

**Amendment Y
Congressional Redistricting**

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

- 2 ♦ create the Independent Congressional Redistricting Commission, consisting of
3 an equal number of members from each of the state's two largest political parties
4 and unaffiliated voters, to amend and approve congressional district maps drawn
5 by nonpartisan legislative 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 and prioritize the criteria the commission must use for adopting the
10 state's U.S. congressional district map.

11 **Summary and Analysis**

12 Amendment Y establishes a new process for congressional redistricting.
13 Amendment Z, which is also on the 2018 ballot, proposes a similar but separate process
14 for state legislative redistricting.

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

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

28 Amendment Y transfers the authority to draw congressional district maps from the
29 state legislature to a newly created Independent Congressional Redistricting
30 Commission (commission). The commission must have 12 members, 4 from the state's
31 largest political party, which is currently the Democratic Party, 4 from the state's second
32 largest political party, which is currently the Republican Party, and 4 who are not
33 affiliated with any political party. These members are appointed from a pool of
34 applicants as described below.

35 **Application and appointment process.** Amendment Y sets minimum qualifications
36 for commissioners. An applicant must be registered to vote and have voted in the
37 previous two general elections in Colorado, and have been either affiliated with the same
38 party or unaffiliated with any party for the last five consecutive years. An applicant may

1 not be appointed to the commission if he or she has been a candidate for federal office
2 within the last five years, or within the last three years been: a professional registered
3 lobbyist; an elected public official; an elected political party official above the precinct
4 level; or paid by a member of or candidate for Congress. Commissioners may not also
5 serve on the Independent Legislative Redistricting Commission proposed in
6 Amendment Z.

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

12 The Chief Justice of the Colorado Supreme Court designates a panel of three of the
13 most recently retired judges from the Colorado Supreme Court or Colorado Court of
14 Appeals to facilitate the selection of commissioners. No more than one of the three
15 judges may be registered with any one political party, and the panel's decisions must be
16 unanimous. Selected judges may not also serve on the panel that facilitates the
17 selection of the proposed Independent Legislative Redistricting Commission. From all of
18 the qualified applicants, the panel of retired judges randomly selects a pool of 1,050
19 applicants. The panel then narrows the applicant pool to 150 applicants using criteria
20 related to applicants' experience, analytical skills, and ability to be impartial and promote
21 consensus.

22 From the 150-person applicant pool, the panel randomly chooses 2 commissioners
23 affiliated with the state's largest political party, 2 commissioners affiliated with the state's
24 second largest political party, and 2 commissioners who are not affiliated with a political
25 party. For the remaining 6 commissioners, the panel selects 2 additional unaffiliated
26 commissioners from the pool of 1,050 applicants, and 4 commissioners from applicant
27 pools determined by legislative leaders. The final 12-member commission will have
28 4 Democrats, 4 Republicans, and 4 unaffiliated members, unless another political party
29 becomes the largest or second largest political party in the state. The final composition
30 of the commission should reflect Colorado's racial, ethnic, gender, and geographic
31 diversity, and must include members from each congressional district, including at least
32 one member from the Western Slope.

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

1 **Criteria for drawing a congressional district map.** The U.S. Constitution requires
2 that all congressional districts within a state have equal populations. Under the federal
3 Voting Rights Act of 1965, the state cannot change voting standards, practices, or
4 procedures in a way that denies or limits the right to vote based on race or color or
5 membership in a language minority group. In particular, the act requires that a minority
6 group's voting strength not be diluted under a redistricting map. Amendment Y
7 incorporates principles of the Voting Rights Act into state law and prohibits the
8 commission from adopting a map that violates its provisions.

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

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

33 **Final map.** Under the measure, the commission must adopt a final map and submit
34 it to the Colorado Supreme Court for review. At least 8 of the 12 commissioners,
35 including at least 2 unaffiliated commissioners, must approve the final map, and the map
36 must be made public before the commission votes on it. If the commission fails to
37 submit a final map, a staff map must be submitted, without amendments, to the Colorado
38 Supreme Court for judicial review.

39 The Colorado Supreme Court must approve the final map unless the court finds that
40 the commission abused its discretion in applying or failing to apply required criteria, in
41 which case the court must return it to the commission. If returned, the commission has
42 12 days to hold a hearing and submit a revised map to the Colorado Supreme Court. If
43 the commission fails to submit a revised map, nonpartisan staff have an additional three
44 days to submit a revised map. The Colorado Supreme Court must approve a
45 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 congressional redistricting
3 process by transferring the legislature's role to an independent commission. The
4 measure creates a system of checks and balances to ensure that no one political
5 party controls the commission. Republicans, Democrats, and unaffiliated voters
6 must be appointed to the commission in equal numbers. Lobbyists and
7 politicians are prohibited from serving on the new commission. Additionally,
8 nonpartisan legislative staff draw the district maps, and a map's approval
9 requires a supermajority vote of the commission, including at least two
10 unaffiliated commissioners. These provisions encourage political compromise by
11 keeping political parties and politicians with a vested interest in the outcome from
12 controlling the redistricting process.
- 13 2) The measure makes the redistricting process more transparent and provides
14 greater opportunity for public participation. Congressional redistricting is
15 conducted by an independent commission in public meetings, with safeguards
16 against undue influence in the preparation and adoption of maps. All Coloradans
17 will have the opportunity to engage in the process because the commission will
18 conduct meetings throughout the state rather than only at the State Capitol. The
19 commission is subject to state open records and open meetings laws, and
20 anyone paid to lobby the commission has 72 hours to disclose their lobbying
21 activities. By requiring that map-related communications occur in public,
22 Coloradans will be able to see exactly how the districts are drawn.
- 23 3) The measure brings structure to the redistricting process by using clear, ordered,
24 and fair criteria in the drawing of districts. By prioritizing factors such as
25 communities of interest, city and county lines, and political competitiveness, it
26 provides specific direction to the commission about how it should evaluate
27 proposed maps. It also prevents the adoption of a map that protects incumbents,
28 candidates, or political parties, or a map that dilutes the electoral influence of
29 racial or ethnic minorities. Along with these prioritized criteria, the measure
30 prescribes a structured court review process and provides more guidance
31 regarding the court's role than has existed in prior redistricting cycles.

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

1 select half of the commissioners. Further, the commission is staffed by
2 government employees who are not accountable to the voters, and they may end
3 up drawing the final map if the commission cannot reach an agreement.

4 2) The commissioner selection process outlined in the measure is complex, and half
5 of the members are determined by random chance. This complicated and
6 random selection process may prevent individuals with important experience and
7 knowledge from becoming commissioners. While the goal of the random
8 selection may be to remove politics from redistricting, unaffiliated commissioners
9 with partisan views could still be selected, and the selection process may not
10 result in a commission that can be impartial and promote consensus.

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

21 **Estimate of Fiscal Impact**

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

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