



# FOUNDATION OF A GREAT STATE

## *THE FUTURE OF COLORADO'S CONSTITUTION*

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# LETTER FROM THE UNIVERSITY OF DENVER CHANCELLOR

The measure of a great university is its commitment to the public good. At the University of Denver, we believe that one of our roles is to stimulate a rich and informed public discourse on critical issues. We do so in hopes of contributing to a sustainable future for Colorado, our home since 1864.

It is with that in mind that the University sponsors the Strategic Issues Program. The program brings together concerned citizens from across the state, convening as a strategic issues panel, to examine the many facets of a single complex topic. The two previous panels examined Colorado's economic future and water issues. Upcoming panels will tackle questions every bit as important for the long-term viability of our state.

The 2007 strategic issues panel has confronted one of the most pressing and politically sensitive challenges facing Colorado: the need for constitutional reform. The panel was made up of distinguished leaders from varying walks of life, coming together as a nonpartisan task force. In the course of their work, they heard from Colorado legislators and an array of local and national constitutional experts on the need and precedent for such reform. They reviewed the experiences of other states in reforming their constitutions, the legal options for constitutional change in Colorado and the policy ramifications of suggested constitutional remedies.

This report is the culmination of all their hard word and analysis. In it, you will learn about the serious dilemmas growing out of Colorado's conflicting constitutional requirements. More important, you will review the panel's comprehensive recommendations for ensuring that this historic document—the Colorado Constitution—can effectively serve future generations.

The work of this panel is done. What happens next depends on the will of Colorado's leaders and the resolve of her citizens. What happens next is up to us.



Robert D. Coombe  
Chancellor, University of Denver



## OVERVIEW FROM THE PANEL CHAIR

Constitutions are the foundation of civil society.

All that we do as a nation or state, all that we seek to become as a community, is grounded in our constitution. Constitutions protect our rights as citizens and express our values. They empower enterprise in the rules they set for human interaction. Constitutions affect every person, every business and every organization.

Because constitutions are so important, the University of Denver, through its Strategic Issues Program, asked that its 2007 panel examine Colorado's Constitution. The choice of this issue was suggested, in part, by the work of a prior strategic issues panel, the 2005 Colorado Economic Futures Panel (CEFP). The CEFP found that the ease of constitutional amendment, and the inability to change provisions once they were placed in the constitution, was a major cause of the entangled fiscal policies that beset the state.

Although the CEFP identified constitutional issues as a major area of concern, the thrust of its recommendations was directed to the area of public finance, consistent with its mission. Thus, in one sense, the 2007 Colorado Constitution Panel (CCP) picks up where the Economic Futures Panel left off. However, rather than focusing solely on financial and economic matters, the 2007 panel's purview was the entire Colorado Constitution.

As with prior strategic issues panels, this year's panel was nonpartisan in nature and composed of accomplished citizens from various segments of the Colorado community. The panel's 13 members were appointed by the University of Denver chancellor, and the panel's work was supported by the University as part of its ongoing commitment to support the public good.

During the fall of 2007, the panel met on an intensive basis, spending more than 40 hours listening to presentations, discussing issues and formulating recommendations. Eleven local and national experts on state constitutions and government made presentations to the panel. A number of presentations focused specifically on the Colorado Constitution. Other presentations looked at constitutional processes used elsewhere in the country and abroad with the goal of identifying best practices that might be adapted for use in Colorado.

Panel members weighed the research and opinions presented by various experts and engaged in discussions based on the information presented and panelists' own views and experience. They identified problems to be solved, made findings of fact and developed recommendations on the question of whether Colorado should undertake major changes to its constitution.



Constitutional improvement is not a simple subject. As the panel studied the constitution in depth, it became clear that there were three interconnected *levels* to consider. The first encompasses the overt constitutional problems facing our state. These are the tangible issues with which we must ultimately grapple. The second involves understanding the underlying causes of these issues. The third level deals with identifying procedural and systemic solutions. This is the level at which the panel's recommendations are focused.

After careful consideration, the panel concluded that the most serious constitutional issues facing the state involve conflicting provisions within the constitution; the unintended consequences of constitutional amendments; and policy matters that are, for all intents and purposes, permanently frozen in the constitution. Each of these conditions frustrates the ability of policy makers to respond to changing times and meet the diverse needs of Colorado citizens, businesses and other organizations.

The causes of these problems are rooted in our constitutional processes. A growing flood of amendments, many of which are brought forth by well-funded special interests, has created a tangled web of constitutional provisions. By itself, this is difficult enough. In Colorado, it is made even worse because

there is no practical way to revise the constitution and untangle conflicting provisions. Unless changes are made, there is every reason to believe that the situation will become increasingly difficult.

The 2007 Colorado Constitution Panel found that the issues we face with our constitutional processes, while difficult, are not impossible to resolve. Indeed, the panel has concluded that several key changes could set the groundwork for major improvements to the constitution. The panel's recommendations on these matters are contained in this report. As with other DU strategic issues panels, the 2007 Colorado Constitution Panel was free to develop such conclusions as panel members considered appropriate. This report represents their collective insights into the future of Colorado's Constitution.

Jim Griesemer, Chair  
Colorado Constitution Panel  
University of Denver

#### Constitutional Issues

- Conflicting fiscal provisions
- Unintended consequences
- Unchangeable policies

#### Underlying Causes

- Ease of amending constitution
- Inability to revise constitution

#### Areas of Recommendation

- Constitutional amendment processes
- Public information and discussion
- Constitutional review and revision



# REPORT OF THE COLORADO CONSTITUTION PANEL

## *The Nature of Constitutions*

Constitutions are the basic social compact. No document is more far-reaching or has greater impact on our lives than a constitution. Constitutions create the government, define the powers of its branches, determine the limits of legislative authority, protect individual rights and set broad policy. Every law that is passed by a legislature, every regulation that is adopted, every action that is taken by a governor and every court case that is decided, is subject to the constitution.

As important as constitutions are, we usually take them for granted, if we think about them at all. For most of us, constitutional law is something to be argued over by lawyers or opined upon by the courts. In truth, however, constitutions are the unique province of the people. Legislators can pass laws, executives can issue orders, courts can render decisions, but only citizens can approve or amend a constitution.

While most people are familiar with the U.S. Constitution, there are actually several *types* of constitutions, each designed for a different level of government. In addition to national constitutions, there are supranational constitutions such as

that of the European Union, and subnational constitutions such as Colorado's state constitution.

