

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

**TO:** Hattie Lou Reed and Mike Melanson  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** April 1, 2020  
**SUBJECT:** Proposed initiative measure 2019-2020 #316 regarding ballot access by candidates

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 Revised Statutes appear to be:

1. To eliminate the role of the political party assembly in designating candidates for the primary and general election ballots.

2. To ensure that candidates are placed on the ballot for the primary or general election, as applicable, exclusively by petition.
3. To change certain requirements governing the required number of valid signatures necessary on a petition used to place a candidate on the primary or general election ballot.

## **Substantive Comments and Questions**

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

### **Category I: General 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. What will be the effective date of the proposed initiative?
3. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the Legislative Council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
  - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
  - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
  - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the Legislative Council staff at [BallotImpactEstimates.ga@state.co.us](mailto:BallotImpactEstimates.ga@state.co.us).
4. The proposed initiative contains several repealed provisions. When repealing language from the Colorado Revised Statutes, it is standard drafting practice to include conforming amendments, which are adjustments that need to be made to references within other statutes to the now-repealed sections of law. For instance, the proponents repeal section 1-4-601. That section is referred to in sections 1-2-222, 1-4-101, 1-4-103, 30-10-501.5, and 30-10-601.5 (in addition to

sections mentioned in the proposed initiative). Would the proponents consider including conforming amendments to update existing law? Or, is it your expectation and intent that the General Assembly will make any necessary conforming amendments upon enactment of the proposed initiative?

**Category II: Questions relating to the elimination of party assemblies**

5. What is the proponents' rationale in eliminating the role of the political party assembly in designating candidates for the primary and general election ballots so that candidates are placed on the applicable ballot exclusively by petition?
6. What effect, if any, would enactment of the proposed initiative have on precinct caucuses? Stated differently, what role will precinct caucuses play in the system of nominating candidates upon enactment of the proposed initiative?
7. What purpose, if any, would enactment of the proposed initiative have on the state, district, or county assembly or convention of a major or minor political party? What role, if any, would these events play in the process of designating a candidate for the ballot upon enactment of the proposed initiative?
8. Throughout the text of the proposed initiative, what is the basis for inserting the word "valid" to modify the word "signatures"?
9. Proposed amendments to section 1-4-802 (2) and (3), C.R.S., appear to eliminate provisions addressing the process of collecting signatures to increase or decrease the membership of boards of county commissioners. Are those provisions being replaced by other provisions located somewhere else? If not, how will those requirements be addressed in statute? Moreover, how are those requirements – which don't address ballot access for candidates—compatible with the single subject of the proposed initiative?
10. Sections 1-4-1002 (2), 1-4-1003 (1) and (2), and 1-4-1004 (1) and (2), C.R.S., in the proposed initiative address the filling of a vacancy after, as stated in section 1-4-1002 (2), "the designation was made". How will candidates be "designated" for the primary or general election ballot, as applicable, if the assembly is no longer performing that function? What does it mean for a candidate to be "designated" under the proposed initiative?
11. Since the proposed initiative retains the concept of a "party designation," why does the proposed initiative repeal section 1-4-1010 (1)(a)(II), C.R.S.?
12. For purposes of clarification, does the proposed initiative eliminate assemblies to select candidates from both major and minor political parties?

