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APR 08 2016 10:00 A.M.

#141 FINAL DRAFT

Colorado Secretary of State

PRIMARY ELECTIONS

Be it enacted by the People of the State of Colorado:

SECTION 1. Declaration of the People of Colorado

BECAUSE PRIMARY ELECTIONS ARE PAID FOR BY TAXPAYERS, ALL ELIGIBLE VOTERS WHO WANT THEIR VOICES TO BE HEARD SHOULD BE ABLE TO VOTE IN THOSE ELECTIONS.

CURRENTLY, THE 35% OF COLORADO VOTERS WHO ARE INDEPENDENT OF A POLITICAL PARTY MUST JOIN A PARTY IF THEY WANT TO PARTICIPATE IN THE SELECTION OF OUR GENERAL ELECTION CANDIDATES. IN FACT, COLORADO IS IN THE MINORITY OF STATES THAT LIMIT PARTICIPATION IN PRIMARY ELECTIONS TO ONLY THOSE AFFILIATED WITH A POLITICAL PARTY.

BECAUSE PRIMARY ELECTION TURNOUT IS DECLINING, INVOLVING MORE VOTERS CAN INCREASE PARTICIPATION AND ENCOURAGE CANDIDATES WHO ARE RESPONSIVE TO THE VIEWPOINTS OF MORE COLORADANS.

ACCORDINGLY, ALL VOTERS SHOULD BE ALLOWED TO VOTE IN STATE AND LOCAL PRIMARY ELECTIONS WITH THE SAME EASE AS THOSE VOTERS AFFILIATED WITH A MAJOR POLITICAL PARTY.

SECTION 2. In Colorado Revised Statutes, 1-2-218.5, **amend** (2) as follows:

1-2-218.5. Declaration of affiliation. (2) Any eligible elector who has not declared an affiliation with a political party or political organization shall be designated on the registration records of the county clerk and recorder as "unaffiliated". Any unaffiliated eligible elector may, BUT IS NOT REQUIRED TO, declare a political party affiliation when the elector desires to vote at a primary election, as provided in section 1-7-201 (2), or the elector may declare his or her political party or political organization affiliation at any other time during which electors are permitted to register by submitting a letter or a form furnished by the county clerk and recorder, ~~either~~ by mail, ~~or~~ in person, OR ONLINE IN ACCORDANCE WITH SECTION 1-2-202.5.

SECTION 3. In Colorado Revised Statutes, 1-4-101, **amend** (2) as follows:

1-4-101. Primary elections - when - nominations - expenses. (2)(a) Each political party that is entitled to participate in the primary election shall have a separate party ballot FOR USE BY ELECTORS AFFILIATED WITH THAT POLITICAL PARTY. IN ADDITION, ALL POLITICAL PARTIES THAT ARE ENTITLED TO PARTICIPATE IN THE PRIMARY ELECTION SHALL HAVE THEIR CANDIDATES PLACED ON A SINGLE COMBINED PRIMARY ELECTION BALLOT TO BE USED BY UNAFFILIATED ELECTORS THAT CONTAINS THE NAMES OF THE CANDIDATES OF EACH OF THE POLITICAL PARTIES AND THAT ARE CLEARLY AND CONSPICUOUSLY SEGREGATED FROM THE NAMES OF THE CANDIDATES OF ANY OTHER POLITICAL PARTY. ALL CANDIDATES OF A POLITICAL PARTY SHALL BE GROUPED TOGETHER AND SEPARATED BY THE OFFICE EACH CANDIDATE IS SEEKING. UNAFFILIATED ELECTORS MAY VOTE IN THE PRIMARY ELECTIONS OF ONLY ONE POLITICAL PARTY. SUCH COMBINED BALLOTS SHALL CLEARLY ADVISE THAT AN ELECTOR MAY CAST THE BALLOT OF ONLY ONE POLITICAL PARTY AND THAT ANY BALLOT IN WHICH VOTES HAVE BEEN CAST IN THE PRIMARY OF MORE THAN ONE PARTY SHALL BE VOID AND NOT COUNTED. HOWEVER, AN ELECTOR IS NOT REQUIRED TO VOTE IN THE SAME PARTY PRIMARY AS THE ELECTOR VOTED IN AS PART OF A PRESIDENTIAL PRIMARY ELECTION OCCURRING IN THAT SAME YEAR, IF SUCH AN ELECTION IS HELD;

