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MEMORANDUM

March 4, 2014

TO: Natalie Menten and Mike Spalding

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2013-2014 #76, concerning the recall of state and local officers

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.

An earlier version of this proposed initiative, proposed initiative 2013-2014 #71, was the subject of a memorandum dated February 17, 2014. Proposed initiative 2013-2014 #71 was discussed at a public meeting on February 19, 2014. The 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 constitution** appear to be:

1. Repealing and reenacting article XXI of the Colorado constitution concerning recalling elected officials from office;
2. Specifying who may file a recall request and the appropriate entity to conduct recall;
3. Outlining requirements for recall petitions and circulators, filing of petitions, the conduct of recall elections, and the filling of resulting vacancies; and
4. Specifying provisions for the enforcement of the article and complaint and appeal procedures concerning recall elections.

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. Write out numbers, fractions, and symbols. For example, in section 2 (2) of the proposed initiative, write "eight and one-half-inch by fourteen-inch page in portrait layout...".

Substantive Comments and Questions

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

1. Section 2 (6) of the proposed initiative requires statewide recall elections to be held "in November only."
 - a. Because the proposed initiative allows statewide recall elections to be conducted only in November, is it the proponents' intent that such elections be held as part of regularly scheduled general or odd-year November elections? If so, is that outcome compelled or implied by

the proposed language? Or could an election official schedule such recall election for, say, the fourth Tuesday in November?

- b. Because statewide recall elections may only be conducted in November, an election to recall a statewide officer for which a petition is validated in early December would not be conducted until November of the next calendar year (i.e., almost an entire year after the validation). Is this the proponents' intended result?

2. Regarding vacancies:

- a. Section 2 (7) of the proposed initiative states that the "standards for recall petitions" apply to "later vacancy elections". To which standards does this provision refer? Can the proponents clarify how such elections are conducted?
 - b. Section 2 (8) states that, in absence of a successor, a vacancy is filled "by like means" in the next November election. Can the proponents clarify the meaning of this phrase?
3. Section 3 (3) of the proposed initiative allows certain persons to file suit in district court to enforce the proposed article XXI, and successful plaintiffs are entitled to recover "costs, attorney fees, and damages". What damages would such a plaintiff have suffered? What type of damages (exemplary, nominal, etc.) could the court award?