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Colorado General Assembly

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MEMORANDUM

TO: Ryan Ross and William Joseph Blazek
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: March 6, 2024
SUBJECT: Proposed initiative measure 2023-2024 #223, 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 repeal section 1-2-222, Colorado Revised Statutes (C.R.S.), regarding errors in recording of affiliation;

2. To amend section 1-2-218.5, C.R.S., regarding declaration of affiliation, and section 1-2-219, C.R.S., regarding changing or withdrawing declaration of affiliation, to repeal references to primary elections;
3. To repeal and reenact, with amendments, part 1 of article 4 of title 1, C.R.S., regarding candidate access to the primary election ballot;
4. To define the term "primary election" as an election to determine which candidates for federal and state elected offices will appear on the succeeding general election ballot;
5. To specify that a candidate is entitled to appear on the primary election ballot if the candidate is nominated by a political party, is an incumbent seeking reelection to office, or submits a petition that satisfies the requirements specified in the proposed initiative;
6. To require the secretary of state (secretary) to make petitions for candidates seeking access to the primary election ballot (petition) available by January 15 in each even-numbered year, in a form and manner to be determined by the secretary;
7. To require the secretary:
 - a. To create, as part of the existing statewide voter registration system, an online system for signing petitions that must be operational by January 1, 2026, and must allow a registered elector to access a list of all candidates who are circulating petitions in the registered elector's district and electronically sign any such petition; and
 - b. To add the electronic signatures to the applicable petition that a candidate submits to the secretary;
8. To require each petition to identify the office for which the candidate is running, the candidate's name and address of legal residence, and the candidate's party affiliation or a specification that the candidate is unaffiliated;
9. To require that a petition list only one name; except that a candidate for president of the United States must include the name of the candidate for vice-president and a candidate for governor must include the name of the candidate for lieutenant governor;
10. To require a candidate for president of the United States to submit the names of registered electors who are nominated as presidential electors;

11. To specify that petitions may be signed only by registered electors and to specify the number of signatures that various candidates must collect from registered electors to be placed on the primary election ballot;
12. To require the secretary to determine whether a petition submitted by a candidate, in combination with the electronic signatures that the candidate collected via the statewide voter registration system, satisfies the number of signatures that the candidate is required to collect;
13. To allow a candidate who has not collected the required number of signatures on a petition to have additional time to collect additional signatures, and to require the secretary to make a new determination of whether the candidate has satisfied the signature requirements after the candidate resubmits the petition to the secretary;
14. To allow each major or minor political party to nominate one or two political party members to be candidates for each office on the primary election ballot and to establish procedures to determine which party members to nominate;
15. To specify the information about each candidate that must appear on the primary election ballot, including the candidate's name, city of legal residence, and political party, if applicable, and whether the candidate was nominated by a political party candidate or is unaffiliated;
16. To specify when a candidate who is placed on the primary election ballot may withdraw the candidate's name from the ballot;
17. To require the secretary to determine by random selection the order in which the candidates for the same office will appear on the primary election ballot;
18. To require the secretary to allow eligible electors to write-in a candidate for any office on the primary election ballot;
19. To allow any registered elector to vote for any candidate for whom the elector is eligible to vote on the primary election ballot regardless of how the candidate obtained ballot access and regardless of the elector's political party affiliation or non-affiliation;
20. To allow counties to hold local government and special district elections as coordinated elections with the primary election;
21. To require the four candidates with the highest number of votes in the primary election and all other candidates who obtained at least three percent of the votes cast in the primary election to appear on the general election ballot;

