

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

To: Suzanne Taheri and Steven Ward

From: Legislative Council Staff and Office of Legislative Legal Services

Date: March 30, 2026

Subject: Proposed initiative measures 2025-2026 #302 and #303, concerning the constitutional right to hunt and fish

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.

Proposed initiatives **2025-2026 #302 through #307** were submitted by the same designated representatives as a series of proposed initiatives. This memorandum covers the proposed initiatives **2025-2026 #302 and #303**.

Purposes

Purposes for Proposed Initiative 2025-2026 #302

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

1. Establishing a right of the people of Colorado to hunt, fish, and harvest fish and wildlife;
2. Establishing hunting and fishing as the primary and preferred means of managing fish and wildlife in the state;
3. Establishing that the right to hunt, fish, and harvest fish and wildlife created under the proposed initiative does not authorize trespass upon private property and does not modify statutes relating to trespassing or property rights; and
4. Allowing the Colorado Parks and Wildlife Commission and the General Assembly to continue regulating hunting, fishing, and wildlife management as long as the regulation is reasonable and necessary for sound scientific wildlife conservation and management, for public safety, or to preserve the future of statewide hunting and fishing opportunities.

Purposes for Proposed Initiative 2025-2026 #303

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

1. Establishing a right of the people of Colorado to hunt, fish, and harvest fish and wildlife;
2. Establishing that the right to hunt, fish, and harvest fish and wildlife created under the proposed initiative does not authorize trespass upon private property and does not modify statutes relating to trespassing or property rights; and
3. Allowing the Colorado Parks and Wildlife Commission and the General Assembly to continue regulating hunting, fishing, and wildlife management as long as the regulation is reasonable and necessary for

sound scientific wildlife conservation and management, for public safety, or to preserve the future of statewide hunting and fishing opportunities.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions for both proposed initiatives **#302** and **#303** unless otherwise noted in the question:

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. Article V, section 1 (4)(a) of the Colorado Constitution requires that when the majority of voters approve an initiative, the initiative is effective on and after the date of the official declaration of the vote and proclamation of the governor. Because the proposed initiative does not contain an effective date, this would be the default effective date. Does this default effective date satisfy your intent? If not, you should include the desired effective date that is not earlier than the default effective date to comply with this constitutional requirement.
3. Is the proposed section being added to the Colorado Constitution intended to be self-executing? Is this proposed section intended to create rights that are enforceable in court?
4. The questions in this proposed section concern this provision: “THERE IS ESTABLISHED A RIGHT OF THE PEOPLE OF COLORADO TO HUNT, FISH, AND HARVEST FISH AND WILDLIFE, INCLUDING BY THE USE OF TRADITIONAL METHODS, AND SHALL APPLY TO ALL SPECIES OF FISH AND WILDLIFE MANAGED BY THE STATE.”
 - a. The right is given to “the people.” That raises a few questions:
 - i. Does that mean that each individual has an enforceable right?
 - ii. Is it a collective right?
 - iii. If it is a collective right, how will it be enforced in court?
 - b. The phrase “INCLUDING BY THE USE OF TRADITIONAL METHODS” raises four questions:
 - i. The term “traditional” is vague. What is intended by the term?

- ii. Would the proponents consider defining the phrase “traditional methods”?
 - iii. Section 33-1-102 (43), C.R.S., defines the term “take” to mean “to kill or otherwise acquire possession of wildlife; ...” Do the proponents intend for the term “harvest” to mean something other than the word “take”?
 - iv. This phrase modifies the phrase “hunt, fish, and harvest.” It is a best practice to place a modifier next to the word or phrase it modifies. So it should be clarified. The phrase could be made a prepositional phrase “There is established a right of the people of Colorado to hunt, fish, and harvest fish and wildlife by the use of traditional methods” (This alternative would subtly narrow the right to only traditional methods.) Or it could be made a separate sentence “There is established a right of the people of Colorado to hunt, fish, and harvest fish and wildlife. The right includes hunting, fishing, and harvesting fish and wildlife by the use of traditional methods”
- c. The questions in this proposed section concern this provision: “AND SHALL APPLY TO ALL SPECIES OF FISH AND WILDLIFE MANAGED BY THE STATE.”
- i. This phrase uses the word “shall” incorrectly. The word “shall” means that a person has a duty. For example, “A person shall pay taxes.” In this provision, the word “shall” appears to be giving the right a duty. A right not being an entity with volition cannot have a duty. Is the intention to apply the word “shall” to the word “right”? If so, the provision should be rewritten without the word “shall.” Here is an example: “THE RIGHT APPLIES TO ALL SPECIES OF FISH AND WILDLIFE MANAGED BY THE STATE.” Would the proponents consider revising this provision?
 - ii. The state manages nongame and endangered wildlife species, such as bison and wolves. Some of these species are illegal to hunt under current law or federal law. It appears that the right to hunt would apply to these species. Is that the intention? If not, would the proponents consider clarifying the intention?

