

STATE OF COLORADO

Colorado General Assembly

Mike Mauer, 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
TDD 303-866-3472



Dan L. Cartin, 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: Jason Legg and Scott Cadiz

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: March 10, 2017

SUBJECT: Proposed initiative measure 2017-2018 #11, concerning Candidate
Disclosure of Income Tax Returns

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 require any candidate for the office of President, Vice President, United States Senator, United States Representative, General Assembly, Governor, Lieutenant Governor, Attorney General, State Treasurer, Secretary of State, State Board of Education, Regent of the University of Colorado, and District

Attorney to file with the Secretary of State a copy of the federal income tax return of the candidate for at least the five most recent taxable years that such a return has been filed with the Internal Revenue Service;

2. To require such candidates' written consent to the Secretary of State of the public disclosure of such tax returns; and
3. To disqualify from the office being sought any candidate who fails to provide the requisite income tax returns and written consent.

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. 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.
3. The proposed initiative locates the new provisions in article 45 of title 1 of the Colorado Revised Statutes, which is also known as the "Fair Campaign Practices Act" (FCPA). Given that the FCPA covers campaign contributions and not candidates' personal finances, is the FCPA the most appropriate location for the new text?

4. The proposed initiative applies only to general elections for the specified public offices. This would appear to exclude other elections, such as congressional vacancy elections, recall elections, etc. Is that the proponents' intent?
5. Does the proposed initiative regulate the conduct of elections or does it, in effect, add a qualification for office? If the latter, would the proposed initiative withstand constitutional scrutiny, particularly as the proposed initiative applies to candidates for the United States House of Representatives, the United States Senate, and offices created by state constitutional provisions that also specify exclusive qualifications for office?
6. Under subsection (3) of the proposed initiative, failure to file the "income tax returns **and** written consent" [emphasis added] disqualifies the noncomplying person as a candidate from the office that he or she seeks. Does use of the word "and" in the excerpted language mean that the disqualification does not occur if the candidate files one of those documents, but not the other?
7. In the case of joint candidates for whom a single vote cast applies to both offices (e.g., president and vice-president, governor and lieutenant governor), what result if one candidate is disqualified for non-filing of the tax return and consent but the other has complied? Are the two candidates jointly disqualified?
8. Regarding redaction of information in income tax return forms filed with the Secretary of State's office by the specified candidates, what constitutes "nonpublic personally identifiable information that is not relevant to furthering the public confidence in the integrity" of a candidate? Is it your intent to leave that to the discretion of the Secretary of State (for example, through promulgation of rules or development of guidelines)? Will the candidates be afforded the opportunity to opine as to particular information that the candidates wish to have redacted?

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. All amendments to the same section of the Colorado Revised Statutes can be contained within one amending clause. Hence, the amending clauses for

sections 1 and 2 of the proposed initiative may be combined into a single amending clause, as follows:

"**SECTION 1.** In Colorado Revised Statutes, 1-45-110, **amend** (3); and **add** (2)(c) as follows:"

2. Each section of the Colorado Revised Statutes has a headnote that briefly describes the contents of the section; these headnotes are reproduced when statutory sections are amended. The headnote for section 1-45-110, C.R.S., should be included (in bold-face type) in the proposed initiative.
3. In subsection (2)(c)(I)(A) of the proposed initiative, please consider using the following standard manner of citation to the federal tax code: "SECTION 6103 (b)(1) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED". [This citation format keeps the subdivision (b) in lower-case type, places the short title in quotation marks, and accounts for amendments to the code.]
4. Internal citations within a section are not written out, but instead use the letters and numbers corresponding to that subsection, paragraph, subparagraph, or sub-subparagraph as required. For example, in subsection (2)(c)(I)(B) of the proposed initiative, "SUBSECTION TWO" should instead be written as "SUBSECTION (2)(c)(II)".
5. The word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes to mean "that a person has a duty." Section 1-45-110 (2)(c)(II) of the proposed initiative is couched in the passive voice but appears to direct the secretary of state to make candidate tax returns publicly available on the secretary's official website. Please consider identifying with specificity the actor to whom the duty attaches.
6. It is standard drafting practice to use SMALL CAPITAL LETTERS, rather than ALL CAPS, to show the language being added to and stricken type, which appears as stricken type, to show language being removed from the Colorado constitution or the Colorado Revised Statutes.
7. 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.