

Amendment__: Constitutional Right to School Choice

Placed on the ballot by citizen initiative • Passes with 55 percent of the vote

1 **Amendment__ proposes amending the Colorado Constitution to:**

- 2 • create the right to school choice for children in kindergarten through twelfth
3 grade (K-12) and create the right for parents to direct the education of their
4 children; and
- 5 • define school choice to include public neighborhood and charter schools, private
6 schools, home schools, open enrollment options, and future innovations in
7 education.

8 **What Your Vote Means**

9 **YES**

10 A “yes” vote on Amendment__ creates a
11 constitutionally protected right to school
12 choice for K-12 children and their
13 parents, and specifies that school choice
14 includes public, private, homeschool, and
15 any future innovations in education.

16 **NO**

17 A “no” vote on Amendment__ maintains
18 the current system of school choice in
19 state law.

20 **Summary and Analysis of Amendment__**

21 **Does Colorado law allow school choice?**

22 Under Colorado law, students may attend any public school for free, even if they do not live
23 in the school district. Public schools include neighborhood schools, charter schools, and
24 some online schools. Each school district has policies allowing parents to enroll students in
25 the public school of their choice. State law also permits parents to choose non-public
26 education options, such as private schools or home schools. Public schools receive public
27 funding from local and state governments. Private schools and home schools do not receive
28 any public funding.

29 **What does this measure do?**

30 Amendment__ creates a constitutional right to school choice and equal opportunity for K-12
31 children. The measure also creates the right for parents to direct the education of their
32 children. Neighborhood and charter schools, private schools, home schools, open
33 enrollment options, and future innovations in education are included in the new
34 constitutional definition of school choice.

1 **Will the measure change school choice laws in Colorado?**

2 The measure results in no immediate change to state law, or the enrollment policies of local
3 school districts. Parents may continue to choose a variety of K-12 school options for their
4 children. The state legislature currently makes laws to govern public education and how
5 schools are funded. By creating a new constitutional right to school choice for children and
6 parents, Amendment__ may affect how the legislature makes policies about school choice
7 and lead to changes to state law and local school district policy via court interpretation or
8 direction.

For information on those issue committees that support or oppose the measures on the ballot at the November 5, 2024, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

<https://coloradosos.gov/pubs/elections/Initiatives/InitiativesHome.html>

9 **Argument For Amendment__**

10 1) Amendment__ guarantees that school choice is a right of parents and children. By
11 placing this right in the state constitution, Coloradans affirm their commitment to a
12 parent's right to choose an appropriate school for their children, including all forms of
13 schools, both public and private. A constitutional measure ensures this right cannot be
14 taken away by future legislatures.

15 **Argument Against Amendment__**

16 1) The Colorado Constitution already guarantees a free public education, and Colorado
17 already has robust school choice laws that allow parents to choose from many public
18 school options, or choose to educate their children in private or home schools. The
19 measure may conflict with current law prohibiting public funding for private education
20 and will require interpretation by the courts. Ultimately, this could result in redirecting
21 funding from public schools to private and home schools.

22 **Fiscal Impact of Amendment__**

23 **State and school district spending.** Amendment__ has no immediate impact on
24 education-related spending by the state or school districts, but may increase their spending
25 on legal expenses and planning costs. Depending on how the measure is interpreted by the
26 courts and the state legislature, the measure may change the allocation of state or local
27 funding for education.

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- 6 schools, home schools, open enrollment options, and future innovations in
- 7 education.

8 **What Your Vote Means**

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12 choice for K-12 children and their
13 parents, and specifies that school choice
14 includes public, private, homeschool, and
15 any future innovations in education.

16 **NO**

17 A “no” vote on Amendment__ maintains
18 the current system of school choice in
19 state law.

20 **Summary and Analysis of Amendment__**

21 **Does Colorado law allow school choice?**

22 Under Colorado law students may attend any public school for free, even if they do not live
23 in the school district. Public schools include neighborhood schools, charter schools, and
24 some online schools. Each school district has policies allowing parents to enroll students in
25 the public school of their choice. State law also permits parents to choose non-public
26 education options, such as private schools or home schools. Public schools receive public
27 funding from local and state governments. Private schools and home schools do not receive
28 any public funding.

29 **What does this measure do?**

30 Amendment__ creates a constitutional right to school choice and equal opportunity for K-12
31 children. The measure also creates the new right of parents to direct the education of their
32 children. Neighborhood and charter schools, private schools, home schools, open
33 enrollment options, and future innovations in education are included in the new
34 constitutional definition of school choice.

1 **Will the measure change school choice laws in Colorado?**

2 The measure results in no immediate change to state law, or the enrollment policies of local
3 school districts. Parents may continue to choose a variety of K-12 school options for their
4 children. The state legislature currently makes laws to govern public education and how
5 schools are funded. By creating a new constitutional right to school choice for children and
6 parents, Amendment__ may affect how the legislature makes policies about school choice
7 and lead to changes to state law and local school district policy via court interpretation or
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9 **Argument For Amendment__**

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11 placing this right in the state constitution, Coloradans affirm their commitment to a
12 parent’s right to choose an appropriate school for their children, including all forms of
13 schools, both public and private. A constitutional measure ensures this right cannot be
14 taken away by future legislatures.

