader from misinterpreting that there is already funding set aside for this purpose, we request removal of the word "existing."

Feel free to contact me if you would like to discuss these further.

Greg Romberg, representing Arapaho County Commissioners:

Thank you for the opportunity to comment on the 3rd draft of the Blue Book on Amendment 68. I am submitting these comments and suggestions on behalf of the Board of County Commissioners for Arapahoe County. If Amendment 68 passes, the only horse racetrack which can take advantage of the provisions of Amendment 68 for the first five years after passage is in unincorporated Arapahoe County. For that reason, the Commissioners are especially aware of the specific provisions concerning impact fees and respectfully requests that the following amendment to the 3rd draft be incorporated into the final draft of the Blue Book.

Page 2, after line 22, insert the following:

"Similarly, under current law, local governments are authorized to assess impact fees on businesses to cover costs. Amendment 68 requires the impact fee be negotiated between the local jurisdiction and the horse racetrack."

Last Draft Comments from Interested Parties

Page 3, after line 36, insert the following

", including being required to subsidize the cost to localities if sufficient impact fees are not successfully negotiated,"

Greg Romberg, representing Arapaho County Commissioners (cont):

Thank you for your consideration of this amendment.

The Commissioners also offer an amendment to lines 21 and 22 of page 2 that they believe simplifies the text. The suggestion is to change the clause that currently reads "without requiring a local vote to affirm that authority." to "without a local vote."

Thank you. If I can answer any questions or provide any additional information, please let me know.

August 12, 2014

Mr. Mike Mauer
Director of Research
Colorado Legislative Council
200 East Colfax Avenue
Denver, Colorado 80203

RE: Preparation of the Ballot Information Booklet

Dear Mr. Mauer:

Thank you for including History Colorado in the public process of the ballot information booklet regarding Amendment 68. We are requesting the following be changed in the Blue Book descriptions.

Overview of Effects on History Colorado and the State Historical Fund

The estimated limiting gaming revenue to the state in FY2013-14 is \$107.1 million. Of this amount, the State Historical Fund received \$23.3 million to fund educational programs, grants, and to offset Certificate of Participation (COP) payments for the History Colorado Center. If approved, Amendment 68 will dilute limited gaming in existing markets, the effect of which will directly reduce the redistribution of revenue to the current gaming cities and revenue available to meet the operations of History Colorado and others. For History Colorado, the impact of a 10% decline in available funds would equate to approximately an \$1,800,000 reduction in gaming tax revenue. This funding supports History Colorado's operations throughout the state, new History Colorado Center's COP (debt) bond commitments, and the statewide preservation grant program. Without a supplemental appropriation from other state resources to make up for any shortfall resulting from the passage of Amendment 68, a reduction of this magnitude would cause significant cuts to its statewide operations of museums, which affects the economies of eight small communities that have state monuments and the entire state in terms of the historic preservation grant program. Amendment 68 would affect History Colorado's business model, its museums, and the diversity of services it provides to the public. Although History Colorado's long term business model seeks to expand its revenue diversity, this will take several years to accomplish. Until then, the agency relies primarily on gaming tax revenue and Amendment 68 is a serious threat to its sustainability. This has an economic impact to all Colorado counties, and rural communities will be affected disproportionately, since funding in these locations generally comprises a greater percentage of their limited annual resources.

If Amendment 68 is approved, it will not only affect History Colorado's operations, but will also dilute a huge opportunity for economic development in all 64 counties. For example, currently:

- More than \$24 million from the State Historical Fund is directed towards active projects in rural communities in Colorado. These projects have served as an economic lifeline for many of these communities by employing local contractors, architects, engineers, and suppliers to complete the rehabilitation of historic buildings. The loss of this grant money will negatively impact these small struggling communities.

- State Historical Fund grant money is often used to rehabilitate historic buildings for reuse. Their new purposes fill voids in communities and spur economic activity that didn't formerly exist. The loss of limited gaming funds will eliminate a tool that Colorado communities utilize for economic development.
- Limited gaming revenue is not only a lifeline for rural Colorado communities but is also a benefit to all of Colorado's cities and towns regardless of size. Urban areas such as Denver and Pueblo have had tremendous opportunities through leveraging funds to match State Historical Fund grants.

History of Limited Gaming Funds in Colorado

Gaming revenue in Colorado has not proven to be a stable source of annual funds. Depending on economic recession or growth, gaming revenues come into the state at varying levels. For example, according to the June 2009 Colorado Legislative Council revenue forecast, limited gaming revenues declined by 3.6% in FY2007-08 and an additional decrease of 13.7% occurred in FY2008-09. The passage of Amendment 68 and further expansion of gaming in Colorado will result in a decrease of current limited gaming funds allocated to Amendment 50 recipients.

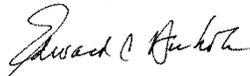
Amendment 50 distributions to community colleges and the State Historical Fund failed to meet predicted funding models upon which the initiative was based. Gross gaming tax revenue collected in the Limited Gaming Fund during the fiscal year ending June 30, 2014 increased slightly; however, the net final distribution continues to trend lower than distributions in prior years. Administrative costs that are imposed prior to distribution of gaming revenue continue to increase, eroding net funding available to History Colorado and other recipients.

Conclusion

The passage of Amendment 68 will destabilize the existing market, greatly impacting Colorado's current gaming destination communities. Further, it will reduce support to those communities, and erodes the original intent of the Constitutional Amendment to support stewardship of the state's rich cultural heritage. The gaming industry has struggled to rebound since the 2008 recession and the smoking ban in casinos enacted by the General Assembly. It further faltered in the fall of 2013 as floods impacted mountain communities and road access to casinos in Gilpin County. In the future, it will likely be impacted by other market changes as well.

We appreciate you taking the time to research both sides of Amendment 68 for the ballot information booklet, and the opportunity to illustrate how the creation of a new gaming revenue fund could jeopardize the critical state programs that are already using the existing gaming revenues and that benefit all of Colorado.

Sincerely,



Edward C. Nichols
President and CEO

CC: Steve W. Turner, AIA, Vice President of Preservation
Joseph Bell, Vice President of Finance

AMENDMENT 68
HORSE RACETRACK CASINO GAMBLING
CONTACT LIST

Katy Atkinson
Katy Atkinson and Associates
110 16th St.
Denver, CO 80202
Phone: 303-861-4828
Email: katyatkinson@aol.com

Joseph Bell
History Colorado
Email: joseph.bell@state.co.us

David Blake
Colorado Attorney General's Office
1525 Sherman St.
Denver, CO 80203
Phone: 303-866-4500
Email: david.blake@state.co.us

Richard Brown
9032 East Amherst Drive
Denver, CO 80231
Phone: 303-695-6388
Email: dickscuba@gmail.com

Brenda Davis
Director of Administration
Colorado Division of Gaming
17301 W. Colfax Ave., Suite 135
Golden, CO 80401
Phone: 303-205-1338
Email: brenda.davis@state.co.us

Dan Hartman
Division of Racing
1881 Pierce St., Suite 108
Lakewood, CO 80214
Phone: 303-205-2903
Email: daniel.hartman@state.co.us

Ron Kammerzell, Director
Division of Gaming
1881 Pierce St., Suite 112
Lakewood, CO 80214
Email: ron.kammerzell@state.co.us

Roger Baker, County Manager
Gilpin County
P.O. Box 366
Central City, CO 80427
Phone: 303-582-5214
Email: rbaker@co.gilpin.co.us

Rhonda Bentz
Colorado Community College System
9101 E. Lowry Blvd.
Denver, CO 80230
Phone: (303) 595-1641
Email: rhonda.bentz@cccs.edu

Lori Bosanko
Arapahoe County
Email: lbosanko@arapahoegov.com

Athena Dalton
Policy Director
Senate Republicans
Phone: 303-866-4867
Email: athena.dalton@state.co.us

Duane Gall
Office of Legislative Legal Services
Room 091 State Capitol
Denver, CO 80203
Email: duane.gall@state.co.us

Bill Hobbs
1745 Krameria St.
Denver, CO 80220
Email: bill.hobbs@me.com

Lino Lipinsky
McKenna Long & Aldridge
1400 Wewatta St., Suite 700
Denver, CO 80202
Phone: 303-634-4336
Email: llipinsky@mckennialong.com

AMENDMENT 68
HORSE RACETRACK CASINO GAMBLING
CONTACT LIST

Shayne Madsen
Jackson Kelly, PLLC
1099 18th Street, Suite 2150
Denver, CO 80202
Phone: 303-390-0012
Email: smadsen@jacksonkelly.com

Laura Manning
Director - Colorado Division of Gaming
Colorado Department of Revenue
17301 W. Colfax, Suite 135
Golden, CO 80401
Phone: 303-205-1316
Email: laura.manning@state.co.us

Mary Marchun
Capstone Group
1576 Sherman St., Suite 300
Denver, CO 80203
Phone: 303-860-0555
Email: mmarchun@capstonegroupllc.com

Jery Payne
Office of Legislative Legal Services
Room 091 State Capitol
Denver, CO 80203
Email: jery.payne@state.co.us

David Porter
Fiscal Note Coordinator
Colorado Department of Revenue
1375 Sherman St., #424
Denver, CO 80203
Phone: 303-866-3187
Email: david.porter@state.co.us

Rick Reiter
Reiter & Associates
P.O. Box 18747
Denver, CO 80218
Phone: 303-377-5724
Email: rick@reiter5280.com

Greg Romberg
Email: gregromberg@comcast.net

Sue Spriggs, Fiscal Note Analyst
Colorado Department of Revenue
1375 Sherman St., #403
Denver, CO 80203
Phone: 303-866-3089
Email: susan.spriggs@state.co.us

Christine Staberg
Capstone Group
1576 Sherman St., Suite 300
Denver, CO 80203
Phone: 303-860-0555
Email: cstaberg@capstonegroupllc.com

Senator Pat Steadman
1257 Corona Street
Denver, CO 80218
Email:
pat.steadman.senate@state.co.us

Jane Urschel
Colorado Association of School Boards
1200 Grant Street
Denver, CO 80203
Phone: 303-832-1000
Email: jurschel@casb.org

Jeannie Vanderburg
Capstone Group
1576 Sherman St., Suite 300
Denver, CO 80203
Phone: 303-860-0555
Cell Phone: 303-249-8150
Email:
jvanderburg@capstonegroupllc.com

AMENDMENT 68
HORSE RACETRACK CASINO GAMBLING
CONTACT LIST

Jill Vaughan
Enforcement Division
Colorado Department of Revenue
1881 Pierce St., Room 112
Lakewood, CO 80214
Phone: 303-205-5929
Email: jill.vaughan@state.co.us

Karen Wick
Colorado Education Association
1500 Grant Street
Denver, CO 80203
Phone: 303-837-1500
Email: kwick@coloradoea.org

Dan Williams
Colorado Horse and Dog Racing Association
1700 Lincoln St., Suite 2545
Denver, CO 80203
Phone: 720-323-3288
Email: spurcon@msn.com

Saskia Young
Legislative Liaison
Colorado Department of Revenue
1375 Sherman St., #408
Denver, CO 80203
Phone: 303-551-2879
Email: saskia.young@state.co.us

Harry Zeid
Email: harryzeid@hotmail.com

Amendment 68
Horse Racetrack Casino Gambling

1 **Ballot Title:** SHALL STATE TAXES BE INCREASED \$114,500,000 ANNUALLY IN THE FIRST FULL FISCAL YEAR, AND
2 BY SUCH AMOUNTS THAT ARE RAISED THEREAFTER, BY IMPOSING A NEW TAX ON AUTHORIZED HORSE
3 RACETRACKS' ADJUSTED GROSS PROCEEDS FROM LIMITED GAMING TO INCREASE STATEWIDE FUNDING FOR K-12
4 EDUCATION, AND, IN CONNECTION THEREWITH, AMENDING THE COLORADO CONSTITUTION TO PERMIT LIMITED
5 GAMING IN ADDITION TO PRE-EXISTING PARI-MUTUEL WAGERING AT ONE QUALIFIED HORSE RACETRACK IN EACH OF
6 THE COUNTIES OF ARAPAHOE, MESA, AND PUEBLO; AUTHORIZING HOST COMMUNITIES TO IMPOSE IMPACT FEES ON
7 HORSE RACETRACKS AUTHORIZED TO CONDUCT LIMITED GAMING; ALLOWING ALL RESULTING REVENUE TO BE
8 COLLECTED AND SPENT NOTWITHSTANDING ANY LIMITATIONS PROVIDED BY LAW; AND ALLOCATING THE RESULTING
9 TAX REVENUES TO A FUND TO BE DISTRIBUTED TO SCHOOL DISTRICTS AND THE CHARTER SCHOOL INSTITUTE FOR
10 K-12 EDUCATION?

11 *Be it Enacted by the People of the State of Colorado:*

12 **SECTION 1.** In the constitution of the state of Colorado, **add** section 17 to article XVIII as follows:

13 **Section 17. K-12 education fund.** (1) THE K-12 EDUCATION FUND IS HEREBY ESTABLISHED TO
14 IMPROVE THE EDUCATION OF CHILDREN IN COLORADO PUBLIC SCHOOLS BY PROVIDING ADDITIONAL REVENUE TO
15 ADDRESS LOCAL NEEDS, INCLUDING REDUCING CLASS SIZES, ACQUIRING TECHNOLOGY FOR TEACHERS AND
16 STUDENTS, ENHANCING SCHOOL SAFETY AND SECURITY, AND IMPROVING SCHOOL FACILITIES.

