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MEMORANDUM

TO: Jason Legg and Scott Cadiz

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: August 18, 2015

SUBJECT: Proposed initiative measure 2015-2016 #33, concerning congressional and legislative reapportionment.

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 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 constitution** appear to be:

1. To direct that the Colorado Reapportionment Commission ("Commission") establish, revise, or alter the districts for congress as well as the state senate and state house of representatives.
2. To direct that legislative leadership, the Governor, and the Chief Justice of the Colorado Supreme Court appoint members of the Commission according to the existing time frames and to require that members of the Commission be qualified electors of the state as in current law;
3. To require each Commission member to apply the proposed new section of the Colorado constitution in a manner that is impartial and that reinforces public confidence in the integrity of the redistricting process;
4. To require that Commission members:
 - a. Cannot be or have been an elected official;
 - b. Cannot be nor have been, for the previous two years prior to appointment, an elected district, county, or state political party officer;
 - c. Cannot, for a period of ten years after appointment, hold elective public office at the federal, state, county, or city level in Colorado;
 - d. Cannot, for a period of five years after appointment:
 - i. Hold appointive federal, state, or local office;
 - ii. Serve as paid staff for or paid consultant to Congress, the legislature, or an individual legislator; and
 - iii. Register as a federal, state, or local lobbyist.
5. To require that no more than six Commission members be or have been registered with the same political party for two years prior to appointment;
6. To continue the existing requirements that:
 - a. No more than four Commission members may be from the same congressional district, that at least one member must be from each congressional district, and that at least one member is from west of the continental divide;
 - b. Vacancies on the Commission are filled by the appointing authority, members hold office until their plans are implemented, and that the governor appoint a temporary chair and convene the Commission by May 15 of the Commission members' appointments;

- c. The Commission shall:
 - i. Publish preliminary plans within 113 days after the Commission is convened;
 - ii. Conduct public hearings throughout the state within 45 days of the publication of the preliminary plans;
 - iii. Finalize and submit final plans to the Colorado Supreme Court no later than 123 days prior to precinct caucuses;
 - iv. If a plan is returned to the Commission from the Court, revise and modify the plan to conform to the Court's requirements and resubmit the plan to the Court; and
 - v. Keep a public record of its proceedings and publish and distribute copies of each plan.

- d. The Colorado Supreme Court shall:
 - i. Review the plans and determine compliance with the proposed new Section 44;
 - ii. Adopt rules for the proceedings;
 - iii. Establish a schedule for submission of plans and legal arguments and evidence, but the last day for submission of such arguments or evidence must not be later than 90 days prior to precinct caucuses;
 - iv. Approve a plan or return the plan to the Commission with the Court's reasons for disapproval; and
 - v. Approve plans so that there is sufficient time for the plans to be submitted to the Secretary of State no later than 55 days prior to precinct caucuses.

7. In drawing districts, to require the Commission to use the following criteria in order of priority:

- a. Districts must comply with the United States constitution:
 - i. With the population of Congressional districts nearly as equal in population as practicable;
 - ii. With the population of senate and house districts reasonably equal in population for each type of district; except that the

deviation between the most populous and least populous of each type of district cannot be more than 5%; and

- iii. Deviations greater than these are permissible if required by the federal Voting Rights Act or allowable by law.
- b. Districts must comply with the federal Voting Rights Act;
- c. Districts cannot be drawn:
 - i. With the intent to favor or disfavor a political party or an incumbent; or
 - ii. With the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice.
- d. To the extent possible, districts cannot be formed by adding part of one county with all or part of another county;
- e. If more than one district is included in a county, the number of cities and towns whose territory is included in more than one district must be as small as possible;
- f. If the boundaries of a county, city, or town are changed, adjustments to legislative districts are made according to law;
- g. Districts must be as compact as possible and the distance of all boundaries must be as short as possible;
- h. Districts must consist of whole general election precincts and shall not overlap; and
- i. To the extent practicable, communities of interest must be preserved with a single district.