National constitutions typically establish the structure of government and may protect certain rights. Our federal constitution, for example, defines the branches of government, enumerates powers and provides for individual rights. Importantly, the U.S. Constitution makes clear that any powers not granted to the federal government are reserved for the states. As documents that articulate broad grants of power, national constitutions can be reasonably concise, as illustrated by the U.S. Constitution with its spare language.

Like national constitutions, state constitutions provide the architecture for government. However, where national constitutions serve primarily to *grant* broad powers, state constitutions typically *limit* the way in which powers can be used. In part for this reason, state constitutions tend to be longer and more detailed than the federal constitution. This is certainly true of the Colorado Constitution, which is not only longer than the U.S. Constitution, but also much longer than most state constitutions. How this came to be is where the story of Colorado's Constitution begins.



The 2007 Colorado Constitution Panel meets in the Schneider Board Room of the Daniels College of Business.



*“Legislators can pass laws, executives can issue orders, courts can render decisions, but only citizens can approve or amend a constitution.”*

### **Colorado’s Constitution**

On July 1, 1876, after five previous attempts, citizens of the Pikes Peak Territory adopted a constitution. Shortly thereafter, the state of Colorado was born. As with all constitutions, Colorado’s document responded to the tenor of the times. It reflected, among other things, a distrust of the free-spending ways of former territorial officials, fiscal conservatism and a general wariness of governmental power.

Today, Colorado is one of only 20 states that retains its original constitution. In the years since it was first adopted, society in general, and our state in particular, has changed in profound ways. While Colorado’s Constitution contains much that is useful, in recent years the Economic Futures Panel and other observers have expressed a number of concerns with the constitution. Is it time to modernize the document? Should the state of Colorado consider constitutional revision? And if so, through what process?

Answering these questions seems to be, above all, a matter of balance. If the concerns with Colorado’s Constitution are relatively minor, opening up the entire document for wholesale revision through

a constitutional convention could lead to a host of unknown outcomes. Conversely, if problems with the constitution are becoming more serious, inaction may only serve to place the state at greater risk. In any case, if change is needed, how might it best be achieved without opening a Pandora’s box of unintended consequences?

### **Constitutional Strengths**

Like the humans who create them, constitutions are imperfect documents. Our constitution is no exception. It has weaknesses as well as some important strengths. As a starting point, it is useful to begin by looking at what’s *right* about the document.

Colorado’s Constitution contains a number of desirable provisions. For example, it has a strong bill of rights and a fairly clear distribution of powers among various branches of government. In Colorado, thanks to the Taxpayers’ Bill of Rights (TABOR), voter approval is required to increase or adopt new taxes. The constitution also contains a strong home-rule provision for cities and towns and permits county residents to select home rule as well. It specifies nonpartisan selection of judges and uses a modern commission



Senior staff professionals from the National Conference of State Legislatures meet with the 2007 Colorado Constitution Panel.



system for reapportionment of state house and senate districts. And, importantly, Colorado's Constitution prohibits the inclusion of nonfinancial items in appropriation bills, in marked contrast to appropriations at the federal level.

After examining the document in depth, the panel concluded that the Colorado Constitution is by no means a candidate for abandonment. To be sure, there are issues to address if Colorado is to have the type of effective and flexible constitution that will serve its citizens in changing times and remain relevant in a competitive global economy. But revision is not the same as abandonment. At this point in our history, the panel concludes that Colorado's Constitution needs to be revised, not discarded.

### *Constitutional Concerns*

While the constitution has a number of strengths, there are also areas of concern. In undertaking its work, the panel did not try to identify every potential problem that might exist. Rather, the panel focused on key processes that, if addressed, could significantly improve the functioning of the constitution, and thereby the effectiveness of state and local government.

### *Constitutional Content*

In a document that is well over 100 years old and crammed with detail, it is not too difficult to find areas of concern. A prime example is the knot of conflicting fiscal provisions that exist in the Colorado Constitution. The report of the Colorado Economic Futures Panel discussed this issue in depth. The panel recommends that readers look at the CEFPP report, which can be found at the DU Strategic Issues Program Web site (<http://www.du.edu/issues>) for an in-depth discussion of constitutional fiscal concerns.

The internal conflicts that exist among fiscal policy issues in the constitution are the first major area of concern. Provisions that provoke unintended consequences are a second significant issue. Examples of unexpected outcomes abound. For example, it is not likely that supporters of constitutional Amendment 23 intended to provide additional funding of K-12 education at the expense of higher education. But that's essentially what happened when Amendment 23, the TABOR amendment and an economic downturn came together in 2001–2004.



Richard Robinson, 2007 Colorado Constitution  
Panel member



*“Amendment 41 is a perfect, but only the most recent, example of unintended outcomes from Colorado’s constitutional amendment process.”*

It’s also unlikely that the Gallagher amendment’s proponents intended to disadvantage the very businesses that create Colorado’s jobs. But that is one of the unanticipated outcomes as Gallagher continually shifts the property tax burden to nonresidential property. No one knows when, or if, a tipping point will be reached where Colorado is no longer viewed as a favorable place to locate businesses due to an unreasonably high property-tax burden.

Nor is it likely that the supporters of recently adopted Amendment 41 intended to discriminate against state employees with their constitutional ethics amendment designed for public officials. No one wanted to prohibit the children of state employees from obtaining a scholarship or prevent a citizen from inviting a government worker and her family over for dinner. The confused labyrinth of this amendment is in court at this writing, awaiting final determination. Whatever the result, Amendment 41 is a perfect, but only the most recent, example of unintended outcomes from Colorado’s constitutional amendment process.

A third broad area of concern relates to the excessive level of detail in the Colorado Constitution. Our state has the third longest constitution in the nation, about twice as long as the average state constitution and nearly *nine times* as long as the U.S. Constitution. Even granting that state constitutions tend to be longer than national constitutions, ours is very long, and getting longer fast.

In the last 17 years, we have amended our constitution 35 times, compared to just 27 amendments to the U.S. Constitution in *217 years*. Since 1990 alone, we have added 22,414 words to the Colorado Constitution, nearly three times the length of the entire U.S. Constitution, including all its amendments.

While constitutional length may not be a problem in and of itself, excessive detail is. Colorado’s Constitution is replete with policy matters that would be far better expressed in statute rather than chiseled, virtually forever, into the constitution. Unlike the framework of government or individual rights—foundational matters that should change very slowly—operating policies need to respond to the times. When detailed statutory-type provisions are frozen in the constitution, it can become difficult or impossible for officials to make timely and effective policy decisions.



G. Alan Tarr, director of the Center for State Constitutional Studies and distinguished professor of political science at Rutgers University, meets with the 2007 Colorado Constitution Panel.