17 (2)(a) THE K-12 EDUCATION FUND CONSISTS OF THE MONEYS AS PROVIDED IN SUBSECTION (3) OF THIS
18 SECTION. THE STATE TREASURER SHALL CREDIT TO THE K-12 EDUCATION FUND ALL INTEREST AND INCOME
19 DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE K-12 EDUCATION FUND.

20 (b) THE STATE TREASURER SHALL ANNUALLY DISTRIBUTE THE MONEYS IN THE K-12 EDUCATION FUND ON
21 A PER-PUPIL BASIS TO EACH SCHOOL DISTRICT AND THE STATE CHARTER SCHOOL INSTITUTE, OR SUCCESSOR
22 AGENCY. THE PER-PUPIL AMOUNT IS DETERMINED BY DIVIDING THE TOTAL AMOUNT TO BE DISTRIBUTED BY THE
23 STATEWIDE PUBLIC SCHOOL ENROLLMENT. THE AMOUNT DISTRIBUTED TO EACH SCHOOL DISTRICT IS THE
24 PER-PUPIL AMOUNT MULTIPLIED BY THE SCHOOL DISTRICT'S PUPIL ENROLLMENT, AND THE AMOUNT DISTRIBUTED
25 TO THE STATE CHARTER SCHOOL INSTITUTE, OR SUCCESSOR AGENCY, IS THE PER-PUPIL AMOUNT MULTIPLIED BY
26 THE NUMBER OF PUPILS ENROLLED AT INSTITUTE CHARTER SCHOOLS.

27 (c) MONEYS DISTRIBUTED TO THE SCHOOL DISTRICTS AND THE STATE CHARTER SCHOOL INSTITUTE, OR
28 SUCCESSOR AGENCY, UNDER THIS SUBSECTION (2) ARE IN ADDITION TO ANY OTHER MONEYS APPROPRIATED FOR
29 DISTRIBUTION TO SCHOOL DISTRICTS OR THE CHARTER SCHOOL INSTITUTE OR OTHERWISE ALLOCATED TO SCHOOL
30 DISTRICTS OR THE CHARTER SCHOOL INSTITUTE. NO SCHOOL DISTRICT OR INSTITUTE CHARTER SCHOOL IS
31 REQUIRED TO USE MONEY DISTRIBUTED UNDER THIS SUBSECTION (2) AS A CONTRIBUTION TO ANY FUNDING
32 FORMULA CONTAINED IN LAW.

33 (d) EACH SCHOOL DISTRICT AND EACH INSTITUTE CHARTER SCHOOL SHALL USE THE MONEYS RECEIVED
34 FROM THE K-12 EDUCATION FUND TO IMPROVE THE EDUCATION OF CHILDREN IN COLORADO PUBLIC SCHOOLS BY
35 ADDRESSING LOCAL NEEDS, INCLUDING REDUCING CLASS SIZES, ACQUIRING TECHNOLOGY FOR TEACHERS AND
36 STUDENTS, ENHANCING SCHOOL SAFETY AND SECURITY, AND IMPROVING SCHOOL FACILITIES.

37 (e) THE STATE AUDITOR SHALL CONDUCT OR DIRECT A FINANCIAL AUDIT OF THE K-12 EDUCATION FUND
38 AT LEAST ANNUALLY, AND SHALL SUBMIT A REPORT OF THE FINANCIAL AUDIT TO THE LEGISLATIVE AUDIT

1 COMMITTEE.

2 (3)(a) NOTWITHSTANDING ANY OTHER LAW OR CONSTITUTIONAL PROVISIONS TO THE CONTRARY, THE
3 COMMISSION SHALL EXPAND LIMITED GAMING IN THE STATE OF COLORADO BY IMPLEMENTING HORSE RACETRACK
4 LIMITED GAMING, AS SET FORTH IN THIS SECTION.

5 (b) IN ORDER TO CONDUCT HORSE RACETRACK LIMITED GAMING, IN ADDITION TO ANY APPLICABLE
6 LICENSE FEES, A HORSE RACETRACK LICENSED TO CONDUCT LIMITED GAMING MUST:

7 (I) WITHIN THE FIRST THIRTY DAYS OF OPERATING HORSE RACETRACK LIMITED GAMING, MAKE A SINGLE
8 PAYMENT OF TWENTY-FIVE MILLION DOLLARS TO THE STATE TREASURER FOR DEPOSIT INTO THE K-12 EDUCATION
9 FUND; AND

10 (II) BEGINNING WITH THE FIRST STATE FISCAL YEAR IN WHICH A HORSE RACETRACK THAT IS AUTHORIZED
11 TO CONDUCT HORSE RACETRACK LIMITED GAMING GENERATES ADJUSTED GROSS PROCEEDS FROM HORSE
12 RACETRACK LIMITED GAMING, PAY TO THE STATE TREASURER THIRTY-FOUR PERCENT OF THE HORSE RACETRACK'S
13 ADJUSTED GROSS PROCEEDS OF HORSE RACETRACK LIMITED GAMING GENERATED EACH YEAR FOR DEPOSIT INTO
14 THE K-12 EDUCATION FUND.

15 (c) EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS SECTION, HORSE RACETRACKS SHALL RETAIN THE
16 BALANCE OF THEIR ADJUSTED GROSS PROCEEDS FROM HORSE RACETRACK LIMITED GAMING NOT PAID PURSUANT
17 TO THIS SUBSECTION (3).

18 (d) ALL MONEYS IN THE K-12 EDUCATION FUND SHALL BE SET ASIDE, ALLOCATED, ALLOTTED, AND
19 CONTINUOUSLY APPROPRIATED FOR DISTRIBUTION IN ACCORDANCE WITH THIS SECTION.

20 (4) A HOST COMMUNITY MAY IMPOSE ON A HORSE RACETRACK LICENSED TO CONDUCT LIMITED GAMING IN
21 THE HOST COMMUNITY A ONE-TIME INITIAL IMPACT FEE AND ANNUAL IMPACT FEES THAT ARE REASONABLY RELATED
22 TO THE HOST COMMUNITY'S COSTS RESULTING FROM HORSE RACETRACK LIMITED GAMING. THE AMOUNT OF THE
23 IMPACT FEES WILL BE ESTABLISHED THROUGH NEGOTIATIONS BETWEEN A HORSE RACETRACK AND THE HOST
24 COMMUNITY.

25 (5) STATE AND LOCAL GOVERNMENTS SHALL COLLECT, DISTRIBUTE, AND SPEND ALL REVENUES DERIVED
26 PURSUANT TO THIS SECTION AS VOTER-APPROVED REVENUE CHANGES WITHOUT REGARD TO ANY LIMITATION
27 CONTAINED IN SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION OR ANY OTHER LAW.

28 (6) THE ADMINISTRATION AND REGULATION OF THIS SECTION ARE SUBJECT TO THE AUTHORITY OF THE
29 COMMISSION. NO LATER THAN JULY 1, 2015, THE COMMISSION SHALL PROMULGATE ALL NECESSARY RULES TO
30 REGULATE HORSE RACETRACK LIMITED GAMING IN ACCORDANCE WITH THIS SECTION AND WITH GENERALLY
31 ACCEPTED INDUSTRY STANDARDS. THE RULES MUST MAXIMIZE THE PROCEEDS AVAILABLE FOR DISTRIBUTION
32 UNDER THIS SECTION TO THE K-12 EDUCATION FUND FOR THE FISCAL YEAR COMMENCING ON JULY 1, 2015, AND
33 EACH SUCCEEDING FISCAL YEAR THEREAFTER. THE COMMISSION SHALL NOT UNREASONABLY WITHHOLD A
34 LICENSE, AND SHALL NOT IMPOSE LICENSE REQUIREMENTS FOR HORSE RACETRACK LIMITED GAMING THAT ARE
35 STRICTER THAN THOSE IMPLEMENTED FOR LIMITED GAMING LICENSES UNDER SECTION 9 OF THIS ARTICLE.

36 (7) HORSE RACETRACK LIMITED GAMING IS SUBJECT TO THE FOLLOWING:

37 (a) HORSE RACETRACK LIMITED GAMING MAY TAKE PLACE ONLY IN THE COUNTIES OF ARAPAHOE, MESA,
38 AND PUEBLO. ONLY ONE HORSE RACETRACK IN EACH OF THE SPECIFIED THREE COUNTIES MAY BE LICENSED TO
39 CONDUCT HORSE RACETRACK LIMITED GAMING.

1 (b) HORSE RACETRACKS LICENSED TO CONDUCT HORSE RACETRACK LIMITED GAMING ARE AUTHORIZED
2 TO HAVE THE GREATER OF TWO THOUSAND FIVE HUNDRED SLOT MACHINES OR SUCH OTHER NUMBER OF SLOT
3 MACHINES AS REQUESTED BY THE HORSE RACETRACK AND AS DETERMINED BY THE COMMISSION TO MAXIMIZE
4 REVENUE TO THE K-12 EDUCATION FUND.

5 (c) HORSE RACETRACK LIMITED GAMING IS RESTRICTED TO PERSONS TWENTY-ONE YEARS OF AGE OR
6 OLDER.

7 (d) HORSE RACETRACK LIMITED GAMING OPERATIONS ARE PROHIBITED BETWEEN THE HOURS OF 2 A.M.
8 AND 8 A.M., UNLESS THE HOURS ARE EXPANDED BY THE HOST COMMUNITY OF A HORSE RACETRACK. EACH HOST
9 COMMUNITY IN WHICH HORSE RACETRACK LIMITED GAMING OCCURS IS AUTHORIZED TO EXTEND THE HOURS OF
10 HORSE RACETRACK LIMITED GAMING OPERATION UP TO TWENTY-FOUR HOURS PER DAY, SEVEN DAYS PER WEEK.

11 (e) ALCOHOLIC BEVERAGES MAY, SUBJECT TO LICENSURE BY THE STATE AND LOCAL LIQUOR LICENSING
12 AUTHORITIES, BE SOLD AT HORSE RACETRACKS IN WHICH HORSE RACETRACK LIMITED GAMING TAKES PLACE.

13 (8) EACH HORSE RACETRACK LICENSED TO CONDUCT LIMITED GAMING SHALL KEEP A COMPLETE AND
14 ACCURATE SET OF BOOKS AND RECORDS, AND COMPLY WITH THE SAME INSPECTION, EXAMINATION, AND AUDIT
15 REQUIREMENTS APPLICABLE TO LIMITED GAMING LICENSEES UNDER SECTION 9 OF THIS ARTICLE AS PRESCRIBED IN
16 SECTION 12-47.1-529, COLORADO REVISED STATUTES, OR SUCCESSOR STATUTE.

17 (9) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

18 (a) "ADJUSTED GROSS PROCEEDS" MEANS THE DEFINITION OF ADJUSTED GROSS PROCEEDS IN SECTION 9
19 OF THIS ARTICLE, AS IT IS APPLIED TO LIMITED GAMING ESTABLISHMENTS LICENSED UNDER SECTION 9 OF THIS
20 ARTICLE IN CALCULATING THE PAYMENTS OWED BY THE LICENSEES FOR THE RIGHT TO CONDUCT LIMITED GAMING.

21 (b) "COMMISSION" MEANS THE COLORADO LIMITED GAMING CONTROL COMMISSION, AS DESCRIBED IN
22 SUBSECTION (2) OF SECTION 9 OF THIS ARTICLE.

23 (c) "HORSE RACETRACK" MEANS A LICENSED CLASS B HORSE RACETRACK THAT HAS BEEN
24 CONTINUOUSLY OPERATED AND THAT THE COLORADO RACING COMMISSION, OR SUCCESSOR AGENCY, HAS
25 LICENSED AS A CLASS B HORSE RACETRACK, TO CONDUCT LIVE RACE MEETS IN THE STATE OF COLORADO AND TO
26 CONDUCT PARI-MUTUEL WAGERING ON HORSE RACES, FOR A PERIOD OF NO LESS THAN FIVE YEARS AS OF
27 JANUARY 1, 2014, OR FOR FIVE YEARS IMMEDIATELY PRECEDING THE CLASS B HORSE RACETRACK'S APPLICATION
28 FOR A LICENSE TO CONDUCT HORSE RACETRACK LIMITED GAMING.

29 (d) "HORSE RACETRACK LIMITED GAMING" MEANS THE SAME LIMITED GAMING THAT CAN BE CONDUCTED
30 BY LIMITED GAMING LICENSEES UNDER SECTION 9 OF THIS ARTICLE, BUT, AT A MINIMUM, INCLUDES THE USE AT THE
31 HORSE RACETRACK OF SLOT MACHINES, THE CARD GAMES OF BLACKJACK AND POKER, AND THE GAMES OF
32 ROULETTE AND CRAPS, EACH GAME HAVING UP TO A MAXIMUM SINGLE BET OF ONE HUNDRED DOLLARS. ALL
33 WAGERS ON GAMES MUST BE PLACED IN PERSON ON THE LICENSED PREMISE OF A HORSE RACETRACK'S PHYSICAL
34 PLACE OF BUSINESS.

35 (e) "HOST COMMUNITY" MEANS THE SINGLE LOCAL JURISDICTION THAT ISSUES THE PERMITS AND
36 APPROVALS NECESSARY FOR THE OPERATIONS OF A HORSE RACETRACK CONDUCTING HORSE RACETRACK LIMITED
37 GAMING.

