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MEMORANDUM

TO: Jonathan Ambler and Rick Van Matre

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: March 11, 2022

SUBJECT: Proposed initiative measure 2021-2022 #80, 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.

Earlier versions of this proposed initiative, proposed initiatives 2021-2022 #22 and 2021-2022 #42, were the subject of memoranda dated March 22, 2021, and July 6, 2021, which were discussed at public meetings on March 24, 2021, and July 8, 2021. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meetings, 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 electors' contributions made to any single candidate committee, political committee, or issue committee for each election cycle;
2. Defining various terms used in the measure including "campaign expenditures," "eligible elector," "eligible elector contribution," and "general contribution";
3. Requiring the secretary of state to undertake various recording, bookkeeping, and reporting duties to facilitate the administration of the proposed initiative; and
4. Specifying sanctions and penalties for violations of the proposed initiative.

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. With respect to proposed section 1-45-119:
 - a. How did the proponents determine 150% as the amount of the limitation on the percentage by which campaign expenditures shall not exceed eligible electors' contributions?
 - b. What is the rationale for this requirement?
 - c. Have the proponents researched the issue of whether it is constitutional for a limitation on campaign expenditures to be tied to contributions received by a candidate, political, or issue committee?
 - d. Have the proponents researched the issues of whether it is constitutional to limit campaign expenditures to contributions received from eligible electors?
 - e. Under the proponents' use of the term "eligible elector," is only an individual elector who is permitted to vote in a particular election contest (whether a primary or general election) considered to be an

- eligible elector for purposes of certifying eligible elector contributions for that election contest
- f. How are "general contributions" treated for purposes of the proposed initiative? How are general contributions limited under the proposed initiative?
 - g. What is a "voter registration identification number"? Is it the number assigned to registered electors in the statewide online registration system (SCORE) or some other number? Given the potential ambiguity in the use of this term, would the proponents consider adding a definition of this term to the proposed initiative?
 - h. How is it possible for a committee to ensure that its expenditures do not exceed 150% of eligible electors' contributions in real time? Specifically, how will a committee know whether it may accept an aggregate amount of contributions (with a civil penalty in the balance) if information on voter registration identification numbers may not be not available at the time these contributions are received?
3. Which person or entity is responsible for ensuring that a contribution is accompanied by a voter registration identification number? Is this the responsibility of the individual donor to a committee?
 4. Please describe the process as you envision it for how a voter registration identification number will accompany a contribution.
 5. How does the requirement specified in section 1-45-119 (1) apply in the case of a political committee or issue committee? What does "eligible elector contributions" mean in the case of a political committee or an issue committee? Who are the eligible electors of such entities?
 6. In the case of an election contest for a statewide office, presumably every elector (by virtue of the definition of an "eligible elector") may cast a ballot in any such statewide contest. In that case, what is the rationale for tying permissible expenditures to contributions where every elector is eligible to vote for a candidate in that race?
 7. What effect, if any, would the proposed initiative have on contributions made by persons living outside the state to candidates running in Colorado elections?
 8. With respect to subsection (6)(d)(II) of the proposed initiative, what do the proponents mean by "districts within the [political] committee's stated area of influence"? Is this term found anywhere else in law? Would the proponent consider adding a definition of this term?

9. With respect to subsection (6)(d)(III) of the proposed initiative, what do the proponents mean by "jurisdictions within the issue election"? Is this term found anywhere else in law? Would the proponents consider adding a definition of this term?
10. Why does the proposed initiative exempt small donor committees from the requirement to maintain an eligible elector account? Where in the proposed initiative is there a requirement to maintain an "eligible elector account"? What is meant by this term?
11. What is the purpose for including subsection (7) in the proposed initiative? How is this provision connected to the requirements specified in proposed section 1-45-119 (1)?
12. The proposed initiative references in subsection (8)(b) that violations will be addressed by means of the "process established by section (2)(a) of article XXVIII of the state constitution...." Is this this reference intended to be section **10** (2)(a) of article XXVIII of the state constitution?

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. Consider standardizing hyphenation. Use either "non-electorate" or "non eligible" but not both.
2. The following is the standard drafting language used for introducing a definitions section: "As used in this section, unless the context otherwise requires:".
3. Colorado Revised Statutes has standard conventions for defined terms: Do not include articles, capitalize only the first word, use quotation marks, and use "means" or "has the same meaning as." For example:

"(a) "Campaign expenditures" has the same meaning as..."; or

"(d) "Eligible elector contribution" means...".

4. In subsection (3), the cross reference to multiple subsections of 1-45-109 should be written as "sections 1-45-109 (1)(a)(I), (1)(a)(II), and (1)(c)."
5. In subsection (8), "committee" should be capitalized because it is the start of a sentence.