

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**To:** Suzanne Taheri and Chuck Broerman

**From:** Legislative Council Staff and Office of Legislative Legal Services

**Date:** April 1, 2026

**Subject:** Proposed Initiative Measures 2025-2026 #362, 363, and 364, Concerning Mail Ballot Voter Identification

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 #362** through **#364** were submitted by the same designated representatives as a series of proposed initiatives. The comments and questions raised in this memorandum address proposed initiatives **2025-2026 #362** through **#364**.

## **Purposes**

### **Purposes for Proposed Initiative 2025-2026 #362**

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

1. Require a voter to sign and provide the last four digits of either their Social Security number or a specific state-issued identification on the self-affirmation on the return envelope for a mail ballot;
2. Require the designated election official to notify a voter if they failed to complete the self-affirmation or their information cannot be confirmed in the statewide voter database and to inform the voter of the process to correct the discrepancy in the self-affirmation;
3. Prohibit the designated election official from counting a mail ballot that includes a discrepancy in the self-affirmation until the discrepancy is corrected; and
4. Specify that a discrepancy in the self-affirmation may be corrected by providing a copy of the voter's real identification to the designated election official or, for a voter eligible to vote under the federal Voting Accessibility for the Elderly and Handicapped Act, by providing any form of identification determined acceptable under the "Uniform Election Code of 1992."

### **Purposes for Proposed Initiative 2025-2026 #363**

The major purposes of the proposed amendment to the Colorado Constitution appear to be, for any election for which the county clerk and recorder is the designated election official, to:

1. Require a voter to sign and provide their full date of birth or the last four digits of either their Social Security number or a specific state-issued identification on the self-affirmation on the return envelope for a mail ballot;
2. Require the designated election official to notify a voter if they failed to complete the self-affirmation or their information cannot be confirmed in

the statewide voter database and to inform the voter of the process to correct the discrepancy in the self-affirmation;

3. Prohibit the designated election official from counting a mail ballot that includes a discrepancy in the self-affirmation until the discrepancy is corrected; and
4. Specify that a discrepancy in the self-affirmation may be corrected by providing a copy of the voter's real identification to the designated election official or, for a voter eligible to vote under the federal Voting Accessibility for the Elderly and Handicapped Act, by providing any form of identification determined acceptable under the "Uniform Election Code of 1992."

### **Purposes for Proposed Initiative 2025-2026 #364**

The major purposes of the proposed amendment to the Colorado Constitution appear to be, for any election for which the county clerk and recorder is the designated election official, to:

1. Require a voter to sign and provide their full date of birth or the last four digits of either their Social Security number or a specific state-issued identification on the self-affirmation on the return envelope for a mail ballot;
2. Require the designated election official to notify a voter if they failed to complete the self-affirmation or their information cannot be confirmed in the statewide voter database and to inform the voter of the process to correct the discrepancy in the self-affirmation;
3. Prohibit the designated election official from counting a mail ballot that includes a discrepancy in the self-affirmation until the discrepancy is corrected;
4. Specify that a discrepancy in the self-affirmation may be corrected by providing a copy of the voter's real identification to the designated election official or, for a voter eligible to vote under the federal Voting Accessibility for the Elderly and Handicapped Act, by providing any form of identification determined acceptable under the "Uniform Election Code of 1992;" and

5. Require the state to reimburse county clerks and recorders for their reasonable costs associated with implementing the proposed initiative.

## **Substantive Comments and Questions**

The substance of the proposed initiatives raise 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. Article V, section 1 (4)(a) of the Colorado Constitution requires that when the majority of voters approve an initiative, the initiative is effective on and after the date of the official declaration of the vote and proclamation of the governor.

Because the proposed initiatives do not contain an effective date, this would be the default effective date. Does this default effective date satisfy the proponents' intent? If not, the proponents should include the desired effective dates that are not earlier than the default effective date to comply with this constitutional provision.

3. Current law allows an individual who is unable to sign their name to complete the self-affirmation on a return envelope for a mail ballot by "making a mark on the self-affirmation, with or without assistance, witnessed by another person" instead of by signing the self-affirmation. *See* Sections 1-7.5-107 (3)(b.5)(II), 1-7.5-204 (1)(b)(II), and 31-10-910 (2)(c)(II) C.R.S. Is it the proponents' intent to require a signature on the self-affirmation and to disallow making such a mark for voters who are unable to sign their name? If not, would the proponents consider adding clarifying language to the initiatives to preserve the ability of individuals who cannot sign their names to make a mark on the self-affirmation instead of a signature?
4. Current law allows for many forms of identification in connection with voting. *See* section 1-1-104 (19.5), C.R.S. For purposes of the identification number required to be added to a self-affirmation by the proposed initiatives, is it the proponents' intent, except for voters covered by the federal Voting Accessibility for the Elderly and Handicapped Act, that voters may only provide the numbers associated with one of the three listed forms of identification (or a full date of birth for proposed initiatives 2025-2026 #363 and #364)?

