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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 measures 2025-2026 #111 and #116, concerning the right for living children to be protected from intentional mutilation and death from the moment they are conceived

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.

Proposed initiatives 2025-2026 #111 and #116 were submitted by the same designated representatives as a series of proposed initiatives. Comments and questions for proposed initiatives 2025-2026 #111 and #116 are addressed in this memorandum.

Purposes

Purpose for Proposed Initiative 2025-2026 #111

The major purpose of the proposed amendment to the Colorado Constitution appears to be to establish the right for living children to be protected from intentional mutilation and death from the moment they are conceived.

Purposes for Proposed Initiative 2025-2026 #116

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

1. To establish the right for living children to be protected from intentional mutilation and death from the moment they are conceived;
2. To ensure children are given neonatal care upon birth;
3. To refer parents to nonviolent resources and medical care that protect all lives;
4. To ensure medical triage is provided by a licensed medical professional when the physical life of a mother is in danger;
5. To revoke or deny a permit or license to any business or individual that causes intentional harm or death to a child;
6. To prohibit an unlicensed or underregulated business or individual from providing surgery or drugs to a pregnant mother or children;
7. To prohibit the dispensing, possession, consumption, transportation, or mailing of drugs intended to kill or disable children;
8. To prohibit discrimination of children whether or not the child has been born; and
9. To authorize biological parents who are unable or unwilling to raise their child to choose who raises their child and receive help through an adoption agency, if desired.

Substantive Comments and Questions

The substance of the proposed initiatives 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 proposed initiative 2025-2026 #111.
3. The following comments and questions relate to the clause concerning the self-executing nature of the proposed initiatives' provisions. The proposed initiatives state, "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 initiatives 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 "provision of lawful protection" is ambiguous. The designated representatives may wish to replace that phrase with "initiative," "section," or "provision" throughout.
 - c. The proposed initiatives indicate that their provisions "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 do the proposed initiatives operate in relation to other state constitutional provisions with which they may be in conflict or in tension?

4. The applicability clause in both proposed initiatives contains retroactivity language stating "this act does not apply to actions prior to November 4, 2026." What "actions" are contemplated here?
5. 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 initiatives identify November 4, 2026, as the date "[t]his act of protection applies" and "[t]his 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 do the proposed initiatives' current applicability/effective dates 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.
6. The following comments and questions relate to the provisions that repeal and add, respectively, sections 32 and 33 of article II of the state constitution in proposed initiative 2025-2026 #111:
 - a. Who is required to "protect living children from intentional mutilation and death from the moment they are conceived"? The word "shall" indicates there is a duty for a specific person to protect living children.
 - b. What does "intentional mutilation" mean?
 - c. The headnote should be in bold-face type with only initial capitalization, not all caps. For example:

Section 33. Right to be born. Living children shall be protected [...]

7. The following comments and questions relate to the provisions that make statutory changes to article 3 of title 18, C.R.S., which is located in proposed initiative 2025-2026 #116:
 - a. 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 instead.
 - b. Regarding proposed section 18-3-101.1:

- i. Who is required to "protect living children from intentional mutilation and death from the moment they are conceived"? The word "shall" indicates there is a duty for a specific person to protect living children.
- ii. What does "intentional mutilation" mean?
- iii. Each section in the Colorado Revised Statutes has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to section 18-3-101.1 of the proposed initiative (or the section number that replaces it) and appear in bold-face type.

c. Regarding proposed section 18-3-101.2:

- i. The Colorado Revised Statutes are divided into numbered sections as follows:
 - (1) Subsection
 - (2) Subsection
 - (3) Subsection
- ii. Subsection (a) requires children to receive "neonatal care, including nutrition, warmth, and human comfort." Who is required to provide this care?
- iii. Subsection (b) requires parents to be "referred to non-violent resources and medical care that protect all lives." What do the designated representatives mean by "non-violent resources"? Who is required to refer parents to these resources and medical care?
- iv. Subsection (c) states there is an expectation that a licensed medical professional triage a mother when her physical life is in danger. What do the designated representatives mean by "medical triage"? Does the term "mother" refer to any woman who is a mother or does it specifically apply to a woman who is pregnant? Would the designated representatives clarify the intent?
- v. Subsection (d) prohibits permits and licenses from being granted to any business or individual that "causes intentional harm or death to

a child." Who is responsible for issuing or revoking permits or licenses?

- vi. Subsection (e) 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"?
- vii. Subsection (g) states that "children shall be protected equally under the law without discrimination for whether or not the child has already been born." What is the intent of this subsection, and how does the subsection interact with Colorado's antidiscrimination statutes?
- viii. Subsection (h) authorizes biological parents to choose who they would like to raise their child. How does this subsection interact with other Colorado adoption statutes? What is the legal process for implementing this subsection?

d. Regarding proposed section 18-3-101.3:

- i. This section requires the judiciary "to consider all facts through due process of law to determine if the law was broken [...]," but the section does not address who has the authority to bring a lawsuit and who a lawsuit may be brought against, whether a violation is criminal or civil in nature, what the punishment is if any or all sections of the proposed initiative are violated, etc. Would the designated representatives clarify the intent?
- ii. This section requires the judiciary to determine "who the perpetrators and victims are." 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?
- iii. What is meant by "fair and appropriate justice for victims"? Who would be considered a victim under this section?

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 initiatives 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, in proposed initiative 2025-2026 #111:

SECTION 1. In the constitution of the state of Colorado, **add** section 33 to article II as follows:

SECTION 2. In the constitution of the state of Colorado, **repeal** section 32 of article II.

For example, in proposed initiative 2025-2026 #116:

SECTION 1. In Colorado Revised Statutes, **add** part 7 to article 3 of title 18 as follows:

2. 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 or Colorado Constitution. Although the text of the proposed initiatives should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. Additionally, language being added should appear in normal-face type rather than bold-face type.
3. For purposes of proposed initiative 2025-2026 #116, the word "shall" is defined in section 2-4-401 (13.7), C.R.S., and it means "that a person has a duty." 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."