

Amendment 76: Citizenship Qualification of Voters

- 1 **Amendment 76 proposes amending the Colorado Constitution to:**
2 • specify that “only a citizen” of the United States rather than “every citizen” of the
3 United States is eligible to vote in Colorado elections.

4 **What Your Vote Means**

YES A "yes" vote on
Amendment 76 will
change constitutional
language to specify that only U.S.
citizens age 18 and older are eligible to
participate in Colorado elections.

NO A "no" vote on
Amendment 76 means the
current constitutional
language allowing every U.S. citizen to
vote in Colorado elections will remain
unchanged.

Legislative Council Draft

1 **Summary and Analysis for Amendment 76**

2 **What are the requirements to vote in Colorado?**

3 The Colorado Constitution and state law establish the eligibility of voters. Under
4 current law, a U.S. citizen may vote in Colorado if he or she is at least 18 years old,
5 has lived in the state at least 22 days immediately prior to the election, and has
6 registered to vote. The Colorado Constitution guarantees this right to every
7 U.S. citizen, but does not specifically prohibit extending voting eligibility to
8 noncitizens or those under age 18. For example, state law allows 17-year-olds to
9 vote in primary elections if they will be 18 years old by the general election.

10 **What happens if Amendment 76 passes?**

11 Amendment 76 allows only U.S. citizens who have met all other legal requirements
12 to vote in elections. Adoption of the measure prevents the state from extending voter
13 eligibility to noncitizens in the future, as well as to those under the age of 18.

14 However, it is unclear if the measure prohibits a city or town with its own “home rule”
15 charter from expanding voter eligibility, and ultimately the courts may have to decide
16 how the measure is applied to elections in home rule cities and towns.¹

17 The measure has no immediate impact on voting requirements related to residency
18 and registration and does not change current election law that excludes noncitizens
19 from voting. However, under Amendment 76, 17-year-olds who are currently able to
20 vote in primary elections will no longer be eligible to do so.

21 **What happens if Amendment 76 fails?**

22 The current constitutional language allowing every U.S. citizen who has met the
23 other legal requirements to vote in elections remains unchanged.

24 **Who is considered a U.S. citizen under the law?**

25 U.S. citizenship is governed by federal law, specifically the federal Immigration and
26 Nationality Act. Federal law allows a person to become a U.S. citizen if he or she:

- 27 • was born in the United States or certain territories or outlying possessions of the
28 United States;
- 29 • was born abroad but had a parent who was a U.S. citizen at the time of the
30 person’s birth; or
- 31 • is naturalized, which is the process by which U.S. citizenship is granted to a
32 foreign citizen or national after he or she fulfills the requirements established by
33 the U.S. Congress.

34 **How are Colorado elections conducted?**

35 Coloradans vote on a variety of offices and ballot questions at the local, state, and
36 federal level. Local government elections include school district, special district, city,
37 and county elections. Colorado holds a general election each November in
38 even-numbered years. Additional elections may be called at other times, for
39 example to decide primary contests or for voters to decide local matters. Home rule

¹ Additional information on home rule cities and towns can be found in Legislative Council Publication Number 20-16 here:
<http://leg.colorado.gov/publications/home-rule-governance-colorado>.

Legislative Council Draft

1 cities and towns have the power to set the procedures for all matters pertaining to
2 city and town elections. All other elections are conducted pursuant to state laws.

For information on those issue committees that support or oppose the measures on the ballot at the November 3, 2020, 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>

3 **Argument For Amendment 76**

4 1) Voting is a fundamental right reserved for U.S. citizens. Amendment 76
5 guarantees that the state will not be able to pursue policies that allow noncitizens
6 to vote. The measure specifies who can vote in Colorado and provides
7 additional constitutional protections for Colorado's elections.

8 **Argument Against Amendment 76**

9 1) Amendment 76 makes an unnecessary and potentially divisive change. The
10 state already has a secure election system that ensures only those who meet
11 legal requirements can vote in elections. Ultimately, the measure seeks to solve
12 a problem that does not exist, may result in voter confusion about state and local
13 elections, and could discourage and even disenfranchise voters.

14 **Estimate of Fiscal Impact for Amendment 76**

15 **No fiscal impact.** Amendment 76 does not change the revenue, spending, or
16 workload of any state agency or local government, and is assessed as having no
17 fiscal impact.

