

STATE OF COLORADO

Colorado General Assembly

Natalie Mullis, Director
Legislative Council Staff

Colorado Legislative Council
200 East Colfax Avenue Suite 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
Email: lcs.ga@state.co.us



Sharon L. Eubanks, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 East Colfax Avenue Suite 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Facsimile 303-866-4157
Email: olls.ga@state.co.us

MEMORANDUM

TO: Jonathan Ambler and Rick Van Matre
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: July 6, 2021
SUBJECT: Proposed initiative measure 2021-2022 #42 concerning campaign expenditure limits

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.

An earlier version of this proposed initiative, proposed initiative 2021-2022 #22, was the subject of a memorandum March 22, 2021. Proposed initiative 2021-2022 #22 was discussed at a public meeting on March 24, 2021. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

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

1. Limiting campaign expenditures to less than 150% of eligible elector's donations;
2. Defining what qualifies as an eligible elector donation and a general donation, and setting reporting requirements for such donations;
3. Authorizing the secretary of state to issue fines for violations; and
4. Requiring the secretary of state to undertake certain action to facilitate the implementation of the proposed amendment.

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. What will be the effective date of the proposed initiative? Subsection (8) of the proposed initiative states that "this provision" will begin the next election cycle following its passage. Does this mean the proposed initiative, if enacted, would take effect on the first date of the first new election cycle after its passage or is some other meaning intended? Are the proponents aware that, under Colorado law, an election cycle generally begins 31 days after a general election for a particular office? *See* section 2(6)(a) of Article XXVIII of the state constitution. So, if the measure is approved at the 2022 general election, would it take effect on the first day of the election cycle that would start 31 days following that general election or is some other date intended? Please clarify your intent as necessary.
3. With respect to subsection (1) of the proposed initiative:
 - a. What do the proponents mean by "campaign expenditures"?
 - b. What does it mean for campaign expenditures not to exceed 150% of eligible electors' contributions at any one time?

- c. Specifically, are the limitations on campaign expenditures applicable to all campaigns for all offices during any one election cycle or only expenditures made by a particular candidate committee for a candidate seeking a particular office? To minimize confusion, would the proponents consider clarifying their intent on this point?
 - d. How will it be possible for a candidates' campaign to ensure that its expenditures do not exceed 150% of its contributions *at any time*?
 - e. How did the proponents determine the limitation on expenditures should be "150%" of the relevant amount of eligible electors' contributions (as contrasted with another number)?
 - f. It would appear this restriction operates as a mandatory limitation on campaign expenditures by a candidate committee. Is this correct? If so, have the proponents researched whether this type of restriction is lawful under *Buckley v. Valeo*, 424 U.S. 1 (1974), and progeny?
 - g. How will the changes made by this subsection (1) "assure representative government"? Specifically, what is the connection between limiting campaign expenditures to a percentage of electors' contributions and assuring representative government?
4. With respect to subsection (3) of the proposed initiative:
- a. The text uses the term "general contribution," but that term is not used in subsection (1). Are eligible elector contributions the same as general contributions or are they different terms as suggested in subsection (8) of the proposed initiative?
 - b. What is the proponents' intent in specifying that a general contribution is one that is accompanied by a voter registration number?
 - c. What is a voter registration number? Does it refer to the voter ID number assigned to registered electors in the statewide online voter registration system (SCORE)?
 - d. How is a voter registration number to be provided to a campaign in connection with the making of a contribution?
 - e. A voter registration number will not be assigned to a political, issue, or small donor committee or political party. What effect will this reality have on the operation of the restrictions imposed by subsection (1) of the proposed initiative? Perhaps stated differently, how will the definition

of general contribution and the restrictions imposed by subsection (1) of the proposed initiative apply to contributions from these committees or political parties?

