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Colorado General Assembly

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MEMORANDUM

To: Luke Lusardi and Philip Bove

From: Legislative Council Staff and Office of Legislative Legal Services

Date: September 5, 2025

Subject: Proposed initiative measure #143, concerning emergency congressional redistricting

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council 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 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 Colorado Legislative Council and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

Purpose

The major purpose of the proposed amendment to the Colorado Constitution appears to be to create an emergency congressional redistricting process that occurs under specified circumstances and with specific requirements, notwithstanding existing constitutional requirements for an independent congressional redistricting commission and its related requirements.

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 (8) of the Colorado Constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado". To comply with this constitutional requirement, this phrase must be added to the beginning of the proposed initiative.
3. 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 initiative does not contain an effective date, this would be the default effective date. Does this default effective date satisfy your intent? If not, the proponents should include the desired effective date that is not earlier than the default effective date to comply with this constitutional requirement.

4. Is it the proponents' intent that the language "Colorado Election Rigging Response Act (CO-ERRA)" appear in the constitution along with the other text in the proposed initiative? If so, where should that language appear?
5. The proposed initiative's headnote contains the phrase "Section X" but does not indicate the article or section number where this amendment would be placed within the Colorado Constitution. Where do the proponents intend for the proposed initiative to be placed within the Colorado Constitution?

6. The following comments and questions relate to subsection (1) of the proposed initiative:
- a. The introductory portion of subsection (1) of the proposed initiative states, in part, "Notwithstanding any provisions of Article V, Sections 44 and 48 of the Colorado Constitution"
 - i. Section 44 of article V of the Colorado Constitution requires the creation of an independent congressional redistricting commission. Is it the proponents' intent that all constitutional provisions concerning the independent congressional redistricting commission are superseded if the provisions of this proposed initiative are satisfied?

If so, there are other constitutional provisions related to the independent congressional redistricting commission, sections 44.1 through 44.6 of article V of the Colorado Constitution, that are not specifically addressed by the proposed initiative. What is the proponents' intent with respect to the applicability of those constitutional provisions when the provisions of this proposed initiative are satisfied? The proponents should clarify their intent in the proposed initiative.
 - ii. Section 48 of article V of the Colorado Constitution addresses organizational, procedural, transparency, voting, public hearing, ethical, and lobbying requirements affecting the independent legislative redistricting commission, not the independent congressional redistricting commission.
 - 1. Is it the proponents' intent that the proposed initiative only concerns congressional redistricting and not legislative redistricting for the state's General Assembly? If so, what is the proponents' intent in mentioning section 48 of article V of the Colorado Constitution?
 - 2. By attempting to exclude the organizational, procedural, transparency, voting, public hearing, ethical, and lobbying requirements affecting the independent congressional redistricting commission, is it the proponents' intent that

these existing constitutional requirements do not apply when the provisions of the proposed initiative are satisfied?

3. There are other constitutional provisions related to the independent legislative redistricting commission, sections 46, 47, and 48.1 through 48.4, of article V of the Colorado Constitution that are not specifically addressed by the proposed initiative. If it is the proponents' intent that the provisions of section 48 of article V of the Colorado Constitution do not apply when the provisions of the proposed initiative are satisfied, what is the proponents' intent with respect to the applicability of the other constitutional provisions regarding legislative redistricting when the provisions of the proposed initiative are satisfied?
- b. What would qualify as a "declaration of the Governor" under subsection (1)(a)? Would the declaration need to be made in a certain form or manner?
 - c. The following questions relate to subsection (1)(b) of the proposed initiative:
 - i. By requiring the governor to initiate the redistricting process upon the General Assembly's joint resolution, is it the proponents' intent that the governor has exclusive authority over the emergency redistricting process notwithstanding the initiation by the General Assembly?
 - ii. Does the joint resolution need to be made in a certain form and manner?
 - iii. Since the statement "in which case the Governor shall be required to initiate the emergency redistricting process as outlined in this section" is only included in subsection (1)(b) of the proposed initiative, does that mean that the governor is not required to "initiate the emergency redistricting process" if the governor makes a declaration pursuant to subsection (1)(a) of the proposed initiative?

