

STATE OF COLORADO

EXECUTIVE CHAMBERS

136 State Capitol
Denver, CO 80203 - 1792
Phone (303) 866-2471



Bill Owens
Governor

D 015 06

EXECUTIVE ORDER

PROCLAMATION

CALL FOR THE FIRST EXTRAORDINARY SESSION OF THE SIXTY-FIFTH GENERAL ASSEMBLY

Pursuant to the authority vested in the Office of the Governor of the State of Colorado, and in particular vested in the Governor pursuant to Article IV, Section 9 of the Colorado Constitution, and as provided for in Article V, Section 7, I, Bill Owens, Governor of the State of Colorado, hereby find that the following extraordinary occasions exist to convene the Sixty-Fifth General Assembly to meet in special session.

I. Background and Need

A. Immigration

Colorado, like every state in the nation, must confront the increasing challenges related to illegal immigration. Illegal immigration has an economic, social and demographic impact on Colorado. It is estimated that approximately 250,000 undocumented aliens reside and work in the State of Colorado, while approximately ten to fifteen million undocumented aliens presently live and work in the United States. Illegal immigration is an issue that crosses state lines and must be addressed by the federal government, however, the State of Colorado must take measures to respond to Colorado's dramatically increasing illegal immigrant population.

1. Prohibiting State Funds for Illegal Immigrants

Federal law prohibits illegal immigrants from receiving tax-funded services, with some specific exceptions. However, the increasing number of illegal immigrants in Colorado, along with the increased costs to the State of Colorado, necessitates further legislation to address the issue. The State of Colorado should ensure that only those persons eligible are able to receive state funded services. Colorado must enact a law which prohibits the use of state funds for illegal immigrants at both the state and local level, except as

necessary for emergency services, including pre-natal care, and K-12 public education, as mandated by federal law.

2. Employer Verification

Employers currently have a financial incentive to hire undocumented illegal immigrants as these workers traditionally accept lower wages. At the same time, employers currently have little legal incentive to ensure the employees they hire may lawfully work in this country. Employers who hire undocumented illegal immigrants perpetuate the flow of illegal immigrants to this state while the vast majority of employers who act according to the law are therefore at a disadvantage.

Employers now have effective tools readily available to validate an employee's status. For instance, several federal databases allow employers to verify the validity of identifying information used to gain employment. These services are free of charge or are available at a minimal fee. With these new tools, employers should be held to a higher standard of accountability by being required to take reasonable measures to validate the lawful work status of its employees.

I believe that significant fines should be levied against these employers who submit false or fraudulent documentation to the state, including I-9 forms and social security numbers, without taking reasonable measures to validate such information prior to submission. I believe that employers should accept this relatively simple step of taking reasonable measures to validate the lawful work status of its employees.

To ensure employers abide by this law, the state must have resources necessary to investigate and issue fines on violating employers. Such a measure would greatly reduce the use of fraudulent documents to illegally obtain employment within the State of Colorado.

3. Prohibiting Tax Benefits for Employers Hiring Illegal Immigrants

Additional state measures can be taken to ensure private employers do not employ undocumented illegal immigrants. In that regard, the State of Colorado should not allow employers who hire illegal immigrants to use any of the unauthorized employees' wages as a deductible business expense. The State of Colorado should require a six percent withholding tax on compensation paid to an employee whose compensation is reported on a Form 1099 where that employee has failed to provide a valid taxpayer identification number. Both laws should be effective July 1, 2007. These measures are similar to the recently enacted Georgia Security and Immigration Compliance Act, Georgia Senate Bill 529.

4. Proof of Citizenship to Register to Vote and to Vote

Verifiable identification is required of citizens to drive a vehicle, board an airplane, or cash a check. These are privileges in which it is critical to confirm the individual's identity through a verifiable identification process. Voting is the most valuable privilege we have as U.S. citizens and yet our state law invites fraudulent activity by allowing people to vote without presenting a basic form of identification. Currently, an individual can present a utility bill, a bank statement, a government check, or even a paycheck to register to vote and to vote. The State of Colorado lends itself to such fraudulent voting by not requiring actual verifiable identification to ensure the individual is a citizen of this state and this country.

