

# 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:** April 3, 2024  
**SUBJECT:** Proposed initiative measure 2023-2024 #278, concerning primary elections for major political parties

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 constitution** appear to be:

1. To require each major political party to have a separate primary election ballot for use by electors affiliated with that party.

2. To establish that a candidate who receives a plurality of the votes cast at a primary election becomes that party's nominee in the general election.

## **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 uses the term "major political party." Is it the proponents' intent for this term to have the same meaning as set forth in section 1-1-104 (22), C.R.S.? Would the proponents consider adding a definition of the term "major political party" to the proposed initiative?
4. Is it the proponents' intent for the proposed initiative to change the current primary ballot system in relation to major political party affiliation?
  - a. If so, what is the intended change?
  - b. If not, is it the proponents' intent to enshrine existing provisions of the current statutory system in the state constitution? Current statutory provisions mirror the language in the proposed initiative as follows:
    - i. Section 1-4-101 (2)(a), C.R.S., states: "Each political party that is entitled to participate in the primary election must have a separate party ballot for use by electors affiliated with that political party."
    - ii. Section 1-4-104, C.R.S., states: "Candidates voted on for offices at primary elections who receive a plurality of the votes cast shall be the respective party nominees for the respective offices."
5. Is it the proponents' intent for the proposed initiative to change the current primary ballot system in relation to unaffiliated voters? If so, what is the intended change?
6. Is it the proponents' intent that all nominations of a major political party for elected office be made by primary election? Under current law, "[a]ll

nominations by major political parties for candidates for United States senator, representative in congress, all elective state, district, and county officers, and members of the general assembly shall be made by primary elections" except that "nominations by major political parties for candidates for lieutenant governor shall not be made by primary elections and shall be made pursuant to section 1-4-502 (3)." Section 1-4-101 (3), C.R.S.

7. The proposed initiative includes a headnote for proposed section 13 of article VII of the Colorado constitution that is as follows: "**Right of the political party for a separate primary election ballot.**" Is it the proponents' intent for the proposed initiative to create a state constitutional right?
  - a. If so, what is that constitutional right? Does the constitutional right belong to a political party?
  - b. If not, would the proponents consider revising the headnote accordingly?
8. Pursuant to section 1 (4)(a) of article V of the Colorado constitution, the effective date of every proposed initiative is "from and after the date of the official declaration of the vote thereon by proclamation of the governor, but not later than thirty days after the vote has been canvassed." In light of this constitutional provision, which results in each initiative having an effective date in late December or early January following the election, is the effective date clause in section 3 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.

1. It is standard drafting practice for the headnote of each proposed initiative section to end with a period (e.g., Declaration of the People of Colorado.).
2. It is standard drafting practice to not have a subsection (1) without a subsection (2). To conform with this practice, the proponents should consider removing the "(1)"s at the beginnings of both Section 1 and Section 2 of the proposed initiative.

3. It is standard drafting practice to use an indefinite article (such as "a") rather than a definite article (such as "the") the first time that a specific noun is used. To conform with this practice, the proponents should consider changing "... TO PARTICIPATE IN THE PRIMARY ELECTION ..." to "... TO PARTICIPATE IN A PRIMARY ELECTION ..." in Section 2 of the proposed initiative.
4. It is standard drafting practice to use the Oxford comma after the second-to-last item in a series (e.g., ordinance, rule, or operating procedure).