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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: September 12, 2025

Subject: Proposed initiative measure 2025-2026 #149, concerning the right to life beginning at conception, and proposed initiative measure 2025-2026 #150, concerning the right of 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.

Proposed initiatives 2025-2026 #149 and #150 were submitted by the same designated representatives as a series of proposed initiatives. The comments and questions raised in this memorandum address proposed initiatives 2025-2026 #149 and #150.

Earlier versions of these proposed initiatives, proposed initiatives 2025-2026 #114 and #117, were submitted by the same designated representatives and were the subject of memoranda dated July 14, 2025. The comments and questions raised in this memorandum do not include comments and questions that were addressed in the earlier memoranda or at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiatives. Prior comments and questions that are not restated in this memorandum continue to be relevant and are considered part of this memorandum.

Purposes

Purposes for Proposed Initiative 2025-2026 #149

The major purpose of the proposed amendment to the Colorado Constitution appears to be to establish the right for children to continue living from the moment they are conceived.

Purposes for Proposed Initiative 2025-2026 #150

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

1. To establish the right of pregnant mothers to continue pregnancy;
2. To establish the right of preborn children to continue living;
3. To ensure that the government protects the right of pregnant mothers to continue pregnancy and of preborn children to continue living;
4. For government agencies and medical providers to refer parents to nonviolent medical care and resources;
5. To prohibit facilities that kill children from operating, profiting from killing children, or advertising services to women;
6. To ensure laws applying to children are enforced fairly without discrimination of children, whether or not they have been born;
7. To ensure individuals who are accused of breaking the law are entitled to due process under the United States Constitution; and

8. To allow civil action to be taken by any United States citizen against any individual or business that causes the intentional death of a child.

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. The following question relates to the provisions that add section 33 of article II to the state constitution in proposed initiative 2025-2026 #149:
 - a. How does section 33, added by this proposed initiative, work with the constitutional right to abortion established in section 32 of the Colorado Constitution? Does the proposed section 33 conflict with section 32?
3. The following questions relate to the provisions that add part 7 to article 3 of title 18, C.R.S., located in proposed initiative 2025-2026 #150:
 - a. Are proposed sections 18-3-702 and 18-3-703 intended to be new law? If so, the language should be in SMALL CAPITAL LETTERS.
 - b. Do the proponents intend that the anti-discrimination provision in proposed section 18-3-703 (2) apply only to laws concerning the life of a child or medical care, or does it apply to all laws that may apply to a child?
 - c. Do the proponents intend proposed section 18-3-703 (3) to expand or otherwise change the due process rights afforded by the United States Constitution? If so, how are they being changed by the initiative? If not, what is your intent by including this provision in the initiative?
 - d. Concerning the civil action created in proposed section 18-3-703 (4):
 - i. Does the citizen bringing the claim need to have been directly harmed by the business or individual who is the defendant in the civil action or can any citizen bring the civil action?

- ii. Does this provision apply in the event of the intentional death of a child after the child was born?

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 proposed initiative 2025-2026 #150 as follows:

1. The term "legislative declaration" is used when the information in the declaration sets out the will of the legislature. In section 1 of the proposed initiative, the declaration sets out the will of the people, so alternative language, or simply the word "declaration," should be used.
2. It is standard drafting practice to start an introductory portion of a statutory or nonstatutory section with (1) and then letter the paragraphs below it as (a), (b), and so forth, rather than have an unnumbered introductory portion that leads into (1), (2), and so on, as is done in sections 1 and 3 of the proposed initiative.
3. When a sentence contains a list that includes internal punctuation, as is found in subsection (2) of the declaration, the components of the list should be separated by semicolons as follows:

(2) We affirm a woman's right to make her own health care decisions and what happens to her body; to be told accurate information about any procedures, risks, alternatives, and potential outcomes of any drugs or surgeries; and to consent to or deny any life-saving treatment for herself, and the right to continue a pregnancy;
4. The subject and verb do not agree at the end of subsection (3) of the declaration: "[...] which has also been found to cause emotional, physical, and spiritual harm to their mothers" is referencing "legally induced abortions," and thus "has" should be changed to "have."
5. In proposed section 18-3-702 (2), please clarify what the facilities are profiting from by adding an object to the preposition. It is unclear if they profit from women or from something else.

6. Proposed section 18-3-703 (3) consists of a run-on sentence. Consider making this two sentences, with the second beginning "Through evidence and testimony, the judiciary [...]."
7. In proposed section 18-3-703 (4), "Attorney's fees" should be "Attorney fees."