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## MEMORANDUM

**TO:** Katina Banks and Robert DuRay  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** March 22, 2016  
**SUBJECT:** Proposed initiative measure 2015-2016 #122, concerning the Citizens' Congressional Redistricting Commission

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

### Purposes

The major purposes of the proposed amendment to the Colorado Constitution appear to be:

1. To establish a citizens' congressional redistricting commission ("commission") to divide the state into congressional districts following each decennial census.

2. To specify an appointment process, the qualifications of members, and procedures for the commission to follow in drawing congressional districts.
3. To establish criteria for the commission to utilize in drawing congressional districts.
4. To create an appeal process if a commission member or a person who testified before or submitted written comments to the commission believes that the commission abused its discretion in adopting the map.
5. To establish a process if the commission is unable to adopt a map.
6. To specify ethical obligations and requirements for commissioners, staff, and persons who contract or receive compensation for advocating to the commission or staff.

## **Substantive Comments and Questions**

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. Section (2) (b) requires "projected political party registration data" to be taken into account to determine competitiveness. From what source(s) may such data be obtained?
3. In section (4) (a) (I), the legislative leaders are to each appoint a member who is affiliated with *any* political party. As only three members may be of the same political party, should this specify that each legislative leader should appoint a member of his or her party?
4. In section (4) (a) (II), the governor is to appoint members affiliated with *major* political parties. What do the proponents mean by major political parties?
5. In section (4) (a) (III), the chief justice is to appoint members who have not been affiliated with any political party. Should the chief justice be able to appoint a member who is affiliated with a minor political party?
6. Under section (4) (a) (III), the last appointment to the commission is to be made by March 10. Between that date and early May, the state legislature is in session and staff, as defined by the initiative, is busy with its responsibilities for

- it. Do the proponents believe that staff will be able to handle both its responsibilities to the general assembly and to the commission?
7. Section (4) (b) directs staff to determine whether an applicant meets the criteria specified in subsection (4).
    - a. What are the criteria that staff is to use?
    - b. May staff rely upon statements made in the application or is staff to conduct additional investigation into an applicant's qualifications?
  8. Section (4) (b) requires the chief justice of the Colorado supreme court to select his or her appointees from a list of qualified applicants forwarded by staff. Are there any other criteria or qualifications that the chief justice should use in designating commissioners from that list?
  9. Under the current reapportionment commission, each congressional district is required to have at least one member. Do the proponents believe that each congressional district should have a member on the commission that draws congressional districts? If so, how should this be handled if Colorado is allocated more than nine congressional districts?
  10. Section (4) (f) (III) provides that no person may serve on the commission if the person is "compensated by a member of, or a campaign committee advocating the election of a candidate to," congress.
    - a. What do the proponents mean by "compensated by"? An employee of the member or campaign committee? An independent contractor working for the member or campaign committee?
    - b. May a commissioner be compensated by anyone else for serving as a commissioner?
  11. Section (6) (a) authorizes any Colorado resident to submit proposed redistricting maps for consideration.
    - a. How would a citizen submit a proposed map?
    - b. Do the proponents intend that the commission establish a method for Colorado residents to create proposed maps?
  12. Does this provision conflict with section (6) (c), which allows "any person" to submit proposed maps or written comments?

13. Section (6) (b) requires the commission to hold public hearings throughout the state. Currently, for state legislative districts, the Colorado reapportionment commission is required to adopt a preliminary plan before conducting public hearings throughout the state. Do the proponents anticipate that the commission would adopt a plan for congressional districts prior to conducting the public hearings?
14. Section (7) (c) directs the commission to draw a map that fosters competitiveness where consistent with the other criteria in that subsection. Is fostering competitiveness on the same level as the criteria in section (7) (b) or below those criteria?
15. If the commission is unable to adopt a map by August 10, section (8) (b) of the proposed initiative authorizes a person to appeal to the Denver district court.
  - a. Is the Denver district court to enter an order establishing a map for congressional districts?
  - b. Is the time between August 10 and November 1 enough for the Denver district court to rule on the matter?
  - c. Is the time between November 30 and December 20 enough for the Colorado supreme court to hear and decide an appeal from the Denver district court?
16. Section (8) (b) (I) specifies that the "DISTRICT COURT SHALL RULE ON THE STATE'S CONGRESSIONAL MAP BY NOVEMBER 1 AFTER THE DECENNIAL CENSUS IS CONDUCTED." For clarity, the proponents may want to specify "NOVEMBER 1 *IN THE YEAR* AFTER THE DECENNIAL CENSUS IS CONDUCTED."
17. Section (9) (d) refers to "ANY APPLICABLE ETHICAL REQUIREMENT IN PART 1 OF ARTICLE 18, TITLE 24, . . . ." Section 24-18-102 (8), C.R.S., for the definition of "public officer", specifically excludes members of a commission who receive no compensation other than a per diem allowance or necessary and reasonable expenses. Section 24-18-109, C.R.S., establishes rules of conduct for members of boards and commissions.
  - a. In § 24-18-109, C.R.S., what is the "ethical requirement" to which the proponents are referring?
  - b. Are there other provisions of part 1 of article 18 of title 24, C.R.S., that the proponents intend to apply to commissioners? If so, the proponents should specify those provisions.

18. Section (9) (d) also authorizes the independent ethics commission established in article XXIX of the Colorado constitution to hear alleged ethics violations.

- a. There has been raised an issue as to whether the independent ethics commission can adjudicate a violation of part 1 of article 18, title 24, C.R.S. In light of this, the proponents might consider a conforming amendment to article XXIX.
- b. Article XXIX, section 2 also excludes members of a commission who receive no compensation other than a per diem allowance or necessary and reasonable expenses from the definition of "public officer". Again, proponents might consider a conforming amendment to article XXIX.

## **Technical Comments**

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized:
  - a. The first letter of the first word of each sentence;
  - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
  - c. The first letter of proper names.