38 (f) "SLOT MACHINE" MEANS ANY MECHANICAL, ELECTRICAL, VIDEO, ELECTRONIC, OR OTHER DEVICE,
39 CONTRIVANCE, OR MACHINE THAT, AFTER INSERTION OF CASH IN THE FORM OF A COIN OR BILL; A TOKEN OR

1 SIMILAR OBJECT; OR UPON PAYMENT BY ANY MEDIUM, INCLUDING ELECTRONIC CREDITS, OF ANY REQUIRED
2 CONSIDERATION BY A PLAYER, IS AVAILABLE TO BE PLAYED OR OPERATED, AND THAT, WHETHER BY REASON OF
3 THE SKILL OF THE PLAYER OR APPLICATION OF THE ELEMENT OF CHANCE, OR BOTH, MAY DELIVER OR ENTITLE THE
4 PLAYER OPERATING THE MACHINE TO RECEIVE CASH PRIZES, MERCHANDISE, TOKENS REDEEMABLE FOR CASH,
5 GAME CREDITS IN ELECTRONIC FORM OR OTHERWISE REDEEMABLE FOR CASH, OR ANY OTHER THING OF VALUE
6 OTHER THAN UNREDEEMABLE FREE GAMES, WHETHER THE PAYOFF IS MADE AUTOMATICALLY FROM THE MACHINES
7 OR IN ANY OTHER MANNER.

8 (10) IF ANY PROVISION OF THIS SECTION IS HELD INVALID, THE REMAINDER OF THIS SECTION REMAINS
9 UNIMPAIRED.

Proposition 104 School Board Meeting Requirements

1 **Proposition 104 proposes amending the Colorado statutes to:**

- 2 ◆ require that local school boards or their representatives negotiate
3 collective bargaining agreements in open meetings.

4 **Summary and Analysis**

5 **Colorado open meetings law.** Any meeting at which a state or local
6 governmental body discusses public business or takes formal action must be open to
7 the public, with certain exceptions. For example, if a governmental body is meeting to
8 discuss issues such as personnel matters, security details, or real estate transactions,
9 a closed meeting known as an executive session may be called. Governmental
10 bodies may also go into executive session to determine positions on matters subject
11 to negotiations, to develop negotiation strategy, and to instruct negotiators. A vote of
12 two-thirds of the members present is required to enter executive session, and the
13 topics to be discussed must be disclosed. Any final action on matters discussed in
14 executive session must be taken in public.

15 **Collective bargaining and local governments.** Collective bargaining is the
16 process of negotiating terms of employment between an employer and a group of
17 employees or employee representatives. Many local governments have collective
18 bargaining agreements with public employees such as firefighters, police officers, and
19 public school personnel to determine pay, benefits, and working conditions. Collective
20 bargaining agreements between school boards and school employees address a
21 variety of other terms and conditions such as curriculum, instructional materials, and
22 class size.

23 Under current law, the governing body of a local government may designate an
24 employee or representative to negotiate a collective bargaining agreement, and there
25 is no requirement that these negotiations take place in public. While a representative
26 of a local school board may negotiate collective bargaining agreements in private, any
27 final collective bargaining agreement must be voted on by the school board in a public
28 meeting and posted on the Internet.

29 Approximately one-quarter of Colorado's school districts, accounting for about
30 three-quarters of the state's public school students, have collective bargaining
31 agreements.

32 **Changes proposed by Proposition 104.** Under this measure, school boards
33 or their representatives are required to negotiate collective bargaining agreements in
34 meetings that are open to the public. It is unclear whether the measure requires
35 school boards to discuss their negotiation strategies in public. Proposition 104 only

1 applies to school districts and does not impact how other public bodies negotiate
2 collective bargaining agreements.

*For information on those issue committees that support or oppose the measures on the ballot at the **November 4, 2014**, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

3 **Argument For**

4 1) Open meetings and transparency are basic principles of good government.
5 This measure upholds the public's right to be informed and provides additional public
6 oversight of government spending. Current law requires that school districts post
7 completed collective bargaining agreements online; however, negotiations to arrive at
8 these agreements are largely held in private meetings. Holding collective bargaining
9 negotiations in a public forum allows for greater understanding by the public and
10 school employees of these proceedings.

11 **Argument Against**

12 1) Voters elect local school board members to determine what is best for the
13 school district, and this measure removes the board's freedom and flexibility to choose
14 how to negotiate with employees. Currently, school boards are allowed to discuss
15 collective bargaining agreements in public, and some choose to do so. Negotiations
16 over labor contracts can be difficult, complicated, and may include sensitive
17 employment issues. If school boards are required to have these discussions in public,
18 they may be at a disadvantage during the negotiations, making it harder to reach a
19 final agreement.

20 **Estimate of Fiscal Impact**

21 Requiring school boards to modify negotiation practices related to collective
22 bargaining agreements may increase local school districts' administrative workloads.
23 The proposition applies to school districts and will not affect state spending or
24 revenue.

Last Draft as Mailed to Interested Parties

Initiative #124 School Board Meeting Requirements

1 **Proposition ? proposes amending the Colorado statutes to:**

- 2 ◆ require that local school boards or their representatives negotiate
3 collective bargaining agreements in open meetings.

4 **Summary and Analysis**

5 **Colorado open meetings law.** Any meeting at which a state or local
6 governmental body discusses public business or takes formal action must be open to
7 the public, with certain exceptions. For example, if a governmental body is meeting to
8 discuss issues such as personnel matters, security details, or real estate transactions,
9 a closed meeting known as an executive session may be called. Governmental
10 bodies may also go into executive session to determine positions on matters subject
11 to negotiations, to develop negotiation strategy, and to instruct negotiators. A vote of
12 two-thirds of the members present is required to enter executive session, and the
13 topics to be discussed must be disclosed. Any final action on matters discussed in
14 executive session must be taken in public.

15 **Collective bargaining and local governments.** Collective bargaining is the
16 process of negotiating terms of employment between an employer and a group of
17 employees or employee representatives. Many local governments have collective
18 bargaining agreements with public employees such as firefighters, police officers, and
19 public school personnel to determine pay, benefits, and working conditions. Collective
20 bargaining agreements between school boards and school employees address a
21 variety of other terms and conditions such as curriculum, instructional materials, and
22 class size.

23 Under current law, the governing body of a local government may designate an
24 employee or representative to negotiate a collective bargaining agreement, and there
25 is no requirement that these negotiations take place in public. While a representative
26 of a local school board may negotiate collective bargaining agreements in private, any
27 final collective bargaining agreement must be voted on by the school board in a public
28 meeting and posted on the Internet.

29 Approximately one-quarter of Colorado's school districts, accounting for about
30 three-quarters of the state's public school students, have collective bargaining
31 agreements.

32 **Changes proposed by Proposition ?.** Under this measure, school boards or
33 their representatives are required to negotiate collective bargaining agreements in
34 meetings that are open to the public. It is unclear whether the measure requires
35 school boards to discuss their negotiation strategies in public. The measure only

Last Draft as Mailed to Interested Parties

1 applies to school districts and does not impact how other public bodies negotiate
2 collective bargaining agreements.

*For information on those issue committees that support or oppose the measures on the ballot at the **November 4, 2014**, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

3 **Argument For**

4 1) Open meetings and transparency are basic principles of good government.
5 This measure upholds the public's right to be informed and provides additional public
6 oversight of government spending. Current law requires that school districts post
7 completed collective bargaining agreements online; however, negotiations to arrive at
8 these agreements are largely held in private meetings. Holding collective bargaining
9 negotiations in a public forum allows for greater understanding by the public and
10 school employees of these proceedings.

11 **Argument Against**

12 1) Voters elect local school board members to determine what is best for the
13 school district, and this measure removes the board's freedom and flexibility to choose
14 how to negotiate with employees. Currently, school boards are allowed to discuss
15 collective bargaining agreements in public, and some choose to do so. Negotiations
16 over labor contracts can be difficult, complicated, and may include sensitive
17 employment issues. If school boards are required to have these discussions in public,
18 they may be at a disadvantage during the negotiations, making it harder to reach a
19 final agreement.

20 **Estimate of Fiscal Impact**

21 Requiring school boards to modify negotiation practices related to collective
22 bargaining agreements may increase local school districts' administrative workloads.
23 The initiative applies to school districts and will not affect state spending or revenue.

Last Draft Comments from Interested Parties

Proposition 104 School Board Meeting Requirements

Tyler Chafee, representing Local Schools, Local Choices:

To whom it may concern:

On behalf of the Local Schools, Local Choices committee, I submit the following comments on the second draft of the Blue Book for Initiative 124, Open School Board Meetings.

We appreciate the changes you made to the first two drafts to better clarify current law and the collective bargaining process. There are additional changes that would further clarify this and the impact of the measure.

Page 2, lines 9-16: We appreciate the revisions made to the argument against the measure. We are offering additional revisions to that strengthen the argument and better reflect the matter at hand.

11 Argument Against

~~12 1) Voters elect local school board members to determine what is best for the~~
~~13 school district, and this measure removes the board's freedom and flexibility to~~
~~14 choose~~
~~15 how to negotiate with employees. Currently, school boards are allowed to discuss~~
~~16 collective bargaining agreements in public, and some choose to do so. Negotiations~~
~~17 over labor contracts can be difficult, complicated, and may include sensitive~~
~~18 employment issues. If school boards are required to have these THEIR~~
~~19 STRATEGIC~~
~~20 discussions ABOUT NEGOTIATIONS in public they may WILL be at a~~
~~disadvantage during~~
~~the negotiations, making it harder to reach a final agreement THAT BENEFITS THE~~
~~20 DISTRICT AND OUR SCHOOLS.~~

Thank you for the opportunity to comment. Please contact me with any questions.

Sincerely,

Tyler Chafee
Local Schools, Local Choices
tylerc@strategies360.com
720-436-7065

PROPOSITION #104
SCHOOL BOARD MEETING REQUIREMENTS
CONTACT LIST

Richard Brown
9032 East Amherst Drive
Denver, CO 80231
Phone: 303-695-6388
Email: dickscuba@gmail.com

Senator Morgan Carroll
Email: morgan.carroll.senate@state.co.us

Tyler Chafee
Strategies 360
1626 Wazee St., #200
Denver, CO 80202
Phone: 303-292-1222
Email: tylerc@strategies360.com

Athena Dalton
Policy Director
Senate Republicans
Phone: 303-866-4867
Email: athena.dalton@state.co.us

Ben Degrow
Independence Institute
13952 Denver West Parkway Bldg. 53, #400
Golden, CO 80401
Email: ben@i2i.org

Senator Rollie Heath
2455 Vassar Drive
Boulder, CO 80305
Email: rollie.heath.senate@state.co.us

Martha Houser
Deputy Executive Director
Colorado Education Association
1500 Grant Street
Denver, CO 80203
Phone: 303-837-1500 x133
MHouser@coloradoea.org

Mike Kraus
Independence Institute
13952 Denver West Parkway Bldg. 53, #400
Golden, CO 80401
Email: mike@i2i.org

Bob Lackner
Legislative Legal Services
200 E. Colfax, Room 091
Denver, CO 80203
Phone: 303-866-4350
Email: bob.lackner@state.co.us

Shayne Madsen
Jackson Kelly, PLLC
1099 18th Street, Suite 2150
Denver, CO 80202
Phone: 303-390-0012
Email: smadsen@jacksonkelly.com

Greg Romberg
Email: gregromberg@comcast.net

Senator Pat Steadman
1257 Corona Street
Denver, CO 80218
Email: pat.steadman.senate@state.co.us

Jane Urschel
Colorado Association of School Boards
1200 Grant Street
Denver, CO 80203-2306
Phone: 303-832-1000
Email: jurschel@casb.org

Proposition 104
School Board Meeting Requirements

1 **Ballot Title:** Shall there be a change to the Colorado Revised Statutes requiring any meeting of a board
2 of education, or any meeting between any representative of a school district and any representative of
3 employees, at which a collective bargaining agreement is discussed to be open to the public?

4 *Be it Enacted by the People of the State of Colorado:*

5 **SECTION 1.** 24-6-402 (1) (a) and (4) (e), Colorado Revised Statutes, are amended to read:

6 **24-6-402. Meetings - open to public.** (1) For the purposes of this section:

7 (a) (I) "Local public body" means any board, committee, commission, authority, or other advisory,
8 policy-making, rule-making, or formally constituted body of any political subdivision of the state and any
9 public or private entity to which a political subdivision, or an official thereof, has delegated a governmental
10 decision-making function but does not include persons on the administrative staff of the local public body.

11 (II) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (A), IN ORDER TO
12 ASSURE SCHOOL BOARD TRANSPARENCY "LOCAL PUBLIC BODY" SHALL INCLUDE MEMBERS OF A BOARD OF
13 EDUCATION, SCHOOL ADMINISTRATION PERSONNEL, OR A COMBINATION THEREOF WHO ARE INVOLVED IN A
14 MEETING WITH A REPRESENTATIVE OF EMPLOYEES AT WHICH A COLLECTIVE BARGAINING AGREEMENT IS
15 DISCUSSED.

16 (4) The members of a local public body subject to this part 4, upon the announcement by the local
17 public body to the public of the topic for discussion in the executive session, including specific citation to
18 the provision of this subsection (4) authorizing the body to meet in an executive session and identification
19 of the particular matter to be discussed in as much detail as possible without compromising the purpose
20 for which the executive session is authorized, and the affirmative vote of two-thirds of the quorum present,
21 after such announcement, may hold an executive session only at a regular or special meeting and for the
22 sole purpose of considering any of the following matters; except that no adoption of any proposed policy,
23 position, resolution, rule, regulation, or formal action, except the review, approval, and amendment of the
24 minutes of an executive session recorded pursuant to subparagraph (II) of paragraph (d.5) of subsection
25 (2) of this section, shall occur at any executive session that is not open to the public:

26 (e) (I) Determining positions relative to matters that may be subject to negotiations; developing
27 strategy for negotiations; and instructing negotiators.

