

STATE OF COLORADO

Colorado General Assembly

Natalie Castle, Director
Legislative Council Staff

Colorado Legislative Council
200 E. Colfax Ave., Room 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
Email lcs.ga@coleg.gov



Ed DeCecco, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 E. Colfax Ave., Room 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Email olls.ga@coleg.gov

MEMORANDUM

To: Angela Eicher and Faye Barnhart

From: Legislative Council Staff and Office of Legislative Legal Services

Date: July 14, 2025

Subject: Proposed initiative measure 2025-2026 #113, concerning the definition of marriage

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

Purpose for Proposed Initiative 2025-2026 #113

The major purpose of the proposed amendment to the Colorado Constitution appears to be to require the state of Colorado to prospectively define marriage as the union of a biological male and a biological female.

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. 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. The proposed initiative identifies November 4, 2026, as the date "This act applies" and "This act shall take effect" if approved by the voters. The date of the 2026 general election is November 3. If the official declaration of the vote and proclamation of the governor takes place after November 4, 2026, how does the proposed initiative's current applicability/effective date interact with the constitutional timing requirement? The designated representatives should consider including a desired applicability/effective date that is not earlier than the default effective date to comply with this constitutional requirement.
3. The proposed initiative adds section 34 to article II of the Colorado Constitution. Please renumber the new section added by the proposed initiative as section 32 so that it immediately follows the last numbered section in the article.
4. What do the designated representatives intend by the terms "biological male" and "biological female"?
 - a. How and when is a person's status as a "biological male" or "biological female" determined?
 - b. What entity is responsible for making the determination?

5. What do the designated representatives mean by the term “marriage”? Does it encompass marriages lawfully performed and licensed under current law, common law marriages, or marriages lawfully entered and licensed in another jurisdiction? Would the designated representatives consider defining the term or elaborating to promote clarity?
6. Is the “union of a biological male and a biological female” limited to a single biological male and a single biological female?
7. In *Obergefell v. Hodges*, 576 U.S. 644 (2015), the U.S. Supreme Court held that the right to marry is a fundamental right and that the Fourteenth Amendment requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out of state.
 - a. How does the proposed initiative relate to the decision in *Obergefell v. Hodges*?
 - b. Article VI, Clause 2, of the U.S. Constitution, the Supremacy Clause, establishes that the U.S. Constitution, federal laws, and treaties are the supreme law of the land. When state laws conflict with federal law or the U.S. Constitution, the federal law and U.S. Constitution take precedence. How do the designated representatives understand this constitutional imperative in the context of the proposed initiative?
8. The following comments and questions relate to the clause concerning the self-executing nature of the proposed initiative's provisions. The proposed initiative states, "This provision of lawful protection shall be self-executing, meaning it does not need the governor's signature...".
 - a. Is this a statement that the provisions in the initiative do not require additional legislation (signed by the governor) to implement? A constitutional provision is typically referred to as "self-executing" when the provision takes immediate effect and no further action *by the legislature* is required to implement the given right. Would the designated representatives please clarify their intent with respect to the governor's role as signatory?
 - b. The term "act" refers to a bill that has been approved by both houses of the General Assembly and has become law. The designated

representatives may wish to replace the term "act" with "initiative," "section," or "provision" throughout.

- c. What do the designated representatives mean by the phrases “provision of lawful protection” here and “act of protection” in the applicability language that follows?
9. The proposed initiative indicates that it “shall supersede any conflicting statutes, legislation, or judgments.” Is it the designated representatives’ intent to confine this requirement to *state* statutes, legislation, or judicial decisions? How does the proposed initiative operate in relation to other state constitutional provisions with which it may be in conflict or in tension?
 10. The applicability clause contains retroactivity language, stating “this act of protection does not apply to actions prior to November 4, 2026.” What “actions” are contemplated here?
 - a. Is part of the intent to exclude marriages lawfully entered into prior to November 4, 2026 (so that the state would continue to recognize those marriages)?
 - b. If not, is the intent of the measure to create a process by which an existing marriage will be transformed into something else? What would be the effect upon a previously married couple's rights, benefits, and responsibilities?

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 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. Before the amending clause, number 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** section 32 to article II as follows:

2. Each section in the Colorado Constitution has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to the section of the proposed initiative and be in bold-face type.
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.
4. 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 large-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.