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Colorado General Assembly

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MEMORANDUM

To: Lindsey Lamb and Raymond Surface

From: Legislative Council Staff and Office of Legislative Legal Services

Date: November 19, 2025

Subject: Proposed initiative measure 2025-2026 #183, concerning the right to liberty

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Legislative Council Staff 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 Staff 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 Legislative Council Staff and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

An earlier version of this proposed initiative, proposed initiative **2025-2026 #173**, was submitted by the same designated representatives, was the subject of a memorandum dated October 24, 2025, and was discussed at a public meeting on October 28, 2025. The comments and questions raised in this memorandum do not include comments and questions that were addressed in the earlier memorandum or at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed

initiative. Prior comments and questions that are not restated in this memorandum continue to be relevant and are considered part of this memorandum.

Purposes

Purposes for Proposed Initiative 2025-2026 #183

The major purposes of the proposed amendments to the Colorado Constitution and to the Colorado Revised Statutes appear to be to:

1. Add “the right of liberty, freedom from unnecessary control” to the inalienable rights of all “natural persons . . . as free living people” in section 3 of article II of the Colorado Constitution;
2. Amend section 7 of article II of the Colorado Constitution to prohibit a warrant to be issued without “probable cause, evidence of harm or a sworn statement by a victim”;
3. Add a new section 33 to article II of the Colorado Constitution that provides:
 - a. A natural person shall not be prosecuted in any civil or criminal court by the state or a district attorney without probable cause to a crime, evidence of harm or sworn statement by a victim;
 - b. A natural person shall not be a defendant in a civil case where a corporation or other legal entity is the plaintiff, without a pre-trial hearing ensuring the natural person’s inalienable rights have not been violated as part of the case subject matter, or a written waiver of rights by the natural person; and
 - c. Any officer, agent, or employee of a public entity convicted of violating inalienable rights shall also be convicted of treason.
4. Add the intentional violation of inalienable rights of a natural person to what constitutes treason against the state pursuant to section 9 of article II of the Colorado Constitution; and

5. Amend the Colorado Revised Statutes to exempt the intentional violation of the inalienable right to liberty from immunity from liability under the “Colorado Governmental Immunity Act”.

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. The following comments and questions relate to section 2 of the proposed initiative that amends section 7 of article II of the Colorado Constitution:
 - a. The proposed initiative states that “no warrant ... shall be issued ... without probable cause, evidence of harm or sworn statement by a victim ...”. Is only one of these items needed to issue a warrant? For example, could a warrant be issued without probable cause but with evidence of harm or a sworn statement by a victim?
 - b. If the answer to question (a.) above is yes, does this provision of the proposed initiative create a conflict with the Fourth Amendment to the United States Constitution, which protects individuals from "unreasonable searches and seizures" and generally requires law enforcement to have a warrant, supported by probable cause, to conduct a search?
 - c. If the answer to question (a.) above is no, consider correcting the wording of the proposed initiative to accurately reflect your intent.
 - d. Does the phrase “supported by oath or affirmation reduced to writing” apply to probable cause, evidence of harm, and a sworn statement by a victim? If not, to which of these items does this phrase apply?
3. The following comments and questions relate to section 3 of the proposed initiative that creates a new section 33 of article II of the Colorado Constitution:
 - a. The headnote for this section is “Protection of Inalienable Rights” while the amending clause states that it is “Protection of Liberty”. What is the intended headnote for this section?

- b. Regarding the first phrase in this section that states that “[n]o natural person shall be prosecuted in any civil or criminal court by the state or a district attorney without probable cause to a crime, evidence of harm or sworn statement by a victim ...”:
 - i. The term "prosecute" specifically refers to criminal cases, not civil suits. Civil suits are initiated by a private party (the plaintiff) seeking a remedy from another party (the defendant), generally with the goal of compensating the victim. The state "prosecutes" criminal cases on behalf of the public, with the goal of bringing a defendant to justice. Consider modifying the language of the proposed initiative accordingly.
 - ii. What does “probable cause to a crime” mean?
 - iii. Is your intent to require only one of the following before a natural person can be the defendant in a criminal case: “probable cause to a crime, evidence of harm or sworn statement by a victim?” If so, could the state prosecute a person with, for example, only a statement by a victim but no other evidence?
- c. Regarding the second phrase in this section that states “nor shall a natural person be a defendant in a civil case where a corporation or other legal entity is plaintiff, without a pre trial hearing ensuring the natural persons inalienable rights have not been violated as part of the case subject matter, or a written waiver of rights by the natural person ...”:
 - i. Why does the requirement for a pre-trial hearing apply only when the plaintiff is a “corporation or other legal entity”?
 - ii. What is a “legal entity”?
 - iii. What would happen at a pre-trial hearing to determine whether a person’s inalienable rights have been violated? Which party would be responsible for proving that a person’s inalienable rights have or have not been violated? How would a judge determine whether a person’s inalienable rights have been violated before hearing all of the facts and evidence in court?
 - iv. What does “as part of the case subject matter” mean?

