

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

**TO:** Marla Fernandez-Benavides and Iesha Wood  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** February 20, 2023  
**SUBJECT:** Proposed initiative measure 2023-2024 #11, concerning the Fundamental Right of Parents to Direct the Upbringing, Education, and Care of their Minor Children

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, proposed initiative 2023-2024 #6, was the subject of a memorandum dated January 27, 2023. Proposed initiative 2023-2024 #6 was discussed at a public meeting on January 31, 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, except as necessary to fully understand the issues raised by the revised proposed initiative. 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 purpose of the proposed initiated measure appears to be to establish certain fundamental rights for parents as it relates to their minor children.

## Substantive Comments and Questions

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

1. The proposed initiative uses the phrase "or any other institution" in several places. What is the definition of "institution"?
2. What is the definition of "biometric scan"?
3. What is the definition of "immune deficiency education"?
4. How would the prohibition on excluding parents from prescribed textbooks be administered?
5. 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?
6. The provision that starts with "1. Be it enacted . . ." appears to be a legislative declaration, but also may contain substantive law that provides a right to sue. The proposed initiative should separate any legislative declaration from substantive law if that is the intent.
7. Under "Parental rights," section 1 c., that specific right is qualified by saying the right "shall not be infringed." None of the other rights under "Parental rights" section 1 contain that qualification. What is the purpose of that distinction?
8. The proposed initiative, in multiple places, refers to the department of children and families. There is no such department in Colorado; please refer to an existing Colorado department.
9. Under "Parental rights," section 6 states that parental rights may not be terminated unless the parent is found guilty of abuse or neglect. Further, it states that there must be a clear and present danger to the child for parental rights to be terminated. How do these provisions work together? Under the proposed initiative, when can parental rights be terminated?
10. Under "Parental rights," section 8 states that parents have a right to all funding disbursed for their child's education. What is the intent of this provision? Under the proposed initiative, is it the proponents' intent that the state sends a parent a check in the amount of the budget allocated to the child for the child's education?

11. Under "Parental rights," section 9 states that a government entity must "make appropriations available to parents opting out with no strings attached of public education." The language needs to specify what parents are opting out of to receive the money.
12. Can the proponents explain what the intent of sections 9.a. and 9.b. of "Parental rights" are? They do not appear to be substantive law.
13. Under "School district notifications on parental rights," section 1 requires each school board to adopt a policy to promote parental involvement. In section 1.b., it states that the people of Colorado shall provide a Parent Organization for the organization of school board candidates that will run for office. How does that provision relate to a district policy to promote parental involvement? How does the Parent Organization differ from a school board?
14. Under "Parental consent for health care services," section 3 states, "This section applies to abortion procedures." Is the intent that the provisions of "Parental consent for health care services" only apply to abortions? Or is the intent to ensure that the provisions apply to abortions?

## **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, **amend** section 11 of article IX as follows:  
  
**SECTION 2.** In Colorado Revised Statutes, **amend** 22-25-104 as follows:  
  
**SECTION 3.** In Colorado Revised Statutes, **repeal** 22-1-128.
2. Each constitutional and statutory 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, **amend** section 11 of article IX as follows:".

3. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

**22-105-104. Colorado comprehensive health education program - role of department of education - recommended curriculum guidelines - allocation of funds - rules.** (1) Subsection

- (a) Paragraph
    - (I) Subparagraph
      - (A) Sub-subparagraph
      - (B) Sub-subparagraph
    - (II) Subparagraph
  - (b) Paragraph
- (2) Subsection
  - (3) Subsection
4. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added and stricken type, which appears as ~~stricken type~~, to show language being removed from the Colorado constitution or the Colorado Revised Statutes.
  5. It is standard drafting practice when referencing statutory sections to include the word "section" before the number. For example, "*section* 24-35-204.5." [*emphasis added*]
  6. Although the text of the proposed initiative should be in small capital letters, it is standard drafting practice to use an uppercase letter to indicate capitalization where appropriate. Only 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.
  7. It is unnecessary to capitalize "general assembly" in the proposed initiative.
  8. Under "Parental rights" section 5, the proposed initiative uses the term "this section" and "this chapter." Colorado statute does not use the term "chapter." The reference should be to "this section."

9. Under "School district notifications on parental rights" section 6, it appears that there should be a list that follows. Is the list that follows section 7 supposed to follow section 6?
10. Under "School district notifications on parental rights," section 9 says "doesn't not." It is standard drafting practice to avoid contractions. Please edit "doesn't not" to say "does not."
11. Under "School district notifications on parental rights," section 5 does not contain any language. Please omit it and renumber.
12. Under "School district notifications on parental rights," section 6 states a violation of the section is a misdemeanor of the first degree. Misdemeanors in Colorado are delineated by class, not degree, so the reference should to be a class 1 misdemeanor.