(b) IF IT IS NOT PRACTICABLE FOR A COUNTY TO USE A SINGLE COMBINED BALLOT THAT CONTAINS THE NAMES OF THE CANDIDATES OF EACH OF THE POLITICAL PARTIES, THE COUNTY CLERK AND RECORDER SHALL SEND TO ALL ACTIVE REGISTERED ELECTORS IN THE COUNTY WHO HAVE NOT DECLARED AN AFFILIATION WITH A POLITICAL PARTY A MAILING THAT CONTAINS THE BALLOTS OF ALL OF THE POLITICAL PARTIES THAT HAVE PRIMARY ELECTIONS. IN THIS MAILING, THE CLERK SHALL ALSO PROVIDE WRITTEN INSTRUCTIONS ADVISING THE ELECTOR OF THE MANNER IN WHICH THE ELECTOR WILL BE IN COMPLIANCE WITH THE REQUIREMENTS OF THIS CODE IN SELECTING AND CASTING THE BALLOT OF A POLITICAL PARTY. AN ELECTOR MAY CAST THE BALLOT OF ONLY ONE POLITICAL PARTY. AFTER SELECTING AND CASTING A BALLOT OF A SINGLE POLITICAL PARTY, THE ELECTOR SHALL RETURN THE BALLOT TO THE CLERK. IF AN ELECTOR CASTS AND RETURNS TO THE CLERK THE BALLOT OF MORE THAN ONE POLITICAL PARTY, ALL SUCH BALLOTS RETURNED WILL BE VOID AND WILL NOT BE COUNTED.

(c) THE SECRETARY OF STATE MAY BY RULE ADOPT ADDITIONAL REQUIREMENTS NECESSARY TO AVOID VOTER CONFUSION IN VOTING IN PRIMARY ELECTIONS.

(d) The primary election of all political parties shall be held at the same time and shall be conducted by the same election officials.

SECTION 4. In Colorado Revised Statutes, 1-4-1304, **amend** (1.5)(c) as follows:

1-4-1304. Nomination of candidates. (1.5) (c) If an assembly designates more than one candidate for an office, or if an assembly designates one or more candidates and

one or more candidates qualifies by petition, the candidate of the minor political party for that office shall be nominated at a primary election held in accordance with this code. A MINOR POLITICAL PARTY MAY PROHIBIT UNAFFILIATED ELECTORS FROM VOTING IN THE PARTY'S PRIMARY ELECTION SO LONG AS THE PROHIBITION IS IN ACCORDANCE WITH THE PARTY'S CONSTITUTION, BYLAWS, OR OTHER APPLICABLE RULES. ANY MINOR PARTY CHOOSING TO PROHIBIT UNAFFILIATED ELECTORS FROM VOTING IN ITS PRIMARY ELECTION MUST NOTIFY THE SECRETARY OF STATE OF THE PROHIBITION NOT LESS THAN SEVENTY-FIVE DAYS PRIOR TO THE PRIMARY ELECTION.

SECTION 5. In Colorado Revised Statutes, 1-5-402, **add** (2) as follows:

1-5-402. Primary election ballots. (2) NO LATER THAN FORTY-FIVE DAYS BEFORE THE PRIMARY ELECTION AND ALL PRIMARY ELECTIONS THEREAFTER, THE COUNTY CLERK AND RECORDER SHALL PREPARE A COMBINED PRIMARY ELECTION BALLOT TO BE USED BY UNAFFILIATED ELECTORS. THE BALLOT MUST BE PRINTED IN THE FOLLOWING MANNER:

(a) ALL OFFICIAL BALLOTS MUST BE PRINTED ACCORDING TO THE PROVISIONS OF SECTIONS 1-4-101, 1-5-407, AND 1-5-408. ACROSS THE TOP OF EACH BALLOT THE WORDS "PRIMARY ELECTION BALLOT FOR UNAFFILIATED VOTERS" SHALL BE PRINTED.

