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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 #112, concerning the definition of gender

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 #112

The major purpose of the proposed amendment to the Colorado Constitution appears to be to require the state of Colorado to prospectively affirm a child's gender based on the child's biological sex, which is either male or 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. Article IX of the Colorado Constitution primarily concerns K-12 education and higher education in the state. The text of the proposed initiative does not reference education and appears to relate to the obligations of the state more broadly.
 - a. What is the designated representatives' intent in placing the provision in article IX? Are the requirements of the proposed initiative confined to the education context? Would the designated representatives consider clarifying the context or scope of the proposed initiative's application?
 - b. The proposed initiative adds section 17 to article IX of the Colorado Constitution. However, section 17 already exists. Please renumber the new

section added by the proposed initiative so that its location reflects its substantive goals and is consistent with the existing numbering scheme. For example, if the scope of the proposed initiative is limited to educational matters, and its location in article IX is therefore proper, please add a new section 18 to article IX instead.

4. What do the designated representatives mean by the term “affirm”?
 - a. What are some examples of the types of state activities that would be permitted, required, or prohibited with respect to this affirmation?
 - b. Do the designated representatives intend that a specific department or agency of state government assume responsibility for the affirmations of natural gender?
5. What do the designated representatives mean by the term “natural gender”? How is the term conceptually distinct from “biological sex”? Would the designated representatives consider defining both terms or elaborating to promote clarity?
6. When and on what basis would a child's biological sex of male or female be determined? Who is responsible for making the determination?
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 act 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.

8. 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?
9. The applicability clause contains retroactivity language, stating “this act does not apply to actions prior to November 4, 2026.” What “actions” are contemplated here?

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 18 to article IX 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 section 17 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.