- iv. Can the governor veto a joint resolution passed by the General Assembly pursuant to subsection (1)(b) of the proposed initiative? If so, can the General Assembly override that veto?
- v. How soon after the passage of the joint resolution described in subsection (1)(b) of the proposed initiative must the governor “initiate the emergency redistricting process”? Is that process the same as the process described in section (3) of the proposed initiative?

7. The following questions relate to the subsection (2) of the proposed initiative:

- a. What constitutes “[t]his authority”? Is this meant to be the “triggering authority” of the governor or the General Assembly specified in subsection (1) of the proposed initiative?
- b. What constitutes “substantial evidence”? What would be the proper venue and method to challenge whether there was “substantial evidence”?
- c. Does the statement that “[t]his authority may be exercised if ...” mean that if the governor and a majority of the members in at least one chamber of the General Assembly could choose not to exercise the “triggering authority”, regardless of whether there is substantial evidence for the factors described in subsections (2)(a) through (2)(c) of the proposed initiative?
- d. The following questions relate to subsection (2)(a) of the proposed initiative:
 - i. Does the language in subsection (2)(a) of the proposed initiative mean that “[t]his authority” may be exercised, even if the “attempt[] to coerce or compel states to adopt congressional district maps favoring one political party” does not succeed?
 - ii. Who qualifies as an “officer of the federal executive branch”?
 - iii. If the president or a federal executive branch officer suggests, and a state—without coercion or compulsion—“adopt[s] congressional district maps favoring one political party”, would that not satisfy the requirements of subsection (2)(a) of the proposed initiative?

- iv. How is it determined whether a congressional district map “favor[s] one political party”?
- e. The following questions relate to subsection (2)(b) of the proposed initiative:
 - i. What is meant by “[s]uch actions”? If “[s]uch actions” is meant to refer back to the actions described in subsection (2)(a) of the proposed initiative, how does that interact with the use of an “or” in this list?
 - ii. How would actions in other states “undermine the independence of Colorado’s elections and materially harm the ability of Colorado voters to choose representatives in a fair and balanced process”? Would this analysis be impacted by the political lean of the states undertaking “[s]uch actions” and the political lean of Colorado’s voters?
- f. The following questions relate to subsection (2)(c) of the proposed initiative:
 - i. Subsection (2)(a) of the proposed initiative refers to both “[t]he President of the United States” and “any officer of the federal executive branch.” Was it intentional for subsection (2)(c) of the proposed initiative to only refer to “presidential coercion”?
 - ii. What is meant by “partisan distortions of congressional representation”?
 - iii. How can “partisan distortions of congressional representation...disadvantage Colorado?” Does this depend on the political makeup of Colorado’s voters?
- 8. The following questions relate to subsection (3) of the proposed initiative:
 - a. Does the phrase “such declaration or legislative resolution” refer to the declaration or joint resolution described in section (1) of the proposed initiative?
 - b. The first bullet of subsection (3) of the proposed initiative requires that the governor “[s]uspend operation of the Independent Congressional

Redistricting Commission for the remainder of the Governor's current term." The following questions that relate to this provision are best illustrated by the following scenario: The governor's term is from January 2039 through January 2043, and the governor makes a declaration pursuant to the proposed initiative in February 2039.

- i. In this hypothetical scenario, is it the proponents' intent that the independent congressional redistricting commission would not convene in 2041?
- ii. In this hypothetical scenario, is it the proponents' intent that after the governor's call in 2039 to draw the congressional maps, the temporary emergency commission would reconvene in 2041 to redraw the congressional maps in response to the decennial census? And, if so, is it the proponents' intent that the temporary emergency commission draw congressional districts based on the current constitutional requirements or based on the proposed initiative's alternative "criteria," even though decennial redistricting is not responsive to the conditions described in subsection (2) of the proposed initiative?
- iii. In this hypothetical scenario, if it is the proponents' intent that decennial redistricting would not occur by either the independent congressional redistricting commission or the temporary emergency commission in 2041:
 1. What is the proponents' opinion concerning the constitutionality of a map that would not reflect equal population or may not reflect the updated apportionment of Colorado's congressional seats in response to the most recent decennial census?
 2. Do you intend that the provisions of federal law, 2 U.S.C. § 2a, which set forth the manner for electing congressional representatives after an apportionment but before redistricting, apply to elections after the 2040 decennial census and reapportionment?
- c. The first independent congressional redistricting commission that was convened pursuant to sections 44 through 44.6 of the Colorado

Constitution concluded its work in December, 2021. Following the State Supreme Court's approval of the congressional redistricting maps drawn by the independent congressional redistricting commission, the commission was dissolved. What does it mean to "suspend operation of the Independent Congressional Redistricting Commission" when the commission does not exist?