*“... the rate at which the constitution is being amended today has doubled.”*

### Concerns About Process

While conflicting provisions, unintended consequences and unchangeable policies in the constitution are serious problems, they are not the cause, but rather a result, of underlying process issues. From the panel's perspective, the most urgent problems that exist with Colorado's Constitution are not substantive, as important as those may be, but rather, procedural.

*The issues that exist with Colorado's Constitution are primarily the result of a flood of amendments, coupled with the inability to reconcile conflicting provisions, resolve unintended consequences and reduce unnecessary detail.* These problems are the result of (1) Colorado's constitutional amendment process and (2) the lack of an effective constitutional revision process.

And therein lies the panel's most basic concerns about the Colorado Constitution: the twin issues of amendment and revision.

### Constitutional Amendment and Revision

Constitutional scholars make a distinction between *amending* a constitution and *revising* a constitution. This distinction is important in framing the issues with Colorado's Constitution.

Any constitutional change, even changing a single sentence or subsection, is an amendment. By this definition, Colorado's Constitution has been amended many times over the past 132 years. Every one of these changes was accomplished through a citizen initiative or legislatively referred measure approved by a majority of voters, and virtually all of these amendments modified only a single provision of the constitution. That situation will continue since today, by law, all amendments are required to relate only to a single subject.

Where a constitutional amendment is a single change to the document, constitutional *revision* involves a broader perspective. Because a constitutional amendment can relate to only a single subject, it precludes the amendment process from being used for broader constitutional revision. Constitutional revision often involves multiple provisions when used to reconcile conflicts, resolve unintended consequences or modify provisions that span a number of articles.



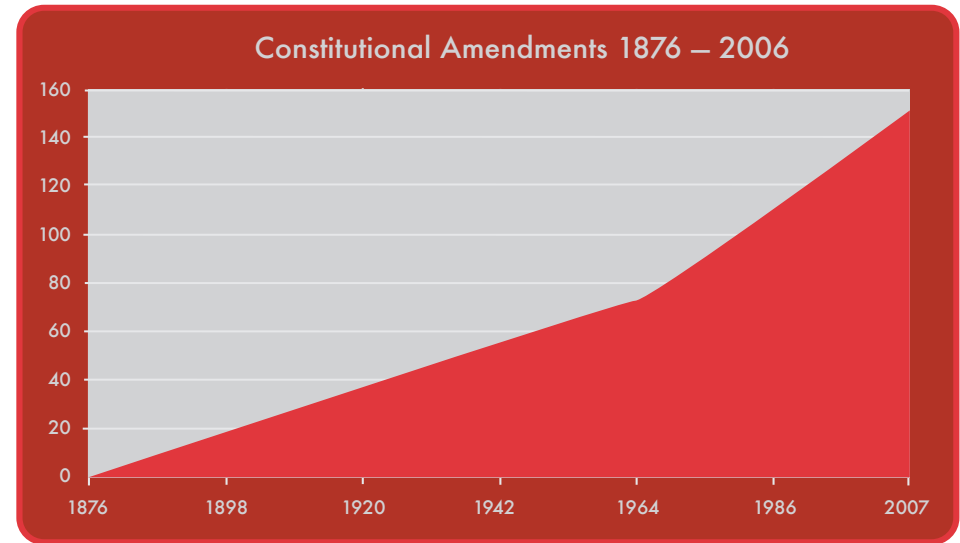
Rebecca Mae Salokar, associate professor of political science, Florida International University, and Richard B. Collins, professor of law and director of the University of Colorado Law School's Byron R. White Center for the Study of American Constitutional Law, speak with the Colorado Constitution Panel.

These amendment and revision processes are, of course, related. The amendment process usually puts provisions into the constitution, while the revision process is used to rationalize or remove provisions. In Colorado, it is easy to add provisions, but there is no practical way to revise the constitution. As a result, individual amendments tend to pile up, with no way to reconcile them.

### *The Amendment Process*

Although the 1876 constitution still governs our state, the document has been amended more than 150 times by our citizens. In recent years, the pace of constitutional amendment in Colorado has quickened. In the past 44 years, from 1964 to 2006, 79 constitutional amendments have been approved. This compares to just 73 measures approved during the prior 88 years, from 1876 to 1964. In essence, *the rate at which the constitution is being amended today has doubled.*

This is depicted in Chart 1, which levels out amendments in individual years to show the trend of amendments. As can be seen from the chart, the rate at which Colorado's Constitution is being amended has increased dramatically since 1964.



*Chart 1 - Pace of Constitutional Change in Colorado*

Not only is the rate at which the constitution is being amended increasing, but the number of constitutional amendments is increasing *within* that most recent 44-year period. A comparison between the first decade of the period (1964–1973) with the most recent decade (1994–2003) shows that the number of amendments has increased over 18 percent. This trend suggests what the future will look like for our state. Unless something changes, Colorado will experience more amendments with the likelihood of more conflicting provisions, more unintended consequences and more statute-like policy detail in the constitution.

*“In Colorado, between 1964 and 2006, more than 75 percent of legislatively referred constitutional amendments were approved by the voters.”*

### Legislatively Referred Amendments

There are two means of amending the Colorado Constitution: legislative referral and citizen initiative. A third method of amendment, calling a constitutional convention, is considered under the section of this report on constitutional revision. Since Colorado became a state, all of the amendments to our constitution have been accomplished through the citizen-initiative or legislative-referral processes.

Amending the Colorado Constitution by legislative referral requires approval by two-thirds of *all of the members* of both houses, followed by approval of a majority of citizens voting at the next general election. Achieving the required two-thirds vote usually involves broad discussion and debate and brings out many points of view. Media coverage of the debate tends to raise the level of public awareness about the issue.

A strong consensus among legislators is required to adopt a proposal and move it forward to the voters. As a result, legislative-referral proposals, with their visibility and wide range of support, are often approved by the electorate. In Colorado, between 1964 and 2006, more than 75 percent of legislatively referred constitutional amendments were approved by the voters.

The panel finds that the legislative-referral process for constitutional amendments functions well and thus recommends that *the process for legislatively referred constitutional amendments remain intact.*

### Citizen Initiatives

The ability of citizens to introduce statutes or amendments to the constitution through direct petition is, to many, a cherished right, and one that the panel supports. The panel recommends that *the right of citizen initiative be retained; with modifications to the processes for citizen-initiated constitutional amendments and with special protections for citizen-initiated statutes.*



John Dinan, associate professor of political science at Wake Forest University, discusses state constitutions with the 2007 Colorado Constitution Panel.



