

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Charles Dukes and Roberta Lynn Moreland
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: December 1, 2023

SUBJECT: Proposed initiative 2023-2024 #99, 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.

This initiative was submitted with a series of initiatives including proposed initiatives 2023-2024 #98 and #100. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2023-2024 #98 and #100, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum. Only new comments and questions are included in this memorandum.

Purposes

The major purposes of the proposed amendment to the Colorado constitution appear to be:

1. To create the "all-candidate primary election" process that requires every candidate for a "covered office", as defined in the proposed initiative, to petition onto the ballot for the primary election by collecting signatures from registered electors;
2. To allow candidates for a covered office to obtain signatures from electors who are affiliated or unaffiliated with a political party, and to require that all candidates who qualify for the ballot, regardless of political party affiliation or nomination, or lack thereof, appear on the same ballot;
3. To allow all electors, regardless of political party affiliation or lack thereof, to vote for one candidate per covered office in the all-candidate primary election;
4. To specify that the all-candidate primary election does not determine the nominee of a political party or group but instead narrows the number of candidates whose names will appear on the ballot at the general election;
5. To specify that the order in which candidates who qualify for the all-candidate primary election will appear on the ballot is determined by lot and specify the process for determining the number of candidates who will advance to the general election;
6. If two or more candidates in the all-candidate primary election received an equal number of vote and resolution of the tie is required to determine which candidate or candidates advance to the general election, to require the tie to be resolved by lot;
7. To specify if a candidate who advanced to the general election becomes unable to appear on the general election ballot, the candidate receiving the next greatest number of votes at the all-candidate primary election replaces the withdrawing candidate on the general election ballot;
8. To require that general elections for covered offices and vacancy elections for representatives to congress be conducted by instant runoff voting, whereby voters rank one or more of the advancing candidates in order of preference on the ballot;

9. To specify how the ballots for general elections for covered offices will be formatted;
10. To specify that a candidate for a covered office for receives a majority of the top-ranked votes on the general election ballot wins the general election for that covered office;
11. To require that the general election for president and vice president of the United States be conducted by instant runoff voting and that a vote for a slate of candidates for the offices of president and vice president is deemed a vote for each presidential elector;
12. To prohibit the use of a vacancy committee to fill a vacancy in the Colorado General Assembly and to require that such vacancies be filled by an election conducted through a process whereby the candidate that receives a majority of the votes is elected;
13. To require that all votes lawfully cast be counted by the end of the day on election day, or as soon as practicable thereafter, to specify processes to ensure the accurate and timely count of ballots, and to specify how the tabulations of the votes will be reported;
14. To require the secretary of state to promulgate rules to implement the initiative; and
15. To require the General Assembly to provide the necessary money so that counties have adequate staffing, systems, and technology to timely complete the counting and reporting of election results.

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. Regarding section 5 of the proposed initiative, which creates a proposed new section 16 of article VII of the state constitution (section 16) and requires the general election for president and vice president to be conducted by instant runoff voting:

- a. Do you anticipate that most voters will rank candidates in the election for United States president and vice president, or vote only for the slate of candidates they prefer?
- b. Is there a potential that electors would have the opportunity to rank dozens of candidates for United States president and vice president? Could this cause potential confusion for the voters or create a burden for election officials?
- c. Proposed Section 15 (3) of article VII of the state constitution, which is included in the proposed initiative, states that a voter may choose to rank as many or as few candidates as the voter chooses on an all-candidate primary election ballot. Similar language, however, is not included in section 16 of the proposed initiative. May voters choose to rank as many or as few slates for United States president and vice president as the voter wishes? Please consider clarifying whether a voter must rank all slates.
- d. The proposed initiative states that the general election for United States president and vice president will be conducted by instant runoff voting. Does the proposed initiative change the way in which presidential primaries are conducted in the state?
- e. The language at the end of subsection (1)(A) states that a vote for a slate of candidates is also a vote for each elector nominated by the petition that qualified the slate. What does this language mean?
- f. Other than changing the way that the general election for the United States president and vice president is conducted, does section 16 of the proposed initiative make any other changes to how the electors of the electoral college are appointed in Colorado or to the responsibilities of the electors after the general election?

Technical Comments

The proposed initiative does not raise any technical comments in addition to those raised in the Review and Comment Memorandum for initiative 2023-2024 #98.

