

AMENDMENT 36
SELECTION OF PRESIDENTIAL ELECTORS

1 **Ballot Title:** An amendment to the Colorado constitution concerning popular
2 proportional selection of presidential electors, and, in connection therewith, creating
3 procedures for allocating Colorado's electoral votes for president and vice-president of
4 the United States, based on the proportion of ballots that are cast in this state for each
5 presidential ticket; making the terms of the proposed amendment effective so that
6 popular proportional selection of presidential electors applies to the 2004 general
7 election; setting forth procedures and timelines that govern the certification of election
8 results and the potential recounting of votes in elections for presidential electors and in
9 the election on this proposed amendment; granting the Colorado supreme court original
10 jurisdiction for the adjudication of all contests concerning presidential electors and
11 requiring that such matters be heard and decided on an expedited basis; and authorizing
12 the general assembly to enact legislation to change the manner of selecting presidential
13 electors or any of the procedures contained in this amendment.

14 **Text of Proposal:**

15 *Be it enacted by the People of the State of Colorado:*

16 ARTICLE VII OF THE CONSTITUTION is amended BY THE ADDITION OF A
17 NEW SECTION, to read:

18 **Section 13. Popular proportional selection of presidential electors.**

19 (1) THE PEOPLE OF THE STATE OF COLORADO HEREBY FIND AND DECLARE THAT:

20 (a) THE UNITED STATES CONSTITUTION DELEGATES TO EACH STATE THE METHOD
21 OF CHOOSING PRESIDENTIAL ELECTORS WHO ARE CHARGED WITH CASTING VOTES
22 IN THE ELECTORAL COLLEGE FOR THE OFFICES OF PRESIDENT AND VICE PRESIDENT
23 OF THE UNITED STATES;

24 (b) THE COLORADO CONSTITUTION RESERVES TO THE PEOPLE OF THIS STATE THE
25 RIGHT TO ACT IN THE PLACE OF THE STATE LEGISLATURE IN ANY LEGISLATIVE
26 MATTER, AND THROUGH ENACTMENT OF THIS SECTION, THE PEOPLE DO HEREBY
27 ACT AS THE LEGISLATURE OF COLORADO FOR THE PURPOSE OF CHANGING THE
28 MANNER OF ELECTING PRESIDENTIAL ELECTORS IN ACCORDANCE WITH THE
29 PROVISIONS OF ARTICLE II, SECTION 1 OF THE UNITED STATES CONSTITUTION;

30 (c) THE RIGHT TO VOTE FOR PRESIDENT OF THE UNITED STATES IS A

1 FUNDAMENTAL RIGHT AND EACH PERSON'S VOTE IS ENTITLED TO EQUAL DIGNITY
2 AND SHOULD COUNT EQUALLY;

3 (d) THE PRESENT WINNER-TAKE-ALL METHOD OF AWARDING PRESIDENTIAL
4 ELECTORS IN COLORADO PERMITS A PRESIDENTIAL TICKET TO RECEIVE ALL OF
5 THIS STATE'S ELECTORAL VOTES EVEN THOUGH IT WINS LESS THAN A MAJORITY OF
6 THE BALLOTS CAST IN THIS STATE;

7 (e) THE WILL OF THE COLORADO ELECTORATE IS BEST REFLECTED BY THE
8 POPULAR PROPORTIONAL ALLOCATION OF ELECTORAL COLLEGE
9 REPRESENTATIVES, BASED ON THE NUMBER OF BALLOTS CAST FOR THE
10 RESPECTIVE PRESIDENTIAL TICKETS IN THIS STATE; AND

11 (f) IN THE STRONGEST POSSIBLE TERMS, THE VOTERS OF COLORADO DECLARE
12 THAT, BY APPROVING THIS INITIATIVE, THEY UNDERSTAND, DESIRE, AND EXPECT
13 THAT THE POPULAR PROPORTIONAL SELECTION OF PRESIDENTIAL ELECTORS IS
14 INTENDED TO APPLY RETROACTIVELY AND THUS DETERMINE THE MANNER IN
15 WHICH OUR STATE'S PRESIDENTIAL ELECTORS ARE CHOSEN AND OUR STATE'S
16 ELECTORAL VOTES ARE CAST FOR THE GENERAL ELECTION OF 2004.

