

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

December 20, 2014

**TO:** Douglas Burns and Laura McFall

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**SUBJECT:** Proposed initiative measure 2015-2016 #9, concerning recall election signatures

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. Allow original electronic signature of registered voters to be used for initiative and referendum;

2. Specify that authentication of original electronic signatures is sufficient in certain circumstances;
3. Require the development of an authentication process to include total recall petition drives for eight years from adoption at the polls.

### **Substantive Comments and Questions**

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

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado". To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative.
2. 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?
3. As a change to the Colorado constitution, the proposed initiative may only be amended by a subsequent amendment to the constitution. Is this your intention?
4. The proponents are adding a new section (5) to Article XXI of the state constitution, which article concerns recall elections. However, paragraph (a) of section 5 mentions "Initiative and Referendum".
  - a. Do the proponents intend the initiative to apply only to recall petitions? Only to petitions for initiatives and referenda? Or, to all three? If the initiative applies at all to initiatives and referenda, is Article XXI the most logical placement in the constitution?
  - b. If the proposed initiative applies to initiative and referenda, do all of the other current legal requirements (e.g., form of petition, submission deadlines, sufficiency and verification of signatures, etc.) apply?
  - c. Does the proposed initiative only apply to signatures used in connection with a petition? Does it apply to any other aspect of the election process such as voter registration or voting?

5. Regarding terminology used in the proposed initiative, what is an "original electronic signature"? What is a "receiving website"? What is a "site record"?
6. The proposed initiative states that electronic signatures "*may* be used... for Initiative and Referendum". Because the word "may" is permissive, this provision appears to be optional. In that case, who decides whether to allow electronic signatures to be used? Does the decision vary from election to election, or from ballot measure to ballot measure within any particular election? In the case of referenda, is usage of electronic signatures at the behest of the person filing for the referendum? If a referendum is demanded against an act of the General Assembly, who decides whether electronic signatures may be accepted?
7. Who operates the receiving web sites? Initiative proponents? Petition entities? Can a third-party nongovernmental entity operate a receiving web site? Does posting a ballot petition on-line constitute "circulation"? If so, does a web site that posts petitions constitute a "circulator" if a petition entity pays for the service?
8. With respect to paragraph (b) of section 5:
  - a. Is the purpose of this paragraph to allow the use of original electronic signatures on initiative and referendum petitions if such signatures are able to be authenticated in conformity with the requirements in said paragraph (b)?
  - b. If so, what public policy problem will the proposed initiative solve (in terms of allowing for electronic signature authentication)?
  - c. Please describe how an elector will go about providing an electronic signature for a particular petition and how the signature will be authenticated under the proposed initiative?
  - d. Does the last sentence of this paragraph essentially give the Secretary of State unlimited discretion to approve authentication methods for such signatures? If so, on what basis will the Secretary be making this determination?
  - e. Are the proponents aware of any other political jurisdictions that allow for the use of electronic signatures for supporting initiative or referendum petitions? If so, are proponents aware of the track record of such use in these other jurisdictions?
9. With regard to paragraph (c) of section 5:

- a. Is it the proponents' intent to compel the state to utilize the proponents' services for implementing this initiative? If so, is it appropriate that the proponents are seeking governmental assistance for their business by means of voter approval of an initiative petition in which they have a clear financial interest? Assuming the proponents intend to compel the state to utilize the proponents' services for implementing this initiative, does this provision extend to all aspects of implementation? Or, would the state perform some of the work required? Can the state contract with other vendors that are lower responsible bidders for some of the services required? Why is it not in the best interest of the taxpayer to allow the work to be performed by the vendor best able to provide the services on as low cost a basis as possible?
  - b. Is eight years an appropriate length of time for the pilot program or contract?
  - c. What would happen if Total Recall Petition Drives goes out of business or is acquired by another entity before the expiration of the eight-year period?
10. If passed, when will the proposed initiative take effect? (In particular, is there a statewide election by which the proposed measure must be implemented?)

## **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. Before the amending clause, number each section, part, etc. that is being amended or added with a section number (e.g., SECTION 1., SECTION 2.). For example:  
  
**SECTION 1.** In the constitution of the state of Colorado, **add** section 5 to article XXI as follows:
2. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being

changed. For example, "In the constitution of the state of Colorado, **add** section 5 to article XXI as follows:".

3. Each section in the Colorado Revised Statutes and the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to section 5 of article XXI of the proposed initiative and be in lowercase, bold-face type.
4. It is standard drafting practice to use SMALL CAPITAL LETTERS to show the language being added to the Colorado constitution.
5. 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.
6. It is unnecessary to capitalize "secretary of state" in the proposed initiative.
7. It appears that the fragment that concludes paragraph "(b)" in the proposed initiative should be added to the end of the preceding sentence.
8. It seems that the "3.5" before paragraph "(c)" in the proposed initiative should be deleted.
9. Paragraph (a) should end with a period.