

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**To:** Jessica Presso and Cameron Porter

**From:** Legislative Council Staff and Office of Legislative Legal Services

**Date:** April 30, 2025

**Subject:** Proposed initiative measure 2025-2026 #84, concerning the Campaign Finance Oversight Commission

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 #84

The major purposes of the proposed initiative appear to be to amend either the Colorado Constitution or the Colorado Revised Statutes to:

1. Establish specific disclosure requirements relating to contributions and expenditures;
2. Prohibit contributions from foreign persons;
3. Provide for disclaimers on campaign-related communications that include content generated by artificial intelligence;
4. Prohibit the creation and distribution of content that is generated by artificial intelligence in an election-related context, materially misrepresents the conduct of a candidate or election official, and is likely to deceive a reasonable person;
5. Provide for civil and criminal penalties for certain violations of the campaign finance requirements outlined in the proposed initiative;
6. Provide for protections against retaliatory action for individuals who make a good faith report of a violation of the campaign finance requirements outlined in the proposed initiative;
7. Restrict access to the ballot for candidates who do not comply with the campaign finance requirements outlined in the proposed initiative; and
8. Establish the Colorado Campaign Finance Oversight Commission.

## **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 (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 an initiative is effective on and after the date of the official declaration of the vote and proclamation of the governor, if the required percentage of voters approve the initiative. Does this default effective date satisfy your intent?
  - a. To comply with this constitutional requirement, please amend or remove the effective date in section 10 of the proposed initiative.
  - b. If it is your intent to place the language of the proposed initiative in the Colorado Constitution rather than in the Colorado Revised Statutes, please also note that an amendment to the constitution, other than an amendment that only removes language from the constitution, requires 55% approval, rather than simple majority approval, pursuant to article V, section 1 (4)(b) of the Colorado Constitution.
4. The statutes governing the submission of proposed initiatives state that the draft of the proposed initiative that proponents must submit is “the typewritten proposed text of the initiative which, if passed, becomes the actual language of the constitution or statute, together with language concerning placement of the measure in the constitution or statutes.” The text of the proposed initiative does not specify if the text of the proposed initiative would be added to the Colorado Revised Statutes or the Colorado Constitution. Where do the proponents intend the text of this proposed initiative to be added?
5. How do the proponents intend the requirements of the proposed initiative to interact with existing campaign finance laws?
  - a. For example, article XXVIII of the Colorado Constitution and section 1-45-103, C.R.S., provide definitions for many terms of art used in the laws that govern campaign finance.
  - b. For example, disclosure requirements already exist in sections 1-45-107.5, 1-45-108, and 1-45-108.5, C.R.S.
  - c. For example, restrictions on foreign contributions already exist in sections 1-45-103.7 and 1-45-107.5, C.R.S..
  - d. Existing campaign finance disclosures and reports are filed with the appropriate officer, such as the Secretary of State or a municipal clerk, according to section 1-45-109, C.R.S. How are disclosures and filings that are required by the proposed initiative to be made?

- e. Existing campaign finance laws are enforced by the Secretary of State, as provided in sections 1-45-111.5 and 1-45-111.7, C.R.S. How do the proponents intend this proposed initiative, and the role of the newly created Colorado Campaign Finance Oversight Commission, to interact with the existing enforcement mechanism?
  - f. Existing campaign finance laws provide for certain civil penalties for violations of those laws, as established in article XXVIII, section 10 of the Colorado Constitution and section 1-45-111.5, C.R.S. These penalties differ from penalties established in the proposed initiative. To the extent that existing statutes and the proposed initiative cover the same conduct, please keep in mind that different statutory provisions that proscribe different penalties for the same conduct may violate equal protection guarantees set forth in the U.S. and Colorado Constitutions.
  - g. Article XXVIII, section 11 of the Colorado Constitution states that “Any provisions in the statutes of this state in conflict or inconsistent with this article are hereby declared to be inapplicable to the matters covered and provided for in this article.” As a constitutional provision, article XXVIII, section 11 will override any conflicting or inconsistent provision of the proposed initiative, if the proposed initiative changes the Colorado Revised Statutes rather than amends the Colorado Constitution.
6. Please ensure that all terms of art used in the proposed initiative are defined in the definitions section of the initiative (for example, “political action committee,” “contribution,” “expenditure,” “political entity,” “election cycle,” “affiliated network,” “beneficial ownership,” “intermediary,” etc.).
  7. Limits on contributions and expenditures implicate the rights of speech, political expression, and association under the First Amendment. The more restrictive the prohibition or limitation, the more likely it is to be viewed with scrutiny by a court and the more it must be related to an important governmental interest. The same considerations apply to disclaimers on elections communications, which can infringe on the freedom of speech, and disclosure requirements, which can infringe on the right to association.
  8. Statutes that restrict voters’ rights to vote for a particular candidate and candidates’ access to the ballot implicate fundamental rights and, therefore, may be found unconstitutional if the restriction is not sufficiently tied to a

counterbalancing state interest. The “permanent disqualification from holding elected office in the State of Colorado” or the “immediate removal from office” as a punishment for a campaign finance violation could be challenged as unconstitutional under this balancing test.

