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Colorado General Assembly

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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 #117, concerning the right for preborn children to continue living and pregnant mothers to continue pregnancy.

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.

Purposes

Purposes for Proposed Initiative 2025-2026 #117

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

1. To establish the right of preborn children to continue living;
2. To establish the right of pregnant mothers to continue pregnancy;
3. To refer parents to non-violent medical care to protect all lives and resources to address individual needs;
4. To revoke or deny a permit or license to any business or individual that intentionally causes the death of a child;
5. To prohibit an unlicensed or under-regulated business or individual from providing surgery or drugs to a pregnant mother or children;
6. To prohibit the dispensing, possession, consumption, transportation, or mailing of drugs intended to kill children;
7. To ensure laws protecting children are enforced fairly without discrimination of children whether or not the child has been born;
8. To prohibit abortion facilities from operating or profiting from performing abortions or advertising abortions to women;
9. To prohibit taxpayers from paying for abortions;
10. To encourage that children are given neonatal care upon birth; and
11. To encourage that medical triage is provided by a licensed medical professional during a medical emergency.

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 each of the proposed initiatives?
2. The Colorado Revised Statutes are divided into numbered sections as follows:

[C.R.S. Section]. [Headnote]. (1) Subsection.

(2) Subsection

(3) Subsection

3. Regarding proposed Section 2:
 - a. The amending clause states the new language should be added “*under* Article 3 of Title 18” but the new language seems to be adding Section 33 to an unspecified article of the Colorado Constitution rather than a new section in the Colorado Revised Statutes. Additionally, article 3 of title 18, C.R.S., already exists in statute. The designated representatives should consider adding a new part 7 to article 3 of title 18. See question 4 for an example.
 - b. The headnote should appear in bold-face type with only the first word in initial capitalization, not all caps. For example:

Section 33. Protection for pregnant mothers and preborn children. (1) The right of preborn children [...]

- c. Section 2 states:

“The right of preborn children to continue living and pregnant mothers to continue pregnancy is hereby recognized. Government shall not deny, impede, or discriminate against the exercise of that right, including permitting businesses to operate that intentionally end the lives of children, allowing drugs in the state intended to end the lives of children, or discriminating in law against a child who due to their age has not yet been born.”

The second sentence and particularly the words *permitting* and *allowing* seem to be contradictory to the first sentence. Would the proponents please clarify their intent?

4. Is it the designated representatives' intent to make the language in proposed Sections 2, 3, and 4 statutory? If so, the designated representatives should consider moving the language in proposed Sections 3 and 4 within a proposed C.R.S. section in Section 2 as follows:

SECTION 1. Legislative declaration.

SECTION 2. In Colorado Revised Statutes, **add** part 7 to article 3 of title 18 as follows:

PART 7

[PART HEADING NAME]

18-3-701. Protection for pregnant mothers and preborn children. [...]

18-3-702. Applicability. [...]

18-3-703. Enforcement. [...]

SECTION 3. In Colorado Revised Statutes, **repeal** part 4 of article 6 of title 25.

SECTION 4. Self-executing. This provision [...]

5. Regarding proposed Section 3:
 - a. Subsection (a) requires parents to be “referred to non-violent medical care to protect all lives and resources to address individual needs.” Who is required to refer parents to these resources and care?
 - b. Subsection (b) prohibits permits and licenses from being granted to any business or individual that “intentionally cause[s] the death of a child.” Who is responsible for issuing or revoking permits or licenses?
 - c. Subsection (c) prohibits “unlicensed or under-regulated businesses and individuals [from] providing surgeries or drugs to pregnant mothers or children [...]”. Is it the designated representatives' intent for this provision

to apply to any and all surgeries and drugs or just those related to pregnancies? What is an “under-regulated business or individual”?

- d. Subsection (e) states that “laws protecting children shall be enforced fairly without discrimination for whether or not the child has been born.” What is the intent of this subsection and how does the subsection interact with Colorado’s anti-discrimination statutes?
 - e. Subsection (f) states that “abortion facilities shall not operate, profit from or advertise to women, and taxpayers shall not pay for abortionists to intentionally kill children [...]”. The designated representatives should consider breaking this provision up into multiple sentences so the intent is clear.
6. Regarding proposed Section 4:
- a. This section states that “legal due process [...] is expected to determine if the law has been broken, who perpetrated breaking the law, and who were the victim/s,” but the section does not address who is responsible for determining whether the law has been broken, who the perpetrator and victims are, what the punishment is if the section is violated, etc. Would the designated representatives clarify the intent? How does this language interact with standard judicial procedures, which require an injured individual to bring a lawsuit against the person alleged to have caused the injury?
 - b. This section states that “civil action may also be taken against any business or individual [...]” but does not state who may bring the civil action against the business or individual. Who has standing to bring these claims?
7. 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 phrase "lawful protection" is ambiguous. The designated representatives may wish to replace the phrase "lawful protection" with "initiative," "section," or "provision" throughout.
 - c. 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 state constitutional provisions with which it may be in conflict or in tension?
8. The applicability clause contains retroactivity language, stating that "this act does not apply to actions prior to November 4, 2026." What "actions" are contemplated here?
9. 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 of protection applies" and "This act shall take effect" if approved by the voters. The date of the 2026 general election is November 3, 2026. 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.

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. It is standard drafting practice to use SMALL CAPITAL LETTERS rather than ALL CAPS or Initial Caps to show the language being added to the Colorado Revised

Statutes. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate.

2. The word “shall” is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means “that a person has a duty.” The related word “must,” which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, “means that a person or thing is required to meet a condition for a consequence to apply.” Furthermore, “‘must’ does not mean that a person has a duty.”
3. Section 2-4-102, Colorado Revised Statutes, specifies that “The singular includes the plural, and the plural includes the singular.” It is standard drafting practice to use the singular form of words, thus it is not necessary to use the word “victim/s” in section 4 of the initiative; simply use the word “victim” and change “were” to “was.”
4. Section 6 is repealing part 4 of article 6 of title 25. The section should appear as follows:

SECTION 6. In Colorado Revised Statutes, **repeal** part 4 of article 6 of title 25.