28 (II) THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (E) SHALL NOT APPLY TO A MEETING OF
29 THE MEMBERS OF A BOARD OF EDUCATION OF A SCHOOL DISTRICT:

30 (A) DURING WHICH NEGOTIATIONS RELATING TO COLLECTIVE BARGAINING, AS DEFINED IN SECTION 8-3-
31 104 (3), C.R.S., ARE DISCUSSED; OR

32 (B) DURING WHICH NEGOTIATIONS FOR EMPLOYMENT CONTRACTS, OTHER THAN NEGOTIATIONS FOR AN
33 INDIVIDUAL EMPLOYEE'S CONTRACT, ARE DISCUSSED.

34 **SECTION 2.** 22-32-109.4, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW
35 SUBSECTION to read:

36 **22-32-109.4. "Colorado School Collective Bargaining Agreement Sunshine Act" - board of**
37 **education - specific duties.** (4) ANY MEETING OF A BOARD OF EDUCATION AT WHICH A COLLECTIVE
38 BARGAINING AGREEMENT IS DISCUSSED SHALL BE OPEN TO THE PUBLIC AND ANY NOTICE REQUIRED BY SECTION
39 24-6-402(2) (c), C.R.S., SHALL BE GIVEN PRIOR TO THE MEETING.

Proposition 105 Labeling Genetically Modified Food

1 Proposition 105 proposes amending the Colorado statutes to:

- 2 ♦ require foods that are genetically modified or produced with genetic
3 engineering to include the words "Produced With Genetic Engineering"
4 on the label or container, with certain exceptions;
- 5 ♦ apply existing food mislabeling penalties in state law to a food
6 manufacturer, distributor, or retailer for failing to comply with the
7 labeling requirements;
- 8 ♦ prohibit a person from bringing legal action against a manufacturer,
9 distributor, or retailer for failing to comply with the labeling requirements;
10 and
- 11 ♦ require the Colorado Department of Public Health and Environment to
12 develop regulations and oversee the labeling requirements.

13 **Summary and Analysis**

14 **Background.** Genetic engineering refers to specific scientific processes that alter
15 the characteristics of organisms at the molecular or cellular level. In agriculture,
16 genetic engineering is generally used to increase the herbicidal tolerance or pest
17 resistance of plants. Genetic engineering was first accomplished in 1973, and
18 became commercialized in 1976. According to the U.S. Food and Drug
19 Administration (FDA), genetically engineered foods, also called genetically modified
20 organisms or GMOs, have been in the food supply since the 1990s. According to the
21 U.S. Department of Agriculture (USDA), in 2013, 90 percent of corn, 90 percent of
22 cotton, and 93 percent of soybean crops planted in the United States were genetically
23 engineered. Currently, no genetically engineered animals are FDA-approved for
24 human consumption, although animal feed may contain genetically engineered
25 material.

26 **Existing labeling of genetically engineered foods.** FDA rules state that
27 genetically engineered foods and food ingredients must meet the same safety
28 requirements as other foods. The FDA allows food producers to voluntarily label their
29 products as to whether or not they contain genetically engineered material, and has
30 issued draft guidance on this labeling to the food industry.

31 The USDA certifies organic foods under the National Organic Program, which can
32 then be labeled as "USDA Organic." Crops grown with the use of genetic engineering
33 cannot be certified as organic under the USDA program.

1 A number of retailers currently sell foods identified as not containing genetically
2 engineered material that have been verified by a third-party verification organization.
3 One such organization currently lists about 16,000 individual food products as having
4 passed its verification process. These products are labeled as "Non-GMO Project
5 Verified."

6 **Proposed labeling requirements.** Beginning July 1, 2016, Proposition 105
7 requires that certain foods sold in Colorado — that are genetically modified or
8 produced with genetic engineering — be labeled "Produced With Genetic
9 Engineering" in a clear and conspicuous manner. For packaged foods that are
10 produced with genetic engineering, the words must be included on the label.
11 Unpackaged raw food products, such as fresh fruits and vegetables and unprocessed
12 grains and nuts, produced with genetic engineering must be identified with the same
13 wording on the container, bin, or shelf where the foods are displayed for sale by a
14 retailer.

15 **Foods covered by the measure.** "Genetically engineered" is defined in the
16 measure as food produced from an organism that has had its genetics scientifically
17 altered. A food is also considered genetically engineered if the organism from which
18 the food is made has been treated with a genetically engineered material or contains
19 an ingredient, component, or other substance that is genetically engineered.

20 These foods are exempt from the measure:

- 21 • food or drink for animals;
- 22 • chewing gum;
- 23 • alcoholic beverages;
- 24 • foods, such as cheese, that would only be considered genetically
25 engineered because a genetically engineered material was used as a
26 processing aid;
- 27 • prepared foods intended for immediate human consumption;
- 28 • foods sold in a restaurant;
- 29 • foods derived entirely from an animal, such as milk, meat, or pure
30 honey, regardless of the animal's diet or medications, unless the animal
31 itself has been genetically engineered; and
- 32 • medically prescribed foods.

33 **Penalties for violations.** A manufacturer, distributor, or retailer that fails to
34 properly label foods that have been produced with genetic engineering commits a
35 violation under the Colorado Food and Drug Act. The penalty for a violation is a fine
36 of not more than \$1,000, six months imprisonment in a county jail, or both.
37 Subsequent violations are punishable by a fine of up to \$2,000, one year in a county
38 jail, or both. Proposition 105 prohibits a person from suing a manufacturer, distributor,
39 or retailer for not properly labeling foods produced with genetic engineering.

1 Proposition 105 exempts from penalties a person who:

- 2 • grows, raises, or produces food without knowing that the food or seed
- 3 had been genetically engineered; and
- 4 • obtains a sworn statement from the seller that the seed or food was not
- 5 knowingly created with genetic engineering.

6 **Regulation by the state.** Proposition 105 requires the Colorado Department of
7 Public Health and Environment to establish regulations for labeling foods that have
8 been genetically modified or produced with genetic engineering. These regulations
9 may include procedures for the inspection of manufacturers and testing of food
10 products to ensure compliance with the measure's labeling requirements.

*For information on those issue committees that support or oppose the
measures on the ballot at the **November 4, 2014**, election, go to the
Colorado Secretary of State's elections center web site hyperlink for ballot
and initiative information:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

11 **Arguments For**

12 1) The labeling of genetically engineered foods will increase the availability of
13 information about Colorado's food supply. Current labeling requirements for packaged
14 foods identify ingredients, nutritional values, and either the presence of allergens in
15 the food, or the existence of allergens in the manufacturing facility. The measure's
16 labeling requirements give Colorado consumers additional information to consider
17 when making their food purchasing decisions. The issue is not whether foods
18 produced with genetic engineering are good or bad, rather that many consumers want
19 to have the option to choose based on their personal needs and values. In the
20 absence of federal action, Proposition 105 can help Colorado citizens make informed
21 food choices by requiring labeling of foods produced with genetic engineering.

22 2) Over 60 countries, including all members of the European Union, have laws or
23 regulations mandating the labeling of genetically engineered foods. Additionally, a
24 small number of states have passed but not yet implemented laws requiring the
25 labeling of genetically engineered foods. The FDA's current voluntary labeling
26 guidelines are not widely used, do not provide enough information, and may never be
27 made mandatory by the federal government. Third party non-GMO and USDA organic
28 labeling account for only a small fraction of consumers' food choices in Colorado, so
29 they are not a substitute for mandatory labeling.

1 **Arguments Against**

2 1) Proposition 105 could result in higher food prices as farmers, food
3 manufacturers, distributors, and retailers pass their costs to comply with the labeling
4 requirements on to consumers. Such businesses could have increased costs for
5 record-keeping, product verification, and separate product storage and handling
6 processes for genetically engineered products. The labeling requirement may be
7 particularly burdensome for small businesses and farmers' markets, since the
8 measure does not provide for any exemptions based on an operation's size.

9 2) The measure conflicts with existing nationwide voluntary labeling standards
10 that already provide consumers with accurate and reliable information on
11 non-genetically engineered and organic foods. Because of the large number of
12 labeling exemptions included in the measure — most notably food served in
13 restaurants and meat and dairy products regardless of the animal's diet and
14 medications — the proposed labeling requirements would not give consumers a
15 reliable way of knowing which foods contain genetically engineered ingredients, and
16 which do not. These exempted foods will appear as products that were not produced
17 with genetic engineering, which may mislead rather than inform consumers. Requiring
18 the labeling of foods produced with genetic engineering may also send the message
19 to consumers that the foods are unsafe, even though no scientific evidence indicates
20 that genetically engineered foods are any riskier than other foods.

21 **Estimate of Fiscal Impact**

22 **State revenue.** Passage of Proposition 105 may result in an increase in revenue
23 from fines. A manufacturer, distributor, or retailer that fails to properly label foods that
24 have been produced with genetic engineering commits a violation under the Colorado
25 Food and Drug Act. The penalty for a violation is a fine of not more than \$1,000,
26 six months imprisonment in a county jail, or both. Subsequent violations are
27 punishable by a fine of up to \$2,000, one year in a county jail, or both. In the past
28 five years, one person has been found guilty of mislabeling a food, drug, device, or
29 cosmetic product, so this proposition is not expected to create a significant increase in
30 fine collections from violations.

31 **State spending.** The Colorado Department of Public Health and Environment will
32 develop rules for the regulation of the labeling requirements through a stakeholder
33 process and hire staff to handle complaints, perform inspections, gather samples, and
34 test food. The department will also be required to update its computer software to
35 track complaints and food inspections. The frequency of inspections, sampling, and
36 testing will depend on the rules established by the department; however, it is expected
37 that the department will test at least 30 samples annually. The department is
38 expected to hire up to two additional staff to implement the proposition.

Final Draft

1 Staffing, rulemaking, and computer software updates are expected to cost about
2 \$113,000 in the first year of implementation. Once the rules are in place, staffing,
3 computer software maintenance, and food sampling and testing are estimated to cost
4 \$130,000 annually. Proposition 105 does not identify a funding source to implement
5 the measure's requirements, so it is assumed state General Fund will be used.

Last Draft as Mailed to Interested Parties

Initiative #48 Labeling Genetically Modified Food

1 **Proposition? proposes amending the Colorado statutes to:**

- 2 ♦ require foods that are genetically modified or produced with genetic
3 engineering to include the words "Produced With Genetic Engineering"
4 on the label or container, with certain exceptions;
- 5 ♦ apply existing food mislabeling penalties in state law to a food
6 manufacturer, distributor, or retailer for failing to comply with the
7 labeling requirements;
- 8 ♦ prohibit a person from bringing legal action against a manufacturer,
9 distributor, or retailer for failing to comply with the labeling requirements;
10 and
- 11 ♦ require the Colorado Department of Public Health and Environment to
12 develop regulations and oversee the labeling requirements.

13 **Summary and Analysis**

14 **Background.** Genetic engineering refers to specific scientific processes that alter
15 the characteristics of organisms at the molecular or cellular level. In agriculture,
16 genetic engineering is generally used to increase the herbicidal tolerance or pest and
17 virus resistance of plants. Genetic engineering was first accomplished in 1973, and
18 became commercialized in 1976. According to the U.S. Food and Drug
19 Administration (FDA), genetically engineered foods, also called genetically modified
20 organisms or GMOs, have been in the food supply since the 1990s. According to the
21 U.S. Department of Agriculture (USDA), in 2013, 90 percent of corn, 90 percent of
22 cotton, and 93 percent of soybean crops planted in the United States were genetically
23 engineered. Currently, no genetically engineered animals are FDA-approved for
24 human consumption, although animal feed may contain genetically engineered
25 material.

26 **Existing labeling of genetically engineered foods.** FDA rules state that
27 genetically engineered foods and food ingredients must meet the same safety
28 requirements as other foods. The FDA allows food producers to voluntarily label their
29 products as to whether or not they contain genetically engineered material, and has
30 issued draft guidance on this labeling to the food industry.

31 The USDA certifies organic foods under the National Organic Program, which can
32 then be labeled as "USDA Organic." Crops grown with the use of genetic engineering
33 cannot be certified as organic under the USDA program.

Last Draft as Mailed to Interested Parties

1 A number of retailers currently sell foods identified as not containing genetically
2 engineered material that have been verified by a third-party verification organization.
3 One such organization currently lists about 16,000 individual food products as having
4 passed its verification process. These products are labeled as "Non-GMO Project
5 Verified."

6 **Proposed labeling requirements.** Beginning July 1, 2016, the measure requires
7 that certain foods sold in Colorado — that are genetically modified or produced with
8 genetic engineering — be labeled "Produced With Genetic Engineering" in a clear and
9 conspicuous manner. For packaged foods that are produced with genetic
10 engineering, the words must be included on the label. Raw food products, such as
11 fresh fruits and vegetables and unprocessed grains and nuts, produced with genetic
12 engineering that are not separately packaged must be identified with the same
13 wording on the container, bin, or shelf where the foods are displayed for sale by a
14 retailer.

15 **Foods covered by the measure.** "Genetically engineered" is defined in the
16 measure as food produced from an organism that has had its genetics scientifically
17 altered. A food is also considered genetically engineered if the organism from which
18 the food is made has been treated with a genetically engineered material or contains
19 an ingredient, component, or other substance that is genetically engineered.