The State of Colorado has developed a comprehensive system for ensuring driver's license and government issued identification are only granted to persons who can prove their identity and citizenship through verifiable identification. C.R.S. § 42-2-108 and C.R.S. § 42-2-302 requires applicants to present two forms of identification in order to be issued a state drivers license or identification. While the list of documentation that can be presented is extensive, this process confirms the individual's identity and citizenship.

Colorado has developed a proven system for confirming identity and citizenship through the process of issuing driver's licenses and government identifications. This same system should be adopted as a requirement to register to vote and to vote. In order to register to vote and to vote, Colorado should require each individual to present a state issued driver's license or require the same form of identification required to obtain a driver's license. This simple measure would confirm that only lawful citizens vote.

5. Strengthening Human Trafficking laws

The human trafficking legislation the General Assembly passed in 2006 was a good first step. However, more can be done to protect vulnerable people from involuntary servitude. Recently, a case went to trial in Colorado where a couple allegedly kept an immigrant woman as a prisoner in their home, forcing her to work for them without compensation. Strengthening our laws against such inhumane practice will help prevent future occurrences and ensure perpetrators are severely punished.

The state legislature should consider measures to strengthen human trafficking laws by criminalizing involuntary servitude, forbidding forced labor or services by threatening the destruction of immigration documents, and making the act of threatening an individual with reporting illegal status to officials for the purpose of extorting money a felony.

6. Referred Measure for Statewide Vote of the People

One important step in this debate was a citizen proposed ballot initiative ("Initiative #55") to be placed on the November 2006 ballot that would have asked voters to decide whether state and local governments should provide non-emergency services to illegal

immigrants. However, the Colorado Supreme Court precluded the citizens from deciding on this issue by issuing an unprecedented ruling that Initiative #55 violated the single subject requirement of the Colorado Constitution. The Supreme Court unilaterally prohibited Colorado citizens from having this debate and precluded the proponents from fixing the alleged technical deficiency.

If the state legislature fails to pass substantive illegal immigration reform statutes, the legislature should pass a referred measure that prohibits state and local governments from providing services to illegal immigrants, except as mandated by federal law. If the people's representatives cannot act on this issue, they must allow the people of Colorado to have this debate. While Colorado citizens may ultimately determine that this law is unnecessary this issue itself deserves public debate and a public vote this November.

B. Colorado Supreme Court Timeline

Colorado Revised Statute §1-40-107, governs the appeal process arising when there is a challenge to a citizen proposed ballot initiative. The law requires the Supreme Court to “promptly” rule on the matter “consistent with the rights of the parties.” In the action pertaining to Initiative #55, the Supreme Court took an unprecedented amount of time to render their ruling. Petitioners in this matter first filed their appeal with the Supreme Court in January 2006. The matter was fully briefed and before the Supreme Court on March 17, 2006. However, the Supreme Court did not issue an opinion on this matter until June 13, 2006, well after the deadline for the proponents of the initiative to attempt to remedy the alleged defects found by the Supreme Court.

Matters concerning citizen proposed ballot initiatives are of significant importance in Colorado. The legislative declaration concerning referendums and initiatives states that the purpose of the statutes is to “properly safeguard, protect, and preserve...these modern instrumentalities of democratic government.” By placing a specific timeline on the Supreme Court, citizens can work with an objective and predictable timeline and plan for time to cure adverse technical rulings on an initiative. I suggest amending C.R.S. §1-40-107(2) by changing the word “promptly” to “within thirty days.”

The public has a right to a predictable timeline on these matters.

C. Common Law Marriage

Colorado is one of ten states that recognizes the validity of common law marriage. Common law marriage is a term used to describe a marriage which has not complied with statutory requirements necessary for a ceremonial marriage. A common law marriage may be established in Colorado as long as the persons are free to enter into a marriage, each person consents to the marriage, and the parties cohabitate.

