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MEMORANDUM

January 25, 2012

TO: Ashley McCarter and Amber Crowe

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #56, concerning campaign finance

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 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.

This initiative was submitted with a series of initiatives including proposed initiatives 2011-2012 #53 to 2011-2012 #55. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2011-2012 #53 to 2011-2012 #55, except as necessary to fully understand the issues raised by this proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed initiative appear to be to amend constitutional and statutory provisions governing campaign finance as follows:

1. The constitutional definition of "election cycle" is amended to mean either:
 - a. The period of time beginning 31 days prior to a general election and 30 days following the general election; or
 - b. The period of time beginning 31 days prior to a special legislative election and ending 30 days following the special legislative election.
2. The legislative declaration in the statutory "Fair Campaign Practices Act" is amended to declare that the advent of significant spending on electioneering communications has frustrated the purpose of existing campaign finance requirements.
3. The statutory time period during which a candidate committee may accept the aggregate contribution limit set forth in the Colorado constitution is adjusted as follows:
 - a. For a primary election, the period is no earlier than 30 days prior to the date of the primary election; or
 - b. For a general election, the period is no earlier than 30 days prior to the date of the primary election.
4. The statutory time period during which a candidate committee may expend contributions received and accepted for a general election is changed to no earlier than 30 days prior to the primary election.

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. The amending clauses and headnotes for the proposed initiative should appear as follows:
 - a. Section 1:

SECTION 1. In the constitution of the state of Colorado, section 2 of article XXVIII, **amend** (6) as follows:

Section 2. Definitions. For the purpose of this article and any statutory provisions pertaining to campaign finance, including provisions pertaining to disclosure:

(6) "Election cycle" means either . . .
 - b. Section 2:

SECTION 2. In Colorado Revised Statutes, **amend** 1-45-102 as follows:

1-45-102. Legislative declaration. The people of the state of Colorado hereby find and declare that large campaign contributions to political candidates . . .

- c. In section 3, section 1-45-103.7 (3) and (4) can be combined in a single section as follows:

SECTION 3. In Colorado Revised Statutes, 1-45-103.7, **amend** (3) and (4) as follows:

1-45-103.7. Contribution limits - treatment of independent expenditure committees - contributions from limited liability companies - definitions. (3) A candidate committee may accept . . .

(4) A candidate committee may expend contributions received and accepted for a general election . . .

2. Any introductory portion, such as the introductory portion to section 2 (6) of article XXVIII contained in section 1 of the proposed initiative, should end with a colon.
3. The first word of each constitutional or statutory subdivision should be capitalized. For example, in section 3 of the proposed initiative, the introductory portion to section 1-45-103.7 (3) should begin with a capital letter "A".
4. All existing constitutional or statutory language should be accounted for in either lowercase type or in ~~strike type~~. All new language being added to the Colorado constitution or Colorado Revised Statutes should be shown in SMALL CAPITAL LETTERS. Stricken text should precede new text where such changes appear together. Please ensure that any text that is shown as stricken is not duplicated later in a provision. Consider making the following changes to ensure that existing language and new language are properly accounted for:
 - a. In section 1 of the proposed initiative, in section 2 (6) (b) of article XXVIII, the amended language should appear as "~~following a general election~~ PRIOR TO A SPECIAL LEGISLATIVE ELECTION". Additionally, at the end of section 2 (6) (b), it is not necessary to show the semicolon in strike type. Standard drafting practice permits changing punctuation without showing it as stricken.
 - b. In section 1 of the proposed initiative, in section 2 (6) (c) of article XXVIII, "~~PRIOR TO~~" should be removed.
 - c. In section 3 of the proposed initiative, in section 1-45-103.7 (3) (a), the amended language should appear as "~~at any time after~~ NO EARLIER THAN THIRTY DAYS PRIOR TO".

- d. In section 3 of the proposed initiative, in section 1-45-103.7 (3) (b), the amended language should appear as "~~at any time~~ NO EARLIER THAN THIRTY DAYS prior to".
- e. To accurately reflect existing statute, the word "or" should be placed after the semicolon at the end of section 1-45-103.7 (3) (a).
5. In section 1 of the proposed initiative, since the word "or" is being deleted at the end of section 2 (6) (b), consider adding the word "OR", in small capital letters, at the end of section 2 (6) (a).
6. In section 1 of the proposed initiative, the word "cycle" should not be capitalized in the definition of "Election cycle".
7. In section 1 of the proposed initiative, in section 2 (6) (b) of article XXVIII, "thirty one" should be written as "thirty-one".
8. When referring to the Colorado constitution in statutory text, it is standard drafting practice to refer to "the state constitution". Please consider making this change in section 2 of the proposed initiative.
9. Please ensure that all typographical errors are identified and corrected.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Section 1 (5.5) of article V of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. As a change to the Colorado constitution, section 1 of the proposed initiative may only be amended by a subsequent amendment to the constitution. Is this your intention?
3. As a statutory change, sections 2, 3, and 4 of the proposed initiative may be amended by subsequent legislation enacted by the General Assembly. Is this your intention?
4. With respect to section 1 of the proposed initiative, what is your rationale in changing the definition of election cycle to essentially a month before and after a general election? What, if any, effect will this change have on contribution limits? How do you intend to address making changes to other references to election cycle in Colorado elections law?
5. It appears that with your change, you have eliminated primary elections. Do you agree with this assessment? If so, is this your intent? If not, why not? How does 60 days make an *election cycle*?
6. With respect to section 2 of the proposed initiative, what is your source of information for the statement to be added to the legislative declaration of the "Fair Campaign Practices Act"?

How has the advent of significant spending "frustrated the purpose of existing campaign finance requirements"?

7. In section 3 of the proposed initiative, what is your intent in making the change to section 1-45-103.7 (3) with respect to both: (a) The provision addressing primary elections; and (b) the provision addressing general elections? What do you foresee as the effect of this change? What is the rationale for making 30 days prior to the primary election the cutoff point?
8. What is your rationale for section 4 of the proposed initiative amending section 1-45-103.7 (4)?