### Category III: Questions relating to signature requirements

13. Regarding section 1-4-801, C.R.S.:

- a. In subsection (2)(a), it appears that the language changed by the proposed amendment is substantially the same as the sentence it strikes and replaces except for the increase in the number of *valid* signatures used as an alternate reference point (along with the percentage qualifier) from 1,000 to 1,250. Are these the only changes made by the proposed initiative to current law? If so, the proponents could make those more specific changes to the existing statutory text rather than repeating the entire sentence as modified. What is the basis for increasing the required number of valid signatures used as the alternate reference point from 1,000 to 1,250?
- b. With respect to subsection (2)(a.5), what is the basis for changing the required number of valid signatures from the lesser of 1,500 or 10% of the applicable votes cast to 2,000 valid signatures alone?
- c. With respect to subsection (2)(b), what is the basis for changing the required number of valid signatures from the lesser of 1,000 or 30% of the applicable votes cast to 1,500 for state senate candidates and 750 for state house of representatives and certain district candidates?
- d. With respect to subsection (2)(b.5), what is the basis for changing the required number of valid signatures from the lesser of 1,000 or 10% of the applicable votes cast to 1,250 valid signatures alone?
- e. With respect to subsection (2)(c)(II), what is the basis for changing the required number of valid signatures from at least 1,500 in each congressional district to at least 12,500 statewide, of which at least 500 must come from each congressional district?
- f. With respect to subsection (2)(c.5), what is the basis for changing the required number of valid signatures from at least 1,000 statewide to at least 8,000, of which 300 must come from each congressional district?
- g. With respect to subsection (2)(c.7), what is the basis for changing the required number of valid signatures from at least 500 in each congressional district to at least 4,000 statewide, of which at least 100 must come from each congressional district.
- h. What is the basis for deleting from current section 1-4-801, C.R.S.:
  - i. Subsection (2)(e)?

- ii. Subsection (2)(f)?
  - iii. Subsection (4)?
14. The new signature requirements for the offices referenced in subsections (2)(c)(II), (2)(c.5), and (2)(c.7) represent a very significant increase from the existing signature requirements for those offices. What is the proponents' rationale in making the new signature requirements for these offices so much greater than the existing requirements?
15. Regarding section 1-4-802, C.R.S.:
- a. With respect to subsection (1)(c)(I), what is the basis for changing the required number of valid signatures in each congressional district from at least 1,500 to at least 1,750?
  - b. With respect to subsection (1)(c)(II)(A), what is the basis for changing the required number of valid signatures from at least 1,000 in each congressional district to at least 7,500 statewide, of which at least 300 must come from each congressional district?
  - c. With respect to subsection (1)(c)(II)(B), what is the basis for changing the required number of valid signatures from at least 500 in each congressional district to at least 3,000 statewide, of which at least 100 must come from each congressional district?
  - d. With respect to subsection (1)(c)(III), what is the basis for changing the required number of valid signatures from the lesser of 1,500 or 2 and  $\frac{1}{2}\%$  of the applicable votes cast to at least 1,250 valid signatures alone?
  - e. With respect to subsection (1)(c)(IV), what is the basis for changing the required number of valid signatures from the lesser of 1,000 or 3 and  $\frac{1}{3}\%$  of the applicable votes cast to at least 1,000 valid signatures alone?
  - f. With respect to subsection (1)(c)(V), what is the basis for changing the required number of valid signatures from the lesser of 1,000 or 5% of the applicable votes cast to at least 750 valid signatures alone?
  - g. With respect to subsection (1)(c)(VI), what is the basis for changing the required number of valid signatures from the lesser of 1,000 or 3% of the applicable votes to at least 750 valid signatures alone?
  - h. With respect to subsection (1)(c)(VII), the existing provision applies to county offices. What is the effect and meaning of inserting a petition requirement in

the middle of the sentence that applies to "the political subdivision"? Under subsection (1)(c)(VII) as it would be amended by the proposed initiative, to what offices would this provision apply? Why not keep the reference uniform as applying to county offices? Please state how you understand this provision to operate?

- i. The new signature requirements for the office of an at-large seat on either the state board of education or the board of regents of the university of Colorado that are referenced in subsection (1)(c)(II)(B) represent a very significant increase from the existing signature requirements for those offices. What is the proponents' rationale in making the new signature requirements for these offices so much greater than the existing requirements?

## **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. For clarity, amending clauses should contain the entire subsection being amended, repealed, or added. For example, please write "**amend** (2)(a), (2)(a.5), (2)(b), (2)(c)(II)..." and so on rather than "**amend** (2)(a), (a.5), (b), (c)(II)...".
2. Section 1-4-801 (2)(a) contains a new sentence that ends with two periods. Please correct.