

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**TO:** Nathan Clay and Mark Tejada

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**DATE:** April 19, 2019

**SUBJECT:** Proposed initiative measure 2019-2020 #82, concerning vouchers for campaigns

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 2019-2020 #60, was the subject of a memorandum dated March 19, 2019. Proposed initiative 2019-2020 #60 was discussed at a public meeting on April 2, 2019. 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. To create a voucher system for the purpose of providing Colorado registered electors non-transferable vouchers to be used by voters to make donations to campaign committees for Colorado political candidates;
2. To describe the language and layout of the vouchers and to specify the monetary value of each voucher and the number of vouchers distributed to the voters for each odd- and even-numbered election years; and
3. To specify additional requirements governing the processes by which the vouchers are disbursed, donated, and redeemed.

## **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?
3. Under section 1-40-105.5, C.R.S., 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. What is the proponents' rationale for setting the effective date for the proposed initiative at January 1, 2022?
5. With respect to proposed section 1-46-102 (3), substantive legal requirements are customarily placed in a substantive law section of a bill or other measure and not in the definitions section of the same. To conform to this practice, would the proponents consider moving the substantive prohibition on the transferability of vouchers, i.e., the second clause within section 1-46-102 (3), from the definitions section to another provision within the proposed initiative that contains substantive legal requirements?
6. Is it an accurate reading of proposed section 1-46-102 (1) that any person performing even the slightest amount of volunteer work for a campaign becomes a representative of that campaign and, thereby, able to collect campaign vouchers on behalf of that candidate?
7. With respect to proposed section 1-46-102 (4) ("Definitions"):
  - a. What is the "Colorado elections division"? This is not an entity created under state law. If, by using this term, you mean the elections division within the Secretary of State's office, would you consider replacing this term with reference to the more accepted and legally established "department of state's office"?
  - b. Since the review and comment hearing on the predecessor proposed initiative, have the proponents been able to research the issue of whether Colorado state law may extend to cover campaign and political finance requirements affecting candidates for *federal* office? If yes, would you be willing to disclose the findings of your research? Are you aware of any avenue of federal campaign finance law that provides for state regulation?
8. With respect to proposed section 1-45-103 ("Voucher Language and Layout"):
  - a. In general, this section contains a number of lists of information. Would the proponents be willing to consider restructuring this section to include further subdivisions of the text to make this section more understandable and easier to read?
  - b. It appears some of the language in this section could be streamlined. Specifically, for example, the general requirements specified in the introductory portion in proposed subsection (1) could be consolidated with the repeated specification of some of the same requirements in subsections (1)(a) and (1)(b). Such changes may make this section more

understandable and easier to read. In addition, if you give rulemaking power to the Secretary of State's office over the vouchers program in general, it may be possible to reduce the detail you place in the new statute.

- c. Is the word "property" in section 1-46-103 (1)(a) supposed to be "properly"?
- d. What is the Colorado Elections Division (hereafter referred to as the "CED") required to do with vouchers delivered to it? What is the process by which that office will see that the voucher is delivered to it and subsequently delivered by it to qualified candidates?
- e. What quality control do you foresee campaigns putting in place to ensure that random campaign volunteers who are authorized to accept campaign vouchers are not stealing or otherwise improperly disposing of vouchers?
- f. As discussed in section 1-46-103 (1)(b), does "[d]irectly to a qualified candidate's campaign" mean hand delivered to that campaign? Would you consider clarifying your language on this point? Who will be paying for the prepaid envelopes used?

9. With respect to proposed section 1-46-104 ("Disbursement"):

- a. Which entity is required to pay for the printing and mailing of democracy vouchers and related supplies required to be sent to all registered electors who apply for said vouchers? Is the county clerk and recorder ("clerk") or other designated election official required to pay for such costs using general fund revenue allocated to the official's office?
- b. Section 1-46-104 (5) refers to "[a]ny adult natural person" whereas section 1-46-104 (6) refers to "[a]ny eligible adult." What is meant by the term "eligible adult" as used in section 1-46-104 (6)? Are these terms intended to be synonymous? If so, to be consistent, would the proponents consider using the same term to express this same idea?
- c. How is eligibility to donate to a political campaign under federal law determined? Why is this criteria relevant for eligibility to be able to transfer a voucher to a candidate at the state level?
- d. Section 1-46-104 (5) suggests that an eligible elector (however defined) is required to opt-in to receive a democracy voucher by applying to receive vouchers with the CED. Is this a correct reading of the proposed initiative? How is the CED to decide whether an application it reviews should be approved?