5. With respect to subsection (4) of the proposed initiative:
 - a. How do the proponents define "advertising" for purposes of the proposed initiative?
 - b. What do the proponents mean by "political party committee" for purposes of this subsection (4)?
 - c. What do the proponents mean by "highest office"?
 - d. If the slate of advertising includes advertising for a presidential candidate, does that mean that the full cost of the expenditures for the slate of advertising is attributed to a presidential campaign that benefits from the advertising?
 - e. Please explain how subsection (4) interacts with subsection (1) of the proposed initiative.
 - f. What is the eligible elector calculation? What goes into such calculation? How does this term relate to the slate of advertising? Which person or entity makes that calculation? How does this calculation interact with subsection (1) of the proposed initiative?
6. In light of the text of subsection (5) of the proposed initiative, please explain how subsection (1) of the same will apply to:
 - a. Issue committees;
 - b. Political committees;
 - c. Small donor committees; and
 - d. Persons expending \$1,000 or more per year in electioneering communications?
7. With respect to subsection (6) of the proposed initiative, most of the requirements applicable to the reporting of information on contributions received and expenditures made are actually found in section 1-45-108, C.R.S., although certain requirements are also found in section 1-45-109. Accordingly, would the proponents consider adding a reference to section 1-45-108 in this subsection (6)?

8. Subsection (6) of the proposed initiative uses "eligible elector contribution", but that term is not defined in the proposed initiative. What does this phrase mean? Is subsection (6), in combination with subsection (1), intended to require that eligible electors provide a voter registration number with all contributions made to committees?
9. With respect to subsection (7)(1) of the proposed initiative:
 - a. What does it mean for a violation to be reported through the "regular periodic disclosure system"? Is this provision intended to cover self-reported violations?
 - b. Is it a correct reading of the proposed initiative that such violations automatically result in a civil penalty assessed against the campaign without the possibility of waiver or appeal?
10. With respect to subsection (7)(2) of the proposed initiative:
 - a. Is this penalty provision reserved for violations that are not self-reported?
 - b. The proposed initiative says that violations not reported through the regular disclosure reporting process "will be subject to the process established by [a]rticle XXVIII (2)(a)", however there is not section (2)(a) in article XXVIII. Is this intended to be a reference to either section (9)(2)(a) or section (10)(2)(a), or to some other section?
 - c. Does section (7)(2) of the proposed initiative carve out a new group of campaign finance procedures different from what is required under section 9 and 10 of article XXVIII and sections 1-45-111.5 and 1-45-111.7, C.R.S.?
11. With respect to subsection (8) of the proposed initiative:
 - a. What does it mean for the secretary of state to "sum" eligible elector contributions and general contributions from each committee?
 - b. Does "committee" for purposes of subsection (8) exclusively mean a candidate committee?
 - c. How are general contributions treated for purposes of subsection (1) of the proposed initiative?
12. With respect to subsection (8)(3) of the proposed initiative:

- a. Please explain what is meant by the requirements of subsections (8)(3)(1), (8)(3)(2), and (8)(3)(3)?
 - b. For purposes of subsection (8)(3)(1) of the proposed initiative, what are "eligible elector total contributions"? When is this information provided to candidates (or their committees)? Will it be possible to calculate this information in advance of the election to which the restrictions apply?
 - c. For purposes of subsection (8)(3)(2) of the proposed initiative, what are "districts within the political committee's stated area of influence"?
 - d. For purposes of subsection (8)(3)(3) of the proposed initiative, what are "jurisdictions within the issue election" (as applied to issue committees)?
 - e. What is an "eligible elector account" as used with reference to subsection (8)(3)(4)? Why does this provision not apply to small donor committees? Is it understood or implied that such accounts are applicable to other forms of committees? If so, which ones and what does this feature of the proposed initiative mean?
13. Section 9 of the proposed initiative states that enforcement will begin one calendar year from the beginning of the election cycle after passage. Does this mean that the penalty provisions of the proposed initiative will not apply until one calendar year from the beginning of the election cycle after passage or is some other meaning intended?

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. Before the amending clause, number each section, part, etc. that is being amended or added with a section number (e.g., SECTION 1., SECTION 2.). For example:

SECTION 1. In Colorado Revised Statutes, **add** 1-45-119 as follows:

2. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

X-X-XXXX. Headnote. (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

For clarity, please consider renumbering or relettering, as appropriate, the subsections in the initiative.

3. It is standard drafting practice when referencing statutory sections to include the word "section" before the number. For example, "section 24-35-204.5."
4. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty."
5. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized:
 - a. The first letter of the first word of each sentence;
 - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
 - c. The first letter of proper names.

It is unnecessary to capitalized defined terms, titles (such as "Secretary of State"), or the subparts of the constitution or statutes (such as "Article") when these terms do not fit into the descriptions above.

6. It is standard drafting practice to write out numerals and percentages, rather than use the numbers, and it is always standard practice to write out the number one. For example:

"150%" becomes "one hundred fifty percent."

"1 year" becomes "one year."