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Colorado General Assembly

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MEMORANDUM

TO: Jason Bertolacci and Owen Alexander Clough
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: March 5, 2024
SUBJECT: Proposed initiative measures 2023-2024 #209 to 218, concerning the conduct of elections

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.

These initiatives were submitted as a series including proposed initiatives 2023-2024 ##209 to 218.

Earlier versions of these proposed initiatives, proposed initiatives 2023-2024 ##186 to 196, were the subject of memoranda dated February 20, 2024, which were discussed at a public meeting on February 22, 2024. The substantive and technical comments and questions 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

Purposes for Proposed Initiative 2023-2024 #209

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

1. To require an all-candidate primary election for covered offices, including United States senator, representative to the United States house of representatives, state officer, and state senator or state representative serving in the general assembly, to be held in which one ballot containing the names of all candidates that have petitioned onto the ballot are listed regardless of political party affiliation and all eligible electors regardless of political party affiliation are allowed to vote for candidates on the ballot;
2. To generally require the four candidates that receive the highest number of votes at the all-candidate primary election to be placed on the ballot for the general election for the corresponding covered offices and provide for exceptions when there are fewer than four candidates or when a candidate who would otherwise be placed on the ballot becomes unavailable to be placed on the ballot;
3. To allow political parties to choose to nominate candidates by assembly or convention for primary elections for covered offices;
4. To establish thresholds for candidates for covered offices and other offices to petition onto a primary election ballot;
5. To require that general elections for covered offices be conducted by instant runoff voting using a ranked voting tally;
6. To require that the general election for president and vice president of the United States be conducted by instant runoff voting using a ranked voting tally;
7. To require the secretary of state to promulgate rules to implement certain changes to the election code as added or amended by the proposed initiative; and

8. To make necessary conforming amendments in the election code regarding primary elections, petitions, and general elections to implement the proposed initiative.

Purposes for Proposed Initiative 2023-2024 #210

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

1. To require an all-candidate primary election for covered offices, including United States senator, representative to the United States house of representatives, state officer, and state senator or state representative serving in the general assembly, to be held in which one ballot containing the names of all candidates that have petitioned onto the ballot are listed regardless of political party affiliation and all eligible electors regardless of political party affiliation are allowed to vote for candidates on the ballot;
2. To generally require the four candidates that receive the highest number of votes at the all-candidate primary election to be placed on the ballot for the general election for the corresponding covered offices and provide for exceptions when there are fewer than four candidates or when a candidate who would otherwise be placed on the ballot becomes unavailable to be placed on the ballot;
3. To allow political parties to choose to nominate candidates by assembly or convention for primary elections for covered offices;
4. To establish thresholds for candidates for covered offices and other offices to petition onto a primary election ballot;
5. To require that general elections for covered offices be conducted by instant runoff voting using a ranked voting tally;
6. To require the secretary of state to release preliminary ranked voting tally results for general elections for covered offices and for the general election for president and vice president of the United States as soon as practicable on election night, and to update the tallies at regular intervals until the official canvass of the vote is complete;
7. To require that the general election for president and vice president of the United States be conducted by instant runoff voting using a ranked voting tally;

8. To require the secretary of state to promulgate rules to implement certain changes to the election code as added or amended by the proposed initiative; and
9. To make necessary conforming amendments in the election code regarding primary elections, petitions, and general elections to implement the proposed initiative.

Purposes for Proposed Initiative 2023-2024 #211

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

1. To require that general elections for covered offices be conducted by instant runoff voting using a ranked voting tally;
2. To require that the general election for president and vice president of the United States be conducted by instant runoff voting using a ranked voting tally; and
3. To condition the effectiveness of the proposed initiative on the passage of a separate initiative, referred measure, or bill which would establish all-candidate primary elections.

Purposes for Proposed Initiative 2023-2024 #212

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

1. To require that general elections for covered offices be conducted by instant runoff voting using a ranked voting tally;
2. To require the secretary of state to release preliminary ranked voting tally results for general elections for covered offices and for the general election for president and vice president of the United States as soon as practicable on election night, and to update the tallies at regular intervals until the official canvass of the vote is complete;
3. To require that the general election for president and vice president of the United States be conducted by instant runoff voting using a ranked voting tally; and

4. To condition the effectiveness of the proposed initiative on the passage of a separate initiative, referred measure, or bill which would establish all-candidate primary elections.

Purposes for Proposed Initiative 2023-2024 #213

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

1. To require an all-candidate primary election for covered offices, including state senator or state representative serving in the general assembly, to be held in which one ballot containing the names of all candidates that have petitioned onto the ballot are listed regardless of political party affiliation and all eligible electors regardless of political party affiliation are allowed to vote for candidates on the ballot;
2. To generally require the four candidates that receive the highest number of votes at the all-candidate primary election to be placed on the ballot for the general election for the corresponding covered offices and provide for exceptions when there are fewer than four candidates or when a candidate who would otherwise be placed on the ballot becomes unavailable to be placed on the ballot;
3. To allow political parties to choose to nominate candidates by assembly or convention for primary elections for covered offices;
4. To establish thresholds for candidates for covered offices and other offices to petition onto a primary election ballot;
5. To require the secretary of state to promulgate rules to implement certain changes to the election code as added or amended by the proposed initiative;
6. To make necessary conforming amendments in the election code regarding primary elections, petitions, and general elections to implement the proposed initiative; and
7. To condition the effectiveness of the proposed initiative on the passage of a separate initiative, referred measure, or bill which would establish instant runoff voting in the general election for each covered office.