10. With respect to proposed section 1-46-105 ("Donation Process"):

- a. "Assignable" generally is understood to mean the transfer by an owner of the owner's rights in something to a new third-party owner. In the case of the proposed initiative, a voucher is not really assigned to a third party standing in the same shoes as the original owner but is merely transferred to a candidate (or, perhaps more precisely, a voucher is exchanged for a monetary payment to the candidate). In fact, the proposed initiative prohibits the assignment of a voucher to anyone other than to a candidate. Under these circumstances, there is some confusion in using the word "assign" or its multiple forms to refer to what is really a transfer between an eligible voter and a candidate. To minimize confusion, would the proponents consider modifying their terminology with respect to these transactions?
- b. With respect to section 1-45-105 (2), how would a request of a holder to deliver a voucher be carried out? Could anyone be compelled to deliver a voucher at the request of the holder?
- c. Is there any limitation on the number of vouchers that any person may deliver for anyone else? Under the "Uniform Election Code," by comparison, to minimize fraud and misconduct in connection with the casting of ballots, no person who is not an agent of the clerk or a designated election official may receive more than 10 mail ballots for mailing or delivery. *See* section 1-7.5-107 (4)(b)(I)(B), C.R.S.
- d. With respect to section 1-46-105 (3), what does it mean for a candidate to have registered with the Federal Election Commission or the CED? How does a candidate for Colorado state office currently register with the CED? What does it mean to say "a valid assignment is irrevocable"?

11. With respect to proposed section 1-46-105 ("Redemption Process"):

- a. Is it a correct reading of this section that the employees of CED will be verifying each voucher in the state transferred by each eligible elector to a candidate? How conceivable is it that the number of signatures to be verified could equal the number of likely electors in the state multiplied by 20 (to account for all the vouchers distributed that may be cast in the primary and general elections)?
- b. Will the Department of State be able to redeem the vouchers when presented or only after the signature verification process is completed?

- c. If a voucher is delivered/mailed to the CED or a candidate redeems a voucher what happens to the voucher and what is the anticipated flow of the money that is to be exchanged for the voucher?
- d. Will the Department of State need to keep a substantial amount of cash on hand to redeem the vouchers? May the Department of State redeem vouchers with a medium of exchange other than cash?
- e. Does this process put the Department of State in the position of acting as a bank or other form of financial institution? If so, do you know whether there are any legal restraints upon the Department of State acting in such a manner?
- f. With respect to section 1-46-105 (5), how do you anticipate that the CED will decide what is meant by "a reasonable period"? Do you anticipate the Department of State will define "reasonable period" by rule? To eliminate uncertainty, would the proponents consider incorporating a hard deadline into the text of the proposed initiative?
- g. What are "costs and debts of the relevant office and election cycle"?
- h. Section 1-46-105 (2) specifies that candidates are required to comply with campaign laws and spending and contribution limits. The phrase specifically excludes a reference to expenditures. Does a candidate need to report expenditures made with the proceeds obtained through the redemption of vouchers?
- i. Insofar as the restrictions on the expenditure of the proceeds obtained through vouchers specified in section 1-46-105 (5) are more restrictive than restrictions covering ordinary campaign expenditures in general, and given that money is fungible, it would seem that the vouchers program will require candidates to create and maintain two separate bank accounts with double accounting and recordkeeping systems and the like. Is this your intent?

12. Would the proponents consider adding language to the proposed initiative granting the Secretary of State the power to promulgate rules to facilitate the administration of the vouchers program?

## **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, it may assist the proponents to follow the standard format for definitions in the proposed initiative. For example, proposed section 1-46-102 should read:

**1-46-102. Definitions.** AS USED IN THIS ARTICLE 46, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "CANDIDATE REPRESENTATIVE" MEANS ANY INDIVIDUAL WORKING FOR OR VOLUNTEERING FOR A SPECIFIC CANDIDATE.

2. Please correctly number the sections within the newly created article 46.
3. To conform to standard drafting practice, "United States" should be written out in this manner when referring to the United States House of Representatives and the United States Senate.
4. It is standard drafting practice to use the Oxford comma in a series of three or more items. Accordingly, this third comma should be added in the case of phrases such as "local, state, or federal...."
5. With respect to proposed section 1-46-104 (7), the customary way of referring to a corporate person in the Colorado Revised Statutes is a "non-natural person" and not a "non-human entity."
6. In the second proposed section 1-46-105, it is not necessary to begin a sentence containing substantive legal requirements with the words "[R]equirements are that ..." with the particular substantive requirements to follow. It is sufficient, in this case, to start the sentence with the words: "The candidate shall comply with campaign laws, and spending...."