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MEMORANDUM

To: Joshua Walen & Patricia Ficter

From: Legislative Council Staff and Office of Legislative Legal Services

Date: April 17, 2026

Subject: Proposed Initiative Measure 2027-2028 #3 & #4, Concerning Proportional Representation in Elections

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 proposal. 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 2027-2028 #3 and #4 were submitted by the same designated representatives as a series of proposed initiatives. The comments and questions raised in this memorandum address proposed initiatives 2027-2028 #3 and #4.

Purposes

Purposes for Proposed Initiative 2027-2028 #3

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

1. To mandate that members of the state Senate and House of Representatives be elected by a system of balloting and proportional representation;
2. To elect members of the state Senate using single-member districts and to elect members of the state House primarily using five-member districts, with exceptions allowing the ten geographically largest House districts to remain single-member or combine to form two-member districts under certain conditions;
3. To apply the same balloting method used by the state House to the election of statewide officials in single-member districts;
4. To elect United States senators using the state House of Representatives' single-member balloting method and to elect United States representatives proportionally in three- to five-member districts, excepting the two geographically largest districts, to the extent permitted by federal law;
5. To allow the University of Colorado Board of Regents, statutory counties, and school boards to adopt proportional representation mirroring the state House of Representative's method by a simple majority vote;
6. To alter the method of nomination for partisan candidates, allowing major parties to nominate up to three candidates for single-member districts and up to four candidates for multi-member districts, while limiting minor parties to one candidate for single-member districts and up to two candidates for multi-member districts; and
7. To create an independent balloting commission to determine whether voters are best served by pick-one ballots with an open-list proportional representation tally or ranked method ballots with a single transferable vote tally.

Purposes for Proposed Initiative 2027-2028 #4

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

1. To mandate that members of the state Senate and House of Representatives be elected by a system of balloting and proportional representation;
2. To elect members of the state Senate using single-member districts and to elect member the state House primarily using five-member districts, with exceptions allowing the ten geographically largest House districts to remain single-member or combine to form two-member districts under certain conditions;
3. To apply the same balloting method used by the state House to the election of statewide officials in single-member districts;
4. To elect United States senators using the state House of Representatives' single-member balloting method and to elect United States representatives proportionally in three- to five-member districts, excepting the two geographically largest districts, to the extent permitted by federal law;
5. To allow the University of Colorado Board of Regents, statutory counties, and school boards to adopt proportional representation mirroring the state House's method by a simple majority vote;
6. To alter the method of nomination for partisan candidates, allowing major parties to nominate up to three candidates for single-member districts and up to four candidates for multi-member districts, while limiting minor parties to one candidate for single-member districts and up to two candidates for multi-member districts;
7. To establish that, unless otherwise determined by the will of the voters, the method of balloting and tallying shall default to pick-one ballots with an open-list proportional representation tally; and
8. To create a commission specifically tasked with determining the method of open-list proportional representation that best serves Colorado voters in the event voters have not adopted an alternative voting method.

Substantive Comments and Questions

The substance of the proposed initiative 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. 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. What is the first election to which the proposed initiatives are meant to apply?
4. A proposed initiative must indicate where the text of the proposed initiative will be located in the Colorado Constitution or the Colorado Revised Statutes. The proposed initiatives make this indication with some, but not all of the proposed new sections of law.
5. The following comments and questions relate to section 1 of the proposed initiatives:
 - a. Proposed article V, section 45 (1) of the Colorado Constitution states that both the state Senate and the House of Representatives shall be "elected by a system of balloting and proportional representation." However, proposed article V, section 45 (2) of the Colorado Constitution states that the Senate shall be elected to represent single-member districts.
 - i. How can proportional representation be achieved in a district that only elects a single member?
 - ii. Does the phrase "proportional representation" strictly apply to the multi-member state House of Representative districts, or is there a specific mathematical mechanism intended for the state Senate?

