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MEMORANDUM

To: Suzanne Taheri & Chuck Broerman

From: Legislative Council Staff and Office of Legislative Legal Services

Date: April 1, 2026

Subject: Proposed Initiative Measure 2026-2026 #365, 366, 367 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 proposals and to avail the public of the contents of the proposals. Our first objective is to be sure we understand your intended purposes of the proposals. We hope that the comments and questions in this memorandum provide a basis for discussion and understanding of the proposals. 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 #365 through #367 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 #365 through #367.

Purposes

Purposes for Proposed Initiative 2025-2026 #365

The major purposes of the proposed amendments to the Colorado Constitution and to the Colorado Revised Statutes appear to be:

1. To amend the Colorado Constitution to require voters to present valid photo identification, which must be current or expired for no more than four years, to verify their identity when voting in person at a polling place;
2. To specify acceptable forms of photo identification, including Colorado Real Identification driver's licenses and cards, United States passports, United States military identification cards, and tribal photo identification;
3. To require voters casting a mail-in ballot to enter either the last four digits of their Colorado Real Identification or driver's license number or the last four digits of their Social Security Number next to their signature for identity verification;
4. To establish a process requiring county clerks to notify voters and provide a means to correct a discrepancy if the required mail ballot information is missing or cannot be confirmed and to withhold counting the ballot until that information is corrected;
5. To update the statutory definition of "identification;" and
6. To revise the self-affirmation language on mail ballot return envelopes to require a voter's last four digits of a driver's license, state identification, or Social Security Number.

Purposes for Proposed Initiative 2025-2026 #366

The major purposes of the proposed amendments to the Colorado Constitution and to the Colorado Revised Statutes appear to be:

1. To amend the Colorado Constitution to require voters to present valid photo identification, which must be current or expired for no more than four years, to verify their identity when voting in person at a polling place;
2. To specify acceptable forms of photo identification, including Colorado Real Identification driver's licenses and cards, United States passports, United States military identification cards, and tribal photo identification;
3. To require voters casting a mail-in ballot to enter the last four digits of their Colorado Real Identification or driver's license number, the last four digits of their

Social Security Number, or their full date of birth next to their signature for identity verification;

4. To establish a process requiring county clerks to notify voters and provide a means to correct a discrepancy if the required mail ballot information is missing or cannot be confirmed and to withhold counting the ballot until that information is corrected;
5. To update the statutory definition of "identification;" and
6. To revise the self-affirmation language on mail ballot return envelopes to require a voter's date of birth or the last four digits of a driver's license, state identification, or Social Security Number.

Purposes for Proposed Initiative 2025-2026 #367

The major purposes of the proposed amendments to the Colorado Constitution and to the Colorado Revised Statutes appear to be:

1. To amend the Colorado Constitution to require voters to present valid photo identification to verify their identity when voting in person at a polling place;
2. To establish that acceptable photo identification must be current or expired for no more than four years, with an exception allowing voters who are 70 years old or older to use identification that is expired for any length of time, provided it is otherwise valid;
3. To specify acceptable forms of photo identification, including Colorado Real Identification driver's licenses and cards, United States passports, United States military identification cards, and tribal photo identification;
4. To require voters casting a mail-in ballot to enter the last four digits of their Colorado Real Identification or driver's license number, the last four digits of their Social Security Number, or their full date of birth next to their signature for identity verification;
5. To establish a process requiring county clerks to notify voters and provide a means to correct a discrepancy if the required mail ballot information is missing or cannot be confirmed and to withhold counting the ballot until that information is corrected;
6. To entitle each county clerk to the reimbursement of costs associated with the execution of the constitutional voter authentication requirements in the proposed initiative;
7. To update the statutory definition of "identification;" and

8. To revise the self-affirmation language on mail ballot return envelopes to require a voter's date of birth or the last four digits of a driver's license, state identification, or Social Security Number.

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 your intent? If not, you should include the desired effective date that is not earlier than the default effective date to comply with this constitutional requirement.

