

memo

## State Legislature

To: Ms. Natalie Castle, Director lcs.ga@coleg.gov

From: Ms. Marla F Benavides, [REDACTED]  
[REDACTED] Ms. Iesha Wood, [REDACTED]

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Date: February 3, 2023

Re: Proposed initiative measure concerning the Fundamental Rights of Parents.

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### Purpose

#### Citizens' initiative 2023-24 #6

Article V, section 1 (5) of the Colorado constitution and section 1-40-102 of the Colorado Revised Statutes require the proponents to submit for review and comment on the full text of the measure being proposed, which if passed becomes the actual language of the Constitution or statutes.

Under Article V, section 1 (2) of the Constitution proposed initiatives to amend either the Colorado Constitution or State law (i.e., the Colorado Revised Statutes). This a proposed initiative intended to amend the Colorado constitution.

The Colorado Article V, section 1 (8) of the Colorado Constitution requires that the following enacted clause be the style for all laws adopted by the initiative:

### The Parent Right in Education

Concerning the fundamental right of parents to direct the upbringing, education, and care of their minor children.

**Citizens' initiative:** 2023

**SUBJECT:** Education

## **SUMMARY**

For Education years commencing on and after January 1, 2024, the proposed initiative amends compulsory education. And adds a Parent Right to control the education of their children. Parents have the right to direct the education of their children and decide whichever school best fits their children's needs.

The People find that it is a fundamental right of parents to direct the upbringing, education, and care of their minor children. The People further find that important information relating to a minor child should not be withheld, either inadvertently or purposefully, from his or her parent, including information relating to the minor child's health, well-being, and education, while the minor child is in the custody of the school district. The PEOPLE further find it is necessary to establish a consistent mechanism for parents to be notified of information relating to the health and well-being of their minor children.

### **Section 11. Parent Rights defined.**

1. **Be it enacted by the People of the State of Colorado, amends Colo. Const. Art. IX, Section 11 and repeals the Comprehensive Human Sexuality Education, C.R.S § 22-1-128, and amends Comprehensive Health Education, C.R.S. § 22-25-104.** The People find that it is a fundamental right of parents to direct the upbringing, education, and care of their minor children. The People further find that important information relating to a minor child should not be withheld, either inadvertently or purposefully, from his or her parent, including information relating to the minor child's health, well-being, and education, while the minor child is in the custody of the school district. The PEOPLE further finds it is necessary to establish a consistent mechanism for parents to be notified of information relating to the health and well-being of their minor children. The People also find that the public schools ONLY duty is to provide a BASIC education. If the school is not providing a BASIC education, parents have a right to sue for breach of contract.
2. For purposes of this chapter, the term "parent" means a person who has legal custody, (is the natural and biological parent, or is the adoptive or guardian) of a minor child as a natural or adoptive parent or a legal guardian. This section takes effect December 31, 2023, or as stated.

### **Infringement of parental rights.—**

1. The state, any of its political subdivisions, any other governmental entity, or any other institution shall not infringe on the fundamental rights of a parent to direct the upbringing, education, health care, and mental health of his or her minor child

without demonstrating **Beyond a Reasonable Doubt** that it is necessary to achieve a compelling state interest in the *welfare of the child* and that such action is narrowly tailored to the *best interest of the child standard* and is not otherwise served by a less restrictive means.

### **Parental rights. —**

1. All parental rights are reserved to the parent of a minor child in this state without obstruction or interference from the state, any of its political subdivisions, any other governmental entity, or any other institution, including, but not limited to, all of the following rights of a parent of a minor child in this state:
  - a. The right to direct the education and care of his or her minor child.
  - b. The right to direct the upbringing and the moral or religious training of his or her minor child.
  - c. The right to apply to enroll his or her minor child in a public school or, as an alternative to public education, a private school, including a religious school, a home education program, or other available options, shall not be infringed.
  - d. The right to access and review all school records relating to his or her minor child.
  - e. The right to make health care decisions for his or her minor child, unless otherwise prohibited by law.
  - f. The right to access and review all medical records of his or her minor child, unless prohibited by law or if the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement agency or official requests that the information not be released.
  - g. The right to consent in writing before a biometric scan of his or her minor child is made, shared, or stored.
  - h. The right to consent in writing before any record of his or her minor child's blood or deoxyribonucleic acid (DNA) is created, stored, or shared, except as required by general law or authorized pursuant to a court order.
  - i. The right to consent in writing before the state or any of its political subdivisions makes a video or voice recording of his or her minor child unless such recording is made during or as part of a court proceeding or is made as part of a forensic interview in a criminal or Department of Children and Families investigation or is to be used solely for the following purposes:
    - i. A safety demonstration, including the maintenance of order and discipline in the common areas of a school or on student transportation vehicles.
    - ii. A purpose related to a legitimate academic or extracurricular activity.
    - iii. A purpose related to regular classroom instructions.
    - iv. Security or surveillance of buildings or grounds; or
    - v. A photo identification card.
2. The right to be notified promptly if an employee of the state, any of its political subdivisions, any other governmental entity, or any other institution suspects that a criminal offense has been committed against his or her minor child, unless the

incident has first been reported to law enforcement or the Department of Children and Families and notifying the parent would impede the investigation.

