

STATE OF COLORADO

Colorado General Assembly

Natalie Castle, Director
Legislative Council Staff

Colorado Legislative Council
200 E. Colfax Ave., Room 011
Denver, Colorado 80203-1716
303-866-3521
lcs.ga@coleg.gov



Ed DeCecco, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
1375 Sherman St., Suite 300
Denver, Colorado 80261
303-866-2045
olls.ga@coleg.gov

MEMORANDUM

To: Jon Caldara and Beth Hendrix

From: Legislative Council Staff and Office of Legislative Legal Services

Date: March 30, 2026

Subject: Proposed Initiative Measure 2025-2026 #286, Concerning the Right to Access Public Proceedings and Records

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Legislative Council Staff 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 Staff 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 Legislative Council Staff and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

An earlier version of this proposed initiative, proposed initiative **2025-2026 #261**, was submitted by the same designated representatives, was the subject of a memorandum dated March 13, 2026, and was discussed at a public meeting on March 16, 2026. The comments and questions raised in this memorandum do not include comments and questions that were addressed in the earlier memorandum or at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed

initiative. Prior comments and questions that are not restated in this memorandum continue to be relevant and are considered part of this memorandum.

Purposes

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

1. Establish a fundamental constitutional right for all persons to know the affairs of all levels of state and local government, which guarantees the right to access and examine public records and public proceedings and to observe the meetings, deliberations, discussions, and presentations of all public bodies of state and local government;
2. Specify that this fundamental right applies to all public affairs of government and does not apply only when the demand of individual privacy or another highly compelling state interest clearly outweighs this fundamental right;
3. Require any government office, official, officer, employee, or public body asserting an exemption to the public access requirements of the proposed initiative to demonstrate by clear and convincing evidence that the government affairs at issue are exempt;
4. Impose a civil penalty of at least \$1,000 on any state or local government for each instance in which they knowingly violate the provisions of the proposed initiative;
5. Prohibit any state or local government from enacting legislation to limit or restrict the provisions of the proposed initiative; and
6. Preempt any ordinance, rule, regulation, charter, or statute that conflicts or is inconsistent with the provisions of the proposed initiative.

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. Because the declaration is found below the enacting clause and is written in small capital letters, the declaration in subsection (1) of the proposed initiative would be included in the new section 33 of the Colorado Constitution. Is this your intent?
3. Subsection (8) of the proposed initiative establishes the penalty for a knowing infringement of the fundamental right established by the proposed initiative. The following questions relate to subsection (8):
 - a. Subsection (8) provides that the sanction applies to any state or local government. Is the intent of this language that individual governmental officers or employees are not liable for violations of this fundamental right, either in their personal or professional capacities?
 - b. Is this subsection (8) intended as a waiver of sovereign or governmental immunity?
 - c. If an individual wanted to file suit alleging a violation of their constitutional right, who would be the correct party against whom to file the action?
 - i. Who would this be at the local level?
 - ii. Who would this be at the state level?

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 meeting only if the designated representatives 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 follows:

1. There should be a colon at the end of the amending clause of the proposed initiative.
2. To maintain consistency, “affairs” should be initial capitalized in the headnote of the proposed section 33 of article II of the Colorado Constitution.
3. There is no need to capitalize the words “article” or “section” in the amending clause of the proposed initiative.
4. When referring to the Colorado Constitution, as in section 2 of the proposed initiative, it is standard drafting practice to write out “section” and to not initial capitalize “article”.
5. The formatting of subsection (1)(f) of the proposed initiative makes it appear as part of the series in subsection (1), but the substance of subsection (1)(f) seems to be a new idea within the declaration that does not necessarily fit within the series in subsection (1). To make this clear, consider changing subsection (1)(a) to subsection (1)(a)(I), subsection (1)(b) to subsection (1)(a)(II), and so forth, and changing subsection (1)(f) to subsection (1)(b).