17 (2) THE TOTAL NUMBER OF ELECTORAL VOTES TO WHICH COLORADO IS ENTITLED SHALL
18 BE DIVIDED AMONG THE PRESIDENTIAL TICKETS ON THE GENERAL ELECTION BALLOT,
19 BASED UPON THE POPULAR PROPORTIONAL SHARE OF THE TOTAL STATEWIDE BALLOTS
20 CAST FOR EACH PRESIDENTIAL TICKET, SUBJECT TO SUBSECTIONS (3) AND (4) OF THIS
21 SECTION. EACH PRESIDENTIAL ELECTOR SHALL VOTE FOR THE PRESIDENTIAL CANDIDATE
22 AND, BY SEPARATE BALLOT, VICE-PRESIDENTIAL CANDIDATE ON THE PRESIDENTIAL
23 TICKET OF THE POLITICAL PARTY OR POLITICAL ORGANIZATION THAT NOMINATED THAT
24 PRESIDENTIAL ELECTOR.

25 (3) THE ALLOCATION OF A PRESIDENTIAL TICKET'S POPULAR PROPORTION OF THIS STATE'S
26 ELECTORAL VOTES SHALL BE IN WHOLE NUMBERS AND SHALL BE MADE IN THE FOLLOWING
27 MANNER:

28 (a) THE TOTAL NUMBER OF BALLOTS CAST IN THIS STATE FOR EACH PRESIDENTIAL TICKET
29 AT A GENERAL ELECTION SHALL BE DIVIDED BY THE TOTAL NUMBER OF BALLOTS CAST FOR
30 ALL PRESIDENTIAL TICKETS THAT RECEIVE VOTES AT THAT GENERAL ELECTION; AND

31 (b) THE PROPORTION OF A PRESIDENTIAL TICKET'S POPULAR VOTE, AS DETERMINED IN
32 PARAGRAPH (a) OF THIS SUBSECTION, SHALL BE MULTIPLIED BY THE NUMBER OF
33 ELECTORAL VOTES TO WHICH COLORADO IS ENTITLED.

34 (4) THE NUMBER OF ELECTORAL VOTES THAT IS ATTRIBUTABLE TO THE BALLOTS CAST FOR
35 ANY PRESIDENTIAL TICKET, AS DETERMINED IN SUBSECTION (3) OF THIS SECTION, SHALL

1 BE ROUNDED TO THE NEAREST WHOLE NUMBER, SUBJECT TO THE FOLLOWING
2 LIMITATIONS.

3 (a) NO PRESIDENTIAL TICKET SHALL RECEIVE ANY ELECTORAL VOTES FROM THIS
4 STATE IF ITS PROPORTION OF THE TOTAL BALLOTS CAST FOR ALL PRESIDENTIAL
5 TICKETS WOULD REFLECT LESS THAN A FULL ELECTORAL VOTE AFTER ROUNDING
6 TO THE NEAREST WHOLE NUMBER.

7 (b) IF THE SUM OF ELECTORAL VOTES ALLOCATED PURSUANT TO PARAGRAPH (a)
8 OF THIS SUBSECTION IS GREATER THAN THE NUMBER OF ELECTORAL VOTES TO
9 WHICH COLORADO IS ENTITLED:

10 (I) THE ALLOCATION OF ELECTORAL VOTES TO THE PRESIDENTIAL TICKET
11 RECEIVING AT LEAST ONE ELECTORAL VOTE AND THE FEWEST NUMBER OF
12 BALLOTS CAST SHALL BE REDUCED BY WHOLE ELECTORAL VOTES UNTIL
13 ONLY THAT NUMBER OF ELECTORAL VOTES TO WHICH COLORADO IS
14 ENTITLED HAVE BEEN ALLOCATED; AND

