

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Adria Padilla-Chávez and Manuel Espinoza
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 2, 2024
SUBJECT: Proposed initiative measure 2023-24 #273, concerning Education as a Fundamental Right

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.

Purposes

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

1. To establish education as a fundamental right;

2. To provide for the establishment and maintenance of a high-quality system of free public schools throughout the state;
3. To educate all residents of the state who are between the ages of 6 and 21 in a public school gratuitously; and
4. To maintain one or more public schools in each school district in the state at least 160 days in each year in order for the school district to receive a portion of the school fund for that year.

Substantive Comments and Questions

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

1. Article V, section 1 (8) of the Colorado Constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado." To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative.
2. 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?
3. Is this proposed initiative amending the Colorado Constitution or the Colorado Revised Statutes?
4. What will be the effective date of the proposed initiative?
5. In accordance with section 1-40-102 (4), Colorado Revised Statutes, and for publications purposes, an amending clause should be used to show where in the Colorado Constitution or Colorado Revised Statutes a proposed initiative's provisions should be inserted. Where will the proposed initiative be placed?
6. The first paragraph of the initiative is similar to article IX, section 2 of the Colorado Constitution. Is it the proponents' intent that the proposed initiative amend article IX, section 2 of the Colorado Constitution?
7. In the first paragraph of the proposed initiative, the phrase "the establishment and maintenance of a high-quality system of free public schools" is used. What is the difference between that language and the current language of article IX, section 2 of the Colorado Constitution that provides for "the establishment and maintenance of a thorough and uniform system of free public schools"?

8. In the first paragraph of the proposed initiative, do the proponents mean "at least 160 days" to apply to each school year or each calendar year?
9. The following questions relate to the language in the second paragraph of the proposed initiative: "Education is a fundamental human right; it is necessary for the fulfillment of freedom, justice, and peace. The Colorado General Assembly shall respect this right."
 - a. How would the Colorado General Assembly respect or disrespect this right?
 - b. Are there measurements to determine whether the Colorado General Assembly is respecting or disrespecting this right?
 - c. Does the term "respect this right" require equal per student funding through the state's school finance formula?
10. What do proponents mean by "[education] must foster agency rather than servitude"?
11. The third paragraph states: "It is the duty of the Colorado General Assembly to ensure that the public schools are havens for learning and growth, crucibles for inquiry and experimentation, and forums for dialogue and dissent." How does the General Assembly fulfill its duty in this case?
12. The third paragraph states: "The public schools must enable human flourishing by providing effective teaching, compassionate guidance, and ongoing opportunities for students to meaningfully participate in their education." What happens if a public school does not provide effective teaching, compassionate guidance, and ongoing opportunities for students to meaningfully participate in their education?
13. The second and third paragraphs of the proposed initiative appear to be a legislative declaration or constitutional purpose to the first paragraph of the proposed initiative. Would the proponents consider making the second and third paragraphs of the proposed initiative into either a legislative declaration or constitutional purpose?

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, **add** article XXX as follows:

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, **add** section ___ to article X as follows:". Or, for example, if you intend to add a new article to title 22 of the Colorado Revised Statutes, you would include the following amending clause: "In Colorado Revised Statutes, **add** article ___ to title 22 as follows:".
3. Each section in the Colorado Revised Statutes and the Colorado Constitution has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to the proposed initiative and be in bold-face type.
4. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

X-X-XXXX. Headnote. (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

5. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to and stricken type, which appears

as ~~stricken type~~, to show language being removed from the Colorado Constitution or the Colorado Revised Statutes.

6. If the proposed initiative is statutory, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty."
7. 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.