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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: October 24, 2025

Subject: Proposed initiative measure 2025-2026 #173, concerning the right to liberty

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 #173

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

1. To 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. To prohibit a warrant to be issued without “probable cause, evidence of harm and two witnesses” pursuant to section 7 of article II of the Colorado Constitution; and
3. To add a new section 32 to article II of the Colorado Constitution that provides:
 - a. “No person shall be convicted nor ordered to perform in a civil court when their right to liberty has been violated in the process of collecting evidence or prosecution.”;
 - b. “Consent in waiving any rights, must be documented and signed by the party waiving rights, including suits in Rem.”; and
 - c. “Any officer, agent, or employee of the State of Colorado, or any county, municipality, or any entity claiming government authority within the territory of Colorado, who is convicted, or upon the sworn affidavits of 10 natural persons to the event, of intentionally violating or depriving a natural person’s right to liberty, shall be removed and banned from any government position, spend 10 years in prison, and return all compensation received from the State of Colorado, or related institution, during their time in office.”

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. Article V, section 1 (8) of the Colorado Constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado". To comply with this constitutional requirement, this phrase must be added to the beginning of the proposed initiative.
3. 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. Because the proposed initiative does not contain an effective date, this would be the default effective date. Does this default effective date satisfy your intent? If not, the designated representatives should include the desired effective date that is not earlier than the default effective date to comply with this constitutional requirement.
4. The following comments and questions relate to the first section of the proposed initiative that is titled "Bill of Rights Section 3 proposed changes" and amends section 3 of article II of the Colorado Constitution:
 - a. What is the purpose of adding the word "natural" before "persons" in section 3 of article II?
 - b. How does the word "natural" change the meaning of section 3 of article II?
 - c. What is the purpose of adding the phrase "as free living people" in section 3 of article II?
 - d. How does the phrase "as free living people" change the meaning of section 3 of article II?
 - e. What is the right of "liberty, freedom from unnecessary control"?
 - f. How do the right of "liberty" and the phrase "freedom from unnecessary control" relate? Are these two different rights? Or, does the "right of liberty" mean "freedom from unnecessary control"?

- g. What is the purpose of adding the right of “liberty, freedom from unnecessary control” to section 3 of article II?
 - h. Is adding the right of “liberty, freedom from unnecessary control” to section 3 of article II intended to create or guarantee a new right not otherwise protected by the Colorado Constitution?
 - i. Article II, section 25 of the Colorado Constitution states, “No person shall be deprived of life, liberty or property, without due process of law.” The right to due process guaranteed by section 25 includes both procedural and substantive protections against unfair criminal and civil proceedings. Due process guarantees, among other things, a fair trial including by jury and the right to counsel. *See People v. District Court*, 843 P.2d 6 (Colo. 1992) (right to fair trial and trial by jury); *People v. Meyers*, 617 P.2d 808 (Colo. 1980) (right to counsel including sufficient time to prepare). Due process also prohibits prosecutorial misconduct and requires a criminal charge to be proved beyond a reasonable doubt to overcome a defendant’s presumption of innocence. *See People v. McBride*, 228 P.3d 216 (Colo. App. 2009) (prosecutorial misconduct); *People v. Hill*, 182 Colo. 253, 512 P.2d 257 (1973) (proof beyond a reasonable doubt and presumption of innocence). How is the right of “liberty, freedom from unnecessary control” different from the due process rights already guaranteed by section 25 of article II?
5. The following comments and questions relate to the second section of the proposed initiative that is titled “Bill of Rights Section 7 proposed changes” and that amends section 7 of article II of the Colorado Constitution:
- a. What is the purpose of the proposed changes to section 7 of article II?
 - b. Is it the proponents’ intent to modify the legal standard for issuance of any warrant in this state, including a search warrant or an arrest warrant?
 - c. Article II, section 7 generally prohibits issuance of a warrant absent a peace officer’s written oath or affirmation evidencing probable cause, which means that under the totality of the circumstances at the time of the arrest or search, objective facts and circumstances available to a person of reasonable caution justify the belief that a crime has been or is being committed. *See People v. King*, 16 P.3d 807 (Colo. 2001); *People v. Brown*, 217 P.3d 1252 (Colo. 2009). How is “evidence of harm” different from probable cause?