### Citizen-Initiated Statutes

The Colorado Constitution provides for two types of citizen-initiative processes. In addition to the ability to initiate constitutional *amendments*, citizens also have the right to initiate *statutes*. While there currently is no practical means of changing or removing a constitutional amendment once enacted, a statute can be revised if necessary to take account of changing conditions. Since the only certainty is change, the panel considers the flexibility of initiated statutes to be a very desirable alternative to the rigidity of locking detailed policy provisions into the constitution.

For this reason, the panel believes that the right of statutory initiative is important to the citizens of Colorado and recommends that ***the right of statutory initiative be preserved in its present form and strengthened.***

To encourage statutory rather than constitutional initiatives, the panel proposes that initiated statutes be given a high level of protection from legislative changes. Specifically, the panel recommends that ***initiated statutes not be subject to any amendments by the legislature for 10 years after the effective date without a two-thirds vote.*** In practical terms,

achieving a two-thirds majority of all members of the house and senate would be possible only with a widely shared consensus that the initiated statute was in urgent need of modification. As a result, amendments would largely be limited to correcting errors or remedying unanticipated consequences.

### Thresholds for Initiated Statutes

As a percent of the state's population, Colorado has the lowest number of signatures required for initiative petitions of any state. And, like most other states, Colorado requires only a simple majority to adopt either a statutory or constitutional initiative. These low-threshold requirements, together with our relatively small population, make Colorado an ideal place for interest groups, including out-of-state special interests, to promote their causes.

Raising the number of signatures required to place an item on the ballot has often been suggested as a means of limiting the number of special interest initiatives. Similarly, requiring a super-majority vote for the passage of an initiative is also an idea that has been offered among those concerned about the great number of initiatives on Colorado's ballot.



Donna Lynne, 2007 Colorado Constitution  
Panel member



***“As it exists today in Colorado, the constitutional-initiative process is neither good democracy nor good government.”***



Cathey Finlon, 2007 Colorado Constitution  
Panel member

In listening to constitutional experts, the panel is persuaded that increasing the number of signatures needed or requiring a super-majority election vote is not likely to reduce the number of petitions from large, well-funded special interests. What raising these thresholds is likely to do, however, will be to make it more difficult for Colorado-based grass-roots organizations to get their issues on the ballot. These groups, typically less well funded than large national organizations, would likely be the ones disadvantaged by changing signature and election requirements. Therefore, the panel recommends that ***the current number of signatures required for statutory initiatives and the simple majority requirement for voter approval both remain unchanged.***

### **Citizen-Initiated Constitutional Amendments**

In Colorado, it is just as easy to initiate a constitutional amendment as to initiate a statute. Not surprisingly, most proponents prefer constitutional amendments to initiated statutes since, for all practical purposes, constitutional measures cannot be changed once enacted. While such special-interest protectionism is understandable, it is bad government. In a fast-moving world, freezing detailed policy provisions in the constitution substitutes rigidity for flexibility, paralysis for responsiveness.

The panel finds that, as a procedure for amending the most important document in the state, the citizen-initiative process for constitutional amendment is flawed and in need of updating. In its present form, the constitutional initiative is subject to abuse by special interests and is a major source of the flood of amendments being experienced in our state. Many of the examples of conflicting constitutional provisions, unintended consequences and constitutional clutter given in this report are the result of initiated constitutional amendments. As it exists today in Colorado, the constitutional-initiative process is neither good democracy nor good government.

In his book *Democracy Derailed*, David Broder, a longtime observer of the American political scene, has noted that the citizen initiative as a “... method of lawmaking has become the favored tool of millionaires and interest groups that use their wealth to achieve their own policy goals. ... It has given the United States something that seems unthinkable — not a government of laws but laws without government.” “It is also a big business, in which lawyers and campaign consultants, signature-gathering firms and other players sell their services to [those] with private political agendas.”



In Colorado, the citizen initiative is often not the true grass-roots citizen activity that reformers envisioned when they added it to the constitution in 1910. Rather, it is a process used by highly organized, often well-funded groups and individuals to promote their special causes. Although we know that change is the only constant in life, those who would lock their solution into the constitution behave as if they have found the answer for all time.

A key theme of the panel's work is that constitutions are foundational documents that affect the lives of all citizens and the operations of every organization. Any time a constitutional change is presented, every effort should be made to assure that the proposal receives careful consideration and the public receives accurate, balanced information. As practiced today, the initiative process for amending Colorado's Constitution falls far short of those goals.

The procedures for citizen-initiated constitutional amendments allow time for neither thoughtful analysis nor thorough discussion. In some cases, editorial writers may try to present a more balanced analysis of the proposal through the media. But more often, "public information" comes in the form

of paid advertising messages reflecting only the views of proponents or opponents. It is a process in which 30-second sound bites substitute for thoughtful debate and only those with significant financial resources have a real voice. From the panel's perspective, this is no way to make the most important public decisions in our state.

Given the importance of constitutional amendments and the need for thorough and thoughtful public discussion, the panel concludes that the citizen initiative process for *constitutional* amendment requires significant reform. To this end, the panel recommends that **Colorado adopt a process for initiated constitutional amendments that requires petitioners to engage with elected representatives of the people while protecting the petitioners' absolute right to have citizens vote on their proposal after public hearings.** The panel calls this the Colorado Legislative Engagement and Referral (CLEAR) process and believes it reflects the traditions of openness and collaboration that underlie the culture of our state. Here, in outline form, with approximate dates shown, is how the process would work.



Chris Diamond, 2007 Colorado Constitution Panel member

*“The net result will be a more thoughtful, balanced discussion  
and a better informed electorate.”*

Pre-review of Petition Proposal (about 18 months prior to November election)

Nonbinding review of proposed ballot language by Legislative Council. Review and approval of the ballot title and determination of appropriate constitutional article for the proposal by the Ballot Title Board.

Review of Signed Petitions (approximately one year prior to November election)

Signed petitions filed with the Office of the Secretary of State. The secretary of state will have a reasonable period to review the petition for sufficiency. A required fiscal-impact analysis will also be conducted during this period.

Legislative Public Hearings (during the legislative session)

During its regular session, the legislature will conduct public hearings on those citizen initiatives found by the secretary of state to have sufficient signatures, that propose to amend the Colorado Constitution.

Legislative Determination on Proposal (prior to conclusion of legislative session)

Before the end of the legislative session, the legislature must express its views on each proposal. Through a majority vote, the legislature will:

- Recommend that voters approve the proposal as submitted; or
- Recommend that voters reject the proposal.

