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MEMORANDUM

March 31, 2014

TO: Randy Schafer and Joe Kinnie
FROM: Legislative Council Staff and Office of Legislative Legal Services
SUBJECT: Proposed initiative measure 2013-2014 #111, concerning state representative districts

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 constitution appear to be:

1. Modifying the way state representative districts are drawn so that each state representative district consists of one county, with each district's boundaries being coterminous with those of its county.

2. Specifying that such change to state representative districts is effective January 10, 2017.

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 proposed initiative is based on a concurrent resolution. For purposes of the proposed initiative, do not include the short title, long title, resolution summary, the first clause beginning "WHEREAS,", or the stock language in sections 1, 2, and 3 of the concurrent resolution. The proposed initiative should begin with the first amending clause ("SECTION 1. In the constitution of the state of Colorado, amend section 45 of article V as follows:") and end before Section 2.
2. 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 before the first amending clause.
3. Section numbers and headnotes should be in bold-faced type. For example, "**Section 45. General assembly.** (1) The general assembly shall...."
4. In the section of the proposed initiative amending section 46 of article V, there appear to be some formatting issues in subsection (2), such as centering, line spacing, and highlighting.

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 advantages to reapportionment will the proposed initiative confer, compared to the current approach? Or, what problems does the initiative

seek to redress (particularly given that preservation of county lines is a necessary consideration under the current reapportionment regime)?

3. The proposed initiative describes the counties of Colorado as "sovereign". Colorado's statutory counties, however, are not independent governmental entities existing by reason of any inherent sovereign authority of its residents. Instead, they are political subdivisions of the state that exist only for the convenient administration of state government, to carry out the will of the state, and possessing the powers expressly granted by the state constitution or statutes.

- a. In that case, is "sovereign" an accurate descriptor? Can the proponents clarify their intent in labeling counties as "sovereign"?
 - b. Given this subordinate character of counties, what is the rationale for aligning representative districts with counties?
4. The United States Supreme Court has held that the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution requires state legislative districts to be apportioned so that each district contains nearly equal population. However, the proposed initiative will result in radical population deviation between districts. For example (using the data from the most recent census conducted by the United States Census Bureau), the state representative district comprising El Paso County would consist of 622,263 persons, while the district consisting of San Juan County would have only 699 persons.
- a. In this case, is the effectiveness of the votes of residents of El Paso (and other populous counties) diluted when compared to the effectiveness of San Juan electors (and residents of other less-populated counties)?
 - b. In light of the population differentials that will result, can the initiative survive a challenge alleging denial of equal protection for the right to participate in the Colorado political process and the right to vote?