

# *Polis' Amendment 41 could face litigation*

At the very least, legislative clarification could be forthcoming

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The irony couldn't have been any more poignant. Here were legislators – almost all Democratic state representatives on this particular occasion – thoroughly enjoying themselves the night before the opening day of the session at a reception attended by a slew of lobbyists. It seemed like everyone was there at this typical pre-session event, good naturedly testing the start of the upcoming session and renewing friendships with colleagues.

It was, you'd think, the makings of some horrible nightmare in which Amendment 41 co-author and funder Jared Polis unwittingly found himself. The kind of stuff which would propel the normally soft-spoken Boulder Democrat into some sort of uncontrollable mad frenzy that could forever alter the world as he knows it. But there, mostly standing by himself in the expanse of the mansion where the party was held, was none other than Polis himself.

Polis – at a fundraiser with legislators and lobbyists in the same room! But the irony didn't stop there. The reception was held at the luxe offices of the **Colorado Automobile Dealers Association**, the organization that had ponied up so much of the money to oppose Amendment 41, the so-called ethics in government proposal that seeks to limit the influence of lobbyists on elected officials. And in the center of all the activity on this evening was **Tim Jackson**, **CADA's president** and host extraordinaire who had made it possible for the House Dems (and Senate Republicans earlier that day) to mix and mingle with Colorado's lobbying corps in such a hospitable and lovely setting.

Polis definitely gets the chutzpah award for going into the lion's den. I wasn't the only one who noticed Polis' appearance at the legislator-lobbyist function. Some lobbyists, eyeing him from afar as he stood awkwardly in the midst of such a grouping, quietly chuckled among themselves. "He's the compliance officer for Amendment 41," joked one well known lobbyist who had gone to bat against the measure last year. "He's being shunned," said yet another, explaining why poor Jared seemed to be so friendless at this function.

I moseyed on over to chat. "How's the campaign going?" I asked him, trying to make small talk. "What campaign?" Polis responded with a sense of earnestness in his voice. I hate it when politicians play so coy. But Polis wasn't too talkative, saying only that he certainly hadn't made up his mind about running for Congress in the 2<sup>nd</sup> CD – or for anything, for that matter – and wasn't even entirely sure, he said, that Mark Udall would be giving up the seat to run for the Senate in 2008. He obviously didn't want to talk politics, so we stuck one of those wrapped asparagus spears into our mouths and casually brought up Amendment 41, which we're sure is one of his favorite subjects these days.

Did we know the proposed enabling legislation that would clarify the amendment? Polis asked us. He didn't even seem daunted when we mentioned that even with a Democratically controlled House and Senate, any tinkering of the amendment isn't automatically guaranteed. Did we realize, Polis asked, that the ethics commission might just have one staff person, and that the probability exists that the scope of the amendment would therefore be reined in? It seemed to us that Polis is already running away from his amendment.

Whether the legislature does in fact enact enabling legislation that will clearly define the measure has yet to be determined. But we do know this. As we go to press, there is a group (which must stay unnamed at this point or we risk getting our heads lobbed off) that has sent out an RFP to law firms interested in representing them in litigation they plan to file against Amendment 41. We've been told that several confidential bids from law firms have already been received, and more are expected.

If the legislature fails to clarify the amendment – or even if it succeeds with enabling legislation – Amendment 41 could also face being litigated in the courts. Attorney Mark Grueskin has spelled out reasons why he thinks the legislature can craft meaningful enabling legislation. He cites Amendment 23 and the campaign finance amendments as historical precedents, both which underwent a similar process. But even if something is approved by the legislature – and that's a big uncertainty at this point – Amendment 41 might end up being litigated all the same.