In addition to expressing its views on the proposal, the legislature may, with the approval of two-thirds of all members, choose to:

- Craft a revised proposal jointly with the petitioners that would appear on the ballot in lieu of the petitioners’ proposal; or
- Present its own proposal to the voters for their consideration.

Election Held (November)

Citizens would vote on the proposal, with a simple majority governing approval, as is currently the case.

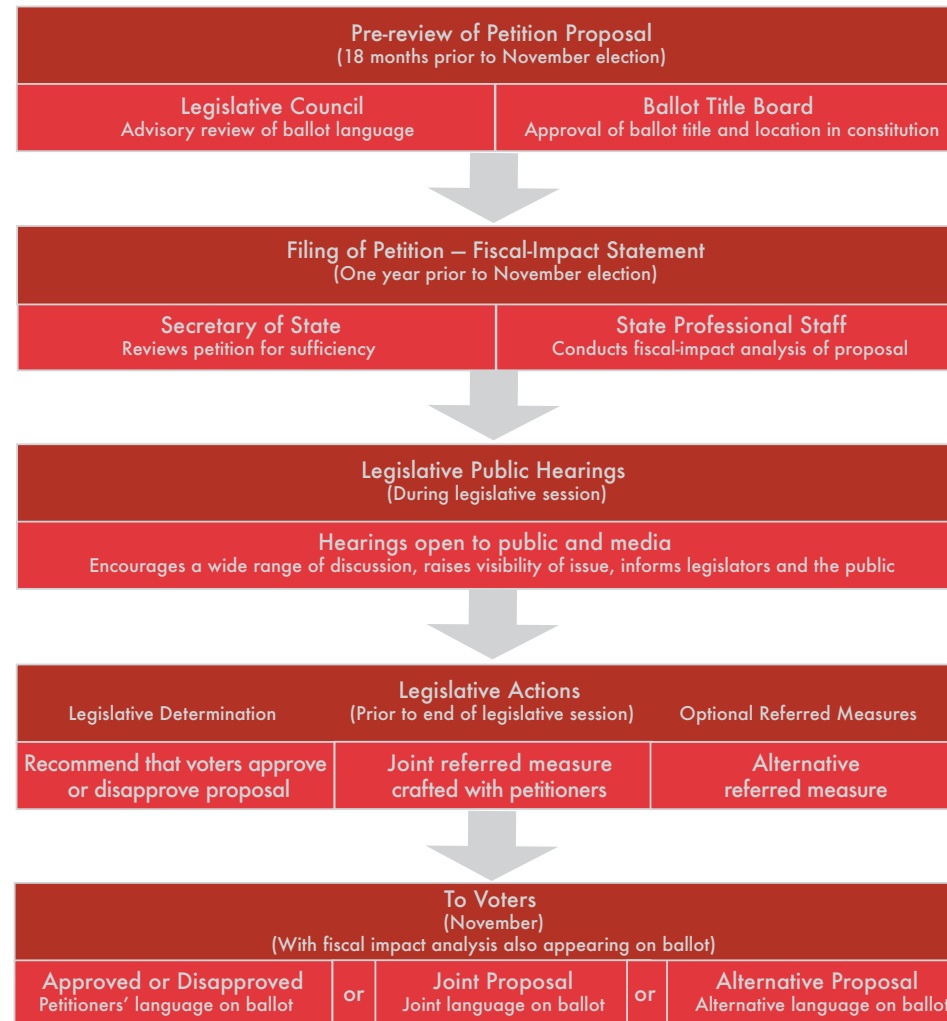
Whatever the legislative determination, petitioners would always have the absolute right to take their proposal, with their language, to the voters the following November. In the case of a joint proposal,





crafted collaboratively by petitioners and approved by a two-thirds vote of all legislators, petitioners would withdraw their original proposal.

It is important to note that the Colorado Legislative Engagement and Referral process applies only to initiated *constitutional* amendments. Initiated *statutory* proposals are exempt from this process. Table 1 provides a graphic representation of the CLEAR process for amending the Colorado Constitution.



Jerry Groszold, 2007 Colorado Constitution Panel member

Table 1 - CLEAR: Colorado Legislative Engagement and Referral Process





Kim Patmore, 2007 Colorado Constitution  
Panel member

The panel believes that the CLEAR approach offers a number of advantages compared to the present citizen-initiative process. First, as its name implies, the process helps make the proposal clearer to both legislators and the public. This is in contrast to the present process where lack of clarity about the intent of the proposal and its likely consequences, inadequate time for a thoughtful discussion and failure to provide a balanced perspective to voters are all major shortcomings.

The CLEAR model uses the visibility, diversity and public nature of the legislative process to shed light on the proposal. The legislative hearing is designed to be informational rather than adversarial and will involve a broad and balanced discussion of the matter, ensuring all points of view to be heard. The goal of the hearings is to inform both legislators and, through media coverage, the general public about the proposal and its likely implications and costs.

The CLEAR process is not intended to, nor does it, thwart the citizen-initiative process. Rather, it allows time for discussion and uses the forum of the state legislature as a vehicle to better inform the public about the proposal. It is important to note that, whether the legislature recommends approval, disapproval or

creates an alternative proposal, at the conclusion of the session, petitioners retain the right to take their proposal, with their language, to the public for a vote.

That proposal, however, will have been vetted in public and been subject to debate and discussion from a number of points of view. In the process, the public will be better informed and there will be adequate time to consider, and perhaps avoid, unintended consequences. If the legislative process uncovers needed changes, and the petitioners agree, an improved, joint proposal will be submitted by the petitioners and the legislature to the voters. If the legislature feels strongly enough that the proposal is harmful to the interests of the state, then the legislature can present its own proposal for the voters' consideration.

The CLEAR process adds some additional time to the citizen-initiative procedure and marginally increases the workload for the state legislature. Yet, what could be more important than a careful process for amending the state's most fundamental document? The net result will be a more thoughtful, balanced discussion and a better informed electorate. That, the panel believes, is in the interest of all Coloradans.



*“The legislative hearing will involve ... a broad and balanced discussion of the matter, ensuring all points of view to be heard.”*

### Thresholds for Constitutional Initiatives

Because of the concern that Colorado-based grass-roots organizations not be disadvantaged relative to large national special interest groups, the panel recommends ***against increasing either the number of signatures required or changing the simple majority vote*** required, even for constitutional initiatives.

At the same time, because constitutional amendments can have a profound effect upon citizens and businesses throughout the state, the panel is concerned that citizens throughout Colorado, not just those on the more populous Front Range, be represented in the initiative process. Therefore, the only change recommended by the panel relates to the geographic distribution of signatures for constitutional (not statutory) initiatives.