15 (II) THE PROCESS SET FORTH IN SUBPARAGRAPH (I) OF THIS PARAGRAPH
16 SHALL BE REPEATED IF, AFTER THE REDUCTION OF ELECTORAL VOTES AS
17 SET FORTH IN SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE TOTAL
18 NUMBER OF ELECTORAL VOTES ALLOCATED TO ALL PRESIDENTIAL TICKETS
19 REMAINS GREATER THAN THE TOTAL NUMBER OF ELECTORAL VOTES TO
20 WHICH THIS STATE IS ENTITLED, AND SUCH PROCESS SHALL BE APPLIED TO
21 THE PRESIDENTIAL TICKET RECEIVING AT LEAST ONE ELECTORAL VOTE
22 AND THE NEXT FEWEST NUMBER OF BALLOTS CAST UNTIL THE TOTAL
23 NUMBER OF ELECTORAL VOTES ALLOCATED TO ALL PRESIDENTIAL TICKETS
24 IS EQUAL TO THE TOTAL NUMBER OF ELECTORAL VOTES TO WHICH THIS
25 STATE IS ENTITLED.

26 (c) IF THE SUM OF ALL ELECTORAL VOTES ALLOCATED WOULD BE LESS THAN THE NUMBER
27 OF ELECTORAL VOTES TO WHICH COLORADO IS ENTITLED, THE PRESIDENTIAL TICKET
28 RECEIVING THE GREATEST NUMBER OF BALLOTS CAST SHALL RECEIVE ANY UNALLOCATED
29 ELECTORAL VOTES UNTIL ALL OF THE ELECTORAL VOTES TO WHICH COLORADO IS
30 ENTITLED HAVE BEEN ALLOCATED.

31 (d) IF TWO OR MORE PRESIDENTIAL TICKETS RECEIVE THE IDENTICAL TOTAL NUMBER OF
32 BALLOTS CAST FOR ALL PRESIDENTIAL TICKETS AND THE ALLOCATION OF ELECTORAL
33 VOTES TO WHICH COLORADO IS ENTITLED CANNOT BE PROPORTIONALLY ALLOCATED IN
34 WHOLE ELECTORAL VOTES TO THESE PRESIDENTIAL TICKETS, THE SECRETARY OF STATE
35 SHALL DETERMINE BY LOT WHICH OF THESE PRESIDENTIAL TICKETS WILL HAVE THEIR
36 NUMBER OF ELECTORAL VOTES INCREASED OR DECREASED BY A WHOLE ELECTORAL VOTE
37 UNTIL ALL OF THE ELECTORAL VOTES TO WHICH COLORADO IS ENTITLED HAVE BEEN

1 ALLOCATED.

2 (5) (a) A RECOUNT OF BALLOTS CAST FOR AND AGAINST THIS INITIATIVE SHALL BE
3 ORDERED BY THE SECRETARY OF STATE IF THE DIFFERENCE BETWEEN THE NUMBER OF
4 BALLOTS CAST FOR AND AGAINST THIS INITIATIVE IS LESS THAN OR EQUAL TO ONE-HALF
5 OF ONE PERCENT OF THE HIGHEST NUMBER OF BALLOTS CAST IN THE ELECTION ON THIS
6 INITIATIVE. WHERE THE DIFFERENCE BETWEEN THE NUMBER OF BALLOTS CAST FOR AND
7 AGAINST THIS INITIATIVE IS GREATER THAN ONE-HALF OF ONE PERCENT OF THE HIGHEST
8 NUMBER OF BALLOTS CAST IN THE ELECTION ON THIS INITIATIVE, A RECOUNT IN
9 CONNECTION WITH THIS INITIATIVE MAY BE REQUESTED BY A PETITION REPRESENTATIVE
10 IDENTIFIED WITH THIS INITIATIVE OR THE REGISTERED AGENT OF AN ISSUE COMMITTEE
11 OPPOSING THIS INITIATIVE; PROVIDED, HOWEVER, THAT ANY SUCH PERSON OR THE
12 COMMITTEE WITH WHICH HE OR SHE IS ASSOCIATED SHALL PAY THE COST OF SUCH
13 RECOUNT BEFORE THE SECRETARY MAY BEGIN THE RECOUNT, BUT IF THE PREVAILING SIDE
14 IN THE ELECTION IS CHANGED THEREBY, SUCH AMOUNT SHALL BE REFUNDED.