- d. What does “evidence of harm” mean?
- e. Must the “evidence of harm” be provided by the “two witnesses” required for the warrant?
- f. Why is there a semicolon following the phrase “probable cause, evidence of harm and two witnesses:”? Is it your intent to create a series by using a semicolon? If so, what are the items in the series? Or if your intent is to modify prior language, what language do you intend to modify with the phrase “describing the place to be searched, or the person or thing to be seized, as near as may be”?
- g. Why is there a semi-colon prior to the phrase “supported by oath or affirmation reduced to writing”? What must be “supported by oath or affirmation”?
- h. What is the purpose of requiring “two witnesses”?
- i. How would the requirement for “two witnesses” be implemented?
- j. Who may be a witness for purposes of a warrant?
- k. Would the peace officer who provides the oath or affirmation for the warrant count as one of the “two witnesses”?
- l. Must the “two witnesses” also provide written oaths or affirmations before a warrant is issued?
- m. Colorado Rule of Criminal Procedure 41 provides that a search warrant shall be issued by a court only on an affidavit sworn or affirmed to before the judge that relates facts sufficient to (1) identify or describe the premises, person, place, or thing to be searched; (2) identify or describe the property to be searched for; (3) establish the grounds for issuance of the warrant, or probable cause to believe that such grounds exist; and (4) establish probable cause to believe that the property to be searched for is located at, in, or upon the premises, person, place, or things to be searched. The affidavit required may include sworn testimony reduced to writing and signed under oath by the witness giving the testimony before issuance of the warrant. Is it the proponents’ intent to overrule Colorado Rule of Criminal Procedure 41?

- n. How would the rule of procedure for issuance of a search warrant need to be modified under section 7 of article II as modified by the proposed initiative?
 - o. Have the proponents considered whether the requirement for “two witnesses” might impede or delay criminal investigations or arrests when a crime is happening or about to happen?
 - p. What would happen if there is probable cause and evidence of harm but the criminal activity has only been witnessed by one individual or by no individuals other than law enforcement?
6. The following comments and questions relate to the third section of the proposed initiative that is titled “Proposed New Section 32. Protection of Liberty” and adds a new section 32 to article II of the Colorado Constitution:
- a. Article II, section 32 of the Colorado Constitution states “The right to abortion is hereby recognized. Government shall not deny, impede, or discriminate against the exercise of that right, including prohibiting health insurance coverage for abortion.” Is it the proponents’ intent to repeal and replace existing article II, section 32 with the proposed new section 32 of article II concerning the protection of liberty? If not, the new section to be added to article II must be renumbered.
 - b. The first sentence in the proposed new section of article II states, “No person shall be convicted nor ordered to perform in a civil court when their right to liberty has been violated in the process of collecting evidence or prosecution.”
 - i. Article II, section 7 prohibits the introduction of illegally obtained evidence at trial. *See People v. Folsom*, 2017 COA 146M, 431 P.3d 652. Article II, section 25 protects against the admission of unreliable or unduly prejudicial evidence as well as evidence that unduly burdens a defendant’s constitutional right to testify in his or her own defense. *See People v. Chavez*, 632 P.2d 574 (Colo. 1981); *People v. Hernandez*, 686 P.2d 1325 (Colo. 1984). Article II, section 25 also guarantees a criminal defendant’s right against prosecutorial misconduct. *See People v. McBride*, 228 P.3d 216 (Colo. App. 2009). How is the “protection of liberty” in the proposed new section of

article II different from the protections already guaranteed by sections 7 and 25 of article II?