22. To require the secretary to allow eligible electors to write-in a candidate for any office on the general election ballot;
23. To require that the general election ballot include the same information regarding each candidate as is required on the primary election ballot;
24. To allow, not less than 45 days prior to a general election, a majority of members of a political party's central committee to withdraw the nomination of any candidate on the general election ballot, to require a political party's central committee to provide notice to the secretary of such withdrawal, and to allow the political party's central committee to endorse another candidate from the same party on the general election ballot;
25. To require that candidates' names appear on the general election ballot in the same order in which they appeared on the primary election ballot;
26. To allow any registered elector to vote for any candidate for whom the elector is eligible to vote on the general election ballot regardless of how the candidate obtained ballot access and regardless of the elector's political party affiliation or non-affiliation;
27. To require that the general election be conducted by instant runoff voting, whereby electors can rank candidates in the order of their preference and counting proceeds in rounds;
28. To specify the process by which a candidate is selected using instant runoff voting;
29. To repeal provisions in section 1-5-102.9 and 1-5-615, C.R.S., regarding affiliating with a political party before a primary election; and
30. To require that any nonpunch card electronic voting system this is purchased or leased and any electronic or electromechanical voting systems certified by the secretary be capable of permitting voting and tabulating election results in an instant runoff voting election.

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. Regarding the statement of intent, in accordance with standard drafting practice, language in capital letters indicates new language that, if approved by the eligible electors, will appear in the Colorado Revised Statutes (C.R.S.). Is it your intent that the statement of intent will appear in the C.R.S.? If so, please include an amending clause to indicate where this language will be added. If not, please reflect the language in lowercase letters (with the exception of the first letter of a sentence).
3. What is the proponents' intent in repealing section 1-2-222, C.R.S., regarding errors in recording of affiliation? Although the proposed initiative seems to allow any elector, regardless of party affiliation or non-affiliation, to vote for any candidate in a primary election, are there other provisions of this section that are still applicable or other reasons why an elector may want to correct an error in the elector's recorded party affiliation? How would this correction occur if this section is repealed?
4. Regarding the proposed amendments to sections 1-2-218.5 and 1-2-219, C.R.S., the language included in the initiative does not reflect current statute. Sections 1-2-218.5 and 1-2-219, C.R.S., as contained in the proposed initiative strike language that *is not* currently in the statute, includes language that is *not* currently in the statute, and omits language that *is* currently in the statute. Either the proponents have used old versions of sections 1-2-218.5 and 1-2-219, C.R.S., or have not indicated the changes to current law in ~~strike-type~~ for deletions from the statute and SMALL CAPITAL LETTERS for additions to the statute. Please use the current version of the statutes in the proposed initiative and show the changes in strike-type and small capital letters.
5. Notwithstanding the comments in the question above, is the intent of the changes to sections 1-2-218.5 and 1-2-219, C.R.S., to repeal language in those two statutory sections that is specific to affiliating with a political party for the purpose of voting in a primary election? If not, what is the proponents' intent?
6. Regarding section 1-4-101, C.R.S., in the proposed initiative, which includes a definition of "primary election":
 - a. The definition included in the proposed initiative is different from the definition of "primary election" contained in section 1-1-104 (32), C.R.S. Is it the proponents' intent to replace the definition of "primary election" in current law? If so, please consider amending section 1-1-104 (32) to reflect the language of the definition in the proposed initiative. In the alternative, is it the proponents' intent to create a new definition of

"primary election" only for the purposes of the proposed new part 1 of article 4 of title 1, C.R.S.?

- b. A "primary election", as defined in the proposed initiative, is to determine candidates for "United States and Colorado state government" elected offices. Which United States and Colorado state government elected offices are included in this definition? Are candidates for any or all local government elected offices included in the definition?
 - c. Part 12 of article 4 of title 1 currently addresses presidential primary elections. If president of the United States is "an elective office for the United States..." how do the requirements of the proposed initiative as they apply to candidates for president of the United States interact with the provisions of part 12 of article 4 of title 1, C.R.S.?
7. Regarding section 1-4-102, C.R.S., in the proposed initiative, which addresses ballot access:
- a. Subsection (1) of this section specifies that one way for a candidate to appear on the primary election ballot is to be nominated by a political party pursuant to proposed section 1-4-104, C.R.S., of the proposed initiative. Proposed section 1-4-104, C.R.S., specifies that "political party" means a political party as defined in section 1-1-104 (22), C.R.S., of current law, which contains a definition of "major political party" or part 13 of article 4 of title 1, which addresses minor political parties. Is it your intent that "political party" as used in this section of the proposed initiative refer to both major political parties and minor political parties?
 - b. Subsection (2) of this section specifies that another way for a candidate to appear on the primary election ballot is to be an incumbent who is seeking reelection to the same office and who notifies the secretary of such intent. Is it the proponents' intent that an incumbent can appear on the primary election ballot without being nominated by a political party and without obtaining signatures on a petition? Is this method of ballot access available to incumbents pursuant to current law? If not, do the proponents anticipate any problems with allowing a candidate to appear on the ballot without either being nominated by a political party or going through the petition process?
8. Regarding section 1-4-103, C.R.S., in the proposed initiative, which addresses petitions:

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- a. Candidates are allowed to access the ballot via petition pursuant to current law. Is it the proponents' intent that the provisions of the proposed initiative override any statutes addressing the current petition process such as the provisions of part 8 of article 4 of title 1, C.R.S? Please consider clarifying your intent regarding the interaction between the proposed initiative and provisions of current law that cover similar subjects by repealing conflicting provisions of current law.
- b. Proposed subsection (2) requires the secretary to create a process whereby an eligible elector may electronically sign a candidate's petition via the statewide voter registration system. Do the proponents anticipate that there will be any programming or other cost associated with this requirement? If so, how do the proponents intend that the secretary will pay for these costs?
- c. Regarding proposed subsection (2), do the proponents anticipate that there could be errors in the electronic signature gathering process? For example, could there be errors in matching active petitions to each elector's district or errors in recording and transmitting the electronic signatures?
- d. How will the secretary verify the electronic signatures? Do the proponents anticipate that an elector will actually sign the electors name electronically or type the elector's name? If it is the latter, how will the secretary match the signature to the signature stored in the statewide voter registration system?
- e. Subsection (6) requires a candidate for president of the United States to submit the names of registered electors "who are thus nominated as presidential electors." What is the proponents' intent in this subsection? Does this provision change the way that presidential electors are selected? How many names of registered electors must a candidate for president of the United States provide?
- f. The number of petition signatures required pursuant to proposed subsection (8) conflict with the number of signatures required for a candidate for a major political party pursuant to section 1-4-801 (2), C.R.S. Is it your intent that the signature requirements in the proposed initiative supersede the requirements of current law? If your intent is that the petition will replace current law, please consider repealing the conflicting provisions of current law.

- b. Do the proponents anticipate that all the information that is required to be included for each candidate pursuant to proposed subsection (1)(A) through (1)(F) will make each primary election ballot longer than they are currently? If so, could this result in extra costs to county election officials?
 - c. Do the proponents anticipate that the amount of information required to be included on the primary election ballot could cause voter confusion and detract from an eligible elector's ability to cast a vote for the elector's intended candidate?
 - d. Currently, section 1-4-101, C.R.S., requires each political party that is entitled to participate in the primary election to have a separate party ballot for use by electors affiliated with that political party. Is it the proponents' intent that the proposed initiative requires one primary election ballot for all candidates, regardless of political party affiliation?
11. Section 1-4-106, C.R.S., of the proposed initiative, regarding order on the ballot, requires the secretary to determine the order in which the candidates for the same office will appear on the primary election ballot. Does this requirement apply to the secretary only for candidates that are running for elected offices "for the United States and state government" as specified in proposed section 1-4-101, C.R.S., or is the secretary required to determine the ballot order for all candidates?
12. Regarding section 1-4-107, C.R.S., in the proposed initiative, which requires the secretary to provide a method for an elector to write-in a candidate for office:
- a. Do the proponents anticipate that this is an option that will change the outcome of any election? If yes, how so? If not, why is it included in the proposed initiative?
 - b. How will designated election officials count and record these votes?
 - c. How will designated election officials verify that the person for whom a vote is counted is the person for whom the elector intended to vote?
 - d. Are electors required to include any information with a write-in vote to assist designated election official in determining for whom a write-in vote was cast?
13. Regarding section 1-4-108, C.R.S., in the proposed initiative, which addresses who may vote in a primary election, is it the proponents' intent that any eligible

elector be allowed to vote for any candidate in a primary election, regardless of the eligible elector's or candidate's political party affiliation or non-affiliation?