15 (b) A RECOUNT SHALL BE ORDERED BY THE SECRETARY OF STATE IF:

16 (I) THE DIFFERENCE BETWEEN THE NUMBER OF BALLOTS CAST FOR ANY TWO
17 PRESIDENTIAL TICKETS IS LESS THAN OR EQUAL TO ONE-HALF OF ONE PERCENT OF
18 THE BALLOTS CAST FOR THE TICKET THAT RECEIVED THE MOST VOTES OF THE TWO
19 PRESIDENTIAL TICKETS IN QUESTION; AND

20 (II) AT LEAST ONE OF THE TWO PRESIDENTIAL TICKETS, AS A RESULT OF SUCH
21 RECOUNT, COULD QUALIFY FOR ONE OR MORE ADDITIONAL ELECTORAL VOTES.

22 WHERE THE DIFFERENCE BETWEEN THE NUMBER OF BALLOTS CAST FOR THE TWO
23 PRESIDENTIAL TICKETS IN QUESTION IS GREATER THAN ONE-HALF OF ONE PERCENT OF THE
24 BALLOTS CAST FOR THE TICKET THAT RECEIVED THE MOST VOTES AS BETWEEN THOSE TWO
25 TICKETS, A RECOUNT FOR PRESIDENTIAL ELECTORS MAY BE REQUESTED BY A
26 PRESIDENTIAL TICKET OR THE POLITICAL PARTY OR POLITICAL ORGANIZATION ASSOCIATED
27 WITH SUCH TICKET; PROVIDED, HOWEVER, THAT ANY SUCH TICKET OR POLITICAL PARTY
28 OR ORGANIZATION WITH WHICH IT IS ASSOCIATED SHALL PAY THE COST OF SUCH RECOUNT
29 BEFORE THE SECRETARY MAY BEGIN THE RECOUNT, BUT IF THE ELECTION RESULT IS
30 CHANGED THEREBY AND AN ADDITIONAL ELECTORAL VOTE OR VOTES IS AWARDED TO
31 THAT PRESIDENTIAL TICKET, SUCH AMOUNT SHALL BE REFUNDED.

32 (c) ANY RECOUNT AUTHORIZED PURSUANT TO THIS SUBSECTION SHALL BE ORDERED OR
33 REQUESTED NOT LATER THAN 5:00 P.M ON THE TWENTY-THIRD DAY AFTER THE GENERAL
34 ELECTION AT WHICH SUCH BALLOTS ARE CAST AND SHALL BE COMPLETED AND THE
35 RESULT SHALL BE CERTIFIED BY THE SECRETARY OF STATE NOT LATER THAN CLOSE OF
36 BUSINESS ON THE THIRTIETH DAY AFTER THE GENERAL ELECTION AT WHICH SUCH BALLOTS
37 ARE CAST.

1 (6) FOR PURPOSES OF THIS SECTION ONLY AND NOTWITHSTANDING ANY OTHER
2 PROVISION OF THIS CONSTITUTION:

3 (a) THE RESULTS OF THE ELECTION ON THIS INITIATIVE SHALL BE OFFICIALLY
4 DECLARED BY PROCLAMATION OF THE GOVERNOR WHICH SHALL BE ISSUED AFTER
5 THE VOTES THEREON HAVE BEEN CANVASSED BUT BEFORE NOON ON:

6 (I) THE TWENTY-FOURTH DAY FOLLOWING THE GENERAL ELECTION, IF NO
7 RECOUNT IS ORDERED OR REQUESTED; OR

8 (II) THE THIRTY-FIRST DAY FOLLOWING THE GENERAL ELECTION, IF A
9 RECOUNT IS ORDERED OR REQUESTED.