3. The following questions relate to proposed article VII, section 13 (1) of the Colorado Constitution:
 - a. Proposed article VII, section 13 (1)(a) of the Colorado constitution requires photo identification when voting "in person at a polling place during early voting or on election day." If a voter fills out their mail ballot and physically drops it off at a polling place or drop box, are they subject to the photo identification requirement in proposed article VII, section 13 (1) or the mail ballot voter authentication requirements in proposed article VII, section 13 (2)?
 - b. Proposed article VII, section 13 (1)(a) of the Colorado Constitution requires a voter to present "photo identification." Proposed article VII, section 13 (1)(b) through (1)(f) of the Colorado Constitution lists acceptable forms of identification, prefaced by the phrase "acceptable forms of identification include:". Is it the proponents' intent that this list be exhaustive?
 - c. If the list of acceptable photo identification in the proposed constitutional amendment is intended to be exhaustive, how does this harmonize with

the proposed changes to section 1-1-104? The proposed amended statutory definition of "identification" in section 1-1-104 (19.5) retains alternative forms of identification, such as a "a valid student identification card" or a "valid medicare or medicaid card." Will voters be permitted to use these statutory forms of identification to vote in person, or does the constitutional amendment override the statute?

- d. Proposed article VII, sections 13 (1)(b), (1)(c), and (2)(a)(I) of the Colorado Constitution repeatedly uses the terms "Colorado Real Identification driver's license" and "Colorado Real Identification card." By including the word "real," is it the proponents' intent to mandate that only credentials compliant with the federal REAL ID Act are acceptable for voting? Does this intentionally exclude standard Colorado driver's licenses and identification cards issued to residents who opt out of the federal REAL ID requirements or who are otherwise ineligible for a REAL ID?
 - e. Proposed article VII, sections 13 (1)(b) and (1)(c) of the Colorado Constitution reference specific statutory sections, such as "sections 42-2-101 and 42-2-402." Does referencing these specific statutory sections in the Colorado Constitution freeze those definitions as they currently exist, preventing the General Assembly from modifying the requirements for a driver's license in the future without needing another constitutional amendment?
 - f. Proposed article VII, section 13 (1)(f) of the Colorado Constitution lists "tribal photo identification" as an acceptable form of in-person identification. Does this apply only to identification issued by federally recognized tribal governments, or does it include state-recognized tribes or other indigenous groups?
4. The following questions relate to proposed article VII, section 13 (2) of the Colorado Constitution:
- a. In proposed initiatives #366 and #367, proposed article VII, section 13 (2)(a) of the Colorado Constitution allows mail ballot voters to authenticate their identity using their "full date of birth. Because dates of birth are often public records, how does this provision securely authenticate a voter's identity compared to a Social Security Number or driver's license number?

- b. Proposed article VII, section 13 (2)(a)(I) of the Colorado Constitution requires "[t]he last four digits of the voter's Colorado Real Identification card or Colorado Real Identification driver's license number." Proposed statutory amendment to 1-7.5-107 (3.5)(d)(I) references a voter who fails to provide "the voter's Colorado driver's license number, the voter's state identification number." Does the statutory language require the voter to provide their entire driver's license or state identification number, or is it intended to align with the constitutional requirement of only the "last four digits?"
- c. For mail ballot voter authentication, proposed article VII, section 13 (2)(b) of the Colorado Constitution states that if an election judge cannot confirm the information provided matches the statewide voter registration database, the ballot shall not be counted until the discrepancy is corrected. If the database does not contain a voter's Social Security Number, how will the election judge confirm the last four digits provided by the voter?
- d. Proposed article VII, sections 13 (2)(b) and (2)(c) of the Colorado Constitution establish a process to correct a mail ballot discrepancy, stating the ballot must not be counted until the discrepancy is corrected. Meanwhile, the proposed amendment to section 1-7.5-107 (3.5)(d)(I) states that if the designated election official receives a copy of identification "within eight days after election day," the ballot shall be counted. Does the constitutional amendment implicitly adopt this eight-day statutory timeline, or could the lack of a specific constitutional timeline create administrative confusion if the statute is later amended?
- e. Is it the proponents' intent to exclude voters from using a United States passport, United States military identification card, or tribal photo identification to cure a mail ballot discrepancy, even though those forms of identification are explicitly deemed acceptable for in-person voting in proposed article VII, sections 13 (1)(d) through (1)(f) of the Colorado Constitution?
- f. In proposed initiative #367, proposed article VII, section 13 (2)(e) of the Colorado Constitution states that "[e]ach county clerk shall be entitled to reimbursement of costs associated with the execution of this section." What entity is responsible for reimbursing the county clerks?

