

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Linda Good and Candice Stutzriem
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: February 27, 2024
SUBJECT: Proposed initiative measure 2023-2024 #201, concerning a Prohibition on Ranked Voting Methods

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 purpose of the proposed amendment to the **Colorado constitution** appears to be:

1. To prohibit the use of ranked choice voting, as defined by the proposed initiative, to nominate candidates for or elect candidates in Colorado to public office.

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. As a change to the Colorado constitution, the proposed initiative may only be amended by a subsequent amendment to the constitution. Is this the proponents' intent?
3. The proposed initiative states that "ranked choice voting is prohibited from use in any nomination or election process" The plain language of the proposed initiative covers all elections and nomination processes, including assemblies and conventions. Is this the proponents' intent?
4. In 2008, the Voter Choice Act was added to the Colorado Revised Statutes in part 10 of article 7 of title 1. The Voter Choice Act allows a statutory city, town, or special district to conduct elections using a ranked voting method. The proposed initiative would seem to prohibit local governments from deciding to conduct their election using ranked voting methods as authorized by the Voter Choice Act. Is this the proponents' intent? If so, is it also the proponents' intent that these statutes be voided in accordance with the proposed new section 13 (4) of article VII of the Colorado constitution, which states that "any statute, ordinance, rule, or operating procedure in conflict with this provision is void"?
5. The Voter Choice Act also requires the secretary of state to report on ranked voting methods, to adopt rules concerning the conduct of elections using ranked voting methods, and to provide guidance and advice to the governing bodies and designated election officials of local governments on the conduct of elections using ranked voting methods. The proposed initiative would seem to make these requirements moot. Is this the proponents' intent? If so, is it also the proponents' intent that these statutes be voided in accordance with the proposed new section 13 (4) of article VII of the Colorado constitution?
6. In addition to the Voter Choice Act, several other sections of the Colorado Revised Statutes, including sections 1-7-118, 1-13.5-617, 31-10-617, and 32-1-805.5, Colorado Revised Statutes, authorize the use of ranked choice voting for elections conducted by municipalities and special districts for specified offices. The proposed initiative would seem to prohibit these elections from being conducted using ranked voting methods. Is this the proponents' intent? If so, is

it also the proponents' intent that these statutes be voided in accordance with the proposed new section 13 (4) of article VII of the Colorado constitution?

7. Sections 1-5-608.5, 1-5-616, 1-5-617, 1-7-118, 1-7-509, and 1-7-515, Colorado Revised Statutes, each require the secretary of state to adopt rules or take specified other actions concerning the conduct of elections using instant runoff voting. The proposed initiative would seem to make these requirements moot. Is this the proponents' intent? If so, is it also the proponents' intent that these statutes be voided in accordance with the new section 13 (4) of article VII of the Colorado constitution?
8. The effective date of the proposed initiative is January 1, 2025. Do the proponents believe that this effective dates gives jurisdictions currently conducting elections by ranked voting methods sufficient time to implement a different voting method?

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. Each section in the Colorado Revised Statutes and the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. These headnotes should be in bold, should not be initial capitalized, except for the first word of the headnote, and should be followed by a period. In sections 1 and 2 of the proposed initiative, the headnotes should be followed by a period.
2. The articles of the Colorado constitution are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

Section X. Headnote. (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

3. The following are instances that may need reorganization or reformatting:
 - a. It is standard practice to not have a paragraph (a) without a paragraph (b), so the text in paragraph (a) in the legislative declaration of the proposed initiative should be incorporated into the end of subsection (1) without any subdivision of the text.
 - b. Additionally, sub-subparagraphs use capital letters, e.g. (A) and (B), rather than lower case letters as used in paragraphs, e.g. (a) and (b). As such, considering replacing the lower case provision letters with capital letters for the sub-subparagraphs under (2)(a)(I).
4. (2)(a)(I)(C) should end with a semicolon and the "or" that follows the sub-subparagraph should appear on the same line as " [...] TABULATION;". The same rule applies for (2)(a)(II). It is standard drafting practice to use SMALL CAPITAL LETTERS, rather than ALL CAPS, to show the language being added to the Colorado constitution. Although the text of Section 2 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 shown as a separate subdivision with a letter or number heading such as "(a)" or "(I)" after a colon; and
 - c. The first letter of proper names, such as Colorado.
5. Paragraph (2)(b) of Section 2 of the proposed initiative appears to contain grammatical errors. That paragraph currently reads as follows:

(b) "RANKED CHOICE VOTING" MEANS A METHOD OF CASTING, RECORDING AND TABULATING VOTES IN DETERMINING THE WHICH CANDIDATE OR CANDIDATES WHO ARE ELECTED, IN WHICH:

The proponents may consider changing that paragraph to read as follows:

(b) "RANKED CHOICE VOTING" MEANS A METHOD OF CASTING, RECORDING, AND TABULATING VOTES TO DETERMINE WHICH CANDIDATE OR CANDIDATES ARE ELECTED, IN WHICH:

6. It is standard drafting practice to use the Oxford comma after the second to last item in a series.
7. The effective date clause should end with a period.