- b. Proposed article V, section 45 (3) of the Colorado Constitution provides exceptions for the "ten geographically largest districts," allowing those districts to remain single-member districts or combine to form a two-member district "in the event that a smaller district is within it as mitigated by a corresponding change to reduce the number of members of for the geographically largest 5 member district."
 - i. What is the proponents' intent with this provision?
 - ii. How does a "smaller district" exist "within" another district?
 - iii. What is the specific meaning of "mitigated by a corresponding change to reduce the number of members?"
 - iv. What condition would be mitigated?
 - c. Article V, section 45 of the Colorado Constitution caps the General Assembly at 35 Senate members and 65 House of Representative members.
 - i. If the members of the House of Representative are elected primarily in five-member districts, with exceptions for single-member or two-member combinations, is it the proponents' intent that the total number of state House of Representatives members remain fixed at 65, or will this number fluctuate based on the geographic exceptions utilized?
 - ii. If the total number of state House of Representatives members fluctuates due to the geographic exceptions in proposed article V, section 45 (3) of the Colorado Constitution, is it the proponents' intent that the constitutionally limited total number of state Senate members also fluctuates, given the interlocked balloting methods?
6. The following comments and questions relate to section 3 of the proposed initiatives:
- a. This section lists the governor and lieutenant governor among those who "shall be elected... to represent single member districts." Pursuant to article IV, section 3 of the Colorado Constitution, the governor and lieutenant governor are elected jointly on a single ticket. Is it the proponents' intent to

sever the joint election of the governor and lieutenant governor, requiring them to run and be elected separately in their own respective single-member district races?

- b. Proposed article X, section X (1) of the Colorado Constitution requires statewide officials to be elected using the same balloting method to represent "single member districts." Are these races also considered to be conducted via proportional representation?
 - c. Proposed article X, section X (2) of the Colorado Constitution states that the University of Colorado Board of Regents, statutory counties, and school boards may adopt proportional representation "by simple majority." Does "simple majority" refer to a simple majority of the voters in a jurisdiction during an election, or does it refer to a simple majority vote by the governing body of a jurisdiction?
7. The following comments and questions relate to section 4 of the proposed initiatives:
- a. Proposed article X, section X (2) of the Colorado Constitution requires that United States Congressional representatives be elected in three to five-member districts "to the extent permitted by federal law." Specifically, 2 U.S.C. § 2c of federal law generally requires states to establish single-member districts for the election for the United States House of Representatives. If federal law remains unchanged and prohibits multi-member congressional districts, is it the proponents' intent that the state will entirely default to single-member districts for the United States House of Representatives?
 - b. Colorado currently has eight United States Congressional representatives. By reserving two single-member seats, there are only six seats remaining. Is it the proponents' intent to mandate exactly two three-member districts for the remainder of the state? How would this mathematical distribution apply if Colorado gains or loses congressional seats as a result of future federal decennial censuses?
 - c. Proposed article X, section X (3) of the Colorado Constitution states, "no federal body balloting limitations shall alter the state general assembly balloting." If a federal court rules that the multi-member proportional

representation system violates the federal Voting Rights Act for specific demographics in Colorado, is it the proponents' intent that the Colorado Constitution would prohibit the state from complying with the federal court order regarding state General Assembly balloting?

8. The amending clauses for section 5 of the proposed initiatives indicate that the proposed initiatives intend to amend article V section 46 (2) of the Colorado Constitution, but those proposed initiatives do not show new or stricken text in this section. Was this intentional? Do the proposed initiatives make any changes to this section of the Colorado constitution?
9. The following comments and questions relate to section 6 of the proposed initiatives:
 - a. Proposed section 1-4-502 (1.5) states that nominations for single-member districts in statewide offices "may be made for up to three candidates for each major party." If a district or statewide office only elects one individual, what is the proponents' intent in allowing a single political party to nominate three candidates for the general election ballot? How will votes be tallied if multiple candidates from the same major party split the vote in a single-member district?
 - b. Proposed section 1-4-502 (1.5) establishes nomination limits for "multi member districts in statewide races." Since statewide offices are elected by the entire state acting as a single jurisdiction, how can there be a "multi member district" within a "statewide race"? Is it the proponents' intent for this direction to apply to General Assembly races rather than statewide executive offices?
 - c. Proposed section 1-4-502 (1.5) states that nominations for multi-member districts in statewide races may be made for "up to four candidates for each major party and up to two for each minor party."
 - i. Since the state House of Representatives will primarily use five-member districts, is it the proponents' intent that no single major political party can ever run a full slate of five candidates for a five-member district?

- ii. If a party can only nominate four candidates for five available seats, how are voters expected to fill the fifth seat?
- iii. How do these nomination limits apply to unaffiliated candidates, who are not explicitly categorized as a "major party" or "minor party" in this subsection?