20 These foods are exempt from the measure:

- 21 • food or drink for animals;
- 22 • chewing gum;
- 23 • alcoholic beverages;
- 24 • foods, such as cheese, that would only be considered genetically
25 engineered because a genetically engineered material was used as a
26 processing aid;
- 27 • prepared foods intended for immediate human consumption;
- 28 • foods sold in a restaurant;
- 29 • foods derived entirely from an animal, such as milk or meat, regardless
30 of the animal's diet or medications, unless the animal itself has been
31 genetically engineered; and
- 32 • medically prescribed foods.

33 **Penalties for violations.** A manufacturer, distributor, or retailer that fails to
34 properly label foods that have been produced with genetic engineering commits a
35 violation under the Colorado Food and Drug Act. The penalty for a violation is a fine
36 of not more than \$1,000, six months imprisonment in a county jail, or both.
37 Subsequent violations are punishable by a fine of up to \$2,000, one year in a county
38 jail, or both. The measure prohibits a person from suing a manufacturer, distributor,
39 or retailer for not properly labeling foods produced with genetic engineering.

Last Draft as Mailed to Interested Parties

1 The measure exempts from penalties a person who:

- 2 • grows, raises, or produces food without knowing that the food or seed
- 3 had been genetically engineered; and
- 4 • obtains a sworn statement from the seller that the seed or food was not
- 5 knowingly created with genetic engineering.

6 **Regulation by the state.** The measure requires the Colorado Department of
7 Public Health and Environment to establish regulations for labeling foods that have
8 been genetically modified or produced with genetic engineering. These regulations
9 may include procedures for the inspection of manufacturers and testing of food
10 products to ensure compliance with the measure's labeling requirements.

*For information on those issue committees that support or oppose the measures on the ballot at the **November 4, 2014**, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

11 Arguments For

12 1) The labeling of genetically engineered foods will increase the availability of
13 information about Colorado's food supply. Current labeling requirements for packaged
14 foods identify ingredients, nutritional values, and either the presence of allergens in
15 the food, or the existence of allergens in the manufacturing facility. The measure's
16 labeling requirements give Colorado consumers additional information to consider
17 when making their food purchasing decisions. The issue is not whether foods
18 produced with genetic engineering are good or bad, rather that many consumers want
19 to have the option to choose based on their personal needs and values. In the
20 absence of federal action, Proposition ? can help Colorado citizens make informed
21 food choices by requiring labeling of foods produced with genetic engineering.

22 2) Over 60 countries, including all members of the European Union, have laws or
23 regulations mandating the labeling of genetically engineered foods. Additionally, a
24 small number of states have passed but not yet implemented laws requiring the
25 labeling of genetically engineered foods. The FDA's current voluntary labeling
26 guidelines are not widely used, do not provide enough information, and may never be
27 made mandatory by the federal government. Third party non-GMO and USDA organic
28 labeling account for only a small fraction of consumers' food choices in Colorado, so
29 they are not a substitute for mandatory labeling.

Last Draft as Mailed to Interested Parties

1 **Arguments Against**

2 1) Proposition ? could result in higher food prices as farmers, food
3 manufacturers, distributors, and retailers pass their costs to comply with the labeling
4 requirements on to consumers. Such businesses could have increased costs for
5 record-keeping, product verification, and separate product storage and handling
6 processes for genetically engineered products. The labeling requirement may be
7 particularly burdensome for small businesses and farmers' markets, since the
8 measure does not provide for any exemptions based on an operation's size.

9 2) Requiring the labeling of foods produced with genetic engineering may send
10 the message to consumers that the foods are unsafe, even though no scientific
11 evidence indicates that genetically engineered foods are any riskier than other foods.
12 The measure conflicts with existing nationwide voluntary labeling standards that
13 already provide consumers with accurate and reliable information on non-genetically
14 engineered and organic foods. Because of the large number of labeling exemptions
15 included in the measure — most notably food served in restaurants and meat and
16 dairy products regardless of the animal's diet and medications — the proposed
17 labeling requirements would not give consumers a reliable way of knowing which
18 foods contain genetically engineered ingredients, and which do not. These exempted
19 foods will appear as products that were not produced with genetic engineering, which
20 may mislead rather than inform consumers.

21 **Estimate of Fiscal Impact**

22 **State revenue.** Passage of Proposition ? may result in an increase in revenue
23 from fines. A manufacturer, distributor, or retailer that fails to properly label foods that
24 have been produced with genetic engineering commits a violation under the Colorado
25 Food and Drug Act. The penalty for a violation is a fine of not more than \$1,000,
26 six months imprisonment in a county jail, or both. Subsequent violations are
27 punishable by a fine of up to \$2,000, one year in a county jail, or both. In the past
28 five years, one person has been found guilty of mislabeling a food, drug, device, or
29 cosmetic product, so this measure is not expected to create a significant increase in
30 fine collections from violations.

31 **State spending.** The Colorado Department of Public Health and Environment will
32 develop rules for the regulation of the labeling requirements through a stakeholder
33 process and hire staff to handle complaints, perform inspections, gather samples, and
34 test food. The department will also be required to update its computer software to
35 track complaints and food inspections. The frequency of inspections, sampling, and
36 testing will depend on the rules established by the department; however, it is expected
37 that the department will test at least 30 samples annually. The department is
38 expected to hire up to two additional staff to implement the measure.

Last Draft as Mailed to Interested Parties

1 Staffing, rulemaking, and computer software updates are expected to cost about
2 \$96,000 in the first year of implementation. Once the rules are in place, staffing,
3 computer software maintenance, and food sampling and testing are estimated to cost
4 \$130,000 annually. Proposition ? does not identify a funding source to implement the
5 measure's requirements, so it is assumed state General Fund will be used.

Last Draft Comments from Interested Parties

Proposition 105 Labeling Genetically Modified Food

Alan Lewis, representing Vitamin Cottage as a proponent:

Page 1 Lines 16 and 17

Text in third draft reads: “to increase the herbicidal tolerance or pest and virus resistance of plants.”

The reference to “virus” is redundant. Virus are always considered a subcategory of pest along with bacteria, fungus, insects and wildlife among others.

Suggested final text: “to increase the herbicidal tolerance or pest ~~and virus~~ resistance of plants.”

Page 2 Lines 10 thru 14

Text in third draft reads: “...Raw food products, such as fresh fruits and vegetables and unprocessed grains and nuts, produced with genetic engineering that are not separately packaged must be identified with the same wording on the container, bin, or shelf where”

The sentence should begin with "Unpackaged raw foods...".

The statute combines "raw" AND "separately packaged" as the standard for bin labeling. The suggested new construction mirrors the language in the initiative and the language in the prior sentence. Moreover, it immediately and accurately communicates to the reader the intended meaning.

Suggested final text: “...**Unpackaged raw** food products, such as fresh fruits and vegetables and unprocessed grains and nuts, produced with genetic engineering ~~that are not separately packaged~~ must be identified with the same wording on the container, bin, or shelf where”.

Page 2 Lines 28-31

Text in third draft reads:

- "• foods sold in a restaurant;
- foods derived entirely from an animal, such as milk or meat, regardless of the animal's diet or medications, unless the animal itself has been genetically engineered; and"

Change “...such as milk and meat...” to “...such as milk, meat, and honey...” as contemplated by the language of the initiative.

Suggested final text:

- "• foods sold in a restaurant;

Last Draft Comments from Interested Parties

Alan Lewis, representing Vitamin Cottage as a proponent (Cont.)

- foods derived entirely from an animal, such as milk, meat, or honey, regardless of the animal's diet or medications, unless the animal itself has been genetically engineered; and"

Page 2 Lines 33 – 39.

Text in third draft reads: "Penalties for violations. A manufacturer, distributor, or retailer that fails to properly label foods that have been produced with genetic engineering commits a violation under the Colorado Food and Drug Act. The penalty for a violation is a fine of not more than \$1,000, six months imprisonment in a county jail, or both. Subsequent violations are punishable by a fine of up to \$2,000, one year in a county jail, or both. The measure prohibits a person from suing a manufacturer, distributor, or retailer for not properly labeling foods produced with genetic engineering."

The term "Manufacturer" is clearly, specifically and intentionally defined in the initiative to include farmers and seed producers. Unless this definition is provided to voters, they certainly will not understand this key concept. Suggest adding at the end of this paragraph the definition from the initiative which reads: "(15.5) "MANUFACTURER" MEANS A PERSON OR BUSINESS ENGAGED IN THE PRODUCTION OR PROCESSING OF SEED, SEED STOCK, FOOD, OR ANY FOOD PRODUCT.":

Suggested final text: "Penalties for violations. A manufacturer, distributor, or retailer that fails to properly label foods that have been produced with genetic engineering commits a violation under the Colorado Food and Drug Act. The penalty for a violation is a fine of not more than \$1,000, six months imprisonment in a county jail, or both. Subsequent violations are punishable by a fine of up to \$2,000, one year in a county jail, or both. The measure prohibits a person from suing a manufacturer, distributor, or retailer for not properly labeling foods produced with genetic engineering. **MANUFACTURER IS DEFINED TO INCLUDE A PERSON OR BUSINESS ENGAGED IN THE PRODUCTION OR PROCESSING OF SEED, SEED STOCK, FOOD, OR ANY FOOD PRODUCT.**"

Page 3 Lines 12-15

Text in third draft reads: "1) The labeling of genetically engineered foods will increase the availability of information about Colorado's food supply. Current labeling requirements for packaged foods identify ingredients, nutritional values, and either the presence of allergens in the food, or the existence of allergens in the manufacturing facility."

Suggest adding a key example, country of origin labeling. Recent federal court rulings have found that country of origin labeling requirements do not impede free speech even if they are not based on health risks to consumers. Specifically, "the consumers desire to know is sufficient cause for the government to require label disclosures."

This is the most similar case to GMO labeling, and thus should be included in the ballot language.

Last Draft Comments from Interested Parties

Alan Lewis, representing Vitamin Cottage as a proponent (Cont.)

Suggested final text: "1) The labeling of genetically engineered foods will increase the availability of information about Colorado's food supply. Current labeling requirements for packaged foods identify ingredients, nutritional values, **country of origin labeling**, and either the presence of allergens in the food, or the existence of allergens in the manufacturing facility."

Page 4 Lines 9-11

Text in third draft reads: "2) Requiring the labeling of foods produced with genetic engineering may send the message to consumers that the foods are unsafe, even though no scientific evidence indicates that genetically engineered foods are any riskier than other foods."

It is not accurate to say no scientific evidences exists in this regard. There are several peer-reviewed studies published in reputable and bona fide scientific journals that call into question the safety of GMO foods for both animal and human consumption.

Suggest using the language "no scientific consensus has been reached that genetically engineered foods are riskier than other foods" to avoid misrepresenting the existence of these studies.

Suggested final text: "2) Requiring the labeling of foods produced with genetic engineering may send the message to consumers that the foods are unsafe, even though **no scientific consensus has been reached** that genetically engineered foods are any riskier than other foods."

Shayne Madsen, representing the Coalition Against the Misleading Labeling Measure as an opponent:

August 11, 2014

Attn:

LEGISLATIVE COUNCIL
ROOM 029 STATE CAPITOL
DENVER, COLORADO 80203-1784

Re: Comments on Draft Ballot Analysis and Arguments – Initiative #48

Please find comments and requested changes to the Draft Ballot Analysis and Arguments regarding Initiative #48.

Arguments Against

Arguments presented against the measure fail to sufficiently inform voters of the serious cost impacts the measure will have on consumers. Numerous economic studies as well as independent media sources have reviewed and confirmed that mandatory labeling requirements such as proposed in Initiative #48 – especially those imposed on a single-state basis – will inevitably result in higher food costs for consumers. References to key studies and findings are attached.

Last Draft Comments from Interested Parties

Shayne Madsen, representing the Coalition Against the Misleading Labeling Measure as an opponent (Cont.)

Argument #1: The use of the word “could” rather than “will” in the opponent arguments implies that increased cost impacts resulting from the measure are merely speculative. However, although there are variable estimates of the amount of cost increases that will result from the labeling requirement, there is widespread agreement from all sources that cost increases will occur.

We therefore request the following changes to Argument #1:

1) Proposition ? ~~could~~ **will** result in higher food prices as farmers, food manufacturers, distributors, and retailers pass their costs to comply with the labeling requirements on to consumers. Such businesses ~~could~~ **will** have increased costs for record-keeping, product verification, and separate product storage and handling processes for genetically engineered products, **as required by the measure**. The labeling requirement may be particularly burdensome for small businesses and farmers' markets, since the measure does not provide for any exemptions based on an operation's size.

Arguments Against (continued)

Argument #2 presented against the measure fails to sufficiently inform voters that measure conflicts with existing federal food labeling policy. One of the most important flaws of the measure is related to the misleading and inaccurate information that would be provided by the label. Instead, Argument #2 emphasizes the important, but less relevant, issue of whether the label will wrongly imply there is a safety concern with labeled products.

We therefore request the following changes to Argument #2:

2) The measure conflicts with existing nationwide voluntary labeling standards that already provide consumers with accurate and reliable information on non-genetically engineered and organic foods. Because of the large number of labeling exemptions included in the measure — most notably food served in restaurants and meat and dairy products regardless of the animal's diet and medications — the proposed labeling requirements would not give consumers a reliable way of knowing which foods contain genetically engineered ingredients, and which do not. These exempted foods will appear as products that were not produced with genetic engineering, which may mislead rather than inform consumers. **The measure also conflicts with existing federal food labeling policy because** requiring the **special** labeling of **certain** foods produced with genetic engineering ~~may~~ send the message to consumers that the foods are **somehow** unsafe, even though no scientific evidence indicates that genetically engineered foods are any riskier than other foods.

