

Doing the Amendment 41 Dance

By CAR lobbyist Jeremy Cottrell

Bow to your corner and your partner...the Amendment 41 dance has begun. The delicate interplay between how to clarify the substantial flaws in Amendment 41, while complying with the amendment's plain language and avoiding violating the constitutional constraints has resulted in some delicate steps.

Representative Rosemary Marshall has attempted to bring forth some clarity in the form of HB-1304, Amendment 41 implementation, in conjunction with Speaker of the House Andrew Romanoff's Interrogatories on HB-1304. Romanoff proposes that the Legislature seek the guidance of the Colorado Supreme Court in making a judicial review regarding many convoluted tenants of Amendment 41. He suggests altering HB-1304 to conform to the court's ultimate clarifications. This would allow an efficient way to determine what portions of HB-1304's interpretation have the Supreme Court's blessing. Romanoff also emphasized the brevity of the interrogatory process, offering a decision in 30 days versus 30 months if litigation were used to reach a similar result.

The dance requires lawmakers to attempt to create some ideal of "ethics in government," ironically the very notion many voters believed they were voting for-while stripping away the harmful effects of 41. Among Marshall's recommendations are to require three of the five member of the yet to be formed "Ethics Committee" to incur a finding of fault. Further, a super-majority of four out of five would be needed in order to invoke the subpoena power given to the committee by the amendment. The bill also addresses the issue of frivolous claims-and requires strict confidentiality by those on the committee in such circumstances.

Representative Kevin Lundberg fears the bill exceeds the scope that the Constitution allows in permitting anything other than a literal interpretation of what he refers to as "plain and clear language." Other legislators, such as Representative Bill Cadman cited the fact that the Colorado Legislative Council prepared and issued a 19-page report warning proponents of Amendment 41 of the probable outcome if introduced into law as written. Throughout extensive discussion, proponents balked at the demonstrated weaknesses, saying no reasonable person would possibly interpret the amendment in that manner. Due to this flippant disregard, we are now entrenched in the current mess affecting nearly one in five Coloradans who are subject to the gift ban tenants of the amendment.

Almost all of those who testified before the committee in support of the enabling legislation, HB-1304, expressed their unwavering opposition to 41, but cited that

clarification needed to occur in a timely manner in order to address the many government and public employees whose lives continue to be adversely affected awaiting a ruling on 41. Fittingly, Common Cause testified in support of the bill, lauding the bill's parallel to Amendment 41's underlying spirit and intent. Of course Common Cause is the group which led the effort to get Amendment 41 written and onto Colorado's ballot.

Among those testifying was Mark Grueskin, an attorney selected as part of a select team, to bring about clarity and meaning to what is known as "The Polis Amendment." Grueskin contends that the Legislature has the authority to interpret 41 in the context of its entirety. Only when 1) language is plain, 2) meaning is clear, and 3) no absurdity would result must lawmakers interpret a law in a strict literal sense. He argues that is not necessarily the case here. Others see his bending of this test as the only escape hatch to try to save an un-salvageable amendment.

Many unwilling contestants have been entered in this contorted Amendment 41 dance. Unfortunately, numerous feet will be stepped on as there is no one to lead what has become an extremely complicated affair. No one can be sure how long this dance-a-thon will last until a court ruling puts an end to this political conundrum.

The irony of the proposed legislation is stark. The bill has developed as a tool for political cover for those who brought on the Amendment 41 mess to begin with. Those who have railed against lobbyist influence over public policy have paid the highest amount of fees so far this year for a first-string legal, lobby and public relations army to spare the proponents and the public of the mess they alone created.