- ii. What does “ordered to perform in a civil court” mean”?
 - iii. How would an unlawful act related to the “process of collecting evidence” or “prosecution” be connected to a civil court proceeding?
- c. The second sentence in the proposed new section of article II states, “Consent to waiving any rights, must be documented and signed by the party waiving rights, including in suits in Rem.”
- i. What rights are intended to be encompassed by this provision?
 - ii. Article II, section 25 requires that any plea in a criminal proceeding must be knowing and voluntary. *See People v. Chavez*, 730 P.2d 321 (Colo. 1986); *People v. Ball*, 813 P.2d 759 (Colo. App. 1990). Colorado Rule of Criminal Procedure 11 prohibits a court from accepting a plea of guilty or a plea of nolo contendere (no contest) without first determining the defendant has been advised of all their rights and also determining that the defendant understands the nature of the charge and the elements of the offense, the plea is voluntary and not the result of undue influence or coercion, the defendant understands the right to trial by jury and waives that right as to all issues, the defendant understands the possible penalties, the defendant understands the court will not be bound by any representations made to the defendant concerning the penalty to be imposed or probation, unless such representations are included in a formal plea agreement approved by the court, and that there is factual basis for the plea. How is the second sentence in the proposed new section of article II intended to change the law in criminal proceedings?
 - iii. What does “suits in Rem” mean?
 - iv. In a civil case in Colorado, Colorado Rule of Civil Procedure 11 requires every pleading of a party represented by an attorney to be signed by at least one attorney of record. A party who is not represented by an attorney is required to sign their pleadings. An application to the court for an order must be by written motion signed in

accordance with Colorado Rule of Civil Procedure 11. How is the second sentence in the proposed new section of article II intended to change the law in civil proceedings?

- d. The third sentence in the proposed new section states, “Any officer, agent, or employee of the State of Colorado, or any county, municipality, or any entity claiming government authority within the territory of Colorado, who is convicted, or upon the sworn affidavits of 10 natural persons to the event, of intentionally violating or depriving a natural person’s right to liberty, shall be removed and banned from any government position, spend 10 years in prison, and return all compensation received from the State of Colorado, or related institution, during their time in office.”
 - i. What is the purpose of this provision of the proposed new section of article II?
 - ii. Is it the proponents’ intent to create a new criminal offense with a mandatory minimum sentence of 10 years of imprisonment?
 - iii. What would be the factual basis for a conviction “of intentionally violating or depriving a natural person’s right to liberty”?
 - iv. Must the act or omission of the state officer, agent, or employee “intentionally violating or depriving a natural person’s right to liberty” occur “in office”, meaning in the course of their official duties, to constitute a violation subject to punishment in accordance with this new provision?
 - v. Article XII, section 1 states, “Every person holding any civil office under the state or any municipality therein, shall, unless removed according to law, exercise the duties of such office until his successor is duly qualified; but this shall not apply to members of the general assembly, nor to members of any board or assembly, two or more of whom are elected at the same time. The general assembly may, by law, provide for suspending any officer in his functions pending impeachment or prosecution for misconduct in office.” Article XII, section 4 provides, “No person hereafter convicted of embezzlement of public moneys, bribery, perjury, solicitation of bribery, or subornation of perjury, shall be eligible to the general assembly, or capable of holding any office of trust or

profit in this state.” Is it the proponents’ intent that the last sentence in the new section of article II repeal or modify sections 1 and 4 of article XII and related statutes concerning the removal and disqualification of every person holding any civil office under the state or any municipality? If so, consider whether those constitutional and related statutory repeals or modifications should be included in the proposed initiative.

