

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**TO:** Peter Bergman and Heather Link-Bergman  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** October 7, 2022  
**SUBJECT:** Proposed initiative measure 2023-2024 #2, concerning the Real Majority Act

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. For elections where one or more candidates are running for an office or for president and vice president, to include an option on the ballot for eligible electors to cast a vote for "none of these candidates";

2. To require the certified record of the results in each election to include a count of the eligible electors for each office;
3. To specify that no person may be elected to an office unless the total votes cast for the office, including the votes for "none of these candidates", exceeds half of the number of eligible electors for that office; and
4. To specify that an office shall be vacant for the applicable term if less than a majority of eligible electors submitted ballots for that office.

## **Substantive Comments and Questions**

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

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado." To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative.
2. 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?
3. Is the proposed initiative intended to amend the Colorado Revised Statutes?
4. A proposed initiative should indicate where the text of the proposed measure will be located in the Colorado constitution or the Colorado Revised Statutes. Where do the proponents intend for this proposed measure to be located?
5. The proposed initiative becomes effective on July 1, 2026. Is it the proponents' intent for the proposed initiative to apply to elections held on and after that date?
6. Regarding the second sentence of the definition for "abstract of votes cast":
  - a. Is it the proponents' intent that the abstract of votes cast include a count of the eligible electors for each office? If so, would the proponents consider changing "certified record" to "abstract of votes cast"?
  - b. Is it the proponents' intent that the "count of the eligible electors" be the aggregate number of individuals who cast a vote for each office for which candidates appear on the ballot or the aggregate number of individuals eligible to cast a vote for each office for which candidates appear on the ballot, regardless of whether all such individuals actually

- voted? Would the proponents consider revising the language to clarify their intent?
- c. A definition of "eligible elector" appears in section 1-1-104 (16), Colorado Revised Statutes. Is that the definition the proponents intend to apply to the proposed initiative?
  - d. The current definition of "abstract of votes cast" applies to each election for candidates for any office, ballot issue, or ballot question on the ballot. Is it your intent that the certified record would be required to include the count of eligible electors only for candidates for office?
7. Section 3.1 of the measure refers to "the names of candidates for... president and vice president of the United States" while section 3.2 of the measure refers to "presidential nominations or the selection of presidential electors". Should both sections be consistent in how they refer to the selection of presidential candidates or presidential electors?
  8. Section 1-5-403 (2), Colorado Revised Statutes, provides for the manner in which presidential electors are elected on a ballot.
    - a. Is it the intent of the proponents to make changes to the manner in which presidential electors are elected on a ballot?
    - b. Is the phrase "or the selection of presidential electors" in Section 3.2 in conflict with the provisions in section 1-5-403 (2), Colorado Revised Statutes, regarding the manner in which presidential electors are elected?
  9. If a voter does vote for a candidate for the office and mark the choice of the line "none of these candidates" in contravention of the provisions in Section 3.3, how would that vote be treated? Would it be void? Would the proponents consider clarifying this in the initiative?
  10. Regarding the phrase "unless the election is using a ranked voting method[ ]" in Section 3.3:
    - a. Is it the proponents' intent that the line "none of these candidates" be a permissible option for voters to choose in casting their votes in a ranked choice manner?
    - b. Is it the proponents' intent that the line "none of these candidates" be a permissible option for voters to choose when casting their votes in a ranked choice manner only if the voter does not choose any of the candidates?

- i. If so, what is the purpose of the enumerated exception for ranked voting?
- ii. Would the proponents consider removing the enumerated exception for ranked voting if it is superfluous?

11. Regarding the language in Section 4.1:

- a. Is it the intent of the proponents that no candidate is elected to an office unless the total votes cast for the *office* exceeds half the number of eligible electors for the office, including votes for the option of "none of these candidate"? Or is it the intent that no candidate is elected to office unless the total votes cast for the *candidate* exceeds half the number of such eligible electors? Would the proponents consider revising the language to clarify their intent?
- b. In addition, is it the intent of the proponents that the total votes cast exceed half the number of eligible electors *who cast a vote* or that the total votes cast exceed half the number of eligible electors who were *eligible to cast a vote*, regardless of whether the electors actually voted? Would the proponents consider revising the language to clarify their intent?

