

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

To: Sherri Stieg & Evanna Dowis

From: Legislative Council Staff and Office of Legislative Legal Services

Date: March 13, 2026

Subject: Proposed Initiative Measure 2025-2026 #265, Concerning Limits on Political Spending by Artificial Persons

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.

Purposes

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

1. To add a new section 15 to article XV of the Colorado Constitution to establish that the state extends to "artificial persons" only those powers defined as

"artificial person powers," and no others, as a condition of state-conferred legal status and charter privileges;

2. To specify that any action taken by an artificial person outside of those powers with respect to "political spending power is ultra vires and void";
3. To specify that any ultra vires exercise of political spending power results, as a matter of law, in the "withdrawal of all charter privileges";
4. To subject the reinstatement of charter privileges to procedures enacted by the legislature during its first regular session following January 1, 2027, upon the "full disgorgement of amounts expended in such activity and certification of future compliance," along with any additional conditions the legislature considers appropriate; and
5. To define terms used in the proposed section 15, including "Artificial person," "Artificial person powers," "Charter privilege," and "Political spending power."

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. In *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), the U.S. Supreme Court held that the government may not suppress political speech on the basis of the speaker's corporate identity. Have the proponents considered whether prohibiting artificial persons from exercising political spending power conflicts with the First Amendment to the United States Constitution and controlling federal case law?
3. The proposed initiative states that any ultra vires exercise of political spending power "results, as a matter of law, in the withdrawal of all charter privileges." Who determines that an action was "ultra vires and void"? Does this require a court order, or is it an automatic administrative action by the Secretary of State?

4. What are the legal and practical consequences of the "withdrawal of all charter privileges"? For example, is the entity immediately dissolved? What happens to the entity's ongoing contracts, property, and employees?
5. Can the State of Colorado withdraw the charter privileges of an entity organized under the laws of another jurisdiction, or does this only revoke their authorization to transact business in Colorado?
6. The initiative allows for reinstatement "pursuant to procedures enacted by the legislature during its first regular session following January 1, 2027." Is it the proponents' intent to require the legislature to enact these procedures? What happens if the legislature fails to enact these procedures during that specific session? Does the entity have any alternative path to reinstatement?
7. The initiative requires "full disgorgement of amounts expended" to be paid to qualify for reinstatement. Disgorgement is a remedy that requires a party that profits from illegal or wrongful acts to give up any profits they made as a result of that illegal or wrongful conduct. In the case of the initiative, an artificial person would not have profited from wrongful acts but instead would have spent money for political purposes in a manner made a wrongful act by the initiative. By using the term "disgorgement", is your intent to impose a monetary penalty on an artificial person that exercises political spending power in an amount equal to its political spending?
8. To whom must the "full disgorgement of amounts expended" be paid to qualify for reinstatement?
9. The definition of "artificial person" includes an entity whose "existence or limited liability shield is conferred by Colorado law." Does this include labor unions, non-profit organizations, and homeowners' associations?
10. The definition of "artificial person" also includes an entity organized under the laws of another jurisdiction that "directly or indirectly undertakes, finances, or directs the exercise of political spending power in the state of Colorado." How would the state enforce this provision against foreign entities that do not hold property or transact regular business in the state?
11. "Charter privilege" is defined as "any legal benefit to an artificial person that exists only because the state of Colorado confers it." Does this include

fundamental rights such as the right to own property, the right to sue and be sued, or the right to enter into valid contracts?

12. "Political spending power" is defined as expending money or "anything of value" to influence a vote. What constitutes "anything of value"? Does it include volunteer time by employees, use of corporate facilities, or non-monetary endorsements?
13. Does the phrase "influence the outcome of a vote of the electorate" apply exclusively to candidate elections, or does it also encompass ballot measures, constitutional amendments, and referenda?
14. The initiative exempts the distribution of "bona fide news, commentary, or editorial content." Who determines what qualifies as "bona fide" news?
15. The initiative states that "[p]olitical spending power may be exercised by political committees, as provided by law." If a political committee is legally organized as an entity with a limited liability shield under Colorado law, is it considered an "artificial person"? If so, how does this exemption interact with the absolute ban in subsection (1)? Furthermore, does this provision allow an "artificial person" to donate money to a political committee to exercise political spending power?

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. Section 15 already exists within article XV of the Colorado Constitution. Proponents should consider changing all references to "section 15" to "section 16."
2. Each constitutional section being amended, repealed, or added is preceded by a separate clause, referred to as the "amending clause," that explains how the law is being changed. Amending clauses are written in lowercase type and follow a specific format. When adding a constitutional section, it is standard drafting practice to format the amending clause in proposed initiative #265 as, "**SECTION**

1. In the constitution of the state of Colorado, **add** section # to article XV as follows:".

- a. Additionally, proponents of this proposed initiative should consider removing "NEW SECTION" before sections 1 and 2.
3. It is standard drafting practice to use small capital letters to show the language being added to the Colorado Constitution. The headnote should remain in lowercase letters. To find small capital letters in Microsoft Word, go to the Home tab, click the arrow in the bottom right corner of the Font group, and in the Font dialog box, check the Small Caps checkbox under Effects.
 4. It is standard drafting practice to not capitalize common nouns. Proponents of proposed initiative #265 should consider replacing "State" with "state."
 5. It is standard drafting practice to put the definitions at the beginning of the section.
 - a. The following is the standard drafting language used for creating a definitions section:

As used in this section, unless the context otherwise requires:

6. When using roman numerals to denote subparagraphs, the roman numerals should be in capital letters, not in lowercase letters.
7. Each section in the Colorado Constitution has a headnote. Headnotes briefly describe the content of the section. For example, section 2 of the proposed initiative should have a headnote that reads, "**SECTION 2. Effective date.**"