Substantive Comments and Questions

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

1. Section 1 (5.5) of Article V of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?

2. At the time that Section 48 of Article V of the Colorado constitution was originally enacted, the Lieutenant Governor served as the President of the Senate. As the Lieutenant Governor was not always a member of the same political party that had a majority in the Senate, the Majority Leader was given the authority to appoint members of the reapportionment commission. The Lieutenant Governor no longer serves as the President of the Senate. The President of the Senate now makes most appointments on behalf of his or her party. Would the proponents consider giving this authority to the President of the Senate rather than the Senate Majority Leader?
3. Although "reapportionment" and "redistricting" are sometimes used synonymously, they have different meanings. "Reapportionment" is the reallocation of members among smaller areas, such as the reapportionment of the members of Congress among the states. "Redistricting" means the redrawing of districts from which an official is elected. The initiative that created the Commission called it the "reapportionment commission." Since that time, legislative redistricting has been known as "reapportionment" and congressional as "redistricting." Do the proponents believe that the activities assigned to the Commission in the measure relate more to reapportionment or redistricting? Should the Commission be known as a reapportionment commission or a redistricting commission?
4. Since the Commission will now also be doing Congressional redistricting, have the proponents considered whether, as proposed, the Commission will have enough time to complete its work within the time given? Since no members of the Commission can be legislators, the Commission could start its work earlier than May 15 of the year of the appointments. Have the proponents considered convening the Commission earlier?
5. Subsection (1) (c) prohibits a Commission member from holding elected or appointed federal office for a period of time. Have the proponents considered whether a state may make additional qualifications for holding federal office?
6. In Subsection (1) (c), a member is prohibited from serving as paid staff or consultant to an "individual legislator." Do the proponents intend to limit this to a legislator in the General Assembly, to a member of Congress from Colorado, or to any state legislator or member of Congress?
7. What do the proponents mean by "pursuant to a mapping process" in the introductory portion to subsection (2)?
8. Subsection (2) (a) first requires compliance with the U.S. constitution and then establishes allowable deviations in population. Is it the proponents'

- intent that compliance with the U.S. constitution is the first priority and that the specified deviations be second?
9. Subsection (2) (a) authorizes deviations greater than the proposal requires "where required to comply with the federal Voting Rights Act", but paragraph (2) (b) specifies compliance with the Voting Rights Act as the next priority. Which has priority—the specified deviations or the Voting Rights Act?
 10. Subsection (2) (a) creates an exception to the deviation requirements when "allowable by law". What other law might make deviation from the Colorado constitution "allowable"?
 11. Subsection (2) (c) contains two criteria. Does one criterion have priority over the other, or are they to be equally weighted?
 12. Subsection (2) (c) prohibits districts drawn to favor or disfavor a political party. Previous Commissions have attempted to increase the number of competitive districts. Drawing such a district may favor one political party and disfavor another political party. For instance, competitive districts drawn in El Paso County might favor the Democratic Party while competitive districts in Boulder County might favor the Republican Party. Is it the intent of the proponents to prohibit the Commission from drawing such districts? Does this criterion relate to individual districts or to the plan for districts taken as a whole?
 13. Subsection (2) (d) contains two criteria. Does one criterion have priority over the other or are they to be equally weighted?
 14. Subsection (2) (d) appears to authorize the "adjustment" of districts if the boundaries of a county, city, or town are changed. Do the proponents intend that the General Assembly is authorized to change districts if a local government boundary is changed?
 15. Subsection (2) (e) contains three criteria. Does one criterion have priority over the others or are they all to be equally weighted?
 16. Subsection (2) (e) contains prohibits districts from overlapping. Do the proponents intend the districts of the same house may not overlap?

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 enacting clause and amending clauses should not be shown in small capitals, but instead should be shown in lowercase lettering. The proper format for constitutional amending clauses is: "In the constitution of the state of Colorado, **repeal and reenact** section __ of article __ as follows:". Please rewrite the amending clauses for the proposed initiative as follows in order to conform to this standard practice:

Section 1. In the constitution of the state of Colorado, **repeal and reenact** section 44 of article V as follows:

Section 2. In the constitution of the state of Colorado, **repeal** sections 46, 47, and 48 of article V.

2. Since legislative leaders are no longer eligible to serve on the Commission, "ACCEPTANCE OF SERVICE OR" in subsection (1) (b) of the proposal does not appear to be necessary.
3. The paragraph letters, such as (1) (b), should not be shown in small capitals, and instead should be shown in lowercase lettering. In addition, each new subsection and paragraph added should be indented, and no hard return is needed between paragraphs.