

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**TO:** Trisha Gomez and James Vance  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** March 21, 2024

**SUBJECT:** Proposed initiative measure 2023-2024 #256 concerning the Right to Food

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 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 intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

### Purposes

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

1. Create a right to food; and
2. Create a fundamental right to be free from hunger, malnutrition, starvation, and the endangerment of life due to the scarcity of or lack of access to nourishing food.

## Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. 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 should be added to the beginning of the proposed initiative.
2. 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?
3. What will be the effective date of the proposed initiative?
4. Pursuant to article V, section 1 (2) of the Colorado Constitution, proposed initiatives must amend either the Colorado Constitution or state law. The proposed initiative should be revised to indicate to show where in the constitution its provisions should be inserted.
5. The proposed initiative contains an introduction, a statement regarding rights to food and food sovereignty, a purpose, and a conclusion. The proposed initiative should only contain the language that is intended to be included in the constitution. If the proponents want to include a statement of intent as the basis for why the proposed initiative is needed, the proposed initiative could include a "declaration of intent" section as its first section.
6. Does the right to food only apply to government action or would it also apply to private citizen action? How would a government violate a right to food? If it also applies to private citizen action, how would a private citizen violate the right to food?
7. The proposed initiative states all persons have a "right to acquire, produce, prepare, preserve, and consume food of their choosing."
  - a. Would a government be able to place restrictions or requirements on how food is produced, like restrictions on pesticide use or limitations on where food could be produced?
  - b. Would a government be able to place restrictions on hunting or fishing, like seasonal restrictions or limits on the number of animals that could be hunted or on the number of fish that can be caught?

8. The proposed initiative states an individual has a fundamental right to be free from hunger, malnutrition, starvation, and the endangerment of life due to the scarcity of or lack of access to nourishing food.
  - a. What does it mean that this right is a fundamental right while the right to food is not a fundamental right, but an unalienable right?
  - b. Does this fundamental right only apply to government action or does it also apply to private citizen action? How would a government violate this right? If it applies to private citizens, how would a private citizen violate this right?
  - c. Does this right require the government to provide food to those who are hungry, malnourished, or starving?
9. The proposed initiative states that "trademarks, patents, or other intellectual property rights shall not impede the inalienable right to food. The protection of such intellectual property rights shall be subject to reasonable limitations that ensure the unobstructed enjoyment of the fundamental right to acquire, produce, process, prepare, preserve, and consume food as outlined in this section."
  - a. In the first sentence, the proposed initiative refers to the right to food as an inalienable right. In the second sentence, the proposed initiative refers to the right to acquire, produce, process, prepare, preserve, and consume food as a fundamental right. Is there a difference between the inalienable right and the fundamental right?
  - b. The proposed initiative uses the terms "inalienable" and "unalienable" interchangeably. Would the proponents consider using one term consistently in the proposed initiative?
  - c. How would a trademark, patent, or other intellectual property impede the inalienable right to food?
  - d. What would be a reasonable limitation that ensures the unobstructed enjoyment of the fundamental right to acquire, produce, process, prepare, preserve, and consume food?

## 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 meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

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:

[**Please note:** Our memorandum style conventions require the capitalization of "Colorado Constitution." However, the style conventions for bills, acts, and proposed initiatives like yours *should not* capitalize "constitution" since it is not a proper noun (as shown in the example above).]

2. Each constitutional 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 \_\_ 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. A headnote should be added to the proposed initiative and be in bold-face type.
4. 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.
5. 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.