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Colorado General Assembly

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MEMORANDUM

TO: Jason Bertolacci and Owen Alexander Clough
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: March 19, 2024
SUBJECT: Proposed initiative measure 2023-2024 #231, concerning the conduct of elections

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 amendments to the Colorado Revised Statutes appear to be:

1. To allow unaffiliated voters to vote for a candidate in one major party's primary election for a particular office while simultaneously voting for a candidate in a different major party's primary election for a different office;

2. To require that a single primary ballot be sent to each unaffiliated voter, and that each ballot list all candidates of all major political parties for all offices specific to the voter's district; and
3. To require the clerk and recorder of each county to prepare a combined ballot containing major political party candidates for all offices to be used by unaffiliated voters.

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. The following questions relate to proposed section 1-4-101(2)(b)(I):
 - a. The word "must" implies that each elector is required to vote for one candidate per office. Is it your intent that each elector "may" vote for only one candidate per office?
 - b. The first and second sentences of this proposed subparagraph contradict each other. Would the subparagraph read better if you were to combine the two sentences and insert the phrase "except that" in between them?
3. Is it your intention that county clerks and recorders continue to prepare primary ballots for the major political parties to be sent to affiliated voters plus one extra primary ballot to be sent to unaffiliated voters? If so, will creating this extra ballot, including writing new voting instructions, create an additional workload or additional costs for the county clerks and recorders?
4. Proposed section 1-5-402(b) requires that "candidates of each major political party must be clearly identified from candidates of other major political parties and grouped together according to section 1-4-101(2)." Which portion of 1-4-101(2) did you intend for this language to refer to? Can you clarify your vision for how the ballot should be organized?
5. Section 2-4-204, C.R.S, states:

2-4-204. Severability of statutory provisions. If any provision of a statute is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of the statute are valid, unless it appears to the court that

the valid provisions of the statute are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or unless the court determines that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

In light of this provision, which applies to all statutes, is section 5 of the proposed initiative necessary?

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

1. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs. Note that declarations follow the same organization. For example:
 - a. **X-X-XXXX. Headnote.** (1) Subsection.
 - (a) Paragraph
 - (I) Subparagraph
 - (A) Sub-subparagraph
 - (B) Sub-subparagraph
 - (II) Subparagraph
 - (b) Paragraph
 - (2) Subsection
 - (3) Subsection
 - b. In section 2 of the proposed initiative, the amending clause indicates that only (2)(b) is being amended but the text adds a new subsection (2)(b.5), which includes both new statutory language and existing statutory language that is being relocated from (2)(b) However, when

existing language is relocated into a new statutory subdivision, as opposed to being moved within the same reorganized or newly subdivided statutory provision, it must be stricken from its current location and reinserted as new language in the new statutory subdivision. To satisfy this requirement, the proponents should reorganize subsection (2)(b) so that the introductory portion becomes subsection (2)(b)(I) with subparagraphs (I) through (III) becoming sub-subparagraphs (A) through (C) and subsection (2)(b.5) becomes subsection (2)(b)(II).

2. 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 Statute.
3. When referencing a subdivision that is outside of the subdivision you're working in, but in the same section, it is common drafting practice to cite the subdivision as follows:

Subsection: Subsection (4)

Paragraph: Subsection (4)(a)

Subparagraph: Subsection (4)(a)(I)

Sub-subparagraph: Subsection (4)(a)(I)(A)

Include "of this section"

Template: "subsection (#) of this section".

For example, in the proposed initiative, section 3, --"section (1)(b)", according to the template, should be referred to as "subsection (1)(b) of this section".