- d. Concerning the second bullet of subsection (3) of the proposed initiative:
- i. How quickly must the governor appoint the temporary emergency commission?
 - ii. What is the proponents' intent regarding the composition of the temporary emergency commission and eligibility for temporary emergency commissioners?
 - iii. How quickly must the temporary emergency commission convene and how quickly must the temporary emergency commission redraw congressional districts?
 - iv. May the governor modify the commission's membership once it is convened?
 - v. May the commission "redraw congressional districts" multiple times?
 - vi. What is the proponents' intent regarding procedures, including transparency, voting, public hearing, ethical, and lobbying requirements, or necessary majority voting requirements affecting the temporary emergency commission?
 - vii. How long are the "Temporary Emergency Commission's" redrawn congressional districts effective?
 - viii. Is there a tension between the three criteria that the proposed initiative identifies as what should be used for redrawing congressional districts? If so, how should that tension be resolved?
 - ix. What is meant by "preserv[ing] electoral fairness"?
 - x. What is meant by "proportionality"?

- xi. What is meant by “resistance to federal executive interference”?
- e. Concerning the third bullet of subsection (3) of the proposed initiative:
 - i. Is the governor required to submit the “Temporary Emergency Commission’s” redrawn congressional districts to the Colorado Supreme Court within a certain period of time of the commission redrawing the congressional districts?
 - ii. What is the proponents' intent regarding requiring the governor to submit the revised maps to the Colorado Supreme Court instead of the temporary emergency commission submitting the maps to the Colorado Supreme Court?
 - iii. What is the proponents' intent regarding the requirement that there be "revised maps"? Is it the proponents' intent that the temporary emergency commission submit multiple statewide options for the Colorado Supreme Court to review and select one of the options? Or, is it the proponents' intent that there be a single map reflecting multiple congressional districts?
 - iv. What is the proponents' intent regarding the constitutional criteria that the Colorado Supreme Court must apply when reviewing the proposed map?
 - v. What if the Colorado Supreme Court rejects the maps?
 - vi. What is meant by “expedited constitutional review”? Does that mean that the Colorado Supreme Court needs to review the maps within a certain period of time?
- 9. The following comments and questions relate to subsection (4) of the proposed initiative:
 - a. What "authority" does this provision refer to? Presumably the “authority” referenced here is different from the “authority” referenced in subsection (2) of the proposed initiative?
 - b. What is the effect on the existing congressional districts when the authority is terminated?

- c. What is the proponents' intent in tying the duration of the emergency redistricting authority to the governor's term?
 - d. Does the "majority vote of Colorado voters" mean the majority of voters who are registered to vote in Colorado or the majority of voters who vote on the question of reauthorizing the map?
 - e. What is the proponents' intent concerning the permitted duration of the voters' reauthorization? How would the voters reauthorize the authority?
 - f. Assuming it is the proponents' intent that the authority is reauthorized by a vote on a ballot question, when do the proponents intend that such an election be held? Can this election be held in both even and odd numbered years?
10. Is subsection (5) of the proposed initiative simply a statement of intention, or is there an expectation that the temporary emergency commission comply with the requirements listed in the subsection?
11. What is the purpose of subsection (5) of the proposed initiative?

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 hearing only if the designated representatives so request. You will have the opportunity to ask questions about these comments at the review and comment hearing. Please consider revising the proposed initiative as follows:

1. There must be an amending clause, numbering each section, part, etc. that is being amended or added with a section number (e.g., SECTION 1., SECTION 2.). For example:

SECTION 1. In the constitution of the state of Colorado, **add** article XXX as follows:

2. The bullets under the proposed initiative's subsection (3) must be replaced to conform with the following style:

X-X-XXXX. Headnote. (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

3. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to and stricken type, which appears as ~~stricken type~~, to show language being removed from the Colorado Constitution or the Colorado Revised Statutes.
4. In the Colorado Constitution, the words "governor," "state," "supreme court," and the names of commissions are not capitalized.