15 **Argument Against Amendment__**

16 1) The Colorado Constitution already guarantees a free public education and Colorado
17 already has robust school choice laws that allow parents to choose from many public
18 school options, or choose to educate their children in private or home schools. The
19 measure may conflict with current law prohibiting public funding for private education
20 and will require interpretation by the courts. Ultimately, this could result in redirecting
21 funding from public schools to private and home schools.

22 **Fiscal Impact of Amendment__**

23 **State and school district spending.** Amendment__ has no immediate impact on education-
24 related spending by the state or school district, but may increase their spending on legal
25 expenses and planning costs. Depending on how the measure is interpreted by the courts
26 and the state legislature, the measure may change the allocation of state or local funding for
27 education.

Last Draft Comments from Interested Parties

Initiative 138 Constitutional Right to School Choice

Nate Golich, representing Colorado Education Association:

Comments re Third Draft of Blue Book Analysis for Proposed Initiative #138/Proposition XXX: "School Choice in K-12 Education"

The following comments and suggested edits are respectfully submitted by the Colorado Education Association ("CEA"). CEA is opposed to this Initiative.

What Your Vote Means YES

A "yes" vote on Amendment__ creates a constitutionally protected right to school choice for K-12 children and their parents, and specifies that school choice includes public, private, homeschool, and any future innovations in education.

NO

A "no" vote on Amendment__ maintains the current system of school choice, **CREATED IN 1994**, in state law. **ALLOWING FAMILIES TO CHOOSE BETWEEN PUBLIC, CHARTER, AND PRIVATE SCHOOLS OR HOME SCHOOLING.**

Summary and Analysis of Amendment

Does Colorado law allow school choice?

SINCE 1994, under Colorado law students may attend any public school for free, even if they do not live in the school district. Public schools include neighborhood schools, charter schools, and some online schools. Each school district has policies allowing parents to enroll students in the public school of their choice. State law also permits parents to choose non-public education options, such as private schools or home schools. **THIS SYSTEM HAS BEEN IN EFFECT FOR THE LAST 30 YEARS.** Public schools receive public funding from local and state governments. Private schools and home schools do not receive any public funding.

What does this measure do?

Amendment , creates a constitutional right to school choice and equal opportunity for K-12 children. The measure also creates the new right of parents to direct the education of their children, Neighborhood and charter schools, private schools, home schools,

Last Draft Comments from Interested Parties

Nate Golich, representing Colorado Education Association (Cont.):

open enrollment options, and future innovations in education are included in the new constitutional definition of school choice.

Will the measure change school choice laws in Colorado?

The measure results in no immediate change to state law, or the enrollment policies of local school districts. Parents may continue to choose a variety of K-12 school options for their children. The state legislature currently makes laws to govern public education and how schools are funded. By creating a new constitutional right to school choice for children and parents, Amendment__ may affect how the legislature makes policies about school choice and lead to changes to state law and local school district policy via court interpretation or direction.

Argument For Amendment

1) Amendment__ guarantees that school choice is a right of parents and children. By placing this right in the state constitution, Coloradans affirm their commitment to a parent's right to choose an appropriate school for their children, including all forms of schools, both public and private. A constitutional measure ensures this right cannot be taken away by future legislatures.

Argument Against Amendment

1) The Colorado Constitution already guarantees a free public education and Colorado already has robust school choice laws that allow parents to choose from many public school options, or choose to educate their children in private or home schools. The measure may conflict with current law prohibiting public funding for private education and will require interpretation by the courts. Ultimately, this could result in redirecting funding from public schools to private and home schools.

2) The Colorado Constitution already guarantees a free public education and Colorado **HAS SINCE 1994 HAD** robust school choice laws that allow parents to choose from many public school options, or choose to educate their children in private or home schools. **THIS SYSTEM HAS BEEN EFFECTIVE OVER THE LAST 30 YEARS. IT HAS EXISTED AND BEEN IMPROVED UPON UNDER BOTH REPUBLICAN AND DEMOCRATIC GOVERNMENTS.**

Fiscal Impact of Amendment

State and school district spending. Amendment__ has no immediate impact on

Last Draft Comments from Interested Parties

Nate Golich, representing Colorado Education Association (Cont.):

education-related spending by the state or school district, but may increase their spending on legal expenses and planning costs. Depending on how the measure is interpreted by the courts and the state legislature, the measure may change the allocation of state or local funding for education. **TAXPAYER SPENDING MAY ULTIMATELY BE INCREASED, HOWEVER, TO PAY FOR PRIVATE SCHOOL TUITION AND OTHER “FUTURE INNOVATIONS” IN EDUCATION.**

Carolyn Martin, representing Christian Home Education Colorado:

See comments below concerning the highlighted items within the 3rd draft.

