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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: April 3, 2024
SUBJECT: Proposed initiative measure 2023-2024 #314, concerning Voter Rights in 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 amendment to the **Colorado constitution** appear to be:

1. To declare that it is in the public interest to adopt an election system that allows all voters to have equal access and more choice so that candidates are elected based on the will of a majority of the voters;

2. To specify that any registered elector has the right to vote for any candidate, regardless of the political affiliation or nonaffiliation of the elector and the candidate, in any taxpayer-funded election, including a primary election, for offices specific to the district of the elector's registration.

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. Is it your intent that the declaration of the people will appear in the Colorado constitution?
3. The language in the proposed initiative specifying that any registered elector has the right to vote for any candidate, "regardless of the political affiliation or non-affiliation of the elector and the candidate" raises the following questions:
 - a. Does this language alter any rights that registered electors currently have in a general election?
 - b. By specifying that this requirement applies to a primary election, is it the proponents' intent to require one primary election ballot for all candidates, regardless of the candidates' political party affiliation or nonaffiliation?
 - c. Does this requirement also apply to a presidential primary election? If so, is it the proponents' intent to require one presidential primary election ballot for all candidates, regardless of the candidates' political party affiliation?
4. The language in the proposed initiative specifying that a registered elector has the right to vote for "any candidate" raises the following questions:
 - a. Is it the proponents' intent to allow a registered elector to vote for any candidate, regardless of eligibility? For example, could a registered elector voting in a general election vote for a candidate who was in the primary election but did not qualify for the general election ballot?

- b. In the alternative, is the intent to specify that a registered elector has the right to vote for any *eligible* candidate or any candidate who qualifies for the ballot?
5. What is the proponents' intent in specifying that the requirements of the proposed initiative apply to any "taxpayer-funded election"? Are there any elections to elect candidates to public office that are not funded by the taxpayers?
6. Does "offices specific to the districts of the elector's registration" mean that an elector will be able to vote for any candidate for office, regardless of political party affiliation or nonaffiliation, for whom the elector is eligible to vote based on where the elector resides?
7. To what extent will changes to existing law be necessary if the proposed initiative is approved by the electors? Who is responsible for determining what changes, if any, are necessary? Do the proponents anticipate that the general assembly will have to introduce legislation to make any necessary changes to current law?
8. Pursuant to section 1 (4)(a) of article V of the Colorado constitution, the proposed initiative will take effect "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 constitutionally-mandated effective date, would the proponents consider replacing the effective date clause, section 5 of the proposed initiative, with either an applicability clause stating that "this initiative applies to elections held on or after January 1, 2026." or adding language to the proposed new section 13 of article VII of the Colorado constitution stating something similar, which might mean, for example, beginning the section with the phrase "For any election held on or after January 1, 2026, any ...".

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 phrase "including primary election" consider either adding the word "a" before "primary" or making "election" plural.
2. The proposed initiative skips from "SECTION 2" to "SECTION 5". Consider renumbering section 5 as section 3 so the sections are in consecutive numeric order.