

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

To: Frederick Michael Enstrom and Kathleen Chandler

From: Legislative Council Staff and Office of Legislative Legal Services

Date: March 31, 2026

Subject: Proposed Initiative Measures 2025-2026 #325, Concerning Congressional Redistricting Criteria, and 2025-2026 #326, Concerning Congressional Redistricting Criteria Using US Citizen Population

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Legislative Council Staff 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 and questions to you regarding the appended proposed initiatives.

The purpose of this statutory requirement of the directors of Legislative Council Staff and the Office of Legislative Legal Services is to provide comments and questions intended to aid designated representatives, and the proponents they represent, in determining the language of their proposal and to avail the public of the contents of the proposal. Our first objective is to be sure we understand your intended purposes of the proposal. We hope that the comments and questions in this memorandum provide a basis for discussion and understanding of the proposal. Discussion between designated representatives or their legal representatives and employees of the Legislative Council Staff and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

Proposed initiatives 2025-2026 #325 and #326 were submitted by the same designated representatives as a part of a group of related proposed initiatives, including proposed initiatives 2025-2026 #324 through #326. The comments and questions raised in this memorandum do not include comments and questions that were addressed in the memorandum for proposed initiative 2025-2026 #324, except as necessary to fully

understand proposed initiatives 2025-2026 #325 and #326. Comments and questions addressed in that memorandum may also be relevant, and those questions and comments are considered part of this memorandum.

Purposes

Purposes for Proposed Initiative 2025-2026 #325

The major purposes of the proposed amendment to the Colorado Constitution appear to be:

1. To define a “citizen population” in article V, section 44 of the Colorado Constitution;
2. To redefine a “community of interest” in article V, section 44 of the Colorado Constitution as a “traditional community of interest”;
3. To define new “geographical communities of interest” in article V, section 44 of the Colorado Constitution;
4. To ensure that congressional districts “achieve, to the extent possible, precise mathematical equality between districts based on citizen population as determined by the U.S. Census Bureau” if the U.S. Census Bureau produces citizen population for the state of Colorado;
5. To ensure that congressional districts “achieve, to the extent possible, precise mathematical equality between districts based on overall population as determined by the U.S. Census Bureau” if the U.S. Census Bureau does not produce citizen population for the state of Colorado;
6. To prohibit any congressional districting plan adopted in Colorado from being created with or influenced by partisan voter registration data or partisan electoral performance;
7. Repeal the requirement in article V, section 44.3 (3) of the Colorado Constitution that the the Colorado independent redistricting commission maximize the number of politically competitive districts; and
8. To require that congressional districting plans adopted in Colorado adhere to certain requirements, including:

- a. A county must contain the maximum number of whole congressional districts possible if the county's total population is greater than the population necessary for one or more congressional districts;
- b. A county may not be divided among more than two congressional districts;
- c. Geographic communities of interest must be preserved within a single congressional district when possible;
- d. No part of one county may be added to another county unless necessary to achieve population equality;
- e. The number of counties whose territory is contained in more than one congressional district must be as small as possible;
- f. The number of cities and towns whose territory is contained in more than one congressional district must be as small as possible; and
- g. Cities that are located in more than one county should be kept whole.

Purposes for Proposed Initiative 2025-2026 #326

The major purposes of the proposed amendment to the Colorado Constitution appear to be:

1. To define a "citizen population" in article V, section 44 of the Colorado Constitution ;
2. To ensure that congressional districts "achieve, to the extent possible, precise mathematical equality between districts based on citizen population as determined by the U.S. Census Bureau" if the U.S. Census Bureau produces citizen population for the state of Colorado;
3. To ensure that congressional districts "achieve, to the extent possible, precise mathematical equality between districts based on overall population as determined by the U.S. Census Bureau" if the U.S. Census Bureau does not produce citizen population for the state of Colorado;
4. Repeal the requirement in article V, section 44.3 (3) of the Colorado Constitution that the the Colorado independent redistricting commission maximize the number of politically competitive districts; and

5. To prohibit any congressional districting plan adopted in Colorado from being created with or influenced by partisan voter registration data or partisan electoral performance.

Substantive Comments and Questions

The substance of the proposed initiatives 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 each of the proposed initiatives?
2. Subsection (1)(a)(II) of section 44.3 requires that congressional districts achieve precise mathematical equality based on “citizen population” if that data is produced by the U.S. Census Bureau. How does this requirement conform to the “one-person, one-vote” principle under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, which federal courts have historically evaluated using total population?
3. Article I, Section 2 of the United States Constitution, as amended by the Fourteenth Amendment, requires that seats in the U.S. House of Representatives be apportioned based on the 'whole number of persons in each state.' Because federal law requires the inclusion of non-citizens for state apportionment, does the proponents' mandate to exclude non-citizens when drawing intrastate congressional district boundaries conflict with federal law?
4. The following questions relate to subsection (3)(a) of section 44 of article V of the Colorado Constitution in the proposed initiatives, which says that “Citizen Population means the number of persons who are U.S. citizens”, and subsection (1) of section 44.3 of article V of the Colorado Constitution in the proposed initiatives:
 - a. Does the U.S. Census Bureau “producing citizen population for the state of Colorado” refer to population data collected and published by the U.S. Census Bureau?
 - b. Is this referring only to citizenship data that is produced as part of the decennial census? Or if the U.S. Census Bureau produces citizenship data as

part of the American Community Survey, should that citizenship data also be used to redistrict?

- c. What is the difference between “citizen population” in subsection (1)(a)(I) of section 44.3 of article V of the Colorado Constitution in the proposed initiative and “overall population” in subsection (1)(a)(II)?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiatives. These comments will be read aloud at the public meeting only if the designated representatives 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 follows:

1. Each constitutional section being amended, repealed, or added is preceded by a separate clause, referred to as the “amending clause,” that explains how the law is being changed. Amending clauses are written in lowercase type and follow a specific format.
 - a. Amending clauses for the Colorado Constitution are written in the following format: “In the constitution of the state of Colorado, section 44.3 of article V, **amend** (1) and (2); and **repeal** (3) as follows:”.
 - b. Section 1 of proposed initiative #325 amends all parts of section 44 of article V of the Colorado Constitution. Thus, the amending clause should be written as follows: “In the constitution of the state of Colorado, **amend** section 44 of article V as follows:”.
2. In section 1 of proposed initiative #325, in proposed paragraph (3)(c), the “(I)” is displayed as stricken, although (II), (III), and (IV) are left intact. Please consider unstriking the “(I)”.
3. In (d) of section 1 of proposed initiative #325, the roman numerals designating subparagraphs are followed by periods. These periods are not necessary.
4. When amending existing constitutional text, if you are only changing a letter from uppercase to lowercase or vice versa, it is not necessary to show the letter as stricken or in small capital letters. For example, in subsection (1)(c) of section 2 of proposed initiative #326, “comply” can be written in normal lowercase text.

5. When repealing a subsection of the Colorado Constitution, the subsection number should not be stricken. For example, in section 2 of both proposed initiatives, (3)(a) should be written as follows: “(3) ~~(a)~~ Thereafter, the commission shall, to the extent possible, maximize the number of competitive districts.”. The paragraph letters should remain in striketype.
6. In section 2 of both proposed initiatives, the phrase “ONE PERSON” should not be hyphenated.