

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

**TO:** Carl E. Reichley II and Rachelle L. Reichley  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** March 28, 2018  
**SUBJECT:** Proposed initiative measure 2017-2018 #168, concerning lowering the voting age requirement to sixteen years of age for local and statewide elections

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 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 intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

An earlier version of this proposed initiative, proposed initiative 2017-2018 #151, was the subject of a memorandum dated March 6, 2018. Proposed initiative 2017-2018 #151 was discussed at a public meeting on March 8, 2018. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

## **Purposes**

The major purposes of the proposed amendment to the Colorado Constitution appear to be:

1. To lower Colorado's voting age requirement from eighteen years of age to sixteen years of age for local and statewide elections.

## **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 the proposed initiative?
2. As a change to the Colorado constitution, the proposed initiative may only be amended by a subsequent amendment to the constitution. Is this your intention?
3. The amendment proposed in the initiative would strike "citizen of the United States" and substitute "citizen of the state of Colorado" in section 1 of article VII. In addressing voting eligibility, the Colorado constitution, the Uniform Election Code of 1992, and other elections statutes generally refer to residents of Colorado and citizens of the United States. What is the impact of amending this section to refer to Colorado citizenship instead?
  - a. What does it mean to be a citizen of Colorado, and how is it different from being a resident of Colorado?
  - b. How would citizenship of the state be determined for the purposes of voting, and what agency, if any, would make that determination? What proof of Colorado citizenship, if any, would be required for voting? Would the determination of Colorado citizenship have other implications?
  - c. Could a person be a citizen of Colorado if they are not a United States citizen? Does the amendment intend to authorize individuals who are not citizens of the United States but reside in Colorado to vote in state and local elections?
4. With the amendments proposed in the initiative, section 1 of article VII would no longer address who is entitled to vote in federal elections, because it would

be specific only to state and local elections. Is it the proponents' intent to change or eliminate the qualifications of Colorado residents to vote in federal elections?

5. Section 6 of article VII of the Colorado constitution states that “[n]o person except a qualified elector shall be elected or appointed to any civil or military office in the state.” Other constitutional provisions and statutes that set out qualifications for specific appointed or elected offices similarly include a requirement that the person be a qualified or eligible elector. By amending the qualification to vote in state and local elections, do the proponents intend to also allow sixteen- and seventeen-year olds to hold elected or appointed offices in Colorado if they meet all other statutory or constitutional qualifications?
6. Section 1 of article V of the Colorado constitution requires petitions for citizen initiatives and referendums to be signed by a certain number of registered electors. Other constitutional and statutory provisions concerning election-related petitions, such as recall petitions, similarly include requirements for signatures by registered or eligible electors. Is it the intent of the proponents that sixteen- and seventeen-year-olds should be allowed to sign such petitions if they are otherwise qualified?
7. The proposed initiative includes a "declaration of the voters of Colorado," which, if the measure is adopted, would become part of the Colorado constitution. Is that the proponent's intent?
  - a. Is adding this language to the constitution intended to have a legal effect?
  - b. The declaration includes statements about the current laws related to driving age, employment, marriage, and military enlistment, and the "fifty-year milestone of 2020." If these provisions become outdated due to changes in these laws or the passage of time, it would take voter approval to amend the constitution to reflect those changes. Is that the proponents' intent?
  - c. It is standard drafting practice for the declaration to precede other substantive provisions. Please consider reordering the language so that the declaration is subsection (1), and subsequent substantive provisions as subsection (2), with paragraphs as necessary.
8. Have the proponents considered whether lowering the voting age, and adopting the declaration included in the initiative, will affect the determination of when

a person should be considered an adult in other legal contexts, such as the prosecution of criminal charges and the rights of criminal defendants, the ability to contract, the ability to sue and be sued, or other areas where the law distinguishes between a person who has reached the age of majority and a person who has not?

9. The proposed initiative includes an effective date provision declaring that it will become effective "on the day the results of the 2018 general election are certified by the governor." Unless a different date is included in an initiative, under article 1, section 1 (4)(a) of the Colorado constitution, citizen initiated amendments to the constitution take effect on the date of the official declaration of the vote by proclamation of the governor, but not later than thirty days after the vote has been canvassed.
  - a. Is this the date the proponents intend? If so, would the proponents consider either removing subsection (2) as unnecessary or revising the language to conform to the language of the constitution?
  - b. Have the proponents considered the practical implications of implementing this measure, including necessary amendments to current statutes and rules and updates to election forms and computer systems, and how they can be accomplished with this effective date?
10. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the Legislative Council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
  - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
  - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
  - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at [BallotImpactEstimates.ga@state.co.us](mailto:BallotImpactEstimates.ga@state.co.us).

## Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents 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 suggested below.

1. Each section of law may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs in that order. For example:

**Section 1. Qualifications of elector.** (1) Every citizen of the STATE OF COLORADO...

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

Please see subsections (1)(e) and (1)(f) of section 1.

2. 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.

It is also standard drafting practice to place new, small-capped language after any stricken language. For example, "of the ~~United States~~ STATE OF COLORADO".

3. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be capitalized:

- a. The first letter of the first word of each sentence;

- b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
  - c. The first letter of proper names.
- 4. The declaration in the proposed initiative references "the 26<sup>th</sup> amendment" and the "twenty-sixth amendment." These appear to be references to the twenty-sixth amendment to the United States constitution. If that is the case, consider adding a complete reference to "the twenty-sixth amendment to the United States constitution" for clarity and to conform to standard drafting practices.
- 5. In subsection (1)(c) of the proposed initiative you refer to internal reference (1)(b) as "item (b)". To align with standard drafting practices and keep with uniformity please consider changing to "subsection (1)(b) of this section".
- 6. In subsection (1)(d) of the proposed initiative you quote, "Lowering the voting age for state and local..." but that specific language does not appear in the court case cited. Please consider adding a citation to where the quoted language can be found.
- 7. In subsection (1)(e) of the proposed initiative, the declaration contains three quotations from "the senate report that accompanied the twenty-sixth amendment". Does this refer to a report issued by the United States senate?
  - a. Would the proponents consider including a citation to that report?
  - b. The quotation in subsections (1)(e)(2) and (1)(e)(3) are sentence fragments. Would the proponents consider expanding the quotations to include full sentences?
- 8. After subsection (1)(f) of the proposed initiative you have another subsection (1)(e). Please correct to (1)(g).
- 9. Also in the abovementioned subsection, the proponents refer to the U.S. military as the "U.S. military system". To align with standard drafting practices, please refer to it as the "United States military".