- v. What rights do you intend to allow a natural person to waive? Do you intend that only the right to a pre-trial hearing ensuring that the person's inalienable rights have not been violated may be waived? If not, what other rights may be waived?
 - d. Regarding the third phrase in this section that states "any officer, agent, or employee of a public entity convicted of violating inalienable rights shall also be convicted of treason":
 - i. Does the proposed initiative create the crime of violating inalienable rights? If it does, consider making this clear in the proposed initiative. If it does not, how would an officer, agent, or employee of a public entity be convicted of violating inalienable rights?
 - ii. Would it be the state's responsibility to prosecute an officer, agent, or employee of a public entity for an alleged violation of a person's inalienable rights?
 - iii. The proposed initiative states that an officer, agent, or employee of a public entity who is convicted of violating inalienable rights is also convicted of treason. How can a person be convicted of the crime of treason if the person is not charged with that crime?
4. The following comments and questions relate to section 4 of the proposed initiative that amends section 9 of article II of the Colorado Constitution:
- a. Section 9 of article II of the Colorado Constitution currently provides that "[t]reason against the state can consist *only* in levying war against it or in adhering to its enemies, giving them aid and comfort;". (emphasis added) However, the proposed initiative adds, before this phrase, a statement that "[t]reason against Colorado shall consist of intentionally violating inalienable rights of natural persons;". Do the changes to section 9 of article II included in the proposed initiative create an internal conflict in this section, as one phrase specifies that treason is *only* levying war against the state or adhering to its enemies and another phrase states that treason is intentionally violating a person's inalienable rights?
 - b. Is it your intent that treason against the state would consist of three possible actions, including levying war against the state, adhering to the

state's enemies, or intentionally violating a natural person's inalienable rights?

- c. Section 9 of article II of the Colorado Constitution further states that "no person can be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on his confession in open court ..." Do these requirements apply to the crime of treason for intentionally violating a person's inalienable rights?
 - d. How does this section interact with the conviction of treason described in section 3 of the proposed initiative? For example, does the requirement of "**intentionally** violating inalienable rights" (emphasis added) apply to a conviction of treason pursuant to section 3 of the proposed initiative?
5. The following comments and questions relate to section 5 of the proposed initiative that amends "title 24-106" of the Colorado Revised Statutes:
- a. Section 24-106 is not a complete statutory cite. Is it your intent to amend section 24-10-106 (1), C.R.S., which is a section in the "Colorado Governmental Immunity Act"? If so, correct the statutory cite in the amending clause as appropriate.
 - b. Section 24-10-106, C.R.S., states that "[a] public entity is immune from liability in all claims for injury that lie in tort or could lie in tort ... except as provided otherwise in this section." By amending this section of the Colorado Revised Statutes, is it your intent to waive a public entity's sovereign immunity in an action for injuries resulting from the intentional violation of a person's inalienable right to liberty?
 - c. What types of injuries could result from the violation of a person's inalienable right to liberty, and how would those injuries be demonstrated in court?
 - d. Is it the proponents' intent to allow for public entities to be convicted of treason for "violating the inalienable right to liberty"? If so, how would that work?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiatives. These comments will be read aloud at the public meeting only if the designated representatives 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 follows:

1. The amending clauses for sections 1 through 4 of the proposed initiative should include which article of the Colorado Constitution is being amended. For example, the amending clause for Section 1 should read as follows:

Section 1. In the Constitution of the state of Colorado, **amend** section 3 of article II as follows:

2. The amending clause for each section of the proposed initiative does not need to contain the headnote for the section of the Colorado Constitution or Colorado Revised Statutes that is being amended.
3. The section number and section headnote at the beginning of each section should be in bold. For example “**Section 3. Inalienable rights.**”
4. In section 2 of the proposed initiative that amends section 7 of article II of the Colorado Constitution, rather than adding one letter to the existing word “issue”, strike the existing word and add the new word “ISSUED” in small capital letters.
5. In the proposed new section 33 of article II of the Colorado Constitution:
 - a. The headnote should not be in capital letters;
 - b. The word “the” should be inserted before the word “plaintiff”;
 - c. The words “pre trial” should be hyphenated; and
 - d. The word “persons” should be changed to “person’s”.
6. Section 24-10-106 (1)(k) already exists. If your intent is to add a new subsection, correct the letter of the subsection accordingly.