(b) THE POSITIONS OF CANDIDATES ON THE BALLOTS TO BE USED BY UNAFFILIATED ELECTORS MUST BE ARRANGED IN THE ORDER SPECIFIED IN PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION; EXCEPT THAT THE CANDIDATES OF EACH POLITICAL PARTY MUST BE CLEARLY AND CONSPICUOUSLY SEGREGATED FROM THE CANDIDATES OF ANY OTHER POLITICAL PARTY AND GROUPED TOGETHER ACCORDING TO SECTION 1-4-101(2).

SECTION 6. In Colorado Revised Statutes, 1-7-201, **amend** (2) and (6); and **add** (2.3) as follows:

1-7-201. Voting at primary election. (2) If the name is found on the registration list, the election judge having charge of the list shall likewise repeat the elector's name and present the elector with the party ballot of the political party affiliation last recorded. If unaffiliated, the eligible elector ~~shall~~ MAY openly declare to the election judges the name of the political party with which the elector wishes to affiliate, complete the approved form for voter registration information changes, and initial the registration list in the space provided. Declaration of affiliation with a political party shall be separately dated and signed or dated and initialed by the eligible elector in such manner that the elector clearly acknowledges that the affiliation has been properly recorded. Thereupon, the election judges shall deliver the appropriate party ballot to the eligible elector. Eligible electors who decline to state an affiliation with a political party that is

participating in the primary shall not be entitled to vote at the primary election IF THE POLITICAL PARTY HAS CHOSEN TO EXCLUDE UNAFFILIATED ELECTORS PURSUANT TO SECTION 1-7-201.5.

(2.3) AN ELIGIBLE UNAFFILIATED ELECTOR MAY OTHERWISE VOTE IN THE PRIMARY ELECTION OF A POLITICAL PARTY WITHOUT AFFILIATING WITH THAT POLITICAL PARTY. TO VOTE IN A POLITICAL PARTY'S PRIMARY ELECTION WITHOUT DECLARING AN AFFILIATION WITH THE POLITICAL PARTY, AN ELIGIBLE UNAFFILIATED ELECTOR SHALL BE GIVEN A COMBINED BALLOT, IF APPLICABLE. IF A COMBINED BALLOT IS NOT AVAILABLE, THE ELECTOR SHALL DECLARE TO THE ELECTION JUDGES THE NAME OF THE POLITICAL PARTY IN WHOSE PRIMARY ELECTION THE ELECTOR WISHES TO VOTE. THEREUPON, THE ELECTION JUDGES SHALL DELIVER THE APPROPRIATE PARTY BALLOT TO THE ELECTOR.

(6) The provisions of subsections (1), (2), (2.3) and (4) of this section shall not apply to a primary election conducted as a mail ballot election pursuant to article 7.5 of this title.

SECTION 7. In Colorado Revised Statutes, 1-7.5-107, **amend (2.5)(a)(II) and repeal (2.3) as follows:**

1-7.5-107. Procedures for conducting mail ballot election -primary elections - first-time voters casting a mail ballot after having registered by mail to vote - in-person request for ballot - repeal.

