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**Amendment Y**  
**Congressional Redistricting**

*(This measure requires at least 55 percent of the vote to pass.)*

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**ANALYSIS**

**Amendment Y proposes amending the Colorado Constitution to:**

- ◆ create the Independent Congressional Redistricting Commission, consisting of an equal number of members from each of the state's two largest political parties and unaffiliated voters, to amend and approve congressional district maps drawn by nonpartisan legislative staff;
- ◆ establish a process for selecting commissioners, new requirements for transparency and ethics, and a procedure for judicial review of commission maps; and
- ◆ establish and prioritize the criteria the commission must use for adopting the state's U.S. congressional district map.

**Summary and Analysis**

Amendment Y establishes a new process for congressional redistricting. Amendment Z, which is also on the 2018 ballot, proposes a similar but separate process for state legislative redistricting.

***Reapportionment and redistricting.*** The U.S. Census Bureau counts the U.S. population every ten years. After this, the congressional reapportionment process occurs, by which each state is granted seats in the U.S. House of Representatives based on its share of the total U.S. population. The states must then redraw their districts so that the number of people in each district is equal.

***Congressional redistricting process in Colorado.*** Colorado currently has seven seats in the U.S. House of Representatives. Under the state constitution, the state legislature is responsible for dividing the state into these congressional districts. If the state legislature fails to complete a new map of congressional districts during the legislative session after the census, legal challenges may result in state courts drawing the map. The process has resulted in court action the last four times congressional redistricting has occurred. Current law lists factors that the courts consider when evaluating maps, but does not direct how the courts should prioritize these factors.

Amendment Y transfers the authority to draw congressional district maps from the state legislature to a newly created Independent Congressional Redistricting Commission (commission). The commission must have 12 members, 4 from the state's largest political party, which is currently the Democratic Party, 4 from the state's second largest political party, which is currently the Republican Party, and 4 who are not affiliated with any political party. These members are appointed from a pool of applicants as described below.

***Application and appointment process.*** Amendment Y sets minimum qualifications for commissioners. An applicant must be registered to vote and have voted in the previous two general elections in Colorado, and have been either affiliated with the same party or unaffiliated with any party for the last five consecutive years. An applicant may not be appointed to the commission if he or she has been a candidate for federal office within the last five years, or within the last three years been: a professional registered lobbyist; an elected public official; an elected political party official above the precinct level; or paid by a member of or candidate for Congress. Commissioners may not also serve on the Independent Legislative Redistricting Commission proposed in Amendment Z.

The measure requires nonpartisan legislative staff to prepare an application form for commissioners after receiving public input on the application at one or more public hearings. All applications submitted must be posted on a public website. Nonpartisan legislative staff must review commission applications to ensure applicants meet the minimum qualifications.

The Chief Justice of the Colorado Supreme Court designates a panel of three of the most recently retired judges from the Colorado Supreme Court or Colorado Court of Appeals to facilitate the selection of commissioners. No more than one of the three judges may be registered with any one political party, and the panel's decisions must be unanimous. Selected judges may not also serve on the panel that facilitates the selection of the proposed Independent Legislative Redistricting Commission. From all of the qualified applicants, the panel of retired judges randomly selects a pool of 1,050 applicants. The panel then narrows the applicant pool to 150 applicants using criteria related to applicants' experience, analytical skills, and ability to be impartial and promote consensus.

From the 150-person applicant pool, the panel randomly chooses 2 commissioners affiliated with the state's largest political party, 2 commissioners affiliated with the state's second largest political party, and 2 commissioners who are not affiliated with a political party. For the remaining 6 commissioners, the panel selects 2 additional unaffiliated commissioners from the pool of 1,050 applicants, and 4 commissioners from applicant pools determined by legislative leaders. The final 12-member commission will have 4 Democrats, 4 Republicans, and 4 unaffiliated members, unless another political party becomes the largest or second largest political party in the state. The final composition of the commission should reflect Colorado's racial, ethnic, gender, and geographic diversity, and must include members from each congressional district, including at least one member from the Western Slope.

**Commission operations.** Under the measure, the commission is responsible for adopting rules to govern its administration and operation, and the commissioners are subject to open meeting laws. Staff for the commission must be assigned from nonpartisan legislative staff agencies. Commissioners are prohibited from communicating with nonpartisan legislative staff about any maps outside of a public meeting or hearing, and staff are prohibited from communicating with outside parties concerning the development of a redistricting map. Any commissioner who participates in prohibited communication must be removed from the commission. Any person who receives compensation for advocating to the commission, one or more commissioners, or staff is considered a lobbyist and must disclose his or her compensation and its source to the Secretary of State for publication.

**Criteria for drawing a congressional district map.** The U.S. Constitution requires that all congressional districts within a state have equal populations. Under the federal Voting Rights Act of 1965, the state cannot change voting standards, practices, or procedures in a way that denies or limits the right to vote based on race or color or membership in a language minority group. In particular, the act requires that a minority group's voting strength not be diluted under a redistricting map. Amendment Y incorporates principles of the Voting Rights Act into state law and prohibits the approval of a map that violates these principles.