5. The questions in this section apply only to proposed initiative **#302** and concern this provision: “HUNTING AND FISHING SHALL BE THE PRIMARY AND PREFERRED MEANS OF RESPONSIBLY MANAGING AND CONTROLLING FISH AND WILDLIFE POPULATIONS.”
- a. This sentence also uses the word “shall” incorrectly. This usage appears to give hunting and fishing a duty. The statute would be better if an entity were given a duty: “THE STATE OF COLORADO SHALL MAKE HUNTING AND FISHING THE PRIMARY AND PREFERRED MEANS OF RESPONSIBLY MANAGING AND CONTROLLING FISH AND WILDLIFE POPULATIONS.” Another revision might read, “THE POLICY OF THE STATE OF COLORADO IS THAT HUNTING AND FISHING ARE THE PRIMARY AND PREFERRED MEANS OF RESPONSIBLY MANAGING AND CONTROLLING FISH AND WILDLIFE POPULATIONS.” Would the proponents consider revising this provision?
 - b. Is the intention that this provision can be enforced in court?
 - c. In the context of this provision, is there an intended difference between the words “primary” and “preferred”? If so, what is that difference? If not, a best practice is to avoid using redundant words because a court is required to give every word in a constitutional provision meaning. So if those words are redundant, would the proponents consider eliminating the redundancy?
 - d. In the context of this provision, is there an intended difference between the words “managing” and “controlling”? If so, what is that difference? If not, a best practice is to avoid using redundant words. So if those words are redundant, would the proponents consider eliminating the redundancy?
 - e. What would be the intended effect of the proposed initiative for other means of managing and controlling fish and wildlife populations that are then not “the primary or preferred means,” such as habitat conservation and vaccinations against disease?
6. This question concerns the following provision: “THIS SECTION SHALL NOT BE CONSTRUED TO AUTHORIZE TRESPASS UPON PRIVATE PROPERTY OR TO MODIFY ANY PROVISION OF STATUTES RELATING TO TRESPASS OR PROPERTY RIGHTS.” This provision also uses the word “shall” incorrectly to give the section a duty. If the duty applies to a court, the provision could be revised to read, “A COURT SHALL

NOT CONSTRUE THIS SECTION TO AUTHORIZE TRESPASS UPON PRIVATE PROPERTY OR TO MODIFY THE STATUTES RELATING TO TRESPASS OR PROPERTY RIGHTS.” Another revision might read, “THIS SECTION IS NOT INTENDED TO AUTHORIZE TRESPASS UPON PRIVATE PROPERTY OR TO MODIFY THE STATUTES RELATING TO TRESPASS OR PROPERTY RIGHTS.” Would the proponents consider revising this provision?

7. The questions in this section concern this provision: “THIS SECTION SHALL NOT LIMIT THE AUTHORITY OF THE COLORADO PARKS AND WILDLIFE COMMISSION OR THE GENERAL ASSEMBLY TO REGULATE HUNTING, FISHING AND WILDLIFE MANAGEMENT; HOWEVER, ANY SUCH REGULATION MUST BE REASONABLE AND NECESSARY FOR SOUND SCIENTIFIC WILDLIFE CONSERVATION AND MANAGEMENT, PUBLIC SAFETY, OR TO PRESERVE THE FUTURE OF HUNTING AND FISHING OPPORTUNITIES FOR ALL SPECIES STATEWIDE.”
 - a. This provision specifically names an agency of the state government, “Colorado parks and wildlife commission.” What would happen if the General Assembly reorganized its agencies to move, rename, or change this commission? Would that change the effect of this provision? This provision could be rewritten to not refer to a specific agency: “THIS SECTION DOES NOT LIMIT THE AUTHORITY OF AN AGENCY OF THE STATE OF COLORADO OR THE GENERAL ASSEMBLY TO REGULATE HUNTING, FISHING AND WILDLIFE MANAGEMENT ...” If naming the commission is desired, the provision could name a successor agency: “THIS SECTION DOES NOT LIMIT THE AUTHORITY OF THE COLORADO PARKS AND WILDLIFE COMMISSION, OR ITS SUCCESSOR, OR THE GENERAL ASSEMBLY TO REGULATE HUNTING, FISHING AND WILDLIFE MANAGEMENT...”
 - b. Are the words “regulate” and “regulation” intended to cover both policy and administration of the policy? If these words are intended to cover administration of the policy, then the provision should include both the Parks and Wildlife Commission and the Division of Parks and Wildlife or their successors. Not naming a specific agency as described in the last paragraph would also address this issue: “THIS SECTION DOES NOT LIMIT THE AUTHORITY OF AN AGENCY OF THE STATE OF COLORADO OR THE GENERAL ASSEMBLY TO REGULATE HUNTING, FISHING AND WILDLIFE MANAGEMENT ...”
 - c. This question concerns only proposed initiative **#302**. This provision also uses the word “shall” incorrectly to give the section a duty. A revision

might read, “THIS SECTION DOES NOT LIMIT THE AUTHORITY OF THE COLORADO PARKS AND WILDLIFE COMMISSION OR THE GENERAL ASSEMBLY TO REGULATE HUNTING, FISHING AND WILDLIFE MANAGEMENT...” Would the proponents consider revising this provision?