~~(2.3) (a) Not less than thirty days nor more than forty five days before a primary election, the county clerk and recorder shall mail a notice by forwardable mail to each unaffiliated active registered eligible elector.~~

~~(b) The notice shall indicate that the unaffiliated elector has the ability to and must affiliate with a political party in order to vote in the primary election.~~

~~(c) The notice shall have a returnable portion that allows the elector to request affiliation with a political party.~~

~~(d) The notice may be included with any other communication by mail from the county clerk and recorder to electors within the county.~~

(2.5) (a) (II) For a primary mail ballot election, in addition to the items described in the notice required by subparagraph (I) of this paragraph (a), such notice shall advise eligible electors who are not affiliated with a political party of the ability to ~~declare an affiliation with a political party and vote in the primary election~~ VOTE IN THE PRIMARY ELECTION OF ANY POLITICAL PARTY THAT HAS NOT OTHERWISE CHOSEN TO EXCLUDE UNAFFILIATED ELECTORS PURSUANT TO SECTION 1-7-201.5. IF ANY POLITICAL PARTY HAS MADE SUCH

CHOICE, THE NOTICE SHALL CLEARLY AND CONSPICUOUSLY ADVISE ELECTORS OF THE NAME OF SUCH POLITICAL PARTY AND THAT IT HAS CHOSEN TO EXCLUDE UNAFFILIATED ELECTORS FROM ITS PRIMARY ELECTIONS. THE NOTICE SHALL FURTHER STATE THAT ANY PRIMARY BALLOT CONTAINING VOTES FOR A CANDIDATE OF MORE THAN ONE POLITICAL PARTY SHALL NOT BE COUNTED.

SECTION 8. In Colorado Revised Statutes, 1-7.5-116, **amend** (1)(b) as follows:

1-7.5-116. Applications for absentee ballot. (1) (b) If the application is made for a primary election ballot, the application shall name the political party with which the applicant is affiliated ~~or wishes to affiliate~~, OR, IF THE APPLICANT IS UNAFFILIATED, THE APPLICATION MUST EITHER NAME THE POLITICAL PARTY WITH WHICH THE APPLICANT WISHES TO AFFILIATE OR MUST STATE THAT THE APPLICANT WISHES TO REMAIN UNAFFILIATED AND RECEIVE A PRIMARY ELECTION BALLOT FOR UNAFFILIATED ELECTORS, OR IF SUCH COMBINED BALLOT IS NOT AVAILABLE, THE BALLOTS FOR EACH PARTY PRIMARY THAT ALLOWS UNAFFILIATED ELECTORS TO PARTICIPATE ALONG WITH NOTICE OF WHICH POLITICAL PARTIES, IF ANY, THAT DO NOT ALLOW UNAFFILIATED ELECTORS TO PARTICIPATE AND THAT THE ELECTOR SHALL VOTE IN ONLY ONE PRIMARY.

SECTION 9. In Colorado Revised Statutes, 1-8.5-101, amend (5) as follows:

1-8.5-101. Provisional ballot - entitlement to vote. (5) UNLESS A POLITICAL PARTY HAS CHOSEN TO EXCLUDE UNAFFILIATED ELECTORS FROM ITS PRIMARY ELECTIONS PURSUANT TO SECTION 1-7-201.5, ANY UNAFFILIATED ELECTOR PARTICIPATING IN A PRIMARY ELECTION MAY CAST A REGULAR PARTY BALLOT UPON REQUESTING SUCH BALLOT FROM AN ELECTION JUDGE IN ACCORDANCE WITH SECTION 1-7-201 (2.3). Any unaffiliated elector at a primary election may ALSO cast a regular party ballot upon openly declaring to the election judge the name of the political party with which the elector wishes to affiliate pursuant to section 1-2-218.5 or 1-7-201.

SECTION 10. In Colorado Revised Statutes, **add** 1-7-201.5 as follows:

1-7-201.5. Political party election to exclude unaffiliated electors in primary. (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A MAJOR POLITICAL PARTY MAY CHOOSE TO EXCLUDE UNAFFILIATED ELECTORS FROM PARTICIPATION IN ITS PRIMARY ELECTIONS BEGINNING IN 2020 IF, AT THE 2018 PRIMARY ELECTION FOR THAT POLITICAL PARTY, AT LEAST SIXTY-SIX PERCENT OF THOSE ELECTORS VOTING ON A BALLOT QUESTION TO PROHIBIT SUCH UNAFFILIATED ELECTOR PARTICIPATION VOTE AFFIRMATIVELY TO DO SO.

