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Colorado General Assembly

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MEMORANDUM

TO: Margot Herzl and Anna Omsberg

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: May 4, 2021

SUBJECT: Proposed initiative measure 2021-2022 #38, concerning 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.

An earlier version of this proposed initiative, proposed initiative 2021-2022 #37, was the subject of a memorandum dated April 20, 2021. Proposed initiative 2021-2022 #37 was discussed at a public meeting April 22, 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 purpose of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To revise Colorado laws and procedures concerning voter registration and voting.
2. To establish new election security measures.
3. To establish new methods of receiving and counting ballots.
4. To regulate spending by state and local election officials on voter registration and "get out the vote" efforts.
5. To establish new elections offenses and punishments for those offenses.

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. The paragraph numbered (104) requires a fingerprint to be included on the elector card.
 - a. Who will collect the fingerprints?
 - b. Will every elector's fingerprints be retained and stored by election officials in the statewide voter registration database or elsewhere? If so, will they be "registration records" subject to public inspection?
 - c. What is the purpose of having fingerprints on the cards? Will elector's fingerprints be checked or verified when they vote in person?
3. The following questions relate to the paragraph numbered (106):
 - a. How is "state or local election official" defined? Does it include election judges and temporary workers, and if so, does the ban on receiving donations, grants, gifts, loans, or other money apply retroactively to the time period before they were hired?

- b. Does this paragraph prevent all election officials from receiving any form of gift or loan, even in their personal lives? For example, are they prohibited from taking out mortgages, car loans, or credit cards, or receiving birthday or Christmas gifts from their families and friends? If the intent is not to prohibit such regular personal business, would the proponents consider clarifying the scope of the prohibition?
- c. Given the calendar of primary, general, and coordinated elections, the 12-month ban described in this paragraph would in practice likely amount to a permanent ban on receiving gifts or loans for many election officials. Is that the proponents' intent? Would this affect the ability of state and local agencies responsible for elections to recruit and retain employees?
- d. The Secretary of State has statutory authority to receive gifts, grants, and donations for some of the programs it administers, most of which are not related to elections. Is it the proponents' intent to prohibit the Secretary of State from receiving those funds for those other programs? What about any county or municipal programs that have similar authority?
- e. The paragraph prohibits using public money for voter research, registration, get out the vote, and other efforts if the money is not "spent evenly per registered state voter without regard to party affiliation, income, age, race, area, or other factors."
 - i. How is this measured? What is an example of spending that would violate this provision?
 - ii. Given that counties are primarily responsible for the administration of coordinated and general elections, does this prohibit counties from spending money to promote registration and voting in their counties, since the money would not be expended to promote those activities across the entire state?
- f. What does it mean for each state or local election office to be personally liable for this requirement? How is such a requirement enforced?
- g. How do the proponents define "electioneering" for the purposes of the prohibition on electioneering within 150 feet of a polling place?
- h. The last sentence prohibits "electioneering for or against any...group." What type of group is covered by this prohibition? Is this term so vague

or broad that the prohibition may be challenged on the grounds that it violates the First Amendment of the U.S. Constitution?

Technical Comments

There are no new technical comments.