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Last Draft as Mailed to Interested Parties

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3 **Argument For Amendment 76**

4 1) Voting is a fundamental right reserved for U.S. citizens. Amendment 76
5 guarantees that the state will not be able to pursue policies in the future that
6 allow noncitizens to vote. The measure exclusively specifies who can vote in
7 Colorado and provides additional constitutional protections for Colorado's
8 elections.

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18 fiscal impact.

Last Draft Comments from Interested Parties

Amendment 76 Citizenship Qualification of Voters

Douglas Bruce, representing himself:

Improved, but still inaccurate and confused.

Line 31 should begin "is naturalized,..." An application alone does not grant citizenship; citizenship itself must then be granted per federal law.

Your following language negates the plain meaning of this Amendment. Lines 39 and 1-2 say home rule has "the power to set the procedures for ALL MATTERS (in local elections)." That is what this amendment changes. Replace with "Amendment X requires U.S. citizenship and age 18 or older in order to vote in all state and local elections." Voting in Colorado is clearly a "matter of statewide concern."

Arg 1 FOR--delete "in the future." Current policy will be changed by this amendment in all elections. No government can pursue a policy at any time that violates the state constitution.

Arg 1 AGAINST--change last sentence to delete "a problem that does not exist" and "cold discourage and even disenfranchise voters."

How can you "disenfranchise" a 10-year-old from Mexico who does NOT have the right to vote? Staff says no problem exists, when the amendment clarifies local elections can now allow non-citizens and those under 18 to vote, but should not. Your analysis is lame. You can't say in lines 14-16 the law is unclear but that is not a problem! Staff has no right to say to voters the amendment is unclear; the fault is with staff. It is crystal clear. Your Arg #1 For says it "exclusively specifies."

People have a right to know when they can register and vote in any election. School boards and towns don't set their own voting rules, any more than the definition of murder. That is why ELECTIONS is the entire Article VII of the constitution, and Elections is the first title of the C.R.S. Section 10 limits voting by felons; it does not leave that up to Rifle or Cortez. Voting is the most important duty of state government.

After line 16, add a sentence that says the authors of the amendment believe it overrides home rule in towns as a matter of state (constitutional) law, and intend that result. The state supreme court said in 1943 and later (in a TABOR case) disclosing that pre-election intent publicly to voters shall aid them in interpreting the amendment and the will of the voters. So they have recently affirmed their 1943 ruling.

Staff drafters are not thinking clearly. That is why you offer so many ambiguities about the meaning and effect of citizenship in voting. Please correct it. I don't want to embarrass you in public about such obvious errors.

Last Draft Comments from Interested Parties

Robert Carlson, representing himself:

I agree only citizens, not illegals, registered to vote in Colorado should be permitted to vote.

R. Todd Davidson, representing City and County of Broomfield Elections Division:

This has come a long way. I'm no lawyer, but I think this is excellent analysis.

Thank you!

Scott Gesler, representing George Athanasopoulos and Arvin Michael as the proponents:

Dear Ms. Eslinger and Ms. King.

Thank you for the opportunity to provide comments on the fourth draft of the legislatively summary for Initiative 76. I have attached comments on behalf of the measure's proponents, Messrs Athanapolous and Michel.

Please do not hesitate to contact me if you have any additional questions.

Thank you,

Mr. Gessler also submitted comments contained in Attachment A.

Susan Thornton, representing herself:

I think the analysis is probably as good as you can make it. The proposal is unnecessary, and intended to raise fear among some voters that noncitizens will be allowed in the future to vote, although that has never happened. It addresses a problem that does not exist, is divisive, and contains provisions (such as application to home rule municipalities) that will have to be decided by the courts.



3 August 2020

PDF VIA EMAIL, ElectorQualification2020.ga@state.co.us

Ms. Cathy Eslinger
Colorado General Assembly
Legislative Council
200 E Colfax Ave RM 029
Denver, CO 80203-1716

Re: *Comments to Initiative 76 Bluebook Summary*

Dear Ms. Eslinger,

Thank you for another opportunity to submit additional comments on behalf of Mr. George Athanapolous and Mr. Arvin Michel, proponents of Initiative 76. Please accept these comments to the current Blue Book summary for Initiative 76.

