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## MEMORANDUM

**TO:** Kelly Brough and Joe Blake

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**DATE:** February 17, 2016

**SUBJECT:** Proposed initiative 2015-2016 #99, concerning independent voters in primary 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.

This initiative was submitted with proposed initiative 2015-2016 #98. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memorandum for proposed initiative 2015-2016 #98, except as necessary to fully understand the issues raised by this proposed initiative. Comments and questions addressed in the other memorandum may also be relevant, and those questions and comments 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 allow voters unaffiliated with a major political party to participate in state and local primary elections in order to increase participation and voter turnout in primary elections.
2. To recreate a presidential primary in Colorado for the purpose of selecting delegates to the nominating conventions of the major political parties.

## **Substantive Comments and Questions**

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

1. It appears that the only substantive difference between proposed initiative 2015-2016 #98 and proposed initiative 2015-2016 #99 is that #99 adds a new section recreating the state's presidential primary. Is this correct? If not, please specify the additional substantive differences between the two proposed initiated measures?
2. Does the addition of the presidential primary to this proposed initiative measure affect your assessment to any extent of the single subject of the proposed initiative? If so, how?
3. With respect to the introductory portion of proposed new section 1-4-1202 (2), C.R.S., what is a "qualified candidate"? Would the proponents consider adding a definition of this term to the proposed initiated measure? What does it mean for a political party to have a "separate party ballot"? Under the provisions recreating the presidential primary, an elector that is affiliated with a political party is required to vote only for a candidate of that political party. Under what circumstances, if ever, is an unaffiliated voter permitted to cast a separate party ballot in the presidential primary election?
4. What is the rationale for the requirement in proposed new section 1-4-1203 (2) (a), C.R.S., that an elector need to have changed or withdrawn his or her political party affiliation no later than the twenty-ninth day preceding the presidential primary election?
5. Proposed new section 1-4-1202 (2) (b), C.R.S., allows an unaffiliated eligible elector to vote in a presidential primary election without being affiliated with

that party to the extent permitted by law. To what extent is such conduct “permitted by law”? Is such requirement making reference to the potential changes to the state’s election laws that would follow from the enactment of other provisions of the proposed initiated measure relating to unaffiliated voters voting in primary elections?

6. What is the basis for the twenty percent threshold requirement that is specified in proposed new section 1-4-1202 (1) (b), C.R.S.?
7. With respect to the requirement in proposed new section 1-4-1204 (4), C.R.S., that the secretary of state address the components of a valid challenge to candidate listings on the primary election ballot, would the proponents consider adding a requirement that any such rule be promulgated in conformity with the “State Administrative Procedure Act”, article 4 of title 24, C.R.S.?
8. With respect to proposed new section 1-4-1205, C.R.S., why is the nonrefundable fee for a write-in candidate (\$1,000) set at twice the fee for a named candidate (\$500) under proposed new section 1-4-1204 (1) (C), C.R.S.?
9. With respect to proposed new section 1-4-1207 (1), how will it be determined whether a noncommitted delegate has generated sufficient votes to be included among the delegation of that major political party to the party’s nominating convention?
10. With respect to proposed new section 1-4-1207 (3), C.R.S., is it a correct reading of this provision that all of the national convention delegates of a respective political party will be allocated to the candidate receiving the highest number of votes? In other words, it appears this provision would make Colorado a so-called “winner-take-all state”? If this is not a correct reading of this provision, would the proponents consider clarifying their intent here? Are there any legal complications that would result from a state law binding the members of the state’s delegation to vote for that candidate at the party’s national convention?

## 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. On page 6, when recreating and reenacting a part, the amending clause should read: "In Colorado Revised Statutes, **recreate and reenact, with amendments**, part 12 to article 4 of title 1 as follows:".
2. On page 8, the following word is misspelled: "bone fide" should be "bona fide".
3. On page 9, subsection (4), the statutory provision should be changed from "this subsection (5)" to "this subsection (4)".
4. In various places, the proposed initiated measure references a "registered member of a political party." In general, under the Uniform Election Code of 1982, "registered" is used to describe an elector who is able to cast a ballot whereas "affiliated" is the term generally used to describe a voter who has "signed up with" a particular political party.
5. Statutory provisions for paragraphs should not be small capped. So, for example, the paragraphs following proposed new section 1-4-1204 (1) should be shown as "(a)", "(b)", "(c)" etc., and not "(A)", "(B)", "(C)", etc.