The Colorado Court of Appeals recently issued a decision concerning common law marriage in Colorado. In In re Marriage of J.M.H., (Colo. App. 2006), the Court of Appeals concluded that the age of consent for a common law marriage is age fourteen for males and age twelve for females.

Colorado must change its statutes regarding this issue. This ruling could be used as a defense for adult perpetrators who violate young children. In addition, this ruling creates conflicts in Colorado law. For instance, in Colorado a person can be convicted of statutory rape if the victim is fourteen years of age and the perpetrator is four years older. Consent is not a defense to statutory rape. Furthermore, in Colorado the Uniform Marriage Act establishes that the statutory age of consent for marriage is eighteen. C.R.S. §14-2-106. Persons between sixteen and eighteen years of age may marry if they obtain parental consent or judicial approval. C.R.S. §14-2-106, 108. This issue must be resolved for public safety and uniformity within state law.

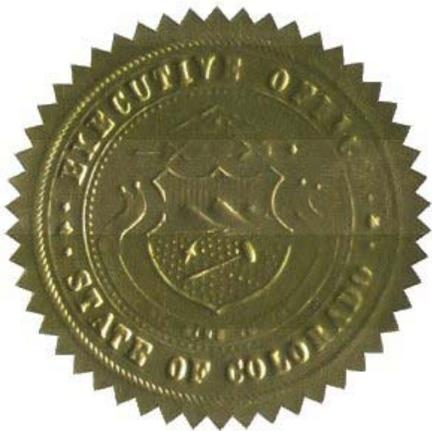
The legislature should consider whether Colorado law should continue to acknowledge common law marriage. At a minimum, the age requirements for a valid common law marriage should mirror the age requirements contained in the Uniform Marriage Act.

II. Proclamation

I, Bill Owens, Governor of the State of Colorado, with this proclamation find extraordinary occasions exist to convene the Sixty-Fifth General Assembly of this state and summon the members of the Sixty-Fifth General Assembly to meet in Special Session at the State Capitol, in the City and County of Denver, on July 6, 2006, at 10:00 a.m. and designate the following specific subjects for your consideration and appropriate legislative action:

- A. Concerning a statutory measure prohibiting state and local governments from expending state funds on services to illegal immigrants, except emergency services including prenatal care and K-12 education, as required by federal law.
- B. Concerning a statutory measure implementing significant fines for employers in the State of Colorado that submit false or fraudulent documentation to the state pertaining to the identification of its employees without taking reasonable measures to confirm such information as legally valid.
- C. Concerning a statutory measure exempting any wages earned by undocumented employees as a deductible business expense for state income tax purposes. The statutory measure shall allow the Department of Revenue to promulgate rules and regulations necessary for the enforcement of this provision.

- D. Concerning a statutory measure requiring a six percent withholding tax on compensation paid to an employee whose compensation is reported on a Form 1099 where that employee has failed to provide a valid taxpayer identification number.
- E. Concerning a statutory measure requiring a person to provide verifiable identification to register to vote and to vote that is no less restrictive than current state requirements to issue driver's license and state identification.
- F. Concerning a statutory measure to criminalize involuntary servitude, forbid forced labor or services by threatening the destruction of immigration documents, and making the act of threatening an individual with reporting illegal status to officials for the purpose of extorting money a felony.
- G. Concerning implementing a referred measure to a statewide vote of the people banning state and local government services to illegal immigrants, except as mandated by federal law.
- H. Concerning a measure to ensure a timely resolution from the Colorado Supreme Court concerning proposed ballot initiatives pursuant to C.R.S. §1-40-107, by replacing the term "promptly" with an objective and numeric timeline, not to exceed 30 days.
- I. Concerning raising the age of consent in common law marriage, at a minimum, to conform with the statutory age requirements contained in the Uniform Marriage Act.



GIVEN under my hand and the
Executive Seal of the State of Colorado
this 28th day of June 2006.

A handwritten signature in blue ink that reads "Bill Owens." The signature is written in a cursive, flowing style.

Bill Owens
Governor