(a) IN ORDER TO PLACE SUCH A BALLOT QUESTION ON THE 2018 PRIMARY BALLOT, THE EXECUTIVE DIRECTOR OF A MAJOR POLITICAL PARTY SHALL NOTIFY THE SECRETARY OF STATE IN WRITING BY OCTOBER 1, 2017 THAT THE PARTY HAS CHOSEN, CONSISTENT WITH ANY BYLAWS OR RULES OF THAT POLITICAL PARTY, TO HAVE SUCH AN ELECTION.

(b) IF SUCH A REQUEST IS TIMELY RECEIVED, THE SECRETARY OF STATE SHALL CERTIFY THE FOLLOWING BALLOT QUESTION FOR THE 2018 PRIMARY BALLOT OF THE SUBMITTING MAJOR POLITICAL PARTY: "THE PEOPLE OF COLORADO VOTED IN 2016 TO OPEN FUTURE PRIMARY ELECTIONS TO VOTERS WHO ARE NOT OFFICIALLY AFFILIATED WITH ANY POLITICAL PARTY. A POLITICAL PARTY CAN DENY THAT RIGHT TO UNAFFILIATED VOTERS BY AFFIRMATIVELY VOTING TO DO SO AT THIS YEAR'S PRIMARY ELECTION. SHALL ALL FUTURE PRIMARY ELECTIONS OF THE [MAJOR PARTY NAME] BE CLOSED TO UNAFFILIATED VOTERS WHO HAVE CHOSEN NOT TO OFFICIALLY AFFILIATE WITH THE [MAJOR PARTY NAME]?"

(c) IF THE BALLOT QUESTION IS ENACTED, ALL FUTURE PRIMARY ELECTIONS OF THAT POLITICAL PARTY SHALL BE CLOSED TO UNAFFILIATED ELECTORS. SUCH ELECTIONS INCLUDE, BUT IS NOT LIMITED TO, PRIMARY ELECTIONS FOR UNITED STATES SENATOR, REPRESENTATIVE IN CONGRESS, GOVERNOR, LIEUTENANT GOVERNOR, SECRETARY OF STATE, STATE TREASURER, ATTORNEY GENERAL, MEMBER OF THE STATE BOARD OF EDUCATION, REGENT OF THE UNIVERSITY OF COLORADO, MEMBER OF THE GENERAL ASSEMBLY, DISTRICT ATTORNEY, AND ALL COUNTY OFFICERS TO BE ELECTED AT A GENERAL ELECTION.

(d) A POLITICAL PARTY THAT HAS DENIED THE RIGHT OF PARTICIPATION TO UNAFFILIATED ELECTORS PURSUANT TO THIS SECTION MAY ALLOW SUCH PARTICIPATION IN FUTURE PRIMARY ELECTIONS IF, BY OCTOBER 1 IN THE YEAR PRECEDING ANY PRIMARY ELECTION, THE EXECUTIVE DIRECTOR OF THAT POLITICAL PARTY NOTIFIES THE SECRETARY OF STATE IN WRITING THAT THE PARTY HAS CHOSEN TO ALLOW UNAFFILIATED ELECTORS TO PARTICIPATE IN FUTURE PRIMARY ELECTIONS OF THAT PARTY. ONCE SUCH AN ELECTION IS MADE, UNAFFILIATED ELIGIBLE ELECTORS SHALL BE ALLOWED TO PARTICIPATE IN ALL PRIMARY ELECTIONS OF THAT POLITICAL PARTY, AND THE POLITICAL PARTY MAY NOT BY PUBLIC VOTE OR OTHERWISE DENY SUCH RIGHT OF PARTICIPATION IN THE FUTURE.

(e) THE SECRETARY OF STATE MAY ADOPT RULES NECESSARY FOR THE PROPER ADMINISTRATION OF THIS ARTICLE.

SECTION 10. Effective date - applicability. All Sections shall take effect on January 1, 2020, except Section 10, which shall take effect upon the effective date of this measure as declared by proclamation of the governor.