With this in mind, the panel recommends that ***petition signatures for initiatives to amend the Colorado Constitution must be collected from a majority of Colorado’s congressional districts***. The formula for this distribution will need to be determined; however, it is the panel’s intent to assure that Colorado citizens from throughout the state be included in the process of initiated constitutional amendments.

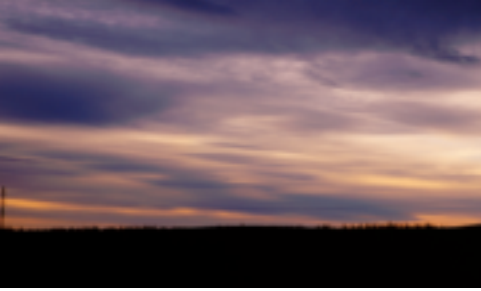
### Informing Voters

Providing voters with accurate, balanced information on proposed constitutional amendments is a primary objective of several of the panel’s recommendations. The panel recognizes that the state of Colorado, through the Colorado Legislative Council, already conducts a level of professional analysis on referred and initiated proposals. The panel commends the Legislative Council for its work and urges the legislature to continue to support the council’s activities.

In addition to the information provided by the state of Colorado, the panel would like to see a more extensive analysis of the implications of proposed constitutional amendments. Such an analysis would examine the way in which the measure, if adopted, would interact with other constitutional or statutory provisions. Ideally, the work could be undertaken by an independent, nonpartisan outside organization. For tax measures or proposals with broad applicability, such an analysis would be an invaluable aid to raise the level of voter information. To that end, the panel recommends that ***private, independent, nonprofit organizations be encouraged to conduct analyses of initiated or referred proposals and share their conclusions with the public***.



Thomas Williams, 2007 Colorado Constitution Panel member



Jon Zeschin, 2007 Colorado Constitution  
Panel member

### Fiscal-Impact Statements

The Colorado Legislative Council currently provides a fiscal analysis of proposed amendments as a part of its Blue Book analysis for voters. The panel believes distribution of the Legislative Council's fiscal analysis should also appear, in summary fashion, on the ballot alongside the proposal. Therefore, the panel recommends that ***all proposed constitutional amendments and statutory initiatives be accompanied by a fiscal- impact statement, copies of which shall be made available at the CLEAR legislative hearings and a summarized version of which shall also appear on the ballot alongside the proposal.*** The panel believes that full disclosure of the financial implications associated with a proposal is in the interest of all voters.

### Constitutional Revisions

It has been noted that the number of constitutional amendments continues to grow and the rate at which amendments are proposed is on the increase. But what about the pace of *revision*? What about the process for revising Colorado's constitution, to keep it organized and rationalized, to reconcile conflicts, to resolve unintended consequences and to reduce unnecessary detail? The practical answer is, there is no process.

In Colorado, the only current means of broad constitutional revision is through a constitutional convention. A constitutional convention has broad powers to amend the constitution. In fact, if called, a convention has the power to disregard the existing constitution entirely and fashion a wholly new one. And, although legal opinion is divided, it could be that even a "limited" constitutional convention might have the power to propose broad changes beyond its mandate. Possibly because of the very significant powers available to such a body, Colorado has never called a convention since its original constitution was adopted in 1876.

Colorado voters are not alone in their reluctance to call a convention. In the past 20 years, no state has called a general convention. And it's not simply because voters haven't been asked. Even in states where voters are automatically asked, by constitutional requirement, whether they wish to call a convention, not a single convention has been called in over two decades.

So Colorado's only tool for *revision* is one that we choose not to use, perhaps for good reason given concerns about a runaway constitutional convention. As a result, however, during the

*“... during the entire history of Colorado, there has been not a single comprehensive revision of the document.”*

entire history of Colorado, there has not been a single comprehensive revision of the document. Colorado's Constitution today is the product of 132 years of piecemeal amendment. It's like a book written by many authors, with no editor.

### Calling a Constitutional Convention

There is little question that Colorado needs a method for periodically revising its constitution. With the constitutional amendment processes in high gear and no practical means of revising the document, the result is a growing bramble of conflicting provisions and policy detail, all cast in concrete. While a constitutional convention would have the power to revise the document in a comprehensive way, calling a constitutional convention in Colorado is a difficult undertaking.

The process begins by obtaining an affirmative vote from two-thirds of all the members of each house in order to place the question of calling a constitutional convention before the citizens. A majority of voters must approve the call for a convention and voters must also elect delegates. After the convention meets, the proposed constitution must then be sent again to the voters for approval. This is a lengthy process, which

requires multiple elections over several years. However, given the power of a constitutional convention, the panel finds that the requirements are not unduly rigorous.

While a constitutional convention is *one way* of dealing with the multiple subjects required in a constitutional revision process, it is not the only means of doing so. The panel shares the concerns of those who are reluctant to open up the entire constitution to the possibility of wholesale rewriting. For that reason, the panel recommends ***against convening a constitutional convention*** at this point in Colorado's history.

### Limited Constitutional Conventions

Some observers have suggested that an alternative to a regular constitutional convention could be a convention that was limited to a specified number of topics. The hope here is that this would avoid the possibility of a runaway constitutional convention. However, the Colorado Constitution does not specifically provide for a limited convention and constitutional legal experts disagree on whether the Colorado legislature could successfully limit the scope of a convention to one or more predefined subjects. Whether or not it is possible to limit the scope,





convening any type of a convention is a very difficult undertaking, requiring super-majority votes in both houses and multiple elections. In addition, the convention process does not respond to the need for *regular periodic review* of the constitution. Conventions are usually called in response to a crisis. Acting before the crisis occurs is a better approach.

Thus, while a limited convention may be more appealing than an open convention, the panel believes that the use of a Constitutional Revision Commission is a better solution. It has the advantage of providing for regular periodic review and making needed revisions without the possibility of making wholesale changes to the constitution. Therefore the panel recommends ***against using a limited constitutional convention*** in favor of the more desirable Constitutional Revision Commission.



Del Hock, 2007 Colorado Constitution  
Panel member

### Establishing a Constitutional Revision Commission

Over the past 40 years, at least 27 states have created some type of Constitutional Revision Commission (CRC). These commissions have normally been time-limited and advisory in nature, although Utah uses an ongoing commission. Commissions have been created in various ways, by legislative resolution, by statute or as a constitutional requirement.

