

# 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:** March 1, 2024  
**SUBJECT:** Proposed initiative measure 2023-2024 #202, concerning Ballot Access through Partisan Caucuses and Assemblies

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 a series of initiatives including proposed initiatives 2023-2024 #202 and #203. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memorandum for proposed initiative 2023-2024 #203, except as necessary to fully understand the issues raised by this proposed initiative. Comments and questions addressed in that memorandum may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

## Purposes

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

1. To create a state constitutional right to become a candidate in Colorado for local, state, or federal office through the endorsement of a political party, including by means of a partisan caucus and assembly process.

## 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 plain language of the proposed initiative covers the process for becoming a candidate for any local, state, or federal office, including nonpartisan offices. Is this the proponents' intent? If so, how would a partisan nomination and election process interact with election to a nonpartisan office?
4. The proposed initiative refers to "endorsement of a political party." What do the proponents mean by "political party"? For instance, the Colorado Revised Statutes differentiate between a "major political party" and a "minor political party."
5. The proposed initiative states that "any statute, ordinance, rule or operating procedure in conflict with this provision is void."
  - a. Is it the proponents' intent that statutes, ordinances, rules, and operating procedures allowing for a candidate's access to the ballot by means other than a partisan caucus or assembly process – for instance, by petition – be voided in accordance with proposed new Section 14 (2)? If it is your intent to eliminate the petition process, please consider specifying this in the proposed initiative.
  - b. In the alternative, is it the proponents' intent that a candidate for office will always have the choice to access the ballot via petition or via the

caucus and assembly process and to provide a constitutional protection for the caucus and assembly process? If your intent is to allow a candidate to use either the petition process or caucus process to access the ballot, please consider modifying the language in Section 14 (2) to clarify your intent.

6. Current Colorado law refers to "Colorado residents" as opposed to "Colorado citizens." Would the proponents consider changing the reference in Section 2 of the proposed initiative from "Colorado citizens" to "Colorado residents" to conform with this practice?
7. Is it the proponents' intent for the proposed initiative to create a constitutional right to be able to become a candidate in Colorado for public office through the endorsement of a political party or, instead, to create a constitutional right to be able to become a candidate in Colorado for public office specifically through a partisan caucus and assembly process? If the right is specific to a partisan caucus and assembly process, would the proponents consider changing the language of section 2 of the proposed initiative to reflect this intent?
8. The proposed initiative does not mention a potential candidate meeting eligibility requirements for the relevant public office. Is endorsement by a political party sufficient to allow an individual to be a candidate for public office or must that potential candidate also meet any established eligibility requirements?
9. The proposed initiative includes a list clarifying the process by which a candidate may be placed on the ballot by political party endorsement (subsection (1)(a) through (1)(c)).
  - a. Is it the proponents' intent that a political party endorsement process include all three of the characteristics in this list ((a), (b), and (c))?
  - b. If so, would the proponents consider changing the language of the list to clarify this by adding an "AND" to the end of (1)(b)?
  - c. In addition, if all three of these characteristics are always included in a political party endorsement process, please consider replacing "may include" with "includes".
  - d. If it is not the proponents' intent that a political party endorsement process include all three characteristics, would the proponents consider changing the language of the list to clarify this by adding an "OR" to the end of (1)(b)?

- e. If paragraphs (1)(a) through (1)(c) are not intended to be a list that clarifies the political party endorsement process discussed in subsection (1), would the proponents consider reformatting paragraphs (1)(a) through (1)(c) accordingly (perhaps as their own subsections)?
10. In paragraph (1)(c) of Section 2 of the proposed initiative, the proposed initiative states "Candidates winning their race for public office constitutes singular endorsement of the political party and grants them access to the primary and general ballot."
- a. What is intended by the term "winning" in this sentence?
  - b. How would a candidate win their race before the primary and general elections?
  - c. In the alternative, in the phrase "candidates winning their race for public office" is it your intent to refer to candidates winning *a nomination* for a public office? If so, please consider changing the language accordingly.
11. The other proposed initiative submitted in this series of initiatives, proposed initiative 2023-2024 #203, has the same proponents as this proposed initiative and seems to have a substantially similar purpose in that it will, if approved, create a state constitutional right to become a candidate in Colorado for public office through the endorsement of a political party.
- a. Do the proponents intend for both proposed initiatives 2023-2024 #202 and #203 to appear on the 2024 general election ballot?
  - b. If so, what do the proponents believe the legal effect will be if the voters approve both of the proposed initiatives?
12. Is it the proponents' intent that the partisan caucus and assembly process protected by the proposed initiative differ in any way from the existing statutory caucus and assembly process? If so, how is it intended to differ? If not, is it the proponents' intent that the caucus and assembly process that is protected in the constitution pursuant to the proposed initiative would operate as currently established in Title 1 of the Colorado Revised Statutes?
13. The effective date of the proposed initiative is January 1, 2025. If the caucus and assembly process guaranteed in the constitution by the proposed initiative differs from the current statutory process, do the proponents believe that this effective date gives political parties sufficient time to implement changes to their

nomination and elections processes in accordance with the right created in this proposed initiative?

## 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. In the amending clause of Section 2 of the proposed initiative, "the" should be added after "In" so that the clause reads: "In the constitution of the state of Colorado, ...."
2. Article VII of the Colorado constitution currently has twelve sections. If the intent of the proponents is to add a new section to this article, it should be numbered "Section 13" rather than "Section 14."
3. Each section in the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. These headnotes should be in bold-faced type, should not be initial capitalized, and should be followed by a period.
4. It is standard practice to not have a paragraph (a) without a paragraph (b). Would the proponents consider incorporating paragraph (a) in the legislative declaration of the proposed initiative into the end of subsection (1)?
5. 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 paragraphed after a colon; and
  - c. The first letter of proper names, such as Colorado.
6. The effective date clause should end with a period.
7. The following words are misspelled: "participatation" should be spelled "participation."

8. It is standard drafting practice to end paragraphs that form a list with a semi-colon. Would the proponents consider replacing the periods at the end of paragraphs (1)(a) and (1)(b) with semi-colons and adding either an "and" or an "or" after the semi-colon in paragraph (1)(b) in relation to the response to Substantive Question #8?
9. The second-to-last sentence of the "Declaration of the People of Colorado" may contain grammatical errors. In that sentence, the hyphen between "physically" and "impaired" may need to be removed and the word "who" may need to be inserted after "persons".