

# 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: March 27, 2024

SUBJECT: Proposed initiative measure 2023-2024 #257, 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.

An earlier version of this proposed initiative, proposed initiative 2023-2024 #174, was the subject of a memorandum dated February 12, 2004. Proposed initiative 2023-2024 #174 was discussed at a public meeting on February 15, 2024. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, 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 Revised Statutes appear to be:

1. To define the term "primary election" as the election to determine which candidates for elected offices for the United States, Colorado state government, and all other offices elected in districts that include parts of multiple counties or whose officials serve on boards with regional jurisdiction encompassing parts of multiple counties will appear on the succeeding general election ballot;
2. To allow a candidate to access the primary election ballot by political party nomination, the petition process, or by being an incumbent seeking reelection;
3. To require the secretary of state (secretary) to:
  - a. Create, as part of the existing statewide voter registration system, a secure 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. Add the electronic signatures to the applicable petition that a candidate submits to the secretary;
4. To require a candidate for president of the United States to submit the names of registered electors who are nominated as presidential electors;
5. To modify the number of signatures that various candidates must collect from registered voters to be placed on the primary election ballot;
6. 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 candidates is required to collect to qualify for the primary election ballot;
7. 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, if the candidate collects additional signatures, 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;

8. To permit political parties to determine how to nominate candidates for public office and to make such nominations at the party's discretion;
9. To require all candidates for a primary election, regardless of party affiliation or nonaffiliation, and regardless of the way in which the candidate accessed the ballot, to appear on the same primary election ballot;
10. To require the primary election ballot to include specified information regarding each candidate, including party affiliation or nonaffiliation, and whether the candidate was nominated by a political party;
11. To allow any registered voter to vote for any candidate on the primary election ballot in their district regardless of how the candidate accessed the ballot and regardless of the voter's party affiliation or nonaffiliation;
12. To allow local government elections to be held in conjunction with the primary election;
13. To provide state money to each political party to fund the party's nominating contests and to unaffiliated candidates to reimburse the candidates for the expenses they incurred in obtaining petition signatures;
14. To require the four candidates with the highest number of votes in the primary election, all other candidates who obtained at least five percent of the vote in the primary election, and all candidates who were nominated by a political party and obtained at least one percent of the vote in the primary election to appear on the general election ballot;
15. To allow, not less than forty-five days prior to a general election, a political party's central committee to withdraw the nomination of any candidate on the general election ballot and endorse any candidate from that party on the general election ballot;
16. To allow any registered voter to vote for any candidate on the general election ballot in their district regardless of how the candidate accessed the ballot and regardless of the voter's party affiliation or nonaffiliation;
17. To require the general election to be conducted by instant runoff voting, whereby electors can rank candidates in the order of their preference and counting proceeds in rounds; and
18. To allow voters to rank their top three choices among the candidates for each office on the general election ballot, and to specify that ballots must be counted

in rounds until only two candidates remain and the winner is the remaining candidate who has the largest number of 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. Regarding section 1-4-101, C.R.S., of the proposed initiative, which includes a definition of "primary election":
  - a. There is a definition of "primary election" in the definition section for the "Uniform Election Code of 1992", which is in section 1-1-104 (32), C.R.S. To which sections of law would the new definition apply? Is it the proponents' intent to replace the current definition? If so, consider repealing the current definition of "primary election" in the proposed initiative and replacing it with the new definition.
  - b. Which offices are included in "elected offices for the United States, Colorado state government and all other offices elected in districts that include parts of multiple counties or whose officials serve on boards with regional jurisdiction encompassing parts of multiple counties"?
  - c. What is an example of an office elected in a district that includes parts of multiple counties? What is an example of an office whose officials serve on boards with regional jurisdiction encompassing parts of multiple counties"?
3. Regarding section 1-4-103, C.R.S., of the proposed initiative, which addresses petitions:
  - a. What is meant by proposed subsection (6)? How many names of registered electors must a candidate for United States president provide? How does this requirement interplay with part 12 of article 4 of title 1, C.R.S., concerning presidential primary elections? Do the proponents intend to move the presidential primary from March to June? If so, consider either amending or repealing the relevant provisions of current law to make your intent clear. If the intent is to move Colorado's presidential primary to June, have the proponents considered that

Coloradans' vote in the presidential primaries may be essentially moot since the presidential nominees for each party will most likely be decided by June?