Last Draft Comments from Interested Parties

Shayne Madsen, representing the Coalition Against the Misleading Labeling Measure as an opponent (Cont.)

Summary and Analysis

It is important to note that the measure defines only certain scientific processes as “genetic engineering.” There are many other ways of “scientifically altering” the genetic material of food crops (including mutagenesis, radiation and chemical processes), and these processes are not required to have special labeling under this measure.

The measure only defines certain foods as “genetically engineered” – even though most food crops today have had their “genetics scientifically altered.” Therefore the description of foods covered by the measure should be revised as follows:

Foods covered by the measure. "Genetically engineered" is defined in the measure as food produced from an organism that has had its **characteristics modified by a specific scientific process.** ~~genetics scientifically altered.~~ A food is also considered genetically engineered if the organism from which the food is made has been treated with a genetically engineered material or contains an ingredient, component, or other substance that is **“genetically engineered” using certain scientific techniques.**

Estimate of Fiscal Impact

The Estimate of Fiscal Impact does not accurately reflect to voters the true regulatory costs to the state related to establishing regulations, implementing and enforcing the measure’s requirements. Since the specific labeling requirements in Initiative 48 are not required by federal law, are not consistent with current FDA regulations and do not exist in any other state or country, tens of thousands of food and beverage products would have to be specially relabeled, repackaged and monitored just in Colorado. In addition, because Initiative 48’s requirements apply to foods exported from Colorado, state officials would also have to implement regulations to assure compliance with export labeling. To ensure compliance with these requirements Colorado state officials would have to monitor and inspect tens of thousands of products in thousands of stores statewide and from hundreds of food companies both within and outside of Colorado. Effective enforcement would also include auditing the records of farmers, food manufacturers, distributors and stores, including sworn statements provided to prove that certain products do not contain any ingredients that would require the special labeling. A study of a similar GMO labeling measure proposed last year in Washington, Initiative 522, concluded that state enforcement of that measure would have required approximately 200 full time-equivalent employees at a cost of \$22.5 million annually. A copy the Executive Summary of this study is attached (See Attachment A).

Information provided by the Coalition Against the Misleading Labeling Measure, 1999 Broadway, Ste. 4190, Denver, CO 80202.

Last Draft Comments from Interested Parties

Bob Mattive, representing himself:

In the Background section: In agriculture....virus resistance of plants, but it could also increase nutritional levels and extend shelf life of food.

Arguments Against: FDA policy states that FDA has no basis for concluding that GE foods differ from other foods in any meaningful way or present any greater safety concern.

Foods from GE plants must meet the same safety requirements as non GE foods.

<http://www.fda.gov/Food/FoodScienceResearch/Biotechnology/ucm34>

1. Costs of Labeling Genetically Modified Food Products in N.Y. State

May 2014

By **William Lesser**, Susan E. Lynch Professor in Science and Business, Dyson School of Applied Economics and Management, Cornell University

- Study estimates direct and indirect economic impacts of proposed mandatory labeling in New York State. Estimated midpoint of annual costs to four-person household is \$800, including increased ingredient costs for non-GM or organic ingredients, “Identity Preservation” costs for recordkeeping and handling, and consumer impact of additional state regulatory costs.
- The study looks at further indirect impacts of mandatory labeling, including economic impacts to farmer and agricultural sectors: “Additional costs to the State include the potential loss of net farmer income from producing GM corn and soybeans, which while very real for State farmers is minor compared to direct consumer costs. There are additionally regulatory costs which are borne by the State.”
- Study further concludes mandatory labeling will increase costs for both GM and non-GM products, as well as reducing consumer choice: “Consumer studies along with experiences from Europe tell us that many shoppers will avoid/pay less for labeled GM foods, in which case many of those over time will be disappear, reducing choice and raising food costs due to the higher ingredient costs of non-GM inputs.”

2. Proposition 37 – California Food Labeling Initiative: Economic Implications for Farmers and the Food Industry if the Proposed Initiative were Adopted

September 2012

By **Julian M. Alston and Daniel A. Sumner**, Professors in the Department of Agricultural and Resource Economics of the University of California, Davis

- Study outlines significant costs for California’s food and agricultural industries, as well as significant consumer costs.
- “Proposition 37 would cause food manufacturers and retailers to change the methods used to produce many of the foods Californians eat, and would make those foods more expensive. Among consumers, the burden would be greater on the poor who spend a larger share of their income on food.”
- “*Proposition 37 would impose about \$1.2 billion in additional costs on California food processors to meet segregation, monitoring and certification costs.*”
- Study also outlines significant environmental and safety costs: “The implications for the environment and farm worker safety are negative. Compared with GE production, to achieve comparable pest control, acres that switch to non-GE production would be expected to use 50–100 percent more herbicide and 10–30 percent more pesticide with potential for a heavier environmental burden (GE insect-resistant corn provides area-wide insect suppression that benefits non-GE producers; the total national insecticide saving from the use of IR maize was almost 80 percent in 2009).”

3. Initiative 522: Costly, Flawed and Ill-Conceived

September 2013

Washington Research Council

Study estimated impacts of Washington-only mandatory labeling requirement would increase grocery costs for a four-person household to be over \$450 per year.

“We estimate that the initial start-up costs to comply with I-522’s Washington-only regulations for farmers and food manufacturers would be \$264 million. (For reference, we estimate that retail expenditures on groceries in Washington in 2012 were \$16.4 billion.) On an ongoing basis, food manufacturers would either have to create special labels for the portions of their products sold in Washington state, or remake those products with higher-priced non-GE or organic ingredients to avoid the mandate to apply special labels. Those costs would be passed on to Washington consumers through higher food prices. This would increase grocery bills for most Washington families by hundreds of dollars per year.”

4. White Paper on Washington State Initiative I-522

Labeling of Foods Containing Genetically Modified Ingredients

October 2013

Washington State Academy of Sciences

See Section 4: Policy and Trade and Section 5: Regulation and Enforcement

- “Mandatory labeling, especially at a state versus federal level, is likely to affect trade and impose higher costs on firms producing and selling products in WA. These costs are likely to be passed on to the consumer resulting in higher food prices. Importantly, these costs will be borne by firms and consumers for both GM and non-GM foods as labeling foods as non-GM will require oversight costs.”
- “Responsibility and costs for monitoring and compliance of I-522 would accrue to both the public and private firms; the estimates have a wide range, and could vary from a few hundred thousand to millions of dollars annually.”

5. The Genetically Engineered Foods Mandatory Labeling Initiative

Overview of Anticipated Impacts and Estimated Costs to Consumers

July 2012

Northbridge Environmental Management Consultants

- Study estimated consumer cost impacts of proposed mandatory labeling in California:
- Mid-point of groceries cost increases for four-person household was estimated at \$350-\$400 per year per family.
- Additional cost scenarios were studied:
“Finally, we computed costs on a state-wide basis, aggregating consumer costs across all households. The total annual consumer cost to pay for the changes made to the food supply by the Initiative range from \$4.5 to \$5.2 billion. Given the conservative nature of our substitution cost assumptions, we believe it is more likely that true costs will fall toward the upper ends of the ranges provided.”

6. The Potential Impacts of Mandatory Labeling for Genetically Engineered Food in the United States

April 2014

Council for Agricultural Science and Technology

- Regarding costs, the report concludes: "Mandatory GE labeling would increase U.S. food costs. The size of the increase will depend on choices made in the marketplace by suppliers and marketers, and what products are included in labeling requirements."
- "If, as in other countries, sellers move to non-GE offerings in response to mandatory labeling, food costs could rise significantly and these increased costs would extract a greater burden on low-income families. If, on the other hand, food supplies choose to label virtually all products as containing GE without testing or segregation, increases in costs might be minimal."

7. Labeling Genetically Modified Foods: An Economic Appraisal

Undated

U.S. Department of Agriculture – Economic Research Service

- This is a technical paper the "presents a simple economic model showing how introduction of labeling for genetically modified foods can affect food markets." and includes "the implications of labeling for international trade in food products."

8. Information Policy and Genetically Modified Food: Weighing the Benefits and Costs

2003

Department of Resource Economics, University of Massachusetts Amherst

- "This paper discusses empirical work on the sources and magnitude of benefits and costs from labeling programs, with particular emphasis on the impact of the design of the labeling program on benefits and costs."
- "The costs of GM labeling programs are highly variable. At one end of the spectrum are voluntary labeling programs for GMF on non-GMFs, where companies set up segregation or IP systems that ensure label integrity for specific product flows. The price of the labeling and underlying quality assurance systems will be reflected in the product price. At the other end of the spectrum is mandatory labeling of all GMFs (broadly defined) and non-GMFs (narrowly defined), verified through IP systems with full traceability. Here all the producers and consumers will bear the costs of labeling and related quality assurance."

9. Direct and Hidden Costs in Identity Preserved Supply Chains

2002

By Richard Maltzberger & Nicholas Kalaitzandonakes

- "Any labeling scheme must be supported by an effective identity preservation system which implies extra logistical costs. Both direct and hidden costs exist in identity preserved (IP) systems. Such costs vary substantially with the configuration of individual supply chains and can be meaningful, especially under strict standards and thresholds."
- While the study is not specifically related to GE food labeling, it's been widely referenced in GE food labeling cost studies because GE food labeling, like other IP food products such as organics and Kosher foods, are IP food systems.
- The study creates a model for IP systems: "To estimate IP costs, we build the Process & Economic Simulation of IP (PRESIP). The PRESIP model is designed to capture the subtle intricacies of day-to-day operations, chain coordination, and relevant costs in the IP supply chains for grain. Its structure is flexible and can be adjusted to simulate any asset configuration that may be encountered."

INITIATIVE 522: COSTLY, FLAWED AND ILL-CONCEIVED

Executive Summary

On November 5, 2013, Washington voters will decide the fate of Initiative 522, which would require special labels on certain foods made with genetically engineered (GE) ingredients and on GE seeds and seed stock sold at retail. There are a lot of misconceptions about GE products, which have safely been part of our food supply for nearly 20 years. In this report, the Washington Research Council assesses the economic impact of I-522 on Washington consumers, taxpayers, and Washington's agricultural economy.

Broad exemptions undermine the initiative's stated goal of providing consumer information.

While I-522 supporters say the measure simply provides consumers with necessary information, there are so many ex-

emptions to the initiative's regulations that it would not provide consumers with meaningful or complete information about the presence or absence of GE content. The exemptions include foods that come from animals (like meat, milk and eggs), even if those animals were fed on GE grains, silage or other GE foods; raw agricultural commodities that may contain but were grown without the "intentional use" of GE products (if the supplier provides a sworn statement to that effect); processed foods, such as cheese, which were made with GE enzymes or other "GE processing aids;" food sold at restaurants or sold "to go;" all alcoholic beverages; and any foods labeled as "certified organic." Processed foods in which GE materials account for 0.9 percent or less of the total weight of the foods would be temporarily exempt until 2019. However, beginning July 1, 2019, that labeling threshold would drop to zero.

Given all of the exemptions, we estimate that only about one-third of the food Washington consumers regularly purchase would be subject to the labeling provisions in I-522—even though the remaining two-thirds of foods may contain GE ingredients.

Compliance costs for farmers and food companies would be high.

Taking into account those categories of food which would be exempt from I-522's requirements, foods that would require special labeling for retail sale just in Washington would include thousands of common food products. The

Chart ES1: Two-Thirds of Food and Beverage Expenditures in Washington Would Be Exempt From I-522's Labeling Requirement

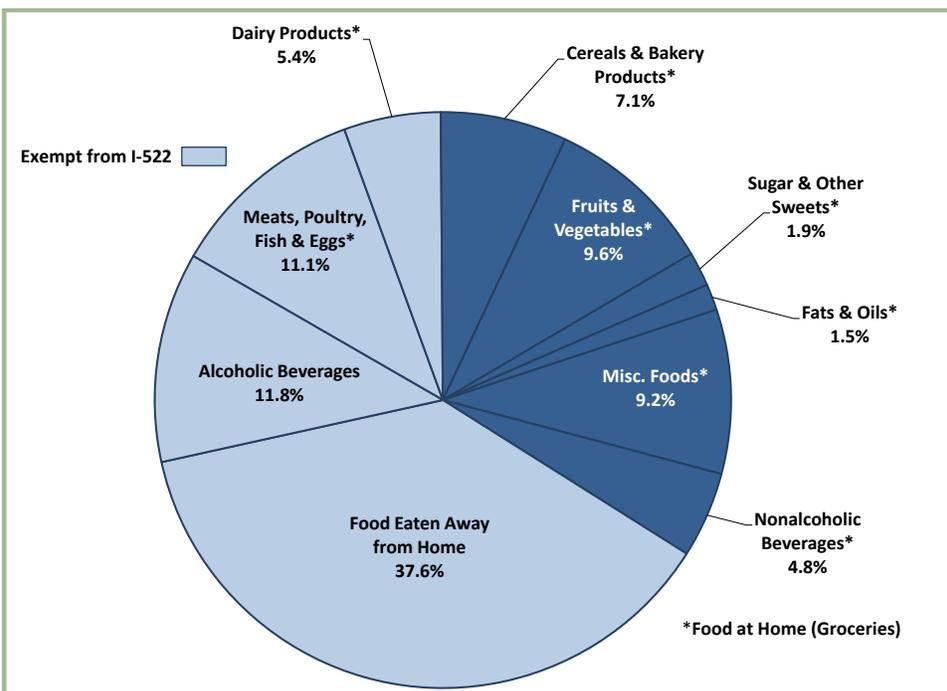


Table ES1: Estimated Range of Cost Increase in Annual Food Spending, by Household Size

Household Size	2	3	4	5	6
2015 to 2019	\$97-\$260	\$150-\$390	\$200-\$520	\$240-\$650	\$290-\$790
2019 and Beyond*	\$220-\$260	\$340-\$390	\$450-\$520	\$560-\$650	\$670-\$790

*I-522 would set a 0% threshold for labeling in 2019. No existing data is available for the costs of complying with a threshold that low. Thus, existing data for obtaining non-GE ingredients to achieve a 0.5% threshold was used as a proxy for 0%. This means that the compliance costs shown for 2019 and beyond are actually understated.