9. Some disclosure requirements under existing law provide mechanisms for an individual to have their name redacted if there is a reasonable probability that the individual would be subject to harm, threats, harassment, or reprisals if the disclosure was compelled. Do the proponents intend to have any such mechanism?
10. The proposed initiative provides for the forfeiture of contributions that were made in violation of the provisions of the proposed initiative. What happens to this forfeited money?
11. In subsection 2 of section 4 of the proposed initiative, which concerns a “Prohibition on Foreign and Corporate Contributions,” how is the 5% foreign ownership determined? What is the standard for determining what constitutes a “foreign-influenced” entity? In the definition of “foreign-influenced entity,” what constitutes a direct versus an indirect “aggregate ownership interest”?
12. The following questions relate to subsection 4 of section 4 of the proposed initiative, which concerns the “Disclosure of Synthetic Media”.
  - a. In subsection 4b, what constitutes knowing production, creation, dissemination, or distribution of synthetic media “in violation of this subsection”?
  - b. When is the requirement to “disclose the source of funding used for the production and dissemination of such media” in subsection 4bi triggered?
  - c. Disclosure requirements concerning content created by generative artificial intelligence exist in current law in article 46 of title 1, C.R.S., with enforcement by the Secretary of State. How do the proponents intend the proposed initiative to interact with these existing statutes?
  - d. The knowing or reckless making, publishing, broadcasting, or circulating of a false statement designed to affect the vote on any issue submitted to the electors at any election or relating to any candidate for election to public office is already prohibited by section 1-13-109, C.R.S. A person convicted of violating that section is guilty of a class 2 misdemeanor. How do the

proponents intend the proposed initiative to interact with that existing statute?

13. In subsection 4b of section 5 of the proposed initiative, which concerns “Super PAC Fraud and Illegal Coordination,” can a candidate be subject to the listed punishment if that candidate knowingly coordinates with a person or entity that is in violation of the expenditure or disclosure requirements but does not have knowledge that the person or entity is in violation of the applicable requirements?
14. What constitutes “retaliation” or “retaliatory action” in violation of subsection 7 of section 5 of the proposed initiative, which concerns “Whistleblower Protections”?
15. Subsection 9 of section 5 of the proposed initiative, which concerns “Voter Enforcement,” provides that any registered voter in the state may file a civil action to enforce the provisions of the proposed initiative. Article 80 of title 13, C.R.S., establishes time limits for when certain civil causes of action may be brought. Do the proponents intend to establish a specific statute of limitation for causes of action brought under the proposed initiative?
16. The following questions and comments relate to section 6 of the proposed initiative, which concerns “Ballot Access Eligibility.”
  - a. Subsection 1, which concerns ballot access for federal candidates, provides for the exclusion from a state-administered primary election ballot for candidates for federal office who do not comply with the requirements of the proposed initiative. It is possible that this provision could be challenged as an unconstitutional additional qualification to federal office.
  - b. Similarly, regarding offices in the state, the Colorado Supreme Court has also held that the General Assembly cannot enact a statute that adds qualifications for an office if the Colorado Constitution establishes the qualifications for that office.
  - c. In subsection 2, which concerns ballot access for state candidates, an individual cannot be certified as a candidate for statewide office unless they “ensure [] public disclosure of the legal names of all donors contributing in excess of \$10,000 to any affiliated ... Super PAC”. A “Super PAC” is defined in section 3 of the proposed initiative as a political committee that, in relevant part, “is prohibited from coordinating with a

candidate or candidate committee.” Given this definition, what is meant by an “affiliated” Super PAC?

17. The following questions and comments relate to section 7 of the proposed initiative, which concerns the establishment of the Colorado Campaign Finance Oversight Commission (CCFOC):

- a. The proposed initiative states that the CCFOC is “vested with the powers and responsibilities set forth in this Act,” but there are no specific powers or responsibilities stated in the Act other than those listed under subsection 5 concerning “Enforcement Powers”.
  - i. Please consider clarifying the powers and duties of the Commission.
  - ii. The enforcement powers listed in the proposed initiative specifically apply to “this Act or other applicable campaign finance statutes.” Is it the proponents’ intent that the CCFOC also have powers and duties in relation to the existing campaign finance laws, as provided in the Colorado Constitution and the state “Fair Campaign Practices Act”?
- b. Is it the proponents’ intent for the CCFOC to be the entity charged with finding violations of the proposed initiative and imposing an appropriate penalty?
  - i. Is it the proponents’ intent that CCFOC powers extend to both the civil and criminal penalties listed?
  - ii. If the proponents intend the CCFOC to have powers regarding criminal prosecution and imposition of criminal penalties, please keep in mind that state agencies, such as commissions, are not authorized to impose felony criminal penalties (but may impose civil penalties, such as fines). A person may be convicted of and punished for a criminal felony only upon indictment and after having been afforded all constitutional rights, including a trial by jury. Likewise, a commission would not have authority to provide an individual immunity from criminal prosecution. Please consider clarifying the proposed initiative accordingly.

