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MEMORANDUM

TO: Mike Spalding and David Ottke

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: January 5, 2016

SUBJECT: Proposed initiative measure 2015-2016 #73, concerning Public
Accountability of Officials

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.

An earlier version of this proposed initiative, proposed initiative 2015-2016 #54, was the subject of a memorandum dated November 25, 2015, and was discussed at a public meeting on November 30, 2015. (That memorandum, in turn, incorporated by reference comments and questions raised in proposed initiatives 2015-2016 #29, #30, #36, and #46.) The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated

here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

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

1. To provide mechanisms by which all state and local legislative and executive elective officials are accountable to voters; and
2. To reestablish the recall process for all state and local legislative and executive elective officials.

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. Prior versions of the proposed initiative included judicial officers, but the current submission does not. Is it correct that judicial accountability is achieved through other (existing) laws?
3. In Section 1 of the proposed initiative, officials are "also" accountable to voters in the manner provided for under reenacted Article XXI of the Colorado constitution. The word "also" implies that this provision is in addition to something. Will the proponents clarify this point?
4. In subsection (1) of Section 2 of the proposed initiative, any two electors may file a signed request to initiate a recall. Prior versions of this initiative required such filers to be *registered* electors. Is it the proponents' intent to allow legally qualified, but unregistered, electors to initiate a recall?
5. Regarding subsection (3) of Section 2 of the proposed initiative:
 - a. The first sentence states that "no... registration... shall be required of petition... signers...". However, under subsection (5) of that section, to be eligible to sign a recall petition, one must be an "active registered elector". Are these two provisions incompatible?

- b. The second sentence of subsection (3) provides that use of paid circulators "create[s] no extra legal duty". What does this mean? Duty to whom, or to do what?
6. The term "foe" is used in several instances throughout the proposed initiative. Who constitutes a "foe"?

Technical Comment

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

1. The word "shall" has been added in several places of the proposed initiative. In modern drafting practice, the word "shall" typically means that a person has a duty. It is unclear what effect, if any, use of the word "shall" has (or is intended to have) where it has been newly added to the proposed initiative. The proponents should consider whether "shall" creates a false imperative, introduces the passive voice, or is otherwise extraneous.