5. How will the proposed initiatives be implemented? Is it the proponents' intent to have the General Assembly amend existing law to comply with the provisions of the proposed initiatives?
6. How will an election judge verify that the identification number information required by the initiatives to be included on the self-affirmation matches the voter's information contained in the statewide voter registration database? Under current sections 1-2-301 (4)(a)(II) and (5), C.R.S., county clerks and recorders and municipal clerks are allowed to have access to the digitized signatures of electors in the centralized statewide registration system for the purpose of comparing an elector's signature in the system with the signature on the return envelope of a mail ballot.
  - a. How will access to other necessary identifying information be provided?
  - b. The identification a voter submitted in order to register to vote may not match the information that a voter is required to provide on the self-affirmation under the proposed initiatives, so will election officials be able to use the information on the self-affirmation to actually verify or match the voter with the statewide voter registration database?
7. Current law allows the use of automated signature verification methods for mail ballots. Would those methods still be available under the proposed initiatives?
8. Subsection (2) of the proposed initiative 2025-2026 #362, and subsection (3) of proposed initiatives 2025-2026 #363 and #364, allows a voter to correct a discrepancy with the self-affirmation by providing a copy of the voter's real identification to the county clerk and recorder. The following comments and questions relate these subsections.
  - a. Is this process intended to be the sole mechanism for correcting a discrepancy with the self-affirmation?
  - b. Does this process apply to discrepancies both with a signature and with an identification number?
  - c. Will a voter's real identification correct a signature discrepancy?
  - d. What is meant by providing a copy of the voter's real identification "in person"? Is "in person" intended to mean providing the physical identification card to the election official, and doing so "in person"?

- e. What is meant by providing a copy of the voter's real identification "digitally"? Can a voter email a copy of their identification card to the election official? Does the voter have to provide a digital copy in person to the election official? What constitutes a "digital" copy of an identification card? Would a photograph stored on a voter's phone constitute a "digital" version" of the identification card?
  - f. How would this process work to correct a discrepancy with the self-affirmation if the voter includes on the self-affirmation the last four digits of their Social Security number instead of their state-issued identification number?
  - g. Concerning proposed initiatives 2025-2026 #363 and 2025-2026 #364, does this process also apply to discrepancies with a full date of birth?
  - h. Is this process intended to replace the current statutory processes that allow a voter to cure a deficiency, as specified in sections 1-7.5-107.3 (1.5) and (2), C.R.S., or in section 31-10-910.3, C.R.S., for municipal elections?
9. If the voter does not correct the discrepancy on the self-affirmation:
- a. What happens? Is the mail ballot rejected and not counted?
  - b. If the mail ballot is rejected and not counted, will this rejection follow the process outlined in current law in section 1-7.5-204 (2), C.R.S., which provides that, if the self-affirmation on the return envelope for the mail ballot is invalid, the election judges mark the envelope "rejected," write on the envelope the reason for the rejection, and set the envelope aside without being opened?
  - c. For municipal elections, will this process follow the process outlined in current law in section 31-10-910 (5), C.R.S., for the counting and rejection of ballots?
10. Under current law, a mail ballot may not be challenged solely on the basis of the signature that appears on the mail ballot and, instead, signatures on mail ballots must be reviewed in accordance with section 1-7.5-107.3, C.R.S. Would the identification number requirement added by the proposed initiatives follow this same process?

11. Are there specific safeguards to protect against public access to, or disclosure of, the personal identifying information required on the self-affirmation?
12. Is it the proponents' intent that the secretary of state be able to adopt rules as necessary to administer and enforce the proposed initiatives?
13. The following comment and question relates only to proposed initiatives **2025-2026 #363** and **2025-2026 #364**:
  - a. The introductory portion of subsection (1) of both proposed initiatives states that the initiatives cover only an "election in which the county clerk and recorder is the designated election official." Later on in the text of the initiatives, however, the phrase "county clerk and recorder or other designated elections official" is used. To which elections are these two proposed initiatives intended to apply?
14. The following comments and questions relate only to proposed initiative **2025-2026 #364**:
  - a. Subsection (5) of the proposed initiative requires the state to reimburse county clerks and recorders for their reasonable costs associated with implementing the proposed initiative.
    - i. What are "reasonable costs"?
    - ii. Do these include both direct and indirect costs?
    - iii. Who determines what costs are reasonable?
    - iv. How does this reimbursement mechanism interact with the existing statutory reimbursement requirement in section 1-5-505.5, C.R.S., which requires the state to reimburse each county for 45% of its election costs incurred for an election in which the state certifies any ballot content?

## **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 initiatives as follows:

1. It is standard drafting practice to not capitalize standalone titles of government officers or names of agencies. For example, "county clerk and recorder" should not be capitalized.
2. When citing to statute, including the United States Code, it is standard drafting practice to use "sec." rather than the symbol "§".
3. In proposed initiative #363, in subsection (3)(b), please ensure that the "note" directly follows "49 U.S.C. sec. 30301" because it is considered part of the statutory citation to the REAL Identification provision.
4. Consider adding "section" after "successor" if, by using the term "successor," you intend to accommodate for a statutory relocation of the identification provisions.
5. It is common drafting practice to use commas to set off parenthetical phrases. Consider adding a comma after "[n]otwithstanding the requirement of subsection (3) of this section" in paragraph (4) of proposed initiatives 2025-2026 #363 and #364.
6. In the reference to section (b)(2)(B)(ii) of the federal Voting Accessibility for the Elderly and Handicapped Act in proposed initiatives 2025-2026 #362 and #364, the first (b) should be lowercase.
7. There should be a comma following "et seq."