

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

February 26, 2014

**TO:** Althea Gerrard and Michael Taylor

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

**SUBJECT:** Proposed initiative measure 2013-2014 #74, concerning Yes or No 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 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. Requiring ballots to contain the choice to vote either "yes" or "no" for each candidate; and

2. Requiring the results of elections in each precinct to state how many "yes" votes and how many "no" votes each candidate received and to calculate the total net votes, rather than total "yes" votes, for each candidate.

## 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. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado". To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative.
2. It is not necessary to include the title and article heading when you are only amending a section of law within said title or article. Likewise, it is standard drafting practice to only include the statutory provisions that are being amended. For example, in section 1-5-403, only subsections (2) and (3) need to be included in the proposed initiative.
3. It is standard drafting practice to include an amending clause telling the reader what is being added to or amended in the Colorado Revised Statutes. For example, if your intention is to amend subsections (2) and (3) of section 1-5-403 of the Colorado Revised Statutes, include an amending clause that reads as follows: "In Colorado Revised Statutes, 1-5-403, **amend** (2) and (3) as follows:".
4. It is standard drafting practice to number, before the amending clause, each section that is being amended with a section number (i.e., **SECTION 1., SECTION 2.**). For example:  
  
**SECTION 1.** In Colorado Revised Statutes, 1-5-403, **amend** (2) and (3) as follows:
5. Statutory section numbers and headnotes should be in bold.
6. It is standard drafting practice to insert a left tab at the beginning of the first line of each new section, subsection, paragraph, or subparagraph, including amending clauses and section headings.

7. It is standard drafting practice to use SMALL CAPITAL LETTERS rather than underlining to show the language being added to the Colorado Revised Statutes. Stricken text should precede new text where such changes appear together.
8. Consider only using quotation marks around the words "yes" and "no" and not the conjunction in between. For example, in the last sentence of proposed section 1-5-403 would read as follows:

A vote of "YES" OR "NO" for any pair of candidates...is a vote for OR AGAINST the duly...

9. Since the phrase "candidate's name" in section 1-5-403 (2), C.R.S., is presumably a "placeholder" that would be filled with new and different candidates for each election, in conformity with standard drafting practice, would the proponents consider placing the phrase in parenthesis in the following form: "Should this candidate, (insert name of candidate here), hold this elected office?".

### **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 is the effective date of the proposed initiative?
3. As a statutory change, the proposed initiative may be amended by subsequent legislation enacted by the General Assembly. Are you aware of this possibility?
4. What are the public policy objectives of the proposed initiative?
5. If your intent is to change the system of elections to allow every voter to vote "yes" or "no", with a numerical value assigned to a "yes" or "no" vote, the net vote count tallied, and the winner of the net vote calculation declared the winner of the election as summarized in your cover letter, it is not sufficient to amend section 1-5-403 and 1-7-601, C.R.S. Those provisions may complement the main proposal but the text of the measure also needs to add requirements codified in statute to effectuate this change. Nowhere in the actual text of your proposed statutory language, for example, do you specify the numerical value assigned a "yes" or "no" vote

or the rules governing the net tally. These requirements could be specified in a new section that contains these requirements or you could make modifications to existing sections of law. But as drafted, the proposal would not bring about the changes you seek because, under the proposal, no changes are made to relevant provisions in the Colorado Revised Statutes that direct that the winner of an election contest is the candidate receiving the most votes, see, e.g., sections 1-10-105 and 1-10-106, C.R.S. You will need to incorporate the basic requirements supporting your proposed new system of electing candidate into the Colorado Revised Statutes in order for the proposed initiative to take effect. On this point, the proponents may wish to consider the provisions of part 10 of article 7 of title 1, C.R.S., which permits ranked voting procedures under specific circumstances in local government elections.

6. In terms of the actual operation of the proposed initiative, would a single elector be able to vote "yes" for one candidate and "no" for each additional candidate in the same race or is a single elector limited to voting "yes" or "no" for a single candidate? Under either construction, please specify how the person with the highest net vote counts will not be the person receiving the most "yes" votes. For example, under the sample ballot you have provided, it is presumed that all of the people otherwise planning to vote for Barack Obama still vote for him to "hold this elected office". If that happens, and he receives the most "yes" votes, why would he not win the net vote tally as well? Would you consider addressing likely voter confusion on this point?
7. Insofar as this question is not addressed under question number 6, above, why is the net vote tally winner not going to be the person with the most "yes" votes? Assuming this is the case, what is the advantage of the proposed initiative?
8. Electing the candidate with the most votes is the time-tested and broadly accepted method of electing candidates. What prompts your significant deviation from this traditional approach? Do you expect that a system along the lines you have suggested is more likely to engender voter confusion and, consequently, more litigation and controversy over election results?
9. With respect to the changes the proposed initiative makes to section 1-5-403, C.R.S., what does it mean to state a "vote of 'yes ' or 'no ' for any pair of candidates for governor and lieutenant governor is a vote for or against each of the candidates who compose that pair"? Isn't a vote *for* a particular candidate automatically a vote *against* another candidate?

10. What does the highest net vote count represent? What is the purpose of making the ultimate winner the candidate with the highest net vote count? Why do the proponents use that standard as the basis for determining the winner?