

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Linda White and Rich Guggenheim
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: January 31, 2024
SUBJECT: Proposed initiative measure 2023-2024 #159, concerning Public Athletics Programs for Minors

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.

An earlier version of this proposed initiative was the subject of a previous memorandum and public meeting. Proposed initiative 2023-2024 #104 was the subject of a memorandum dated December 8, 2023, and was discussed at a public meeting on December 14, 2023. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

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

1. To require any interscholastic, intramural, or club athletic team, sport, or athletic event that is sponsored or sanctioned by a public athletics program for minors to specify whether each team, sport, or event is for:
 - a. Females, women, or girls;
 - b. Males, men, or boys; or
 - c. Coeducational or mixed.
2. To require that only students who are female based on their biological sex at birth may participate in an event designated for females, women, or girls.
3. To prohibit a governmental entity from taking any adverse action against a public athletics program for minors for complying with the requirements of this proposed initiative.
4. To create causes of action for a student or public athletics program for minors that suffers harm as a result of noncompliance with this proposed initiative.

Substantive 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. Subsection (3)(a) of the proposed initiative states in part, "If a student is deprived of an athletic opportunity **or** suffers direct or indirect harm as a result of a violation of subsection (2) of this section, the student has a private cause of action ..." (**Emphasis added**). The conjunction "or" implies that a student who is "deprived of an athletic opportunity" has a private cause of action. Is it the proponents' intent that a student who is deprived of an athletic opportunity to compete in a program designated for females because the student's biological sex is male is entitled to a cause of action? If not, would the proponents consider revising for clarity?

Technical Comments

1. 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.