In examining this matter, the panel finds that the state of Colorado would be well served by the existence of a periodic Constitutional Revision Commission. Central to this finding is the commission's ability to take proposals relating to a limited number of constitutional articles directly to the voters. In such cases, a CRC provides the opportunity for broad periodic review without the danger of wholesale constitutional revision.

With a mandate to take a broad look at the constitution, a CRC would be able to identify conflicting provisions and make recommendations that respond to the interrelationships of various provisions within the constitution. It would not be limited to single-subject revisions; rather it could address the real-world issues of interrelated constitutional provisions.



*“Conventions are usually called in response to a crisis.  
Acting before the crisis occurs is a better approach.”*

In terms of the structure of the Constitutional Revision Commission, the panel favors a modification of an approach that has been used with increasing success for some 20 years in Florida. This approach provides, by constitution, for the automatic creation of a CRC on a periodic basis. The commission is empowered to look at the constitution broadly and may take recommended changes directly to voters for their consideration.

The panel recommends that ***Colorado adopt an amendment to our constitution to create a Constitutional Revision Commission that meets periodically to provide a review of the constitution and recommend proposed changes directly to the voters.***

The panel finds significant advantages to the idea of a constitutional revision commission. The recommended structure reflects what the panel believes to be an effective process for periodic constitutional review and revision. Particulars of the Colorado Constitutional Revision Commission are as follows:

- ◆ A Colorado Constitutional Revision Commission, established by constitutional provision, would automatically come into existence every 10 years.

- ◆ In the year prior to the automatic creation of the commission, the governor, with the advice of the legislative leadership, would appoint a planning committee to establish logistics and recommend a budget for the Constitutional Revision Commission. The planning committee would be politically balanced, composed of Republicans, Democrats, unaffiliated members and possibly representation from significant minority parties.
- ◆ The legislature would be required to fund the CRC at an appropriate level, including funding for public hearings, meetings, staff, research, et cetera.
- ◆ The Constitutional Revision Commission would be politically representative, composed of 33 members, none of whom could be current state legislators or holders of other statewide offices, appointed as follows:
  - Governor: 10 appointments, with representation based upon the percent of voters registered as Republicans, Democrats, and unaffiliated, along with minority parties meeting a threshold that represent a significant number of registered voters



Marguerite Salazar, 2007 Colorado  
Constitution Panel member





Steve Halstedt, 2007 Colorado Constitution  
Panel member

- Speaker of the House and President of the Senate: 20 appointments total, 10 each, with representation based upon the political composition of each body (i.e. percentage of Republicans, Democrats, unaffiliated and significant minority parties)
- Supreme Court: 3 appointments
- ◆ Members of the Constitutional Revision Commission would receive no salary or other compensation except for reimbursement of reasonable personal expenses.
- ◆ The commission would meet for up to one year. The CRC would be empowered to review the entire constitution and could recommend revisions affecting no more than one-third of the existing articles of the constitution.
- ◆ Prior to proposing revisions to the constitution, the commission would be required to hold at least one public hearing in each congressional district in Colorado.
- ◆ In order to approve a proposed amendment for consideration by the voters, the commission would require a two-thirds vote of all members. The CRC's constitutional revision proposals would not be bound by the single-subject rule.
- ◆ The first Colorado Constitutional Revision Commission would begin meeting two years after approval of the constitutional amendment establishing the commission. During the year prior to the commission's meeting, the planning committee would handle preparations and the legislature would appropriate funds for the commission's work.
- ◆ After the initial CRC cycle, the commission would come into being every 10 years by operation of the constitutional provision.

*“... the Colorado Constitutional Revision Commission is a positive mechanism for providing much-needed periodic constitutional review and revision.”*

The panel believes that the Colorado Constitutional Revision Commission is a positive mechanism for providing much-needed periodic constitutional review and revision. It is important to note that the role of the CRC is to rationalize and reconcile *a limited number of existing provisions* of the constitution. Unlike a constitutional convention, the CRC cannot propose wholly new sections or create a new constitution.

Although its powers are limited to revising the existing document, a Constitutional Revision Commission would fulfill a critical need in Colorado. It would provide, for the first time, a practical means of resolving internal conflicts within the constitution, including the tangled knot of conflicting fiscal provisions that exists today. A Commission could recommend revisions to resolve unintended consequences of amendments and could rationalize the mass of detailed provisions that burden the constitution.

At the moment, short of calling a constitutional convention, there is no certain means of accomplishing these very important tasks. For these reasons, the panel believes that the creation of a Colorado Constitutional Revision Commission is an essential step to solve today's issues and to secure the future of Colorado's Constitution.



Jennifer Bowser, program principal, Legislative Management, National Conference of State Legislatures, speaks with the 2007 Colorado Constitution Panel.



# SUMMARY OF PANEL RECOMMENDATIONS

## **Recommendation 1**

### **Retain Process for Referred Amendments**

The panel finds that the legislative referral process for constitutional amendments functions well and does not require revision. Thus, the panel recommends that *the process for legislatively referred constitutional amendments remain intact.*

## **Recommendation 2**

### **Preserve the Right of Citizen Initiative**

The ability of citizens to introduce statutes or amendments to the constitution through direct petition is, to many, a cherished right, and one that the panel supports. The panel recommends that *the right of citizen initiative be retained; with modifications to the processes for citizen-initiated constitutional amendments and special protections for citizen-initiated statutes.*

## **Recommendation 3**

### **Strengthen Citizen-Initiated Statutes**

While there is no effective means of changing or removing a constitutional amendment once enacted, a statute can be revised if necessary to take account of changing conditions. Since the only certainty is change, the panel considers the flexibility of initiated statutes to be very desirable

compared to the rigidity of locking policy provisions into the constitution. For this reason, the panel believes that the right of statutory initiative is important to the citizens of Colorado and recommends that *the right of statutory initiative be preserved in its present form and strengthened.*

## **Recommendation 4**

### **Provide Special Protection for Citizen-Initiated Statutes**

In order to encourage statutory rather than constitutional initiatives, the panel proposes that initiated statutes be given a high level of protection from legislative changes. Specifically, the panel recommends that *initiated statutes not be subject to any amendments by the legislature for 10 years without a two-thirds vote.* In practical terms, achieving a two-thirds majority of those legislators voting would be possible only with a widely shared consensus that the initiated statute was in urgent need of modification.

## **Recommendation 5**

### **Maintain Thresholds for Initiated Statutes**

Colorado has the lowest signature burden for initiative petitions of any state and requires only a simple majority to adopt a statutory or constitutional initiative. Raising the number of



signatures required to place an item on the ballot or requiring a super-majority vote for the passage of an initiative are ideas that have been offered.