- c. How does the CCFOC interact, if at all, with the Secretary of State, who is the entity charged with enforcement of and adoption of rules concerning existing campaign finance laws?
  - d. In subsection 5c concerning “Due Process” before the CCFOC, please consider adding a subject to the following sentence: “Shall be provided a right to respond within thirty (30) days, present evidence, retain counsel, and request a hearing;”.
18. The following questions and comments relate to section 8 of the proposed initiative, which concerns the funding and oversight of the CCFOC:
- a. Where will the fines and fees collected by the CCFOC be deposited?
  - b. Is revenue collected by the CCFOC continuously appropriated to the CCFOC or is it subject to annual appropriation by the General Assembly?
  - c. Is the CCFOC the entity that is charged with administering the remaining 85% of the fine and fee revenue dedicated to “improving election security” and “expanding public financing systems”? If not, what entity has this duty?
  - d. The Taxpayer’s Bill of Rights (TABOR), section 20 of article X of the Colorado Constitution, requires voter approval of taxes but not fees. What do the proponents intend by referencing TABOR in the language of the proposed initiative?
  - e. Section 24-6-303, C.R.S., requires all professional lobbyists to pay a registration fee determined by the Secretary of State. Will the \$250 fee required by subsection 3a of section 8 of the proposed initiative be in addition to this already required registration fee?
- The existing statute also distinguishes between professional and volunteer lobbyists, and volunteer lobbyists are not required to pay the registration fee. Is it the proponents’ intent to have the language of the proposed initiative apply to both professional and volunteer lobbyists?
- f. Subsection 6a of section 8 of the proposed initiative refers to “impact fees” and “carbon credit proceeds”. What do the proponents mean by these terms, which do not appear to be used anywhere else in the proposed initiative? How would the CCFOC have “revenues received” from these fees



and credit proceeds if no provision of the proposed initiative requires them to be credited to the CCFOC?

- g. Subsection 6a of section 8 also provides that the CCFOC's request for additional funding from the General Assembly "be contingent upon approval by a majority vote of Colorado electors." What happens if voters do not approve of the funding request? Can the CCFOC submit additional funding requests in subsequent years? And if the funding request is approved by voters, do the proponents intend to require the General Assembly to appropriate that amount of money to the CCFOC?

## 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 followed by a period (e.g., SECTION 1., SECTION 2.). For example:

**SECTION 1.** In the Colorado Revised Statutes, **add** article 47 to title 1 as follows:

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, if you intend to add a new article to title 1 of the Colorado Revised Statutes, you would include the following amending clause: "In Colorado Revised Statutes, **add** article 47 to title 1 as follows:".
3. Each section in the Colorado Revised Statutes and the Colorado Constitution has a headnote. Headnotes briefly describe the content of the section and are followed by a period.
4. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

**X-X-XXXX. Headnote.** (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

5. It is standard drafting practice to use SMALL CAPITAL LETTERS 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.
6. If the proponents' intent is to add this proposed initiative to the Colorado Revised Statutes, the following definitions would apply:
  - a. The word "shall" is defined in section 2-4-401 (13.7), C.R.S., and it means "that a person has a duty."
  - b. The related word "must," which is defined in section 2-4-401 (6.5), C.R.S., "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."
  - c. The word "person" is defined in section 2-4-401 (8), C.R.S., and it means "any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity."
7. 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.
- 8. The following is the standard drafting language used for creating a definition: "As used in this section, unless the context otherwise requires:" Please consider updating the introductory portion of section 3 of the proposed initiative accordingly.
- 9. The definitions should be in alphabetical order.
- 10. It is standard drafting practice to spell out numbers. However, it is not standard drafting practice to also include digits in parentheses. Please consider removing the digits in parentheses from the proposed initiative.
- 11. When a section or subsection contains an introductory portion, all items in the subsequent list must be able to be read in conjunction with the introductory portion. For example, the introductory portion to subsection 5a of section 4 of the proposed initiative reads: "It shall be unlawful for any person or entity to knowingly produce or distribute synthetic media that:". In the list that follows, subsection iv cannot be read in conjunction with this introductory portion. Please consider amending the proposed initiative accordingly.