14. Regarding section 1-4-109, C.R.S., in the proposed initiative, which addresses joint local elections, is it the proponents' intent to change any process pursuant to current law that allows for coordinated elections between the state and local governments? If so, how do the proponents intend to change the current process?
15. Regarding section 1-4-207, C.R.S., in the proposed initiative, which addresses candidates on the general election ballot:
 - a. This section states that the four candidates with the highest number of votes cast in the primary election and any candidate who received at least three percent of the votes cast in the primary election will all appear on the general election ballot. Do the proponents' have a sense of how many people may appear on the general election ballot for a given office as a result of this requirement?
 - b. If it is the proponents' intent that there will be one primary election ballot for all candidates, it is possible that the general election ballot for a particular office may not include a candidate from a particular political party, even if there was a candidate from that political party on the primary election ballot?
 - c. The questions associated with write-in candidates for the primary election ballot pursuant to section 1-4-107, C.R.S., in the proposed initiative also apply to the write-in candidate requirement in the proposed initiative for the general election ballot. Are any of the proponents' answers to those questions different regarding the write-in candidate requirement for the general election? In addition, why did the proponents use different language to describe the same requirement in the write-in candidate provisions for primary elections and general elections in the proposed initiative?
16. Regarding section 1-4-208, C.R.S., in the proposed initiative, which addresses ballot information:
 - a. The questions associated with the information that is required to be included on the primary election ballot for each candidate pursuant to proposed subsection (1)(A) through (1)(F) of section 1-5-105, C.R.S., in the proposed initiative also apply to the candidate information

requirements specified in this section for the general election ballot. Are any of the proponents' answers to those questions different for the general election ballot requirements?

- b. If the nomination of a candidate is withdrawn by a majority vote of a political party central committee, does that mean that the withdrawn candidate will not appear on the general election ballot even if the candidate received the required number of votes to appear on such ballot during the primary election?
 - c. If the nomination of a candidate is withdrawn by a majority vote of a political party central committee but the candidate gained ballot access to the primary election ballot through both a party nomination and the petition process and then qualified for the general election ballot, would the candidate still be listed on the general election ballot? If so, would the candidate be listed on the general election ballot as an unaffiliated candidate or as a member of the party?
 - d. Will there be an administrative process for the withdrawn candidate to appeal or object to the decision of a political party central committee to withdraw the candidate from the general election ballot?
 - e. Can a political party central committee withdraw its nomination of a candidate for any reason?
 - f. Can a political party central committee endorse any candidate from the party on the general election ballot at any time? Or is this only an option if the central committee withdraws the nomination of another candidate on the general election ballot?
17. Section 1-4-210, C.R.S., in the proposed initiative allows any registered elector to vote for any candidate on the general election ballot for whom the elector is eligible to vote regardless of how the candidate secured ballot access and regardless of the elector's party affiliation or non-affiliation. Is this consistent with an eligible elector's current voting rights? If not, how does this section change current law?
18. Regarding section 1-4-211, C.R.S., of the proposed initiative which addresses instant runoff voting:
- a. To which offices do the provisions of section 1-4-211 (and all of the provisions of part 2 of article 4 of title 1 of the proposed initiative) apply? The proposed initiative includes certain offices in the definition

of "primary election" but does not specify offices to which the sections of the proposed initiative regarding general elections apply.