Source: Northbridge Environmental Management Consultants

economic impact of complying with these Washington-only regulations would involve a number of initial and ongoing costs to farmers, food processors and manufacturers, retailers, consumers and taxpayers.

We estimate that the initial start-up costs to comply with I-522’s Washington-only regulations for farmers and food manufacturers would be \$264 million. (For reference, we estimate that retail expenditures on groceries in Washington in 2012 were \$16.4 billion.) On an ongoing basis, food manufacturers would either have to create special labels for the portions of their products sold in Washing-

ton state, or remake those products with higher-priced non-GE or organic ingredients to avoid the mandate to apply special labels. Those costs would be passed on to Washington consumers through higher food prices. This would increase grocery bills for most Washington families by hundreds of dollars per year.

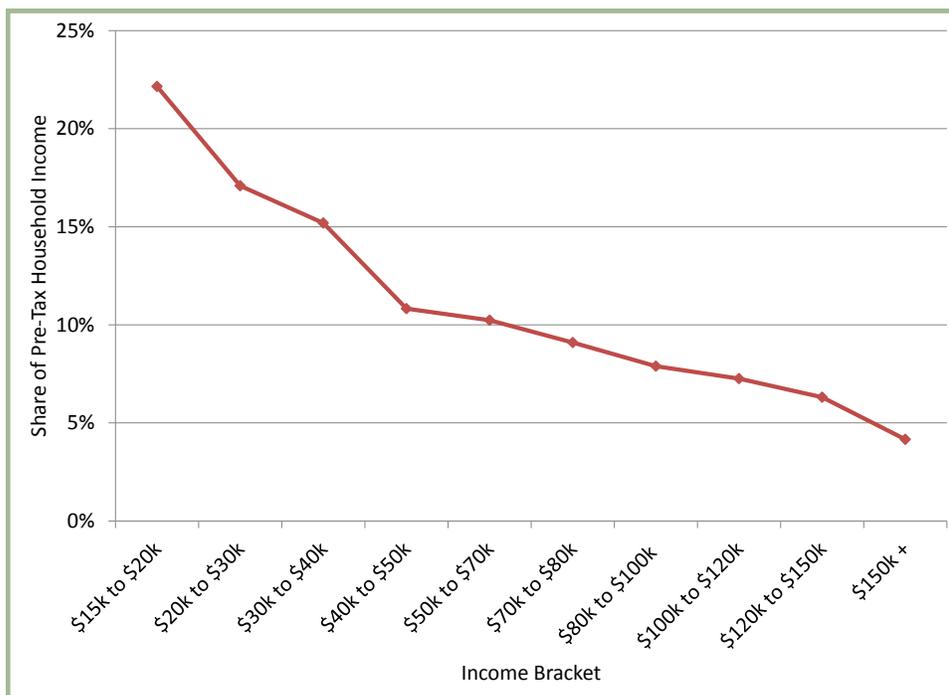
Consumer food costs would increase by hundreds of dollars per year.

We estimate that, for the 2015–19 period, the increase in food costs that I-522 would impose for a household of four would be between \$200 and \$520 per year. For 2019 and onward, the increase in food costs for such a family would be more than \$450 per year. The increase in food prices caused by the initiative would disproportionately affect households with lower incomes.

Regulations would increase state spending and costs to taxpayers.

Based on regulatory costs for comparable existing programs, we estimate that a program to actively enforce I-522’s Washington-only labeling regulations on thousands of common food products sold at thousands of retail stores statewide, as well as on seed and seed stock, would require the Department of Health to hire approximately 200 full time equivalent employees at a cost of \$22.5 million annually. The initiative dedicates no source of funding to cover the cost of this new state government program.

Chart ES2: I-522’s Increased Costs Would Fall Heavily On Lower Income Families (Expenditures on Groceries as a Percentage of Income)



I-522 exceeds international standards.

I-522 backers claim the initiative conforms to international standards. That is simply not the case. For example, in the European Union (EU), the threshold set for labeling is 0.9 percent GE content by total weight of the product. In Japan, it is 5 percent. The zero percent threshold standard that would be implemented under I-522 would be far stricter than global standards and would be difficult or impossible to enforce, given the absence of existing tests that can detect trace amounts of GE ingredients.

New lawsuit provision would be costly and complicated for farmers, retailers and food companies.

I-522 would give trial lawyers, anti-biotechnology activists and any other person a special new right to file lawsuits against farmers, food manufacturers and grocers, by claiming they had somehow violated I-522's labeling requirements. This would undoubtedly encourage costly, "shakedown" lawsuits.

The minimal level of Department of Health activity related to the initiative anticipated by the state fiscal note seems to suggest that the state would not actively enforce the measure's labeling requirements. This means that most of the enforcement effort would be based on lawsuits filed by private parties, thus increasing the likelihood that the risks and costs of litigation over the initiative's labeling regulations would be high for the food industry and retailers.

Federal law may preempt I-522.

There may be federal legal challenges to the law created by the initiative's passage on First Amendment and other grounds, including that the labels may be considered misleading. The costs of defending I-522 against such challenges would fall to the state government, opening the door to costly litigation.

I-522 would block adoption of future technological advancements for Washington farmers and food companies.

Supporters of I-522 and other such labeling proposals have said that labeling is a step toward stigmatizing and achieving a complete ban on GE foods. To the extent that they succeed, GE research and development activity and the use of new GE breakthroughs in Washington would be stifled. This could have severe negative consequences for Washington's agricultural sector in the future, by discouraging local farmers from using GE varieties of crops that are more resistant to diseases, pests and drought, thus requiring less pesticides and water.

Existing federal labeling policy already provides consumers with ample information on GE foods.

Food labeling requirements are typically set at the federal level. Current federal food labeling regulations in the U.S. do not require special labels for foods containing GE ingredients. However, there are existing voluntary labeling standards that already provide consumers with options to purchase foods made without GE ingredients, if that is what they prefer. In addition, the "USDA organic" label is a nationally approved standard which allows consumers another option for identifying foods without GE ingredients.

I-522 would be first state-based labeling policy in the U.S.

While some countries do have GE labeling requirements, the scope and enforcement of those laws vary considerably and such regulations are set at the national level, not at the state or provincial level. If I-522 were to pass, Washington would be the only state to have such regulations in effect. (Connecticut did recently enact a GE-related labeling law, but it would not go into effect unless major "trigger" conditions are met, making it unlikely to be implemented.)

By unilaterally imposing special label-

ing as a single state, Washington would put local producers, processors and retailers at a competitive disadvantage. They would face significant costs due to having to install and maintain different sets of production processes and packaging depending on whether they are selling in Washington or in the rest of the U.S. Such a patchwork of laws does every member of the food supply chain, along with the consumer, a disservice.

I-522 would reduce consumer choice.

The end result of labeling, as has been borne out in the EU, would be reduced consumer choice. As a European Com-

mission report noted,

The introduction of the current labeling provisions coincided with a general withdrawal of products which would have had to be labeled and this has not facilitated choice, informed or otherwise.

In all, I-522 would have an unfair and adverse economic impact on Washington's food industry, and it would increase costs and reduce choice for consumers. Additionally, requiring producers and retailers to label products in only one state is bad policy, and it would put Washington's food industry at a competitive disadvantage.

PROPOSITION 105
LABELING GENETICALLY MODIFIED FOOD
CONTACT LIST

Julian M. Alston
University of California, Davis
Phone: 530-752-3283
Email: jmalston@ucdavis.edu

Marc Arnusch
33521 WCR 16
Keenesburg, CO 80643
Phone: 303-732-4074
Email: marc@arnuschfarms.com

Jennifer Berman
Legislative Legal Services
200 E. Colfax, Room 091
Denver, CO 80203
Phone: 303-866-3286
Email: jennifer.berman@state.co.us

James Bertini
Denver Urban Homesteading
200 Santa Fe Drive
Denver, CO 80204
Phone: 303-572-3122
Email: james@denverurbanhomesteading.com

Jim Brett
Valley Organic Growers Association
P.O. Box 614
Hotchkiss, CO 81419
Email: vogaco@gmail.com

Richard Brown
9032 East Amherst Drive
Denver, CO 80231
Phone: 303-695-6388
Email: dickscuba@gmail.com

Ron Carleton
Colorado Department of Agriculture
300 Interlocken Parkway
Broomfield, CO 80021
Phone: 303-869-9004
Email: ron.carleton@state.co.us

Mary Lou Chapman
Rocky Mountain Food Industry Association
P.O. Box 1083
Arvada, CO 80001
Phone: 303-478-8587
Email: marylou@rmfia.org

Larry Cooper
6961 Lee St.
Arvada, CO 80004
Phone: 303-289-1034
Email: larry@j4cl.com

Athena Dalton
Policy Director
Senate Republicans
Phone: 303-866-4867
Email: athena.dalton@state.co.us

Kevin Dietly
Northbridge Environmental Management
Consultants
319 Littleton Road, Suite 208
Westford, MA 01886
Phone: 978-392-9665
Email: kdietly@nbenvironmental.com

James J. Ehrlich
Colorado Potato Administrative Committee
P.O. Box 348
Monte Vista, CO 81144
Phone: 719-852-3322
Email: jehrich@coloradopotato.org

Landon Gates
Capitol Focus
Phone: 970-218-0284
Email: landon@capitolfocusllc.com

April Giles
Colorado BioScience Association
600 Grant St., Suite 306
Denver, CO 80203
Phone: 303-592-4073
Email: agiles@cobioscience.com

**PROPOSITION 105
LABELING GENETICALLY MODIFIED FOOD
CONTACT LIST**

Cheryl Gray
665 Eldorado Blvd. #434
Broomfield, CO 80021
Phone: 303-875-8658
Email: cagsports@aol.com

Mark G. Grueskin
Recht Kornfeld - Attorneys at Law
1600 Stout St., Suite 1000
Denver, CO 80202
Phone: 303-573-1900
Email: mark@rechtkornfeld.com

Jenifer Gurr
Chief Administrative Officer
Colorado Department of Agriculture
700 Kipling St., Suite 400
Lakewood, CO 80215
Phone: 303-239-4102
Email: jenifer.gurr@state.co.us

Christopher D. Howes, President
Colorado Beverage Association
1580 Lincoln St., Suite 1125
Denver, CO 80202
Phone: 303-355-1066
Email: chris@chrishowes.com

Larry G. Hudson
Hudson Government Affairs, LLC
2308 Bellaire Street
Denver, CO 80217
Phone: 303-249-4234
Email: larry@hudsonga.com

Hermine Kallman
Lewis Roca Rothgerber
Phone: 303-628-9552
Email: HKallman@Lrrlaw.com

Eric Kornacki
Revision International
3735 Morrison Road
Denver, CO 80219
Phone: 720-465-9605
Email: eric@revisioninternational.org

Alan Lewis
Natural Grocers
Phone: 303-986-4600
Email: alewis@vitamincottage.com

Shayne Madsen
Jackson Kelly, PLLC
1099 18th Street, Suite 2150
Denver, CO 80202
Phone: 303-390-0012
Email: smadsen@jacksonkelly.com

Bob Mattive
Phone: 719-852-4659
Cell Phone: 719-850-1782
Email: bgmattive@gmail.com

Glenda Mostek
Colorado Association of Wheat Growers
4026 S. Timberline Road, Suite 100
Fort Collins, CO 80525
Phone: 970-449-6994
Email: gmostek@coloradowheat.org

Rick Ridder
RBI Strategies and Research
1900 Grant St., Suite 1170
Denver, CO 80203
Phone: 303-832-2444
Email: rick@rbistrategies.com

**PROPOSITION 105
LABELING GENETICALLY MODIFIED FOOD
CONTACT LIST**

Eliza Schultz
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246
Phone: 303-692-3471
Email: eliza.schultz@state.co.us

Kris Staaf, Director of Public Affairs
Safeway Stores
Email: kris.staaf@safeway.com

Daniel Sumner, PhD
University of California, Davis
Phone: 530-752-1668
Email: dasumner@ucdavis.edu

Chad Vorthmann
Colorado Farm Bureau
9177 E. Mineral Circle
Centennial, CO 80112
Phone: 303-749-7501
Email: chad@ColoradoFB.org

Don Shawcroft
Colorado Farm Bureau
9177 E. Mineral Circle
Centennial, CO 80112
Phone: 719-274-5516
Email: don@coloradofb.org

Senator Pat Steadman
1257 Corona Street
Denver, CO 80218
Email: pat.steadman.senate@state.co.us

Danny L. Tomlinson
Tomlinson and Associates
1729 S. Poplar St.
Denver, CO 80224
Phone: 303-638-6509
Email: dtomlinson@lobbycolorado.com

Marie Weller
GMO Free Colorado
5959 Greenbrook Lane
Colorado Springs, CO 80924
Phone: 703-927-3704
Email: gmofreecolorado@gmail.com

Proposition 105
Labeling Genetically Modified Food

1 **Ballot Title:** Shall there be a change to the Colorado Revised Statutes concerning labeling of genetically
2 modified food; and, in connection therewith, requiring food that has been genetically modified or treated
3 with genetically modified material to be labeled, "Produced With Genetic Engineering" starting on July 1,
4 2016; exempting some foods including but not limited to food from animals that are not genetically
5 modified but have been fed or injected with genetically modified food or drugs, certain food that is not
6 packaged for retail sale and is intended for immediate human consumption, alcoholic beverages, food for
7 animals, and medically prescribed food; requiring the Colorado department of public health and
8 environment to regulate the labeling of genetically modified food; and specifying that no private right of
9 action is created for failure to conform to the labeling requirements?