In listening to constitutional experts, the panel is persuaded that increasing the number of signatures needed or requiring a super-majority election vote is not likely to reduce the number of petitions from large, well-funded special interests. Rather, the ones disadvantaged would be local grass-roots organizations. Therefore, the panel recommends that *the current number of signatures required for statutory initiatives and the simple majority requirement for voter approval both remain unchanged.*

### ***Recommendation 6*** **Reform Initiated Constitutional Amendment Process**

Constitutions are foundational documents that affect the lives of all citizens and the operation of every organization. As such, they should be changeable, but not easily changed. Any time a constitutional change is presented, every effort should be made to assure that the proposal receives careful consideration and the public receives accurate, balanced information.

To achieve these goals, the panel recommends that *Colorado adopt a process for initiated constitutional amendments that requires petitioners to engage with elected representatives of the people while protecting the petitioners' absolute right to have citizens vote on their proposal after public hearings.* The panel calls this the Colorado Legislative Engagement and Referral (CLEAR) process and believes it reflects the traditions of openness and collaboration that underlie the culture of our state.

### ***Recommendation 7*** **Broaden Thresholds for Constitutional Initiatives**

Because of the concern that real Colorado-based grass-roots organizations not be disadvantaged relative to large national special interest groups, the panel *does not recommend increasing either the number of signatures required or changing the simple majority vote required,* even for constitutional initiatives.

At the same time, because constitutional amendments can have a profound effect upon citizens and businesses throughout the state, the panel is concerned that citizens throughout Colorado, not just those on the more populous Front Range, be represented in the initiative process. With this in

# SUMMARY OF PANEL RECOMMENDATIONS

mind, the panel recommends that *petition signatures for initiatives to amend the Colorado Constitution must be collected from a majority of Colorado's congressional districts*. The formula for this distribution will need to be determined, however it is the panel's intent to assure that Colorado citizens from throughout the state be included in the process of initiated constitutional amendments.

## **Recommendation 8**

### **Expand Voter Information**

Providing voters with accurate, balanced information on proposed constitutional amendments is a primary objective of several of the panel's recommendations. The panel commends the Colorado Legislative Council for its efforts to inform voters through the Blue Book and urges the legislature to continue supporting the council's activities.

In addition to the information provided by the state of Colorado, the panel recommends a more extensive, independent analysis of the implications of proposed constitutional amendments, especially tax measures or proposals with broad applicability. To that end, the panel recommends that *private, independent nonprofit organizations be encouraged*

*to conduct analyses of initiated or referred proposals and share their conclusions with the public.*

## **Recommendation 9**

### **Show Fiscal-Impact Analysis on Ballot**

The Colorado Legislative Council currently provides a fiscal analysis of proposed amendments as a part of its Blue Book analysis for voters. The panel believes the fiscal analysis should also appear, in summary fashion, on the ballot alongside the proposal.

Therefore, the panel recommends that *all proposed constitutional amendments and statutory initiatives be accompanied by a fiscal-impact statement, copies of which shall be made available at the CLEAR legislative hearings and a summarized version of which also appear on the ballot alongside the proposal*. The panel believes that full disclosure of the financial implications associated with a proposal is in the interest of all voters.

## **Recommendation 10**

### **Call for a Constitutional Convention Unnecessary**

There is little question that Colorado needs a method for periodically revising its constitution. A constitutional convention is one way of dealing with the multiple subjects required in a constitutional





revision process, but it is not the only means of doing so. The panel shares the concerns of those who are reluctant to open up the entire constitution to the possibility of wholesale rewriting. For that reason, the panel *recommends against convening a constitutional convention* at this point in Colorado's history.

### ***Recommendation 11***

#### **Use of a Limited Constitutional Convention Unclear**

It is not at all clear whether Colorado could legally call a constitutional convention that was limited to one or more predefined subjects. However, both limited and unlimited conventions are very difficult to convene, requiring super-majority votes in both houses and multiple elections.

While a limited convention may be more appealing than an open convention, the panel believes that the use of a Constitutional Revision Commission is a better solution. It has the advantage of providing regular, periodic review and making recommendations to voters, without the potential liability of making wholesale changes to the constitution. Therefore the panel recommends *against using a limited constitutional convention* format in favor of the more desirable Constitutional Revision Commission.

### ***Recommendation 12***

#### **Establish a Constitutional Revision Commission**

The panel finds that the state of Colorado would be well served by the existence of a periodic Constitutional Revision Commission with the ability to take proposals relating to a limited number of articles directly to the voters. Such a commission will provide the opportunity for broad periodic review without the danger of wholesale constitutional revision. The Constitutional Revision Commission would not be limited to single-subject revisions; rather it could address the real-world issues of interrelated constitutional provisions.

The panel recommends that *Colorado adopt an amendment to our constitution to create a Constitutional Revision Commission that meets periodically to provide a review of the constitution and recommend proposed changes directly to the voters.* The CRC would exist by constitutional provision that would require a commission to be created every 10 years. Politically representative in nature, the commission would be empowered to look at the constitution broadly and take recommended changes directly to voters for their consideration.

# ACKNOWLEDGEMENTS

This report represents the consensus of the 2007 Colorado Constitution Panel. It was written by James Griesemer, professor and dean emeritus of the Daniels College of Business and director of the DU Strategic Issues Program with editorial assistance provided by Sarah Arbuthnot, program assistant.

The Colorado Constitution Panel wishes to acknowledge and extend its appreciation to the following individuals whose expertise contributed to the process and the report:

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- *Richard B. Collins*, Professor of Law and Director of the University of Colorado Law School's Byron R. White Center for the Study of American Constitutional Law
- *John Dinan*, Associate Professor of Political Science, Wake Forest University
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- *Honorable Andrew Romanoff*, Speaker of the House, Representative District 6
- *Rebecca Mae Salokar*, Associate Professor of Political Science, Florida International University
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- *Honorable Al White*, Representative District 57
- *Robert F. Williams*, Associate Director of the Center for State Constitutional Studies and Distinguished Professor of Law, Rutgers University–Camden.

We thank *Phyllis Resnick* who provided research assistance throughout the program, *Lisa Mattiace* of the Daniels College of Business for her advice and assistance, and *Sarah Arbuthnot* for her support of the panel's activities.

Finally, we wish to extend special appreciation to University of Denver *Chancellor Robert D. Coombe* for his support of the Strategic Issues Program and to *Provost Gregg Kvistad* for his advice and guidance throughout the program's operation. Their commitment to supporting the public good in Colorado has been instrumental to the panel's work.



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