Amendment Y also adds criteria for the commission to follow when adopting a map. After achieving population equality and complying with the Voting Rights Act, the commission must preserve whole political subdivisions and communities of interest as much as possible, and districts must be as compact as possible. After the consideration of these criteria, Amendment Y requires the commission to maximize the number of politically competitive districts, which are defined as having the reasonable potential for the party affiliation of the district's representative to change at least once over the decade, to the extent possible. Maps cannot be drawn for the purpose of protecting incumbents, candidates, or political parties.

**Map consideration and public involvement.** The measure directs nonpartisan commission staff to create a preliminary redistricting map, and requires them to consider public comments while developing the map. Members of the public may also present proposed redistricting maps and written comments for the commission's consideration. The commission must hold at least three public hearings in each congressional district to receive public input before approving a redistricting map. At least ten commissioners must attend each hearing, either in person or electronically. These hearings must be broadcast online, and the commission must maintain a website through which Colorado residents may

submit maps or written comments. All written comments pertaining to redistricting must be published on the website. After the commission holds its hearings on the preliminary map, staff must prepare additional maps. The commission can adopt standards and guidelines for staff to follow when developing staff maps. Any commissioner can request at a public hearing that staff prepare additional maps or amendments to maps. The commission can adopt a final map at any time after the presentation of the first staff map.

**Final map.** Under the measure, the commission must adopt a final map and submit it to the Colorado Supreme Court for review. At least 8 of the 12 commissioners, including at least 2 unaffiliated commissioners, must approve the final map, and the map must be made public before the commission votes on it. If the commission fails to submit a final map, a staff map must be submitted, without amendments, to the Colorado Supreme Court for judicial review.

The Colorado Supreme Court must approve the final map unless the court finds that the commission abused its discretion in applying or failing to apply required criteria, in which case the court must return it to the commission. If returned, the commission has 12 days to hold a hearing and submit a revised map to the Colorado Supreme Court. If the commission fails to submit a revised map, nonpartisan staff have an additional three days to submit a revised map. The Colorado Supreme Court must approve a congressional redistricting map by December 15 of the redistricting year.

For information on those issue committees that support or oppose the measures on the ballot at the November 6, 2018, 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>

## Arguments For

- 1) Amendment Y limits the role of partisan politics in the congressional redistricting process by transferring the legislature's role to an independent commission. The measure creates a system of checks and balances to ensure that no one political party controls the commission. Republicans, Democrats, and unaffiliated voters must be appointed to the commission in equal numbers. Lobbyists and politicians are prohibited from serving on the new commission. Additionally, nonpartisan legislative staff draw the district maps, and a map's approval requires a supermajority vote of the commission, including at least two unaffiliated commissioners. These provisions encourage political compromise by keeping political parties and politicians with a vested interest in the outcome from controlling the redistricting process.
- 2) The measure makes the redistricting process more transparent and provides greater opportunity for public participation. Congressional redistricting is conducted by an independent commission in public meetings, with safeguards against undue influence in the preparation and adoption of maps. All Coloradans will have the opportunity to engage in the process because the commission will conduct meetings throughout the state rather than only at the State Capitol. The commission is subject to state open records and open meetings laws, and anyone paid to lobby the commission has 72 hours to disclose their lobbying activities. By requiring that map-related communications occur in public, Coloradans will be able to see exactly how the districts are drawn.
- 3) The measure brings structure to the redistricting process by using clear, ordered, and fair criteria in the drawing of districts. By prioritizing factors such as communities of interest, city and county lines, and political competitiveness, it provides specific direction to the commission about how it should evaluate proposed maps. It also prevents the adoption of a map that protects incumbents, candidates, or political parties, or a map that dilutes the electoral influence of racial or ethnic minorities. Along with these prioritized criteria, the measure prescribes a structured court review process and provides more guidance regarding the court's role than has existed in prior redistricting cycles.

## Arguments Against

- 1) Amendment Y takes accountability out of the redistricting process. Unlike state legislators who are subject to election and campaign finance requirements, unelected commissioners are not accountable to the voters of Colorado. The selection process relies on unelected retired judges to screen applicants and select half of the commissioners. Further, the commission is staffed by government employees who are not accountable to the voters, and they may end up drawing the final map if the commission cannot reach an agreement.
- 2) The commissioner selection process outlined in the measure is complex, and half of the members are determined by random chance. This complicated and random selection process may prevent individuals with important experience and knowledge from becoming commissioners. While the goal of the random selection may be to remove politics from redistricting, unaffiliated commissioners with partisan views could still be selected, and the selection process may not result in a commission that can be impartial and promote consensus.
- 3) The measure outlines criteria that may be difficult to apply in an objective manner. For example, the broad definition of communities of interest is vague and open to interpretation. The measure also leaves the commission to determine what a competitive district is without specifying what factors to consider. Additionally, the four unaffiliated commissioners will have political leanings that may be difficult to discern, but that could sway how they apply the criteria and influence the final map, since many critical votes require their support. The resulting map may serve to protect certain segments of the population at the expense of others and could result in districts that make no sense to voters.

## Estimate of Fiscal Impact

**State revenue.** Beginning in FY 2020-21, Amendment Y may minimally increase Secretary of State cash fund revenue from fines collected from lobbyists who fail to disclose the required information.

**State expenditures.** Overall, Amendment Y increases state expenditures to fund the commission by \$31,479 in FY 2020-21 and \$642,745 in FY 2021-22 as compared with the expenses for the current process.