5. The proposed amendments to the definition of "identification" in 1-1-104 (19.5)(a)(XI) redefine which student identification cards are acceptable, limiting those cards to those issued by a "public postsecondary education institution in Colorado." However, student identification cards are not included in the list of acceptable photo identification for in-person voting in the proposed amendments to the Colorado Constitution. What is the practical purpose of amending the statutory definition of student identification if that identification cannot be used to vote under the new constitutional provisions?
6. The proposed amendments to section 1-7.5-107 (3)(b.5)(I)(A) require voters to provide sensitive information (such as the last four digits of a Social Security Number or driver's license number) on the mail ballot return envelope. Have the proponents considered whether exposing this information on the exterior or accessible portions of a mail envelope conflicts with state or federal privacy laws or raises identity theft concerns during postal transit?

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. Proposed article VII, section 13 (1)(b) of the Colorado Constitution reads, "Colorado Real Identification driver's license, as codified as codified in 49 U.S.C. § 30301." This appears to be a typographical error.
2. It is common drafting practice to use commas to set off parenthetical phrases. For example, proposed article VII, section 13 (1)(c) of the Colorado Constitution in proposed initiatives #366 and #367 reads, "Colorado Real Identification card as codified in...". Proponents should consider adding a comma after "card."
 - a. A second comma should be added after "42-2-301" to set off the phrase correctly in proposed initiatives #365 and #366.
 - b. The comma after "any other state" should be removed in all three proposed initiatives.
3. In proposed initiative #367, proposed article VII, section 13 (1)(c) of the Colorado Constitution reads, "sectin 42-2-301." Proponents should consider correcting the misspelling of "section".

4. "US" should be written out as "United States."
5. Following a sentence fragment that leads into a list, it is standard drafting practice to end each paragraph with a semicolon, with the second-to-last list item ending in either "; and" or "; or". The last list item should end in a period.
 - a. The sections following the sentence fragment should also be broken down further. For example:

(1) PHOTO IDENTIFICATION.

(a) ACCEPTABLE FORMS OF IDENTIFICATION INCLUDE:

(I) US PASSPORT;

(II) US MILITARY IDENTIFICATION CARD;

(III) TRIBAL PHOTO IDENTIFICATION; AND

(IV) MAIL BALLOT VOTER AUTHENTICATION.

4. Proposed article VII, section 13 (2)(d) of the Colorado Constitution cites the federal Voting Accessibility for the Elderly and Handicapped Act as "section (B)(2)(B)(ii) of the federal 'voting accessibility for the elderly and handicapped act', 52 U.S.C. sec. 20102 et seq." The standard citation format for this specific provision in the United States Code is typically 52 U.S.C. § 20102 (b)(2)(B)(ii).

5. Amending clauses follow a specific format. For example, the proposed amending clause for 1-1-104 in section 2 of the proposed initiatives should read as follows:

In Colorado Revised Statutes, 1-1-104, **amend** (19.5) as follows:

6. It is not necessary to include "C.R.S." after each statutory section number. Proponents should consider striking these references from current statute.

7. Because the entirety of (3)(b.5) is not being amended in section 3 of the proposed initiatives, the amending clause should read as follows:

In Colorado Revised Statutes, 1-7.5-107, **amend** (3)(b.5)(I)(A) and (3.5)(d)(I) as follows: