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Colorado General Assembly

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MEMORANDUM

To: John Retrum & Craig Donaldson

From: Legislative Council Staff and Office of Legislative Legal Services

Date: March 13, 2026

Subject: Proposed Initiative Measures 2025-2026 #262, Concerning elect members of the General Assembly by open list proportional representation

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 initiative.

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.

This proposed initiative 2025-2026 #262 was submitted by the same designated representatives as a part of a group of related proposed initiatives, including proposed initiatives 2025-2026 #262 through #264. The comments and questions raised in this memorandum do not include comments and questions that were addressed in the memoranda for proposed initiatives 2025-2026 #263 and #264, except as necessary to fully understand proposed initiative 2025-2026 #262. Comments and questions

addressed in those memoranda may also be relevant, and those questions and comments are considered part of this memorandum.

Purposes

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

1. To change the method of electing members of the Colorado General Assembly to open list proportional representation;
2. To divide the state into seven senatorial districts and thirteen representative districts, with five members to be elected from each district;
3. To guarantee that a political party receives at least one seat in a district if its nominees collectively receive more than one-sixth of the votes cast, and at least three seats if they receive more than half of the votes cast;
4. To require that all five state senators from a given district be elected at the same general election;
5. To amend the criteria for the independent legislative redistricting commission by redefining a competitive district as one having a reasonable potential for the party affiliation of at least one of the district's representatives to change;
6. To authorize political parties, joint slates, and unaffiliated slates to nominate up to five candidates in each legislative district and determine the rank order in which they appear on the ballot;
7. To create petitioning processes for minor political parties and unaffiliated candidates to run as multi-member slates;
8. To require that ballots group candidates by their political party, joint slate, or unaffiliated slate, and allow voters to vote for one candidate;
9. To establish the Jefferson Method of proportional representation as the mathematical process for tallying votes and awarding seats to candidate slates based on their proportional vote share; and
10. To require that any vacancy in the General Assembly be filled by a member of the same political party as the vacating member.

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 the proposed initiative?
2. The following questions relate to section 1 of the proposed initiative:
 - a. What is the proponents' intent in stating that the general assembly shall determine a method of proportional representation while dictating a method of proportional representation in the proposed initiative?
 - b. Proposed article V, section (2) of the Colorado Constitution guarantees that a certain number of a "political party's nominees will be elected" if certain conditions are met. Do these guarantees apply to unaffiliated slates or write-in candidates? Proposed section 1-7-1102 (3)(a) of the Colorado Revised Statutes states that each joint slate, unaffiliated slate, and write-in candidate is treated as "a separate political party for purposes of tallying the votes".
 - c. What is meant by "the votes cast" in proposed article V, section 2 (2)? Is "votes cast" intended to mean the total number of ballots cast by voters residing in the district (including ballots where the voter left the General Assembly race blank), or does it strictly mean the total number of valid votes tabulated for that specific General Assembly race? How do undervotes impact the calculation of the one-sixth and one-half constitutional thresholds?
 - d. The reenacted language in article V, section 2 (5) of the Colorado Constitution states that a person appointed to fill a vacancy "shall be a member of the same political party, if any, as the person whose termination of membership...created the vacancy".
 - i. If an individual who ran as part of an "unaffiliated" slate creates a vacancy, what is the mechanism for filling it? How does the mechanism interact with the current procedures in section 1-12-203?

- ii. Proposed section 1-1-104 (20.5) of the Colorado Revised Statutes states that a "joint slate is treated as the slate of a single political party when counting votes". If a vacancy is created by a member who was elected on a joint slate, which political party is entitled to fill the vacancy under article V, section 2 (5)?
3. The following questions relate to section 2 of the proposed initiative:
 - a. Is it possible for one-half of the state senators to be chosen biennially, if state senators are elected in five member districts?
 - b. Since state senators currently serve staggered four-year terms, how do proponents intend to handle the transition for sitting senators whose terms extend past the election when the new method of election goes into effect? Will some senators' terms be truncated, or will there be a transition period?
4. The initiative has an effective date of January 1, 2027. Article V, section 46 of the Colorado Constitution requires that the independent legislative redistricting commission convenes and establishes districts "[a]fter each federal decennial census". Is it the proponents' intent that the commission must convene out of cycle in 2027 to draw the new seven state senate and thirteen state house districts using 2020 census data in time for either the 2028 or 2030 elections?
5. Section 4 of the proposed initiative reduces the number of state senate districts from thirty-five to seven. Article V, section 1 (2.5) of the Colorado Constitution requires that "a petition for an initiated constitutional amendment shall be signed by registered electors who reside in each state senate district in an amount equal to at least two percent of the total registered electors" Is the proponents intent to lower the signature threshold for initiated constitutional amendments?
6. Section 5 of the proposed initiative amends the definition of "competitive" to mean having a reasonable potential for the party affiliation of "at least one" of the district's representatives to change. Given the lower vote threshold required to win one out of five proportional seats, will virtually every newly drawn district meet this definition of competitiveness?
7. The following questions relate to proposed section 1-1-104 (20.5) of the Colorado Revised Statutes:

- a. How does this proposed section interact with sections 1-4-502 (1) and (2)? Is it the proponents' intent to authorize multiple political parties to cross-endorse a single slate of candidates?
 - b. How are two political parties meant to “jointly nominat[e]” candidates? How will this process be decided?

8. The following questions related to section 7 of the proposed initiative:
 - a. If a joint slate is nominated, how will the rank order of the candidates be determined under proposed section 1-4-601 (2)(a), given that two different political parties with potentially different party rules are involved?
 - b. Proposed section 1-4-601 (2)(a) directs the political party to determine the "rank order" of each slate of candidates. However, proposed section 1-7-1102 (3)(c) dictates that seats are awarded to the nominee of the winning party “with the highest vote total that has not yet been elected”. If candidates are seated based strictly on their individual vote totals, does the "rank order" determined by the party have any legal bearing on who is elected, or is it used exclusively to determine the visual sequence of names on the printed ballot?

9. The following questions relate to section 8 of the proposed initiative:
 - a. Proposed sections 1-4-802 (1)(h)(III) and (1)(i)(III) require petition signatures equal to the lesser of 1,000 or one percent of votes cast in the district "in the most recent general election." Because Section 4 of the initiative alters district boundaries, how will the Secretary of State calculate the "votes cast" for the newly created districts during the initial 2028 election cycle?
 - b. Proposed section 1-4-802 (1)(i) allows "between one and five unaffiliated candidates" to self-nominate as a slate. If an independent candidate wishes to run alone without any affiliations, must they legally declare themselves as a "slate" of one to appear on the ballot?

10. Proposed sections 1-4-802 (1)(i)(I) and (1)(i)(II) allow unaffiliated candidates to propose a name for their slate in "not more than three words." Are there any restrictions on what this name can be (e.g. an unaffiliated slate proposing “The Democratic Slate”)? Who imposes and decides on these restrictions?

11. Proposed section 1-4-1304 (1.5)(c) states that if more than five candidates qualify for a minor political party by assembly or petition, the candidates must be nominated at a primary election. What voting method is intended for this primary election to narrow the field down to the final slate of five candidates?
12. How is the order of the slates (e.g., determining whether the Democratic Party slate, Republican Party slate, or unaffiliated slate appears first on the ballot) determined under this new system?
13. Proposed section 1-7-503 (2) states that “[v]oters may vote for one candidate.” What happens if a voter votes for two or more candidates? Is the answer different if all of the candidates that the voter votes for belong to the same party’s slate?
14. The following comments and questions relate to proposed section 1-7-1102 (3):
 - a. Proposed section 1-7-1102 (3)(a) dictates that "each write-in candidate [is] treated as a separate political party for purposes of tallying the votes". Are write-in candidates permitted to form joint slates with other write-in candidates? Furthermore, if a single write-in candidate's total vote share mathematically entitles them to two seats based on the Jefferson Method, what happens to the second seat, since they are presumably treated as a separate party with only one nominee?
 - b. Section 1-7-114 (1) states that “electors may cast a write-in vote for a candidate who has filed an affidavit of intent of write-in candidacy pursuant to section 1-4-1101.” Do the proponents intend to allow write-in candidates to file a joint affidavit to form a "write-in slate" to pool their votes, or must all write-in candidates compete strictly as single-member entities?
 - c. Proposed section 1-7-1102 (3)(b) states that if all nominees of a political party have been elected, that party's score shall be zero. If a party or unaffiliated slate runs fewer candidates than the number of seats they mathematically win based on their vote share, is it the proponents' intent that the "extra" seat is effectively forfeited and passed to the party with the next highest score?

- d. Proposed section 1-7-1102 (3)(c) dictates that ties are resolved "by lot."
Does this apply to ties between political parties competing for the highest score, ties between candidates within the same party competing for the highest individual vote total, or both? Who is responsible for conducting the lot drawing?
15. The proposed initiative takes effect on January 1, 2027, but it describes a different process for the election of members of the General Assembly. Is it the proponents' intent that this new process is followed for the 2028 general election? Does the new process require new elections before the convening of the General Assembly in January of 2027?

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. It is standard drafting practice to show language being removed from the Colorado Constitution or the Colorado Revised Statutes in stricken type, e.g., ~~stricken type~~. Language that is being newly added should be shown in small capital letters, while language that currently exists and is not being removed should be shown in standard lowercase text, even if the existing language is being moved within the section. Section 1 of the proposed initiative has existing constitutional language written in small capital letters and removes existing constitutional text without showing it in stricken type.
2. Constitutional and statutory sections that are not being amended, repealed, or added do not need to be included in the initiative. For example, in section 5 of the proposed initiative, (3)(a) does not need to be included.
3. Section 1 of the proposed initiative should show current subsections (2) and (3) in striketype with the new language of subsections (2) and (3) after the strike type in small caps. There should be no strike type of (2) and (3) in subsections (4) and (5) The amending clause should state: "In the constitution of the state of

Colorado, section 2 of the article V, amend (2) and (3), and (3), (4), and (5) as follows:".

4. In section 1 of the proposed initiative, the provisions of subsections (2)(a) and (2)(b) should start with a capital letter.
5. Section 11 of the proposed initiative adds section 1-7-503 to the Colorado Revised Statutes, but that section already existed and has been repealed. As such, the amending clause should say to **add** section 1-7-504" and the section should be renumbered to 1-7-504.
6. In section 12 of the proposed initiative, subsections (3)(b), (3)(c), and (3)(d) contain references to subsections, the proper way to refer to them in statute is "subsection (3)(a) of this section" or "subsection (3)(b) of this section". The letter should be in regular type not small capitals.