10. The following comments and questions relate to section 7 of proposed initiative 2027-2028 #3:

- a. What are "pick-one ballots with an open-list proportional representation tally"?
- b. What is the "ranked method ballot with single transferable vote tally as currently described in rule 26"? To what specific body of rules does "Rule 26" refer?
- c. What is the deadline for this commission to convene and make its final determination?
- d. What does it mean to say that the commission "shall be compromised in a manner that mirrors the independent redistricting commission," since the commission is required to have members who are county clerks and tenured professors, which the independent redistricting commission is not required to have?
- e. The proposed measure requires the committee to use "clear criteria for the selection of committee members.". Who selects the committee members? What does it mean for the committee to use clear criteria for the selection of committee members?
- f. Because the commission includes an even number of partisan and unaffiliated members, what happens if the commission ties or otherwise fails to reach a consensus on the balloting method?
- g. How is it determined whether a commission applicant has "competence in election administration" or "recent lobbying or candidacy"?
- h. Once the commission decides on a method, does that decision automatically bind the statutory counties, school boards, and CU Board of

Regents if they choose to adopt proportional representation under proposed section 3?

11. What constitutes the "will of voters" for purposes of section 7 of proposed initiative 2027-2028 #4?
12. The following comments and questions relate to section 8 of proposed initiative 2027-2028 #4:
 - a. Since the open-list proportional representation tally is already established as the default in proposed section 7, what specific details is the commission tasked with determining?
 - b. Is the commission intended to select the specific mathematical formula for allocating seats?

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. The following are technical comments for both proposed initiatives 2027-2028 #3 and #4:
 - a. It is standard drafting practice to show language being removed from the Colorado constitution in stricken type, e.g., ~~stricken type~~.
 - b. It is standard drafting practice to use small capital letters to show the language being added. To find small capital letters in Microsoft Word, go to the Home tab, click the arrow in the bottom right corner of the Font group, and in the Font dialog box, check the Small Caps checkbox under Effects.
 - c. Each section in the Colorado Constitution has a headnote. Headnotes are bolded, briefly describe the content of the section, and should follow the section number. Headnotes should never begin with a dash.
 - d. Amending clauses and headnotes are written in lowercase type.

- i. Amending clauses must specify the exact article, section, subsection, paragraph, etc. proponents intend to amend, add to, or repeal.
 - ii. Section numbers are referred to in digits, not roman numerals. For example, "section 10 of article X."
 - iii. A comma should never precede the phrase "as follows:".
- e. The following terms should be hyphenated:
 - i. "single-member district(s)"
 - ii. "two-member district(s)"
 - iii. "multi-member district(s)"
 - iv. "five-member district(s)"
 - v. "two-member district(s)"
 - vi. "open-list proportional representation"
- f. Pertaining to section 1 (3) of both proposed initiatives:
 - i. It is common drafting practice to use commas to set off parenthetical and nonessential phrases. For example:
 - 1. "The house shall be elected using the balloting and tally method determined by the commission, as described in section 7, to represent ...".
 - ii. When referencing a section within the same article, a specific format should be followed. For example:
 - 1. "Section 7 of this article V"
 - iii. Avoid combining two complete sentences with a comma. Instead, use a period or semicolon to separate the sentences. For example:
 - 1. The house shall be elected using the balloting and tally method determined by the commission as described in section 7 to represent five member districts, with the exception of the ten geographically largest districts which

may remain single-member districts. Alternatively, any of the ten largest districts may combine ...".

- iv. The following is not grammatically correct: "... reduce the number of members of for the geographically largest member district."
Consider removing either "of" or "for."
 - g. Both proposed initiatives jump from section 1 to section 3. Consider correcting this so that there is a section 2.
 - h. In section 3 (2) of both proposed initiatives, the subsection is missing a period at the end.
 - i. In section 4 (1) and (2) of both proposed initiatives, "United States" is misspelled as "United State."
 - j. In section 4 (2) of both proposed initiatives, the following is not grammatically correct: "... permitted under federal law for to represent three...". Consider removing "for."
 - k. In section 5 (2) of both proposed initiatives, consider adding the word "districts" after "representative." For example:
"After each federal decennial census, the congressional districts, the senatorial districts and the representative districts shall..."
 - l. In section 6 of both proposed initiatives, the amending clause should be formatted as follows:
"**SECTION 6.** In Colorado Revised Statutes, 1-4-502, **amend** (1); and **add** (1.5) and (1.6) as follows:"
 - m. Every sentence should begin with a capital letter.
2. The following is a technical comment for only proposed initiative 2027-2028 #4:
- a. In section 7 (1), "otherwise" is misspelled as "otherwide," and there are two periods at the end of the sentence.