

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Ryan Ross and Mark McIntosh
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: February 12, 2024

SUBJECT: Proposed initiative measure 2023-24 #174, concerning election procedures

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 Revised Statutes appear to be:

1. To give political parties permission to determine how to nominate candidates for public office and to do so at their own discretion;
2. To create a two-stage election system in which all candidates for federal or state offices qualify for the ballot by party nomination or petition and compete

against each other in both the primary and general election stage regardless of their party affiliation or non- affiliation, and where any registered voter can vote for any candidate on the ballot in their district regardless of their declared party affiliation or non-affiliation; and

3. To permit general election voters to vote for their top three choices among the candidates for each office, with the winner determined by a series of instant runoffs and winning by at least fifty percent of the votes.

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. As a statutory change, the proposed initiative may be amended by subsequent legislation enacted by the General Assembly. Are the proponents aware of this possibility?
3. What is intended by the phrase “second-stage voters” in proposed Section 1? This is the only time this phrase is used in the measure.
4. The following questions concern proposed section 1-4-102:
 - a. Do the three criteria in this section represent threshold conditions that a candidate must satisfy to appear on the primary ballot or does satisfying these conditions automatically result in a candidate appearing on the ballot?
 - b. Is it the proponents' intent that an incumbent would automatically be placed on the primary ballot if the incumbent notifies the Secretary of State that the incumbent is seeking reelection without going through the party nomination process or without filing a petition? Would this give an unfair advantage to incumbents to get on the ballot?
5. The following questions concern proposed section 1-4-103:
 - a. Do the proponents know whether the necessary security safeguards are in place to make the system described in section 1-4-103 (2) operational by January 1, 2026?

- b. Is there any element of the new online petition system that would allow for verification of a registered voter's signature? Is there any element that would allow for the confirmation that a registered voter, and not someone else, signed a petition on the registered voter's behalf?
 - c. Is there a way for a candidate to know how many signatures they have collected on a petition, beyond the periodic reports issued by the Secretary of State?
 - d. Are there any legal restrictions on the ability of the proposed initiative to cover candidates for federal office?
 - e. What is the purpose of proposed section 1-4-103 (6), which requires the submission of the names of registered electors to be nominated as presidential electors?
 - f. Subsection (7) allows petitions to be signed by "registered voters residing in the state or district from which the officer is to be elected". Do the proponents intend for state residents to be able to sign for statewide office candidates and their own district's candidates only or can any state resident sign a petition for any candidate in the state?
 - g. Does the initiative allow for the use of physical rather than online petitions, and if so, do different rules apply to the different types of petitions?
 - h. Does subsection (8) mean that if a petition for a particular candidate obtains the requisite number of signatures, the candidate is automatically placed on the primary election ballot?
6. The following questions concern proposed section 1-4-104:
- a. Does the Secretary of State currently certify political parties, or merely make a determination of qualification? To the extent that this is a new duty, do the proponents wish to elaborate on the certification process?
 - b. Does proposed section 1-4-104 (1)(b) mean that each political party may have two nominees placed on the primary ballot? If not, would you consider clarifying the effects of obtaining the nomination of a political party under the proposed initiative? What is the intent or purpose of limiting primary elections to two candidates per party? How does this provision work with proposed section 1-4-207 that allows the four candidates with the highest number of votes in the primary election to

appear on the general election ballot, if only two candidates are allowed for each race on each party's primary ballot?

7. With respect to proposed sections 1-4-105 through 1-4-210, when the initiative refers to "ballot," do you mean "general election ballot"? If so, would you consider clarifying this point to eliminate confusion?
8. Proposed section 1-4-105 states that the ballots will indicate whether a candidate was nominated by a political party. Could this give an unfair advantage to candidates who are party nominees?
9. Will all primary candidates appear on one ballot regardless of party affiliation? If this is the intent, would the proponents consider clarifying this in proposed section 1-4-105 or somewhere else in the measure?
10. Section 1-4-109 allows primary elections to be coordinated with county, municipal, school district, and special districts elections. Do the proponents wish to allow or require such local elections to be held on the fourth Tuesday in June of even-numbered years to the extent that they aren't currently?
11. The following questions concern proposed section 1-4-207:
 - a. If a candidate receives more than fifty percent of the votes cast in the primary election, is the only way that candidate can lose the general election if a write-in candidate receives more votes?
 - b. Do the proponents have a sense of how many contests will have fewer candidates appear on the general election ballot as a result of proposed section 1-4-207 than would appear on the general election ballot under the current system?
 - c. Is it correct that there could be a case where all the same candidates appear on the general election ballot as the primary election ballot?
12. The following questions concern proposed section 1-4-208:
 - a. What happens if a candidate moves and changes their address between the primary election and the general election?
 - b. How does this section interact with part 10 of article 4 of title 1, C.R.S., which addresses vacancies in and withdrawals from nominations?
 - c. May a party only endorse one candidate on a general election ballot? How does this interact with a party's ability to nominate two candidates for a primary election?

- d. Does this section allow a party to unilaterally withdraw a candidate that has qualified for the general election ballot through the primary election process in favor of another candidate who did not participate in the primary election?

13. The following question concerns proposed section 1-4-209:

- a. If a party replaces a candidate after the primary election pursuant to section 1-4-208, where is the replacement candidate placed on the general election ballot?

14. The following questions concern proposed section 1-4-210:

- a. What does it mean that: "The election shall be conducted by the ranked voting method 'instant runoff voting,' offered as a local option in 1-7-1003 (3)"? Is there a reason that the proponents did not choose to reproduce the language in section 1-7-1003 (3), C.R.S., here?
- b. Who administers the process of instant runoff voting? Who counts the ballots? Where does this counting take place?
- c. Is there deadlines by which the process of counting ballots is to be completed? Is that deadline specified in the proposed initiative?
- d. Will the instant runoff voting procedures under the proposed initiative be used for federal as well as state elections? To what extent will this system be used in presidential elections in the state? To the extent it will be used, how will the proponents ensure that such a system based on repeating counting of ballot to produce a winner will not cause delays that would adversely affect the timely election of a President of the United States?
- e. This section refers to the "blue-book," but this is not a term that is used in state law. Would the proponents either consider defining the term or refer to the "ballot information booklet," as that is how the blue book is referred to in state law.

15. In both proposed sections 7 and 9 of the initiative, did the proponents intend to refer to the entirety of the initiative with the reference to "these amended sections"?

16. The following questions concern proposed section 8 of the initiative:

- a. An amendment that ensures conformity between different portions of statute is referred to as a confirming amendment, is this what the proponents meant to refer to rather than "nonconforming amendments"?
- b. What is meant by "inconsistencies in technical language"?

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** article XXX 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, if you intend to add a new article to title 39 of the Colorado Revised Statutes, you would include the following amending clause: "In Colorado Revised Statutes, **add** article __ to title 39 as follows:"
3. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

X-X-XXXX. Headnote. (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

4. It is standard drafting practice when referencing statutory sections to include the word "section" before the number. For example, "section 24-35-204.5."
5. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to and stricken type, which appears as stricken type, to show language being removed from the Colorado constitution or the Colorado Revised Statutes.
6. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty."
7. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate.
 - 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.
8. On page 3, proposed section 1-4-105 (1) (E) there appears to be a misspelling. Would the proponents consider changing the word "he" to "the" before the phrase "ballot as being nominated."
9. On page 5, in amended section 1-5-615, would the proponents remove the period after the paragraph indicator (q) to conform with standard drafting practices.