- b. The proposed initiative specifies what happens if two candidates are tied for the lowest number of votes when using instant runoff voting. What happens if two candidates are tied for the highest number of votes when using instant runoff voting?
 - c. Subsection (6) specifies that an explanation of "ranked voting" must be provided to eligible electors. To keep terminology consistent, please consider changing this to "instant runoff voting", as this is the defined term in the proposed initiative.
 - d. Even with instructions to electors, do the proponents anticipate that there will be any voter confusion in making a switch to instant runoff voting?
 - e. Do designated election officials currently have the resources needed for election tabulation of ballots using instant runoff voting?
 - f. Do you anticipate that the secretary will have to promulgate rules or that the general assembly will have to enact laws to implement instant runoff voting elections? If so, what is the nature of the rules or laws that would be necessary?
19. Section 7 of the proposed initiative indicates that the proponents intend to repeal section 1-5-615 (1)(n), C.R.S. However, subsection (1)(n) of this section was repealed in 2023. Did the proponents intend to repeal a different subsection in section 1-5-615?
20. Section 8 of the proposed initiative, which amends section 1-5-611, C.R.S., specifies that electronic voting systems that are purchased or leased must be capable of permitting voting and tabulating votes cast as specified in 1-4-210. Did the proponents intend to include a cross reference to section 1-4-211, regarding instant runoff voting, instead?
21. Regarding Section 9 of the proposed initiative which specifies that the proposed initiative is self-executing and severable:
- a. Is it the proponents' intent that the provision be included in the C.R.S.? If so, please include an amending clause to indicate where this will be added to the statutes. If not, please use regular type, rather than capital letters, for this provision.

- b. This language specifies that the statutory changes contained in the proposed initiative "supersede conflicting statutes and regulations" and that "statutes and regulations may be enacted to facilitate the implementation" of the proposed initiative. Why have the proponents chosen to amend some statutes with provisions that conflict with the proposed initiative and not to amend others?
- c. Who will be responsible for determining which provisions of current law conflict with the provisions of the proposed initiative?
- d. How will the Colorado general assembly know which provisions of current law to amend or repeal in keeping with the proponents' intent? How will the proponents be sure that the general assembly will fully understand the intent of the proposed initiative?
- e. Please consider amending the current provisions of law that conflict with the provisions of the proposed initiative in the proposed initiative to better insure that your intent is understood and correctly 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. The format of an amending clause for a "straight repeal", whereby a section of statute is repealed without showing the statutory language in strike-type, is as follows:

SECTION 1. In Colorado Revised Statutes, **repeal** section 1-2-122.

In addition, standard drafting practice is to include all sections that are being repealed via a "straight repeal" in one amending clause in one section at the end of the proposed initiative. For example:

SECTION 1. In Colorado Revised Statutes, **repeal** sections 1-2-122, 1-5-102.9 (3)(e), and 1-5-615 (1)(h).

2. The format of an amending clause to amend a portion of an existing statute should include the subsection that is being amended. Each statutory section

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that is being amended should have its own amending clause explaining how the law is being changed and should be in the following format:

SECTION 1. In Colorado Revised Statutes, 1-2-218.5 **amend** (2) as follows:

3. The format of an amending clause to *add* one or more sections to the same statutory part is as follows:

SECTION 1. In Colorado Revised Statutes, **add** 1-4-207, 1-4-208, 1-4-209, 1-4-210, and 1-4-211 as follows:

4. The format of an amending clause to repeal and reenact a portion of statute, as the proponents have done with part 1 of article 4 of title 1, is as follows:

SECTION 1. In Colorado Revised Statutes, **repeal and reenact, with amendments**, part 1 of article 4 of title 1 as follows:

5. 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

6. It is standard drafting practice when referencing statutory sections to include the word "section" before the number. For example, "section 1-4-104."
7. 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 Revised Statutes.

8. 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."
9. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate and only where appropriate. The following, and only 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.
10. The proposed initiative refers to "registered electors", "registered voters", and "voters". Unless there is a reason to use different terms, please consider using the same term throughout the proposed initiative.
11. In Section 8 of the proposed initiative, "**Part 6. Authorization and use for voting machines and electronic voting systems**" can be removed, as it is not part of the headnote or otherwise necessary.
12. In section 1-4-107, C.R.S., of the proposed initiative that allows an elector to "write-in a candidates for each office": either eliminate "a" or change "candidates" to "candidate".
13. In sections 1-4-105 and 1-4-208 of the proposed initiative the terms and phrases "member of", "unaffiliated", and "endorsed by", which are enclosed by single quotation marks (') should instead be enclosed by double quotation marks (").