1. Home rule municipalities.

The summary states:

However, it is unclear if the measure prohibits a city or town with its own “home rule” charter from expanding voter eligibility, and ultimately the courts may have to decide how the measure is applied to elections in home rule cities and towns.

As discussed in our earlier comments, under current case law the measure unambiguously applies to all home rule entities. In the event the voters adopt Initiative 76, they will be “presumed to know the existing law at the time they amend or clarify that law.”¹ Accordingly, the proper way to answer questions raised about the scope of home-rule municipal powers is to look at the existing law at the time of adoption – *not* to predict what a court might decide in determining this issue as a matter of first impression. In other words, courts will look to the existing case law as of November 2020 to determine the electorate’s intent in adopting Initiative 76.

¹ *Common Sense Alliance v. Davidson*, 995 P.2d 748, 754 (Colo. 2000); *Dnyer v. State*, 2015 CO 58, ¶ 19.

The existing, controlling law is unambiguous: Article VII, Section 1 overrides a municipality's home rule powers. Colorado courts have squarely confronted a conflict between Article VII and Article XX, and the Court of Appeals has ruled that Article VII prevails: "Any person meeting the requirements set forth in Colo. Const. art. VII is allowed to vote at all elections in this state, and a home rule municipality such as the Town [can] not deny that right."² This is the existing, controlling case law.

I have reviewed previous comments to prior drafts and carefully reviewed the applicable case law. Neither contains any authority whatsoever that contradicts or limits the ruling *May v. Town of Mountain Village*, and there is no authority that enables a home-rule municipality to avoid the requirements of Article VII, Section 1. Accordingly, it is simply incorrect to state "it is unclear if the measure prohibits a city or town with its own 'home rule' charter from expanding voter eligibility." The existing law is clear, supported by directly applicable language from an appellate court that has considered a conflict between Article VII and Article XX. Those who oppose this interpretation have provided no support for their position. .

In short, if and when the voters adopt Initiative 76, they will also be adopting the legal ruling contained in *May v. Town of Mountain Village*. They will be adopting existing law under which Article VII, Section 1, overrides and municipal powers under Article XX.

For this reason, the summary should be modified to read:

~~However, it is unclear if the measure prohibits a city or town with its own "home rule" charter from expanding voter eligibility, and ultimately the courts may have to decide how the measure is applied to elections in home rule cities and towns.~~

Alternatively, if the summary retains the "unclear" language, it should also inform voters that the Proponents specifically intend the measure to apply to home-rule municipalities, in part because of the ballot title and submission clause. Voters should be made fully aware that Initiative 76 is specifically intended to apply to home-rule municipalities. A statement to this effect provides voters a "reasonable opportunity . . . to become informed"³ about the consequences of Initiative 76. Thus, voters will not be blindsided when Proponents (or other supporters) argue that the measure applies to home-rule municipalities.

² *May v. Town of Mountain Village*, 969 P.2d 790, 794–95 (Colo. App. 1998).

³ Colo. Const. art. V, § 1.

There are two supporting reasons that voters should receive this information. First, courts will look to the ballot title and submission clause to when interpreting the measure.⁴ For Initiative 76, that clause unambiguously asks “[s]hall there be an amendment to the Colorado constitution requiring that to be qualified to vote at *any election* an individual must be a United States citizen?” (Emphasis supplied.) Voters should understand that courts will look to this language encompassing “any election” to construe Initiative 76.

Second, courts will also look to “other relevant materials” beyond the Blue Book and ballot title and submission clause.⁵ Courts will consider “[e]vidence of the contemporary interpretation of those actively promoting the amendment.”⁶ For example, the Colorado Supreme Court looked to the drafting history to interpret the scope of a term-limit initiative, holding that “the drafters . . . believed that the proposed amendment would cover every elected official in Colorado not already term-limited”⁷

Here, the drafting history during the review and comment session is silent on the scope of Article VII with respect to home-rule municipalities, but the current comments by the Proponents are a “contemporary interpretation,” and it shows that the drafters believe that the proposed amendment will cover every election, including municipal elections. Furthermore, the Proponents have advanced this unambiguous interpretation of their own measure well before adoption by the electorate and any potential litigation. The electorate should fully understand this.

