

**Amendment Y
Congressional Redistricting**

1 **Amendment Y proposes amending the Colorado Constitution to:**

- 2 ♦ create the Independent Congressional Redistricting Commission, consisting of
3 members from the state's two largest political parties and unaffiliated voters, to
4 amend and approve congressional district maps drawn by nonpartisan legislative
5 staff;
- 6 ♦ establish a process for selecting commissioners, new requirements for
7 transparency and ethics, and a procedure for judicial review of commission
8 maps; and
- 9 ♦ establish the criteria the commission must use for drawing the state's U.S.
10 congressional district maps.

11 **Summary and Analysis**

12 **Reapportionment and redistricting.** The U.S. Census Bureau counts the U.S.
13 population every ten years. After this, the congressional reapportionment process
14 occurs, by which each state is granted seats in the U.S. House of Representatives
15 based on its share of the total U.S. population. The states must then redraw their
16 districts so that the number of people in each district is equal.

17 **Congressional redistricting process in Colorado.** Colorado currently has seven
18 seats in the U.S. House of Representatives. Under the state constitution, the state
19 legislature is responsible for dividing the state into these congressional districts. If the
20 state legislature fails to complete a new district map during the legislative session after
21 the census, legal challenges may result in state courts drawing the map. The process
22 has resulted in court intervention the last four times congressional redistricting has
23 occurred. Current law lists factors that the courts consider when evaluating maps, but
24 does not direct how the courts should prioritize these factors.

25 Amendment Y transfers the authority to draw congressional district maps from the
26 state legislature to a newly created Independent Congressional Redistricting
27 Commission (commission). The commission must have 12 members, four from the
28 state's largest political party, which is currently the Democratic Party, four from the
29 state's second largest political party, which is currently the Republican Party, and four
30 who are not affiliated with any political party. These members are appointed from a pool
31 of applicants as described below.

32 **Application and appointment process.** Amendment Y sets minimum qualifications
33 for commissioners. An applicant must be registered to vote and have voted in the
34 previous two general elections in Colorado, and have been either affiliated with the same
35 party or unaffiliated with any party for the last five consecutive years. An applicant may
36 not be appointed to the commission if he or she has been a candidate for federal office
37 within the last five years, or within the last three years been: a professional registered
38 lobbyist; an elected public official; an elected political party official above the precinct

1 level; or paid by a member of or candidate for Congress. Commissioners may not also
2 serve on the Independent Legislative Redistricting Commission proposed in
3 Amendment Z.

4 The measure requires nonpartisan legislative staff to prepare an application form for
5 commissioners after receiving public input on the application at one or more public
6 hearings. All applications submitted must be posted on a public website. Nonpartisan
7 legislative staff must review commission applications to ensure applicants meet the
8 minimum qualifications.

9 The Chief Justice of the Colorado Supreme Court designates a panel of three of the
10 most recently retired judges from the Colorado Supreme Court or Colorado Court of
11 Appeals to facilitate the selection of commissioners. Selected judges may not serve on
12 both the panel that selects this commission and the panel that selects the proposed
13 Independent Legislative Redistricting Commission. From all of the qualified applicants,
14 the panel of retired judges randomly selects a pool of 1,050 applicants. The panel
15 narrows the applicant pool to 150 applicants using criteria related to applicants'
16 experience, analytical skills, and ability to be impartial and promote consensus.

17 From the 150-person applicant pool, the panel randomly chooses two commissioners
18 affiliated with the state's largest political party, two commissioners affiliated with the
19 state's second largest political party, and two commissioners who are not affiliated with a
20 political party. For the remaining six commissioners, the panel selects two additional
21 unaffiliated commissioners from the pool of 1,050 applicants, and four commissioners
22 from applicant pools determined by legislative leaders. The final 12-member commission
23 will have four Democrats, four Republicans, and four unaffiliated members, unless
24 another political party becomes the largest or second largest political party in the state.
25 The final composition of the commission should reflect Colorado's racial, ethnic, gender,
26 and geographic diversity, and must include members from each congressional district,
27 including at least one member from the Western Slope.

28 **Commission operations.** Under the measure, the commission is responsible for
29 adopting rules to govern its administration and operation, and the commissioners are
30 subject to open meeting laws. Staff for the commission must be assigned from
31 nonpartisan legislative staff agencies. Commissioners are prohibited from
32 communicating with nonpartisan legislative staff about any maps outside of a public
33 meeting or hearing, and staff are prohibited from communicating with outside parties
34 concerning the development of a redistricting map. Any commissioner who participates
35 in prohibited communication must be removed from the commission. Any person who
36 receives compensation for advocating to the commission, one or more commissioners,
37 or staff is considered a lobbyist and must disclose his or her compensation and its
38 source to the Secretary of State for publication.

39 **Criteria for drawing a congressional district map.** The U.S. Constitution requires
40 that all congressional districts within a state have equal populations. Under the federal
41 Voting Rights Act of 1965, the state cannot change voting standards, practices, or
42 procedures in a way that denies or limits the right to vote based on race or color or
43 membership in a language minority group. In particular, the act requires that a minority
44 group's voting strength not be diluted under a redistricting map. Amendment Y adopts
45 portions of the Voting Rights Act into state law.

1 Amendment Y also adds criteria for the commission to follow when adopting a map.
2 After achieving population equality and complying with the Voting Rights Act, the
3 commission must preserve whole political subdivisions and communities of interest as
4 much as possible, and districts must be as compact as possible. After the consideration
5 of these criteria, Amendment Y requires the commission to maximize the number of
6 politically competitive districts, which are defined as having the reasonable potential for
7 the party affiliation of the district's representative to change at least once over the
8 decade, to the extent possible. Maps cannot be drawn for the purpose of protecting
9 incumbents, candidates, or political parties.