10 *Be it Enacted by the People of the State of Colorado:*

11 **SECTION 1.** In Colorado Revised Statutes, **add** 25-5-401.5 as follows:

12 **25-5-401.5. Legislative declaration.** (1) THE ELECTORATE OF COLORADO HEREBY FINDS,
13 DETERMINES, AND DECLARES THAT:

14 (1) LABELING OF GENETICALLY MODIFIED FOOD IS INTENDED TO PROVIDE CONSUMERS WITH THE
15 OPPORTUNITY TO MAKE AN INFORMED CHOICE OF THE PRODUCTS THEY CONSUME AND TO PROTECT THE PUBLIC'S
16 HEALTH, SAFETY AND WELFARE;

17 (2) PERSONS WITH CERTAIN RELIGIOUS, CULTURAL AND MORAL BELIEFS OBJECT TO CONSUMING
18 GENETICALLY MODIFIED FOOD BECAUSE OF OBJECTIONS TO TAMPERING WITH THE GENETIC MAKEUP OF LIFE
19 FORMS AND THE RAPID INTRODUCTION AND PROLIFERATION OF GENETICALLY ENGINEERED ORGANISMS;

20 (3) U.S. FEDERAL LAW DOES NOT PROVIDE FOR THE REGULATION OF THE SAFETY AND LABELING OF
21 GENETICALLY MODIFIED FOOD;

22 (4) THE LONG TERM HEALTH, SAFETY AND ENVIRONMENTAL CONSEQUENCES OF GROWING AND
23 CONSUMING GENETICALLY MODIFIED FOOD ARE NOT YET FULLY RESEARCHED AND ARE NOT YET WELL
24 UNDERSTOOD BY SCIENCE;

25 (5) CONSUMERS HAVE A RIGHT TO KNOW IF THE FOOD THEY ARE CONSUMING HAS BEEN GENETICALLY
26 MODIFIED OR HAS BEEN PRODUCED WITH GENETIC ENGINEERING.

27 **SECTION 2.** In Colorado Revised Statutes, 25-5-402, **add** (8.5), (9.5), (12.5), (15.5), (16.5),
28 (20.3), (20.5), and (21.5) as follows:

29 **25-5-402. Definitions.** As used in this part 4, unless the context otherwise requires:

30 (8.5) "DISTRIBUTOR" MEANS A PERSON OR BUSINESS ENGAGED IN ANY METHOD OF DISTRIBUTING OR
31 TRANSPORTING A FOOD OR FOOD PRODUCT FROM ONE PLACE TO ANOTHER.

32 (9.5) "ENZYME" MEANS A PROTEIN THAT CATALYZES CHEMICAL REACTIONS OF OTHER SUBSTANCES
33 WITHOUT BEING DESTROYED OR ALTERED UPON COMPLETION OF SUCH REACTIONS.

34 (12.5) "GENETICALLY ENGINEERED" OR "GENETICALLY MODIFIED" MEANS FOOD PRODUCED FROM OR
35 WITH AN ORGANISM OR ORGANISMS WITH ITS GENETICS ALTERED THROUGH APPLICATION OF:

1 (a) IN VITRO AND IN VIVO NUCLEIC ACID TECHNIQUES, INCLUDING RECOMBITANT DEOXYRIBONUCLEIC ACID
2 (DNA) TECHNIQUES AND THE DIRECT INJECTION OF NUCLEIC ACID INTO CELLS OR ORGANELLES; OR

3 (b) METHODS OF FUSING CELLS BEYOND THE TAXONOMIC FAMILY THAT OVERCOME NATURAL
4 PHYSIOLOGICAL REPRODUCTIVE OR RECOMBINANT BARRIERS, AND THAT ARE NOT TECHNIQUES USED IN
5 TRADITIONAL BREEDING AND SELECTION SUCH AS CONJUGATION, TRANSDUCTION, AND HYBRIDIZATION.

6 (c) A FOOD SHALL OTHERWISE BE CONSIDERED TO BE GENETICALLY ENGINEERED IF:

7 (I) THE ORGANISM FROM WHICH THE FOOD IS DERIVED HAS BEEN TREATED WITH A GENETICALLY
8 ENGINEERED MATERIAL; EXCEPT THAT THE USE OF MANURE AS A FERTILIZER FOR RAW AGRICULTURAL
9 COMMODITIES MAY NOT BE CONSTRUED TO MEAN THAT SUCH COMMODITIES ARE PRODUCED WITH A GENETICALLY
10 ENGINEERED MATERIAL; OR

11 (II) THE FOOD CONTAINS AN INGREDIENT, COMPONENT, OR OTHER ARTICLE THAT IS GENETICALLY
12 ENGINEERED.

13 (15.5) "MANUFACTURER" MEANS A PERSON OR BUSINESS ENGAGED IN THE PRODUCTION OR PROCESSING
14 OF SEED, SEED STOCK, FOOD, OR ANY FOOD PRODUCT.

15 (16.5) "ORGANISM" MEANS ANY BIOLOGICAL ENTITY CAPABLE OF REPLICATION, REPRODUCTION OR
16 TRANSFERRING GENETIC MATERIAL.

17 (20.3) "PROCESSED FOOD" MEANS ANY FOOD OTHER THAN A RAW AGRICULTURAL COMMODITY AND
18 INCLUDES ANY FOOD PRODUCED FROM A RAW AGRICULTURAL COMMODITY THAT HAS BEEN SUBJECT TO
19 PROCESSING SUCH AS CANNING, SMOKING, PRESSING, COOKING, FREEZING, DEHYDRATION, FERMENTATION, OR
20 MILLING .

21 (20.5) "PROCESSING AID" MEANS:

22 (a) A SUBSTANCE THAT IS ADDED TO A FOOD DURING THE PROCESSING OF THE FOOD BUT IS REMOVED IN
23 SOME MANNER FROM THE FOOD BEFORE IT IS PACKAGED IN ITS FINAL FORM;

24 (b) A SUBSTANCE THAT IS ADDED TO A FOOD DURING PROCESSING, IS CONVERTED INTO CONSTITUENTS
25 NORMALLY PRESENT IN THE FOOD, AND DOES NOT SIGNIFICANTLY INCREASE THE AMOUNT OF THE CONSTITUENTS
26 FOUND IN THE FOOD; OR

27 (c) A SUBSTANCE THAT IS ADDED TO A FOOD FOR ITS TECHNICAL OR FUNCTIONAL EFFECTS IN THE
28 PROCESSING BUT IS PRESENT IN THE FINISHED FOOD AT INSIGNIFICANT LEVELS AND DOES NOT HAVE ANY
29 TECHNICAL OR FUNCTIONAL EFFECT IN THAT FINISHED FOOD.

30 (21.5) "RETAILER" MEANS A PERSON OR BUSINESS ENGAGED IN SELLING THE FOOD FROM INDIVIDUALS OR
31 BUSINESSES TO THE END-USER.

32 **SECTION 3.** In Colorado Revised Statutes, 25-5-411, **add** (1)(q), (1)(r), (3) and (4) as follows:

33 **25-5-411. Definitions of "misbranding".** (1) A food shall be deemed to be misbranded:

34 (q) BEGINNING JULY 1, 2016, IF IT HAS BEEN GENETICALLY MODIFIED OR HAS BEEN PRODUCED WITH
35 GENETIC ENGINEERING, UNLESS THE WORDS "PRODUCED WITH GENETIC ENGINEERING" APPEAR IN A CLEAR AND
36 CONSPICUOUS MANNER ON ITS LABEL, IN THE CASE OF PACKAGED FOOD. IN THE CASE OF A RAW AGRICULTURAL
37 COMMODITY THAT IS NOT SEPARATELY PACKAGED OR LABELED, THE WORDS "PRODUCED WITH GENETIC

1 ENGINEERING" SHALL BE PLACED IN A CLEAR AND CONSPICUOUS MANNER ON THE CONTAINER USED FOR
2 PACKAGING, HOLDING OR TRANSPORT BY THE MANUFACTURER, AND SHALL BE MAINTAINED BY THE DISTRIBUTOR,
3 AND DISPLAYED IN A CLEAR AND CONSPICUOUS MANNER ON THE RETAIL STORE SHELF OR BIN IN WHICH SUCH
4 COMMODITY IS DISPLAYED FOR SALE BY THE RETAILER. THIS PARAGRAPH (q) OF SUBSECTION (1) OF THIS SECTION
5 DOES NOT APPLY TO:

6 (I) FOOD OR DRINK FOR ANIMALS;

7 (II) CHEWING GUM;

8 (III) ALCOHOLIC BEVERAGES;

9 (IV) ANY PROCESSED FOOD THAT WOULD BE SUBJECT TO SUBSECTION (q) SOLELY BECAUSE ONE OR
10 MORE PROCESSING AIDS OR ENZYMES WERE PRODUCED OR DERIVED WITH GENETIC ENGINEERING;

11 (V) ANY FOOD WHICH IS NOT PACKAGED FOR RETAIL SALE AND THAT EITHER:

12 (a) IS A PROCESSED FOOD PREPARED AND INTENDED FOR IMMEDIATE HUMAN CONSUMPTION;

13 (b) IS SERVED, SOLD, OR OTHERWISE PROVIDED IN ANY RESTAURANT OR OTHER FOOD ESTABLISHMENT
14 THAT IS PRIMARILY ENGAGED IN THE SALE OF FOOD PREPARED AND INTENDED FOR IMMEDIATE HUMAN
15 CONSUMPTION;

16 (VI) FOOD CONSISTING ENTIRELY OF, OR DERIVED ENTIRELY FROM, AN ANIMAL THAT HAS NOT ITSELF
17 BEEN GENETICALLY ENGINEERED, REGARDLESS OF WHETHER THE ANIMAL HAS BEEN FED OR INJECTED WITH ANY
18 FOOD PRODUCED WITH GENETIC ENGINEERING OR ANY DRUG THAT HAS BEEN PRODUCED THROUGH MEANS OF
19 GENETIC ENGINEERING; OR

20 (VII) MEDICALLY PRESCRIBED FOOD.

21 (3) FOOD WILL NOT BE CONSIDERED MISBRANDED UNDER PARAGRAPH (q) OF SUBSECTION (1) OF THIS
22 SECTION IF IT IS PRODUCED BY A PERSON WHO:

23 (a) GROWS, RAISES, OR OTHERWISE PRODUCES SUCH FOOD WITHOUT KNOWLEDGE THAT THE FOOD WAS
24 CREATED WITH SEED OR OTHER FOOD THAT WAS DERIVED IN ANY WAY THROUGH A PROCESS OF GENETIC
25 ENGINEERING; AND

26 (b) OBTAINS A SWORN STATEMENT FROM THE PARTY THAT SOLD TO SUCH PERSON THE SEED OR FOOD
27 THAT SUCH SUBSTANCE HAS NOT BEEN KNOWINGLY ENGINEERED, WAS ENTIRELY SEGREGATED FROM, AND HAS
28 NOT KNOWINGLY BEEN COMMINGLED WITH A FOOD OR FOOD COMPONENT THAT MAY HAVE BEEN CREATED
29 THROUGH A PROCESS OF GENETIC ENGINEERING. THE SWORN STATEMENT MUST BE OBTAINED AT THE TIME THE
30 SEED OR FOOD IS DELIVERED FROM THE SELLER.

31 (4) THERE IS NO PRIVATE RIGHT OF ACTION AGAINST A DISTRIBUTOR, MANUFACTURER, OR RETAILER THAT
32 SELLS OR ADVERTISES FOOD FOR FAILURE TO CONFORM TO THE LABELING REQUIREMENTS UNDER PARAGRAPH (q)
33 OF SUBSECTION (1) OF THIS SECTION.

34 (5) THE DEPARTMENT SHALL PROMULGATE REGULATIONS IN ACCORDANCE WITH THE REQUIREMENTS OF
35 SECTION 25-5-420 CONCERNING THE PROCEDURES FOR PROMULGATING SUCH REGULATIONS, TO CARRY OUT THE
36 LABELING REQUIREMENTS OF PARAGRAPH (q) OF SUBSECTION (1) OF THIS SECTION. SUCH REGULATIONS MAY
37 PRESCRIBE THE PROCEDURES FOR INSPECTIONS AND TESTING OF PRODUCTS TO ENSURE COMPLIANCE WITH

1 PARAGRAPH (q) OF SUBSECTION (1) OF THIS SECTION.