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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 #203, concerning Ballot Access through Political Party Endorsement

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 #202, 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. Substantive questions #1 through 7 are substantially similar to those included in the memorandum for proposed initiative 2023-2024 #202.

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 public office through the endorsement of a political party.

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 office in any town, city, county, district, state, or federal government. Is this the proponents' intent? If so, how would a partisan nomination and election process interact with election to a nonpartisan office?
4. Does the phrase "who satisfies eligibility requirements to any local, state, and federal office" refer to Colorado citizens? For example, it is the right of Colorado citizens who satisfy the eligibility requirements of any local, state, and federal office to gain access to the ballot?
5. The proposed initiative defines the term "public office" as any "town, city, county, district, state or federal government..." but states in Section 14 (1) that the candidate for office must satisfy the eligibility requirements "to any local, state, and federal office". Is it the proponents' intent to refer to different offices than those addressed in the definition? If not, please consider using the defined term so that phrase reads "...eligibility requirements of the public office through...".
6. If the proponents choose not to use the defined term, is it your intent that citizens have to satisfy the eligibility requirements for local, state, *and* federal offices, or just the eligibility requirements of the office for which they are a candidate? If it is the latter, consider changing the "and" to an "or".

7. The proposed initiative refers to "endorsement of a political party."
 - a. 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."
 - b. How would a candidate receive the endorsement of a political party?
8. In the definition of "public office" do the proponents intend to include a city and county - for example, the city and county of Denver? If so, please consider adding "city and county" after "county".
9. 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 political party endorsement – for instance, by petition – be voided?
10. 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?
11. The other proposed initiative submitted in this series of initiatives, proposed initiative 2023-2024 #202, 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 through the endorsement of a political party, specifically by way of partisan caucus and assembly.
 - 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. What will be the effective date of the 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 the following reformatting changes:
 - a. Incorporating paragraph (a) in the legislative declaration of the proposed initiative into the end of subsection (1)?
 - b. Removing the (a) in the subsection defining "public office" in Section 2 of the proposed initiative?
5. To conform to standard drafting practice and eliminate any confusion, would the proponents consider one of the following reformatting changes:
 - a. Renumber the second subsection (1) in Section 2 of the proposed initiative, so that there are not two subsections (1)?
 - b. Incorporate the definition in current subsection (1)(a) in Section 2 of the proposed initiative into the end of subsection (1) of that section?
6. It is standard drafting practice when creating a definition to begin with the phrase "For purposes of this section," Would the proponents consider adding this phrase to the definition of "public office" so that the definition reads: "FOR PURPOSES OF THIS SECTION, "PUBLIC OFFICE" MEANS ..."?
7. The second-to-last sentence of the "Declaration of the People of Colorado" may contain grammatical errors. The hyphen between "physically" and "impaired" may need to be removed and the word "who" may need to be inserted after "persons".