10 **Map consideration and public involvement.** The measure directs nonpartisan
11 commission staff to create a preliminary redistricting map, and requires them to consider
12 public comments while developing the map. Members of the public may also present
13 proposed redistricting maps and written comments for the commission's consideration.
14 The commission must hold at least three public hearings in each congressional district to
15 receive public input before approving a redistricting map. At least ten commissioners
16 must attend each hearing, either in person or electronically. These hearings must be
17 broadcast online, and the commission must maintain a website through which Colorado
18 residents may submit maps or written comments. All written comments pertaining to
19 redistricting must be published on the website. After the commission holds its hearings
20 on the preliminary map, staff must prepare additional maps. The commission can adopt
21 standards and guidelines for staff to follow when developing staff maps. Any
22 commissioner can request at a public hearing that staff prepare additional maps or
23 amendments to maps. The commission can adopt a final map at any time after the
24 presentation of the first staff map.

25 **Final map.** Under the measure, the commission must adopt a final map and submit
26 it to the Colorado Supreme Court for review. Eight commissioners, including at least two
27 unaffiliated commissioners, must approve the final map, and the map must be made
28 public before the commission votes on it. If the commission fails to submit a final map, a
29 staff map must be submitted, without amendments, to the Colorado Supreme Court for
30 judicial review.

31 The Colorado Supreme Court must approve the final map unless the court finds that
32 the commission abused its discretion in applying or failing to apply required criteria, in
33 which case the court must return it to the commission. If returned, the commission has
34 12 days to hold a hearing and submit a revised map to the Colorado Supreme Court. If
35 the commission fails to submit a revised map, nonpartisan staff have an additional three
36 days to submit a revised map. The Colorado Supreme Court must approve a
37 congressional redistricting map by December 15 of the redistricting year.

*For information on those issue committees that support or oppose the measures on the ballot at the **November 6, 2018**, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

1 **Arguments For**

- 2 1) Amendment Y limits the role of partisan politics in the redistricting process.
3 Through the commissioner selection process, checks and balances are in place
4 to ensure that no one political party controls the commission. Lobbyists and
5 elected officials are prohibited from serving on the new commission.
6 Republicans, Democrats, and unaffiliated voters must be appointed to the
7 commission in equal numbers. Additionally, nonpartisan legislative staff draw the
8 district maps, and each map's approval requires a supermajority vote of the
9 commission, including at least two unaffiliated commissioners. These provisions
10 encourage political compromise by keeping political parties and politicians with a
11 vested interest in the outcome from controlling the redistricting process. This is
12 particularly beneficial for congressional redistricting, which has been decided
13 through court intervention in every redistricting period since 1980.
- 14 2) The measure makes the redistricting process more transparent and protects the
15 voices of individual voters in the process. Congressional redistricting is
16 conducted by an independent commission in public meetings, with safeguards
17 against undue influence in the preparation and adoption of maps. All Coloradans
18 will have the opportunity to engage in the process because the commission will
19 conduct meetings throughout the state rather than only at the State Capitol. The
20 commission is subject to the Colorado Open Records Act, and anyone lobbying
21 the commission must follow lobbyist disclosure laws. By requiring that map
22 communications occur in public, Coloradans will be able to see exactly how the
23 districts are drawn.
- 24 3) The measure brings structure to the redistricting process by using clear, ordered,
25 and fair criteria in the drawing of districts. By prioritizing factors such as
26 communities of interest, city and county lines, and political competitiveness, it
27 provides specific direction to the commission about how it should evaluate
28 proposed maps. It also prevents the adoption of maps that protect incumbents,
29 candidates, or political parties, or maps that dilute the electoral influence of racial
30 or ethnic minorities. This could result in a more diverse pool of candidates for
31 public office, better reflecting the voters in the state.

32 **Arguments Against**

- 33 1) Amendment Y takes accountability out of the redistricting process. Unlike state
34 legislators who are subject to election and campaign finance requirements,
35 unelected commissioners are not accountable to the voters of Colorado. The
36 selection process relies on unelected retired judges to screen applicants and
37 select half of the commissioners. Further, the commission is staffed by
38 government employees who are not accountable to the voters, and they may end
39 up drawing the final maps if the commission cannot reach an agreement.
- 40 2) The commissioner selection process outlined in the measure is complex, and half
41 of the members are determined by random chance. This complicated and
42 random selection process may prevent individuals with importance experience

1 and knowledge from becoming commissioners. While the goal of the random
2 selection may be to remove politics from redistricting, unaffiliated commissioners
3 with partisan views could still be selected, and the selection process may not
4 result in a commission that can be impartial and promote consensus.

- 5 3) The measure outlines criteria that may be difficult to apply in an objective
6 manner. For example, the broad definition of communities of interest is vague
7 and open to interpretation. The measure also leaves the commission to
8 determine what a competitive district is without specifying what factors to
9 consider. Additionally, the four unaffiliated commissioners will have political
10 leanings that may be difficult to discern, but that could sway how they apply the
11 criteria and influence the final map, since many critical votes require their
12 support. The resulting map may serve to protect certain segments of the
13 population at the expense of others and could result in districts that make no
14 sense to voters.

15 **Estimate of Fiscal Impact**

16 **State revenue.** Beginning in FY 2020-21, Amendment Y may minimally increase
17 Secretary of State cash fund revenue from fines collected from lobbyists who fail to
18 disclose the required information.

19 **State expenditures.** Overall, Amendment Y increases state expenditures to fund
20 the commission by \$31,479 in FY 2020-21 and \$642,745 in FY 2021-22 as compared
21 with the expenses for the current process.