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MEMORANDUM

TO: Mike Spaulding and David Ottke

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: September 1, 2015

SUBJECT: Proposed initiative measure 2015-2016 #36, concerning Public Accountability of Officers

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.

Earlier versions of this proposed initiative, proposed initiatives 2015-2016 #29 and #30, were the subject of memoranda dated July 29, 2015, which were discussed at a public meeting on July 31, 2015. The substantive comments and questions and technical comments 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

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

1. To provide mechanisms by which all state and local legislative and executive elective officials, and all state and local judicial officers, are accountable to voters.
2. To reestablish the recall process for all state and local legislative and executive elective officials.
3. To subject all judicial officers to a retention election during each presidential election, but specify that judicial officers are not eligible for recall.

Substantive Comments and Questions

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

1. This proposed initiative principally differs from proposed initiatives 2015-2016 #29 and #30 in that it makes no provision for the recall of judicial officers. Is this understanding correct?
2. Currently, article VI of the Colorado constitution sets forth provisions relating to the selection and retention of justices and judges. Under the proposed initiative, new quadrennial retention elections (held during presidential election years) would be required of justices and judges, but those elections would be pursuant to reenacted article XXI.
 - a. In order to better inform persons of the additional mechanism for judicial officer accountability and to reduce potential confusion regarding how articles VI and XXI do or do not interact, would the proponents consider amending or cross-referencing article VI? For example, section 3 of the proposed initiative bars judicial officers defeated for retention from holding judicial office for ten years. Does this provision apply only to the quadrennial retention elections mandated by reenacted article XXI? Or does the provision apply when a judicial officer is not retained under an article VI retention election?
 - b. County court judges serve terms of four years. If the proposed initiative becomes law, county court judges with terms expiring in presidential election years will be subject to fewer retention elections than their

counterparts facing retention elections in non-presidential general elections. Is this the proponents' intended result?

3. Section 4 (1) of the proposed initiative defines the terms “elective” and “judicial officer” and also contains a variety other provisions relating to recall elections: the ineligibility of judicial officers for recall, the applicability of reenacted article XXI to home rule jurisdictions, the length of time that public officers subjected to recall are prohibited from holding public office, the unavailability of the recall mechanism once an officer defeats a recall effort, the number of officers that may be included on a single recall petition, etc.
 - a. Definitions generally applicable to the entirety of a larger portion of law (such as an article, title, or part) typically stand alone as a separate section, subsection, or paragraph. Please consider subdividing subsection (1) of section (4) or relocating the definitions.
 - b. In the alternative, please consider modifying the headnote of this section to better apprise readers of its contents. Section 4 is currently labeled “Enforcement” but includes many provisions seemingly unrelated to enforcement.

Technical Comment

The following new technical comment is raised by the proposed initiative:

1. In section 4 (1) of the proposed initiative, the word "not" is emphasized by being formatted in all capital letters, bold type, and underlined. To conform to standard drafting practice, please remove this formatting.