Accordingly as an alternative to changing the “unclear” language, the summary should include a sentence as follows:

However, it is unclear if the measure prohibits a city or town with its own “home rule” charter from expanding voter eligibility, and ultimately the courts may have to decide how the measure is applied to elections in home rule cities and towns. THE DRAFTERS AND SUPPORTERS OF THE MEASURE INTERPRET IT TO APPLY TO ANY ELECTION, INCLUDING ANY ELECTION HELD BY A “HOME RULE” CITY OR TOWN.

Finally, if the summary will not include an additional statement regarding the Proponents’ position, then it should remove the “unclear” language entirely. There is *always* uncertainty involving every ballot initiative; “[i]t is probably nearly impossible to draft a

⁴ See, e.g., *In re Submission of Interrogatories on House Bill 99-1325*, 979 P.2d 549, 554 (Colo. 1999), *as modified on denial of reh'g* (May 17, 1999).

⁵ See, e.g., *Dnyer v. State*, 2015 CO 58, ¶ 19.

⁶ *Lobato v. State*, 218 P.3d 358, 375 (Colo. 2009)(internal quotation and citation omitted).

⁷ *Davidson v. Sandstrom*, 83 P.3d 648, 657 (Colo. 2004).

proposed constitutional amendment that could anticipate and provide for all conceivable practical problems that may arise in actually applying and implementing the amendment.”⁸ To be sure, some commenters have raised the issue of home rule municipalities. But this does not mean that Initiative 76 differs from any other adopted initiative, in that nearly all initiatives are subject to controversy and litigation at some point following adoption.

Further, there is no indication that a controversy involving Article XX will ever arise – currently no municipality allows noncitizens the ability to vote, and there is no indication that any municipality plans to extend voter eligibility to noncitizens in the future. Accordingly, the Blue Book should not single out Initiative 76 by identifying a hypothetical, or speculative, legal controversy.

For this reason, the summary should be modified to read:

~~However, it is unclear if the measure prohibits a city or town with its own “home rule” charter from expanding voter eligibility, and ultimately the courts may have to decide how the measure is applied to elections in home rule cities and towns.~~

2. Argument For

Lastly, the Proponents wish to submit one additional comment under the “Arguments For” section, which we did not include in our previous comments. Specifically, one of the arguments for the proposal is that a citizen’s right to vote should not be diluted by noncitizen votes. Citizenship matters. It is a cherished right, and one of the primary values of citizenship is that it confers the right to determine the governance and future of our state and country. Indeed, Initiative 76 affects voter eligibility for national, state and local elections.

For this reason, we ask that you add under “Arguments For” the following language:

- 2) CITIZENSHIP MATTERS, AND ONE OF THE PRIMARY VALUES OF CITIZENSHIP IS THAT IT CONFERS THE RIGHT TO DETERMINE THE GOVERNANCE AND FUTURE OF OUR STATE AND COUNTRY. A CITIZEN’S RIGHT TO VOTE SHOULD NOT BE DILUTED BY NONCITIZEN VOTES.

⁸ *People v. Clendenin*, 232 P.3d 210, 218 (Colo. App. 2009)(Loeb, J. specially concurring).

Again, thank you for your consideration of the above objections. Please feel free contact me via email at sgessler@gesslerlawfirm.com, or on my cell phone at 720-839-6637, if you have any questions or if I can provide further assistance.

Very truly yours,
GESSLER LAW, LLC



By: _____
Scott E. Gessler

Amendment 76
Citizenship Qualifications of Voters
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Amendment 76
Citizenship Qualification of Electors

1 **Ballot Title:**

2 Shall there be an amendment to the Colorado constitution requiring that to be qualified to vote at
3 any election an individual must be a United States citizen?

4 **Text of Measure:**

5 Colo. Const. Art. VII, Section 1. In the constitution of the state of Colorado, **amend** section 1 of
6 article 7 as follows:

7 ~~Every citizen~~ ONLY A CITIZEN of the United States who has attained the age of eighteen years, has
8 resided in this state for such time as may be prescribed by law, and has been duly registered as
9 a voter if required by law shall be qualified to vote at all elections.