12. Regarding the language in Section 4.2:

- a. Is it the intent of the proponents that if less than a majority of eligible electors vote for any one candidate for an office, that the office must be vacant for the entire term at issue? If so, would the proponents consider clarifying this in the language in Section 4.2?
- b. In instances where current law provides for an appointment process to fill a vacancy, how should the requirement that an office be vacant for the term at issue in the case of less than a majority vote be given effect? (See for example Title 1, Article 12, Part 2.) Will there be any conflict with any current law governing vacancies?
- c. Do the proponents intend the vacancy provisions to apply to candidates for president and vice president of the United States? If so, would there be any implication to Colorado's electoral votes? Do the proponents foresee any conflicts with Federal law?

13. Under the proposed initiative, how is a winner determined in an election for an office? Would the proponents consider clarifying how the calculation is to be made?

14. Do the proponents intend for the initiative to apply to local, municipal, and school board elections? If so, would the proponents consider making the applicable conforming amendments to the local, municipal, and school board election codes currently in statute to reflect that intent?
15. If the proposed initiative becomes law, do the proponents foresee any conflicts between the initiative and existing law, in particular with the Uniform Election Code or the Colorado Local Government Election Code? How do the proponents propose that any conflict or conflicts be resolved?
16. Have the proponents considered any fiscal or other impacts that may result from the enactment of the proposed initiative on the state or on local governments in this state? Insofar as enactment of the proposed initiative were to lead to a strain on governmental resources, have the proponents considered incorporating a tax, fee, or some other mechanism that would allow some of the costs of the proposed initiative to be recovered?

## **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. Before the amending clause, number each section, part, etc. that is being amended or added with a section number (e.g., SECTION 1., SECTION 2.). For example:

**SECTION 1.** In the constitution of the state of Colorado, **add** article XXX as follows:

2. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. If, for example, you intend to add a new section to article X of the Colorado constitution, you would include the following amending clause:

"In the constitution of the state of Colorado, **add** section \_\_ to article X as follows:"

Or, for example, if you intend to add a new article to title 39 of the Colorado Revised Statutes, you would include the following amending clause:

In Colorado Revised Statutes, **add** article \_\_ to title 39 as follows:"

3. 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

Statutory sections should be added in place of the numbered sections, followed by the existing bolded text as the headnote which briefly describes the content of each statutory section, and the statutory section should be divided into subsections, paragraphs, subparagraphs, and sub-subparagraphs, as applicable.

4. It is standard drafting practice when referencing statutory sections to include the word "section" before the number. For example, "section 24-35-204.5."
5. The following guidelines for statutory citations should be used within the Colorado Revised Statutes:

When referencing the section you are currently in, the section number does not need to be referenced. For example:

**44-3-911.5. Third-party delivery of alcohol beverages.** (3) In order to receive a delivery service permit, an applicant shall:

(a) Provide to the state licensing authority a sample contract that the applicant intends to enter into with a licensee listed in subsection (1) of this section for the delivery of alcohol beverages. ... [*emphasis added*]

When referencing a subsection within a different section, begin with the word "section," followed by the section number and then the subsection number. For example: "...in accordance with section 44-3-301 (11), ...".

When referencing a different subsection within the same section, begin with the word "subsection," followed by the subsection number, then the words "of this section." For example:

(2) Any individual, limited liability company, corporation, or partnership ... may apply for and be issued a delivery service permit that authorizes the permittee to deliver alcohol beverages from a licensee permitted for delivery by *subsection (1) of this section*, ... [*emphasis added*]

Except when specifying "this section," in all other levels of the statutes, the number and letter of the level being referenced should be specified, even when you are within the same provision. For example:

Title: "this title 1"

Article: "this article 1"

Part: "this part 1"

Subsection: "this subsection (2)"

Paragraph: "this subsection (2)(a)"

Subparagraph: "this subsection (2)(a)(I)"

Sub-subparagraph: "this subsection (2)(a)(I)(b)"

6. 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 constitution or the Colorado Revised Statutes.
7. 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." Where appropriate in the proposed initiative, instances of "shall" should be replaced with "must".
8. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. 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.