d. The second clause, “... REGULATION MUST BE REASONABLE AND NECESSARY FOR SOUND SCIENTIFIC WILDLIFE CONSERVATION AND MANAGEMENT, PUBLIC SAFETY, OR TO PRESERVE THE FUTURE OF HUNTING AND FISHING OPPORTUNITIES FOR ALL SPECIES STATEWIDE,” raises three questions:

- i. Federal law sometimes requires the state to regulate wildlife hunting and fishing in certain ways. For example, federal law governs whether the state could authorize wolf hunting. Would the proponents consider adding federal law to the list of reasons why a regulation may be promulgated?
- ii. Does the word “reasonable” stand alone or does it apply to the list: “FOR SOUND SCIENTIFIC WILDLIFE CONSERVATION AND MANAGEMENT, PUBLIC SAFETY, OR TO PRESERVE THE FUTURE OF HUNTING AND FISHING OPPORTUNITIES FOR ALL SPECIES STATEWIDE”? That is, does the word reasonable stand alone so that the regulation need only be reasonable? Or does the regulation need to be reasonably related to sound scientific wildlife conservation? If the regulation need only be reasonable, then breaking up the provision would make that clearer:

“... THE REGULATION MUST BE:

(a) REASONABLE; AND

(b) NECESSARY FOR SOUND SCIENTIFIC WILDLIFE CONSERVATION AND MANAGEMENT, PUBLIC SAFETY, OR TO PRESERVE THE FUTURE OF HUNTING AND FISHING OPPORTUNITIES FOR ALL SPECIES STATEWIDE.”

- iii. If the reasonable standard applies to the list, then it is redundant because, if it is necessary for conservation, then it is reasonable for conservation. When faced with this doublet, courts have read the word “necessary” out of the statute. The conjunctive word “and” means that the regulation must meet both standards, so a court may interpret the doublet to require the regulation to meet the higher standard of necessity. If the intention is to apply the word

“reasonable” to the list, would the proponents consider revising this section to set one standard?

- e. The first clause in this provision states that the authority of the General Assembly and the Colorado Parks and Wildlife Commission are not limited by the section, but the second clause does appear to limit the authority of those entities to regulate hunting and fishing. This provision could be rewritten to avoid the conflict:

“(4) THIS SECTION DOES NOT PREVENT THE GENERAL ASSEMBLY AND AN AGENCY OF THE STATE OF COLORADO FROM REGULATING HUNTING AND FISHING IF THE LAW IS:

(a) REASONABLE; AND

(b) NECESSARY FOR SOUND SCIENTIFIC WILDLIFE CONSERVATION AND MANAGEMENT, PUBLIC SAFETY, OR TO PRESERVE THE FUTURE OF HUNTING AND FISHING OPPORTUNITIES FOR ALL SPECIES STATEWIDE.”

Would the proponents consider revising this provision?

- f. As mentioned, the state manages nongame and endangered wildlife species, such as bison and wolves. Some of these species are illegal to hunt under current law or federal law. Does the requirement that a regulation preserve the future of hunting and fishing opportunities for “all species” apply to these species? If not, would the proponents consider clarifying the intention?

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. In subsection (1) of each of the proposed initiatives, it would be helpful to restate the subject of the sentence (“the right”) before “shall apply” so that it is clear what shall apply. For example: “...INCLUDING BY THE USE OF TRADITIONAL METHODS, AND THE RIGHT SHALL APPLY TO ALL SPECIES...” This also potentially

avoids a grammatical error. Provisions that are separated by a comma and conjunction need to be independent clauses, which requires both a subject and a verb. (The comma may be only the ending parenthetical closing of the phrase that begins with the word “including.”) If so, moving this phrase will solve the grammar problem, but restating the right still makes this provision more clear.

2. For each of the proposed initiatives, it is standard drafting practice to not capitalize standalone titles of government officers or names of agencies. For example, in subsection (4) of the proposed initiative, “Colorado Parks and Wildlife Commission” should be shown as the “Colorado parks and wildlife commission.”
3. For each of the proposed initiatives, it is standard drafting practice to not capitalize "general assembly."
4. For each of the proposed initiatives, the new section is numbered as 12c. The letter is normally used when multiple initiated measures have the same numbering. This section may be given a whole number without the letter. If the desire is to be placed next to the current section, which is 12b, concerning wildlife, section 13 is not being used.
5. For each of the proposed initiatives, it is standard practice to use an oxford comma between the two last items in a list. For example:

“(4) THIS SECTION SHALL NOT LIMIT THE AUTHORITY OF THE COLORADO PARKS AND WILDLIFE COMMISSION OR THE GENERAL ASSEMBLY TO REGULATE HUNTING, FISHING AND WILDLIFE MANAGEMENT;...”

Should be:

“(4) THIS SECTION SHALL NOT LIMIT THE AUTHORITY OF THE COLORADO PARKS AND WILDLIFE COMMISSION OR THE GENERAL ASSEMBLY TO REGULATE HUNTING, FISHING, AND WILDLIFE MANAGEMENT;...”