10 (b) THE SECRETARY OF STATE SHALL CERTIFY THE ELECTION OF PRESIDENTIAL
11 ELECTORS, AS DETERMINED PURSUANT TO THIS SECTION, BUT IN NO EVENT SHALL
12 SUCH CERTIFICATION BE ISSUED LATER THAN 2:00 P.M. ON:

13 (I) THE TWENTY-FOURTH DAY FOLLOWING THE GENERAL ELECTION, IF NO
14 RECOUNT IS ORDERED OR REQUESTED AS TO SUCH ELECTION; OR

15 (II) THE THIRTY-FIRST DAY FOLLOWING THE GENERAL ELECTION, IF A
16 RECOUNT IS ORDERED OR REQUESTED AS TO SUCH ELECTION.

17 (c) THE ELECTION CERTIFICATION PROCESS REFERRED TO IN PARAGRAPH (b) OF
18 THIS SUBSECTION SHALL APPLY TO THE BALLOTS CAST FOR PRESIDENTIAL TICKETS
19 AT THE NOVEMBER 2, 2004 GENERAL ELECTION AND AT GENERAL ELECTIONS
20 HELD AFTER 2004 AT WHICH PRESIDENTIAL TICKETS ARE ON THE STATEWIDE
21 BALLOT.

22 (7) THE SECRETARY OF STATE SHALL DETERMINE BY LOT WHICH PRESIDENTIAL ELECTORS,
23 NOMINATED IN CONJUNCTION WITH A PRESIDENTIAL TICKET THAT QUALIFIES FOR AT
24 LEAST ONE ELECTORAL VOTE PURSUANT TO THIS SECTION, SHALL BE ENTITLED TO CAST
25 ELECTORAL VOTES. FOR EACH PRESIDENTIAL TICKET, THE SECRETARY OF STATE SHALL
26 THEN DETERMINE BY LOT THE ORDER OF NOMINATED PRESIDENTIAL ELECTORS FOR THAT
27 PRESIDENTIAL TICKET TO SERVE AS ALTERNATES IF ANY VACANCIES OCCUR IN THE OFFICE
28 OF PRESIDENTIAL ELECTOR FOR THAT PRESIDENTIAL TICKET BECAUSE OF DEATH, REFUSAL
29 TO ACT, ABSENCE OR OTHER CAUSE. SUCH DETERMINATIONS BY LOT PERFORMED BY THE
30 SECRETARY OF STATE SHALL BE MADE BEFORE 3:00 P.M. OF THE TWENTY-FOURTH DAY
31 FOLLOWING THE ELECTION IF NO RECOUNT IS ORDERED OR REQUESTED AND BEFORE 3:00
32 P.M. OF THE THIRTY-FIRST DAY FOLLOWING SUCH ELECTION IF A RECOUNT IS ORDERED OR
33 REQUESTED. IF THE NUMBER OF NOMINATED PRESIDENTIAL ELECTORS FOR A
34 PRESIDENTIAL TICKET IS INSUFFICIENT TO ALLOW THE SECRETARY OF STATE TO FILL A
35 VACANCY IN THE OFFICE OF PRESIDENTIAL ELECTOR BY LOT, THE POLITICAL PARTY OR

1 POLITICAL ORGANIZATION OF THE PRESIDENTIAL TICKET FOR WHICH THE VACANCY
2 REMAINS SHALL NOMINATE THE NUMBER OF ADDITIONAL PRESIDENTIAL ELECTORS
3 NECESSARY TO FILL THE VACANCY. THE SECRETARY OF STATE SHALL PREPARE A
4 CERTIFICATE OF ELECTION FOR EACH PRESIDENTIAL ELECTOR ENTITLED TO CAST AN
5 ELECTORAL VOTE. THE GOVERNOR SHALL SIGN AND AFFIX THE SEAL OF THE STATE TO THE
6 CERTIFICATES AND DELIVER ONE CERTIFICATE TO EACH ELECTOR ON THE FIRST MONDAY
7 AFTER THE SECOND WEDNESDAY OF DECEMBER FOLLOWING A GENERAL ELECTION.

