

Mike Mauer, Director
Legislative Council Staff

Colorado Legislative Council
200 East Colfax Avenue Suite 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
TDD 303-866-3472



Dan L. Cartin, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 East Colfax Avenue Suite 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Facsimile 303-866-4157
Email: olls.ga@state.co.us

MEMORANDUM

TO: Mike Spalding and David Ottke

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: October 23, 2015

SUBJECT: Proposed initiative measure 2015-2016 #46, concerning Public
Accountability of Officers

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 #36, was the subject of a memorandum dated September 1, 2015, which was discussed at a public meeting dated September 3, 2015. (That memorandum incorporated by reference comments and questions raised in proposed initiatives 2015-2016 #29 and #30, which were the subject of memoranda dated July 29, 2015, and were discussed at a public meeting on July 31, 2015.) The substantive comments and questions and

technical comments raised in this memorandum will not include comments and questions that were addressed at the earlier meetings, 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, and all state and local judicial officers, are accountable to voters.
2. To reestablish the recall process for all state and local legislative and executive elective officials.
3. To subject all judicial officers to a retention election every four years or fewer, and to specify that judicial officers are not eligible for recall.

Substantive Comments and Questions

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

1. Section 3 of the proposed initiative ("Retention") subjects all judicial officers to a retention vote "every four years or fewer".
 - a. Who determines how frequently retention elections occur?
 - b. Will all judicial officers be subject to the same frequency of retention elections?
 - c. If judicial officers are subject to retention election every year or every 3 years, how can this timing be reconciled with the article VI, section 25 requirement that retention be voted on at general elections (which are held in even-numbered years)?
2. How does Section 3 affect or supersede the retention election provisions of article VI of the state constitution?

- a. Are the retention elections held pursuant to Section 3 of the proposed initiative in place of, or in addition to, the retention elections that are held in accordance with section 25 of article VI?
 - i. If the former, does the proposed initiative, in effect, create new term limits? Currently, judges in district court serve 6-year terms, judges in the court of appeals serve 8-year terms, and supreme court justices serve 10-year terms. If these judges and justices were subject to retention elections on at least a quadrennial basis, aren't their terms coextensive with those periods? Would the proponents consider clarifying the law on this point?
 - b. Under section 25 of article VI, judges and justices must file a declaration of intent to retain judicial office within a certain period of time before the general election next prior to the expiration of his or her term of office. Under the proposed initiative, must judges and justices still file a declaration of intent?
3. Regarding the "officer's website and the websites against retention" described in Section 3:
 - a. With whom would the websites be filed?
 - b. Section 3 appears to allow only one website (the judicial officer's) in favor of retention to be listed on the ballot, but an unlimited number of websites opposing retention. Is this the proponents' intent?
4. Regarding the official retention reports described in Section 3:
 - a. Who, or what entity, creates the official retention reports?
 - b. What facts must or could be included in the reports?
 - c. On which websites would the retention reports appear?

Technical Comments

There are no new technical comments raised.