Purposes for Proposed Initiative 2023-2024 #214

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

1. To require an all-candidate primary election for covered offices, including the offices of state officer, state senator, or state representative serving in the general assembly, to be held in which one ballot containing the names of all candidates that have petitioned onto the ballot are listed regardless of political party affiliation and all eligible electors regardless of political party affiliation are allowed to vote for candidates on the ballot;
2. To generally require the four candidates that receive the highest number of votes at the all-candidate primary election to be placed on the ballot for the general election for the corresponding covered offices and provide for exceptions when there are fewer than four candidates or when a candidate who would otherwise be placed on the ballot becomes unavailable to be placed on the ballot;
3. To allow political parties to choose to nominate candidates by assembly or convention for primary elections for covered offices;
4. To establish thresholds for candidates for covered offices and other offices to petition onto a primary election ballot;
5. To require the secretary of state to promulgate rules to implement certain changes to the election code as added or amended by the proposed initiative;
6. To make necessary conforming amendments in the election code regarding primary elections, petitions, and general elections to implement the proposed initiative; and
7. To condition the effectiveness of the proposed initiative on the passage of a separate initiative, referred measure, or bill which would establish instant runoff voting in the general election for each covered office.

Purposes for Proposed Initiative 2023-2024 #215

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

1. To require that general elections for covered offices, including state senator or state representative serving in the general assembly, be conducted by instant runoff voting using a ranked voting tally; and

2. To condition the effectiveness of the proposed initiative on the passage of a separate initiative, referred measure, or bill which would establish all-candidate primary elections.

Purposes for Proposed Initiative 2023-2024 #216

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

1. To require that general elections for covered offices, including state senator or state representative serving in the general assembly, be conducted by instant runoff voting using a ranked voting tally;
2. To require the secretary of state to release preliminary ranked voting tally results for general elections for covered offices and for the general election for president and vice president of the United States as soon as practicable on election night, and to update the tallies at regular intervals until the official canvass of the vote is complete; and
3. To condition the effectiveness of the proposed initiative on the passage of a separate initiative, referred measure, or bill which would establish all-candidate primary elections.

Purposes for Proposed Initiative 2023-2024 #217

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

1. To require that general elections for covered offices, including the offices of state officer or state senator or state representative serving in the general assembly, be conducted by instant runoff voting using a ranked voting tally; and
2. To condition the effectiveness of the proposed initiative on the passage of a separate initiative, referred measure, or bill which would establish all-candidate primary elections.

Purposes for Proposed Initiative 2023-2024 #218

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

1. To require that general elections for covered offices, including the offices of state officer or state senator or state representative serving in the general assembly, be conducted by instant runoff voting using a ranked voting tally;
2. To require the secretary of state to release preliminary ranked voting tally results for general elections for covered offices and for the general election for president and vice president of the United States as soon as practicable on election night, and to update the tallies at regular intervals until the official canvass of the vote is complete; and
3. To condition the effectiveness of the proposed initiative on the passage of a separate initiative, referred measure, or bill which would establish all-candidate primary elections.

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 each of the proposed initiatives?
2. The following questions and comments relate to the provisions concerning "Instant Runoff Presidential General Elections" in proposed section 1-4-301.5 in proposed initiatives 2023-2024 ## 209 to 212:
 - a. Proposed section 1-4-301.5 refers to "slates" of candidates for the offices of president and vice president of the United States. This term is not defined in the initiative and does not appear elsewhere in article 4 of title 1 of the Colorado Revised Statutes. Do you think this term should be defined to avoid ambiguity?
 - b. Should section 1-5-409, which states that "Each office in every election shall be voted upon separately, and no emblem, device, or political party designation shall be used on the official ballot at any election by which an eligible elector may vote for more than one office by placing a single cross mark on the ballot or by writing in the name of any political party or political organization," be amended in order to comport with proposed section 1-4-301.5?
3. The following question relates to the provision concerning the "**Effective date – applicability**" clause in proposed initiatives 2023-2024 # 211 to 218:

- a. Would the proposed initiatives referenced in subsection (2) also be conditioned on the passage of separate proposed initiatives? If not, would the structure of general elections be impacted if only one of the proposed initiatives was passed?

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. The following technical comments relate to proposed initiative #209:
 - a. When writing amending clauses, there should be no space between the subsection and paragraph number (i.e. "(2)(b)" rather than "(2) (b)"). (This happens on page 12 and 13).
 - b. In section 1-4-1304 (1), the word "and" does not need to appear twice. Also, there should be a blank line between paragraphs (b)(I) and (c). (On page 16).
 - c. When adding a section number to a list of existing section numbers, in order to make the addition clear, the new section number should be expressed in *bold italics*. This applies to "1-4-802.5" in section 1-4-1304 (1) of the proposed initiative. (On page 16).
2. The following technical comment relates to proposed initiative #211:
 - a. When a statutory subsection contains definitions, typically the headnote of the section will reflect this (i.e. "**1-4-207. General elections for covered offices – definitions.**" rather than "**1-4-207. General elections for covered offices.**") (Page 1).
3. The following technical comment relates to proposed initiative # 213:
 - a. When striking words and adding new words, the words that are being stricken should appear before words that are being added in small caps (i.e. "for ~~a particular~~ AN OFFICE OTHER THAN A COVERED office" rather than "for AN OFFICE OTHER THAN A COVERED ~~a particular~~ office"). (Pages 6 and 7).
4. The following technical comment relates to proposed initiative # 214:

- a. When creating a new subsection, the subsection number only needs to be written once. (Page 6, (1.5) is repeated.)
- b. When amending a word so that it appears in the plural form rather than singular, strike the entire singular word and re-write the plural in small capitals (i.e. "~~candidate~~ CANDIDATES" rather than "candidates"). (Page 6).