8 (8) THE SUPREME COURT SHALL HAVE ORIGINAL JURISDICTION FOR THE ADJUDICATION
9 OF ALL CONTESTS CONCERNING PRESIDENTIAL ELECTORS AND SHALL PRESCRIBE RULES
10 FOR PRACTICE AND PROCEEDINGS FOR SUCH CONTESTS. CONTESTS CONCERNING THE
11 ELECTION OF PRESIDENTIAL ELECTORS SHALL BE GIVEN THE HIGHEST PRIORITY ON THE
12 COURT'S CALENDAR AND SHALL BE EXPEDITED IN ALL RESPECTS, INCLUDING HEARING
13 AND DECISION. THE COURT SHALL RENDER ITS FINAL DECISION IN ANY CONTEST
14 CONCERNING PRESIDENTIAL ELECTORS NOT LATER THAN THE FIRST FRIDAY AFTER THE
15 SECOND WEDNESDAY OF DECEMBER FOLLOWING A GENERAL ELECTION. NO JUSTICE OF
16 THE COURT WHO IS A CONTESTOR IN THE ELECTION CONTEST SHALL BE PERMITTED TO
17 HEAR AND DETERMINE THE MATTER.

18 (9) THIS SECTION SHALL BE EFFECTIVE ON AND AFTER NOVEMBER 3, 2004.

19 (10) THIS SECTION SHALL BE LIBERALLY CONSTRUED TO ACHIEVE POPULAR
20 PROPORTIONAL ALLOCATION OF PRESIDENTIAL ELECTORS AT THE 2004 GENERAL
21 ELECTION.

22 (11) THE GENERAL ASSEMBLY MAY ENACT LEGISLATION TO CHANGE THE MANNER OF
23 SELECTING PRESIDENTIAL ELECTORS OR ANY OF THE PROCEDURES RELATED THERETO.

24 (12) FOR PURPOSES OF THIS SECTION:

25 (a) "PRESIDENTIAL TICKET" MEANS CANDIDATES FOR PRESIDENT AND VICE
26 PRESIDENT OF THE UNITED STATES WHO RUN FOR THEIR RESPECTIVE OFFICES
27 JOINTLY IN COLORADO.

28 (b) "ROUNDED TO THE NEAREST WHOLE NUMBER" MEANS:

29 (I) INCREASED TO THE NEXT WHOLE NUMBER IF THE FRACTIONAL
30 PROPORTION OF AN ELECTORAL VOTE ALLOCATED IS EQUAL TO OR
31 GREATER THAN .5; AND

32 (II) DECREASED TO THE PRECEDING WHOLE NUMBER IF THE FRACTIONAL
33 PROPORTION OF AN ELECTORAL VOTE ALLOCATED IS LESS THAN .5.

1 (c) "THIS INITIATIVE" MEANS THE VOTER-INITIATED CONSTITUTIONAL
2 AMENDMENT, APPROVED AT THE NOVEMBER 2, 2004 GENERAL ELECTION,
3 PROVIDING FOR POPULAR PROPORTIONAL SELECTION OF PRESIDENTIAL ELECTORS.

4 (d) "WHOLE NUMBER" MEANS A POSITIVE INTEGER, INCLUDING ZERO.

5 (13) IF ANY PROVISION OF THIS SECTION OR ANY PART THEREOF IS, FOR ANY REASON,
6 HELD TO BE INVALID OR UNCONSTITUTIONAL, THE REMAINING PROVISIONS SHALL NOT BE
7 AFFECTED, BUT SHALL REMAIN IN FULL FORCE AND EFFECT, AND TO THIS END, THE
8 PROVISIONS OF THIS SECTION ARE SEVERABLE.