- vi. In addition to sections 1 and 4 of article XII, for members of the general assembly, article XIII specifies how members must be impeached. Is it the proponents’ intent that the last sentence in the new section of article II repeal or modify sections 1 and 4 of article XII or article XIII and any related statutes concerning the impeachment or prosecution for misconduct in office and disqualification of members of the general assembly or other elected state officers? If so, consider whether those constitutional and related statutory repeals or modifications should be included in the proposed initiative.
- vii. The last sentence indicates that an officer, agent, or employee of the state may be removed from office, imprisoned for 10 years, and made to return all compensation based on a conviction “or upon the sworn affidavits of 10 natural persons to the event”. Is it the proponents’ intent to provide for punishment based on these two alternative means of proof?
- viii. Article II, section 8 requires an indictment for a criminal prosecution. Article II, section 16 requires that the witnesses to an alleged crime testify at trial and be subject to cross examination by the defendant or defendant’s counsel. Article II, section 23 guarantees a criminal defendant’s right to trial by jury. Article II, section 25 guarantees a fair trial by jury with defense counsel, as needed. Allowing for a person to be imprisoned for 10 years “upon the sworn affidavits of 10 natural persons to the event” is inconsistent with sections 8, 16, 23, and 25, among other provisions, of article II. Is it the proponents’ intent to repeal or modify these existing constitutional provisions? If so, each repeal or modification of an existing constitutional provision should be included in the proposed initiative.

- ix. Article 10 of title 24 of the Colorado Revised Statutes is the Colorado Governmental Immunity Act (“CGIA”), which provides “the state, its political subdivisions, and the public employees of such public entities, by virtue of the services and functions provided, the powers exercised, and the consequences of unlimited liability to the governmental process, should be liable for their actions and those of their agents only to such an extent and subject to such conditions as are provided by this article.” 24-10-102, C.R.S. How is the criminal provision set forth in the last sentence of the proposed new section of article II intended to interact with or affect the CGIA?
- x. The underlying policy of the CGIA includes that, “[T]he state and its political subdivisions provide essential public services and functions and that unlimited liability could disrupt or make prohibitively expensive the provision of such essential public services and functions . . . that the taxpayers would ultimately bear the fiscal burdens of unlimited liability and that limitations on the liability of public entities and public employees are necessary in order to protect the taxpayers against excessive fiscal burdens. It is also recognized that public employees, whether elected or appointed, should be provided with protection from unlimited liability so that such public employees are not discouraged from providing the services or functions required by the citizens or from exercising the powers authorized or required by law.” § 24-10-102, C.R.S. Have the proponents considered how the criminal provision set forth in the last sentence of the proposed new section of article II will impact the availability and costs of essential public services?
- xi. Would a state officer be required to “return all compensation received from the State of Colorado” even if all or some of the compensation was received before the alleged violation and has no connection to the alleged violation?
- xii. Have the proponents considered the vacancies in office that may be created by enforcement of the last sentence of the new section of article II and how those vacancies will be filled?

- xiii. Have the proponents considered whether and how the last sentence in the new section of article II would apply to home rule counties and cities, as opposed to statutory counties and cities?
- xiv. Consider whether additional provisions of article XII, such as those governing investigations and definitions of misconduct by state officers, require modification or repeal to fulfill the proponents' intent.

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 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** article XXX as follows:

A section number must be added to each of the three sections of the proposed initiative.

2. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, "In the constitution of the state of Colorado, **add** section __ to article X as follows:"

Each section of the proposed initiative must be preceded by an amending clause.

3. Each section in the Colorado Revised Statutes and the Colorado Constitution has a headnote. Headnotes briefly describe the content of the section. The headnote for the new section 32 in the third section of the proposed initiative does not provide a complete description of the content of the section. It should be revised to reference both the waiver provision and the prosecution provision.

5. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS or *italics*] to show the language being added to and stricken type, which appears as stricken type, to show language being removed from the Colorado Constitution or the Colorado Revised Statutes.

To conform with standard drafting practice, all new language in the initiative should be changed from *italics* or regular font to SMALL CAPITAL LETTERS.

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.
6. The following word is misspelled: “unnecessary” should be spelled “unnecessary”;
7. The “Proposal with edits incorporated” sections in the proposed initiative should be removed. The source notes in the first and second sections of the proposed initiative should be removed.