What does this measure do?

Amendment creates a constitutional right to school choice and equal opportunity for K-12 children. The measure also creates the new right of parents** to direct the education of their children.

Neighborhood and charter schools, private schools, home schools, open enrollment options, and future innovations in education are included in the new constitutional definition of school choice.

Will the measure change school choice laws in Colorado?

The measure results in no immediate change to state law, or the enrollment policies of local school districts. Parents may continue to choose a variety of K-12 school options for their children. The state legislature currently makes laws to govern public education and how schools are funded. By creating a new constitutional right to school choice for children and parents**, Amendment may affect how the legislature makes policies about school choice and lead to changes to state law and local school district policy via court interpretation or direction.

**How does this create a “new” right of parents? Doesn’t CRS 22-33-104.5 (1) already acknowledge this right exists when it states: “The general assembly hereby declares that it is the primary right and obligation of the parent to choose the proper education and training for children under his care and supervision.”? SCOTUS has long acknowledged the fundamental right of parents to direct their children’s education.

While it is true a child’s right to education or school choice does not exist within US or CO jurisprudence, a parent’s right and responsibility to oversee their children’s education does exist. It is my contention the blue book language should reflect this properly.

Thank you for your consideration,
Carolyn Martin

Last Draft Comments from Interested Parties

Catherine Ordoñez, representing ACLU of Colorado:

To whom it may concern:

The ACLU of Colorado appreciates the role your office plays in voter education and ensuring fair elections in Colorado. Thank you for your ongoing work in preparing the 2024 voter information booklet and for your solicitation of feedback on the third draft of ballot analysis for Initiative 138 School Choice in K-12 Education. Below you will find the ACLU of Colorado's comments and proposed changes to the draft.

The third draft of the ballot analysis resolved the second draft's introduction of pro-initiative bias into the "will the measure change school choice laws in Colorado?" section. It also took a significant step in more accurately depicting the initiative's "future innovations in education" provision. Thank you for your careful consideration of feedback on those issues.

The ACLU recommends the following changes to the draft ballot analysis to bring further clarity to the existing system of school choice under Colorado law and what the measure entails:

8 What Your Vote Means

16 **NO**

17 A "no" vote on Amendment__ maintains 18 the current system of school choice in
19 state law. **The Colorado Constitution already guarantees a free public education,
and Colorado already has robust school choice laws that allow parents to choose to
educate their children in public, charter, private, or home schools.**

20 Summary and Analysis of Initiative 138

21 Does Colorado law allow school choice?

22 **Since 1994, u**nder Colorado law students may attend any public school for free,
even if they do not live
23 in the school district. . . .

29 What does this measure do?

30 Amendment__ creates a constitutional right to school choice ~~and equal opportunity~~
for K-12 31 children. ~~The measure also creates the new right of parents to direct the-~~

Last Draft Comments from Interested Parties

Catherine Ordoñez, representing ACLU of Colorado (Cont.):

~~education of their children.~~ **This right would be subject to individual direction by each child's parent.**

Neighborhood and charter schools, private schools, home schools, open 33 enrollment options, and future innovations in education are included in the new 34 constitutional definition of school choice.

* * *

15 **Argument Against Amendment**

16 1) The Colorado Constitution already guarantees a free public education and Colorado

17 already has robust school choice laws, **in existence since 1994**, that allow parents to choose from many public

18 school options, or choose to educate their children in private or home schools. **This system has been effective over the last 30 years.**

2) The

19 measure may conflict with current law prohibiting public funding for private education

20 and will require interpretation by the courts. Ultimately, this could result in redirecting 21 funding from public schools to private and home schools, **no matter the quality of the educational program or whether the school engages in discrimination, and without any measure of accountability. The measure risks making the current underfunding of Colorado public schools even worse.**

Thank you for your consideration of our feedback. We look forward to engaging with you further in this process.

Initiative 138
Constitutional Right to School Choice
Contact List

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Initiative 138
Constitutional Right to School Choice
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Initiative 138
Constitutional Right to School Choice
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Initiative 138
School Choice in K-12 Education

1 **Ballot Title:**

2 Shall there be an amendment to the Colorado constitution establishing the right to school choice for children in
3 kindergarten through 12th grade, and, in connection therewith, declaring that school choice includes
4 neighborhood, charter, and private schools; home schooling; open enrollment options; and future innovations in
5 education?

6 **Text of Measure:**

7 *Be it Enacted by the People of the State of Colorado:*

8 SECTION 1. In the constitution of the state of Colorado, add section, 18 to article IX as follows:

9 Section 18. Education - School Choice (1) Purpose and findings. The people of the state of Colorado hereby find
10 and declare that all children have the right to equal opportunity to access a quality education; that parents have
11 the right to direct the education of their children; and that school choice includes neighborhood, charter, private,
12 and home schools, open enrollment options, and future innovations in education.

13 (2) Each K-12 child has the right to school choice.