- b. Proposed subsection (8) specifies the number of petition signatures required for a candidate to access the primary election ballot. The number of required petition signatures in the proposed initiative reduces the number of petition signatures required by current law for most offices, but also appears to increase the number of signatures for other offices. Specifically, current law requires a petition for a candidate for the office of an at-large seat on either the state board of education or the board of regents of the university of Colorado to be signed by at least five hundred eligible electors in each congressional district. Are these offices included in the proposed initiative? If so, is it your intent to increase the number of petition signatures that candidates for these offices are required to obtain?
  - c. Regarding proposed subsection (9), by what date would a candidate need to submit a petition to the secretary for review and still have enough time to be provided an additional fifteen days for signature gathering if the number of signatures submitted is deficient? Consider specifying this date in the proposed initiative. In addition, what happens if a candidate submits a petition for review without enough time in the election calendar for the additional fifteen days of signature gathering?
4. Regarding section 1-4-104, C.R.S., of the proposed initiative, which addresses political party nominations:
- a. Is it the proponents' intent that "political party" as used in the proposed initiative includes both major political parties and minor political parties?
  - b. What types of procedures do the proponents anticipate a political party would implement to determine which party members to nominate to a primary election ballot? Would these procedures include the current caucus and assembly process? Would they include some other new process instead of or in addition to the caucus and assembly process?
  - c. How would a political party determine which one or two candidates for each office to nominate for the primary election ballot?

- d. Would there be any requirements for a candidate to receive a certain portion of votes from the party to appear on the primary election ballot?
5. Regarding section 1-4-110, C.R.S., of the proposed initiative, which addresses funding for political party nominations and unaffiliated candidates' petition costs:
- a. Is there any precedent for using state money to fund political party activities or the campaign activities of individual candidates?
  - b. Do the proponents anticipate that the use of state funding for political party and campaign activities will conflict with any current state constitutional or statutory laws?
  - c. Does the payment for each registered active voter affiliated with a party result in unequal state contribution to different political parties?
  - d. What is the source of funding for the payments made by the secretary to political parties to finance nominating contests and to unaffiliated candidates for their costs in gathering petition signatures?
  - e. What do the proponents mean by the "Colorado Consumer Price Index" in subsections (1) and (3)? If the proponents intend to adjust the payment for inflation based on the consumer price index published by the United States Bureau of Labor Statistics, consider using one of the indexes identified by area by the bureau, such as the consumer price index for Denver-Aurora-Lakewood.
  - f. Why are only unaffiliated candidates entitled to reimbursement from the state for their costs in obtaining petition signatures? Does the payment create an unfair advantage for unaffiliated candidates among all candidates who petition onto the ballot? Does it create a preference for candidates who are affiliated with a political party to access the ballot by party nomination?
  - g. The proposed initiative includes a formula for determining a "per signature" reimbursement for unaffiliated candidates' costs in obtaining petition signatures. Before a candidate is reimbursed "per signature" will the secretary have to verify that the signatures are valid signatures of eligible electors?
6. Regarding section 1-4-207, C.R.S., of the proposed initiative, which addresses the general election ballot:

- a. Does subsection (1), which allows a candidate who won only one percent of the vote in the primary election but was nominated by a political party to access the general election ballot create a preference for candidates who accessed the primary election ballot using the party nomination process?
- b. Do the proponents anticipate that there will be any candidates who were nominated by a political party in the primary election who will not gain access to the general election ballot?

## **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. Although the text of the proposed initiative should be in small capital letters, it is only necessary to use an uppercase letter to indicate capitalization where appropriate, for example in the first word of a new sentence. It is unnecessary to capitalize the first letter of every word.
2. In proposed section 1-4-103 (9), the hyphen in the phrase "of-registered voters" does not conform to standard drafting practice. Similarly, in proposed section 1-4-110 (1), C.R.S., consider replacing the hyphens in the phrase "pursuant to – and in compliance with – sections...." with commas to conform to standard drafting practice.
3. It is standard drafting practices to write out references to numbers rather than using digits. Similarly, rather than using \$1, it is standard drafting practice to write out "one dollar".
4. It is standard drafting practice to use a full term, for example "secretary of state" the first time it is referenced in each section before using an abbreviated term in the section, for example "secretary".
5. Proposed section 1-4-107, C.R.S., specifies that "voters can write-in a candidates for each office...". This phrase should be either singular or plural and not mismatched with the singular "a" preceding the plural "candidates".