



April 19, 2023

Dear Colorado Secretary of State Jena Griswold and Director of Elections Judd Choate,

The League of Women Voters of Colorado (LWVCO) respectfully disagrees with the Attorney General's interpretation of Amendment 76 that disenfranchised previously eligible 17-year-olds from voting in the 2022 and future primary elections. The League of Women Voters is a nonpartisan political organization which encourages informed and active participation in government. We envision a democracy in which every person has the desire, the right, the knowledge, and the confidence to participate. Our mission as an organization is to empower voters and defend our democracy.

LWVCO respectfully requests that the CO Department of State ask the CO Attorney General to reconsider his interpretation in light of the following two considerations: 1) the circumstances around the adoption of Amendment 76 and the proponents' intent, and 2) the fact that primary elections are activities of political parties, which are not bound by the constitutional age requirement.

The Attorney General appears to have interpreted the language of Amendment 76 (A76) separate from the context in which A76 was considered by the Title Board, supported by its proponents, explained to the voters in the Blue Book, and presented on the ballot.

- Because the practice of under-18-year-olds voting in primary elections was not yet in effect in Colorado in 2019, the disenfranchisement of young voters was not part of the May 1, 2019 Title Board discussion and approval of the initiative language that would later become Amendment 76. Meanwhile, HB19-1278, which allowed 17-going-on-18-year-olds to vote in primaries, was a moving target with over 3 dozen amendments as it made its way through the legislative process; its final version eventually passed both houses on April 30, the day before the Title hearing, and was signed by the governor on May 29, 2019.
- The intent of the A76 proponents was to prohibit non-citizens from voting. Because the US has had a history of allowing non-citizens to vote in some elections, the proponents had a case for enshrining this idea in the state

constitution. At no time, to our knowledge, did the proponents publicly advocate for disenfranchising almost-18-year-old citizens. In fact, *The Denver Post* reports (<https://www.denverpost.com/2020/11/03/colorado-amendment-76-results-citizenship-voting/>) that supporters were solely focused on the citizenship question, not the age question:

Joe Stengel, one of the initiative's backers, said Colorado voters overwhelmingly supported the measure to ensure only citizens can vote in Colorado. He disputes that the amendment will do anything but affirm that right by changing the wording in the state's constitution from "every citizen" who is at least 18 to "only a citizen of the United States" who is at least 18 years old.

"The amendment was very specific," Stengel said. "Whether a 17-year-old can vote or not is a separate question and that has not been decided."

- The Colorado Office of Legislative Legal Services (OLLS) notes in a memorandum to the Statutory Review Committee dated February 19, 2021, that "[a]ccording to the 2020 Ballot Information Booklet, commonly called the Blue Book, the amendment was intended to preclude the state from pursuing policies that would allow noncitizens to vote by specifying in the constitution that *only* a citizen of the United States ... could vote." (OLLS Memorandum pg. 3, citing 2020 *State Ballot Information Booklet*, Legislative Council of the Colorado General Assembly, Research Publication No 748-1, 18) OLLS further notes in the memorandum that "[w]hen construing a constitutional amendment, the duty of the reviewing court is to 'give effect to the electorate's intent in enacting the amendment ... If the intent of the electorate is not clear from the language of an amendment, courts should construe the amendment in light of the objective sought to be achieved."" (OLLS Memorandum, pg. 3, citing *Lobato v. People*, 218 P.3d 358, 375 (Colo. 2009)) The OLLS Memo further notes on page 5: "a Colorado court has not yet considered or issued an opinion on the question of whether Amendment 76 renders these statutes unconstitutional."
- The Title Board accurately and clearly described to voters the proponents' intended result, but the initiative petition did not clearly explain the complete constitutional impact after enactment of HB19-1278. Neither the Blue Book's Argument For nor the Argument Against Amendment 76 mentioned the question of 17-year-olds! Clearly, the issue was not on the Title Board's, voters', supporters' or opponents' radar. Only by carefully reading the details in the Blue Book would a voter understand that "under Amendment 76, 17-year-olds who are currently able to vote in primary elections will no longer be eligible to do so."

- Non-citizens were not allowed to vote in Colorado prior to the passage of A76. The ballot title of Amendment 76 did not indicate that a group of previously enfranchised voters would become disenfranchised with its passage. The wording that voters saw on their ballots was: *Shall there be an amendment to the Colorado constitution requiring that to be qualified to vote at any election an individual must be a United States citizen?*

We also ask the Attorney General to note that primary elections are contests for political parties and, therefore, are not inevitably bound by the constitution's language on elections in general. Political parties may currently allow preregistered 16- and 17-year-olds to vote in official party meetings, including party nominations and vacancy committee meetings. Just as political parties are not subject to a constitutional age constraint for their designation and nomination processes nor for selection of elected officials via a vacancy committee, neither are the parties' primary elections constrained by Amendment 76. Rather, 1-2-101 (2)(c) C.R.S. allows qualifying 17-year-olds to vote in partisan primary elections.

We request that the Secretary of State present these facts to the Attorney General and request a review of the interpretation of Amendment 76. We believe that qualifying 17-year-olds should be allowed to vote in primary elections. More than 10,000 almost-18-year-olds voted in the 2020 presidential primary. Their 2022 counterparts were disenfranchised due the Attorney General's interpretation of Amendment 76. Now, when SB23-276 is proposing to strike 1-2-101 (2)(c) C.R.S., is the time to resolve the legal ambiguity around Amendment 76.

Sincerely,

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Cc: LWVCO Legislative Liaison Andrea Wilkins