3. This section does not:
  - a. Authorize a parent of a minor child in this state to engage in conduct that is unlawful or to abuse or neglect his or her minor child in violation of general law.
  - b. Condone, authorize, approve, or apply to a parental action or decision that would end life.
  - c. Prohibit a court of competent jurisdiction, law enforcement officer, or employees of a government agency that is responsible for child welfare from acting in his or her official capacity within the reasonable and prudent scope of his or her authority; or
  - d. Prohibit a court of competent jurisdiction from issuing an order that is otherwise permitted by law.
4. An employee of the state, any of its political subdivisions, or any other governmental entity who encourages or coerces, or attempts to encourage or coerce, a minor child to withhold information from his or her parent may be subject to disciplinary action or fired.
5. A parent of a minor child in this state has inalienable rights that are more comprehensive than those listed in this section, unless such rights have been legally waived or terminated by a trial by jury of its peers ONLY. That makes the termination process more fair. This chapter does not prescribe all rights to a parent of a minor child in this state. Unless required by law, the rights of a biological parent of a minor child in this state may not be limited or denied. This chapter may not be construed to apply to a parental action or decision that would end life.
6. A biological parent's right to his or her child may not be terminated unless found guilty beyond a reasonable doubt of abuse or neglect or the parent has voluntarily terminated his or her right. There must be a clear and present danger to the child for parental rights to be terminated. The clear and convincing evidentiary rule does not suffice in terminating parental rights.
7. Neither the general assembly nor the state or county board of education may exclude parents from prescribing textbooks to be used or controlling the instruction in classrooms.
8. Parents have a right to all funding disbursed for their child's education.
9. The General Assembly, county, city, town, township, school district or other public corporation, must make appropriations or any public funds or monies whatever available to parents opting out with no strings attached of public education.
  - a. Any funding raised by government for schools belongs to taxpayers. Taxpayers should have a choice of opting out without government oversight.
  - b. The government may not control where the parents allocate their resources.
10. Neither the General Assembly, county, city, town, township, school district or other public corporation, shall prohibit aid to any parent or taxpayer or deny support or prevent any parent or taxpayer from using the funds to transfer to another school whether private, homeschool, or other literary institution or

sectarian denomination. Parents have a right to choose the school that suits their children best and the government must not interfere with this right.

**School district notifications on parental rights. —**

1. Each district school board shall, in consultation with parents, teachers, and administrators, develop and adopt a policy to promote parental involvement in the public school system. Such policy must include:
  - a. A plan for parental participation must be required of all schools to improve parent and teacher cooperation in such areas as homework, school attendance, textbooks to be used, and discipline.
  - b. The PEOPLE of Colorado shall provide a Parent Organization for the organization of school board candidates that will run for office, those that successfully qualify and are elected as directors, shall answer to parents of district and together must have control of instruction, and prescribing textbooks to be used in the public schools of their respective district.
  - c. The parent-teacher communication is vital to the best interest of the child and shall be required in all schools. The school board, superintendent, school administrator, teacher must make every attempt to make sure every student's parent attends school Parent Organization.
2. The Parent Organization must provide the procedure for a parent to learn about his or her minor child's course of study, including the source of any supplemental education materials shall be required of all schools.
3. Every school in the district must provide the Procedures for a parent to object to instructional materials and other materials used in the classroom. Such objections may be based on beliefs regarding morality, sex, and religion or the belief that such materials are harmful. For purposes of this section, the term "instructional materials" may include other materials used in the classroom, including workbooks and worksheets, handouts, software, applications, and any digital media made available to students.
4. Every school in the district must provide the Procedures for a parent to withdraw his or her minor child from any portion of the school district's comprehensive health education required under 22-5-104 that relates to sex education or instruction in acquired immune deficiency syndrome education or any instruction regarding sexuality if the parent provides a written objection to his or her minor child's participation. Such procedures must provide for a parent to be notified in advance of such course content so that he or she may withdraw his or her minor child from those portions of the course.
5. Every school in the district must provide the Procedures for a parent to learn about the nature and purpose of clubs and activities offered at his or her minor child's school, including those that are extracurricular or part of the school curriculum.
6. Every school in the district must provide the Procedures for a parent to learn about parental rights and responsibilities under general law, including all of the following:
7. The right to opt his or her minor child out of any portion of the school district's comprehensive health education that relates to sex education or social emotional learning instruction in acquired immune deficiency syndrome education or any instruction regarding sexuality, or a revisionist history or America.

- a. The schools must educate parents on schools' plans to disseminate information about school choice options, including open enrollment, and/or tax credit for opting out of public school
  - b. The right of a parent to exempt his or her minor child from immunization.
  - c. The right of a parent to review statewide, standardized assessment results.
  - d. The right of a parent to enroll his or her minor child in gifted or special education programs.
  - e. The right of a parent to inspect school district instructional materials.
  - f. The right of a parent to access information relating to the school district's policies for promotion or retention, including high school graduation requirements.
  - g. The right of a parent to receive a school report card and be informed of his or her minor child's attendance requirements.
  - h. The right of a parent to access information relating to the state public education system, state standards, report card requirements, attendance requirements, funding allocated to each student at those school and instructional materials requirements.
  - i. The right of a parent to participate in parent-teacher associations and organizations that are sanctioned by a district school board or the Department of Education.
  - j. The right of a parent to opt out of any district-level data collection relating to his or her minor child is not required by law.
  - k. A district school board may provide the information required in this section electronically or post such information on its website, however, the school must mail out the information to the parents directly to them aware of their rights.
8. A parent may request, in writing, from the district school superintendent the information required under this section. Within 10 days, the district school superintendent must provide such information to the parent. If the district school superintendent denies a parent's request for information or does not respond to the parent's request within 10 days, the parent may appeal the denial to the district school board. The district school board must place a parent's appeal on the agenda for its next public meeting. If it is too late for a parent's appeal to appear on the next agenda, the appeal must be included on the agenda for the subsequent meeting.
  9. A school official or other person who violates this section is subject to disciplinary action and breaches the contractual obligation between parent and school and may be liable in a civil proceeding. Qualified immunity doesn't not hold a teacher, school, or board of directors exempt from lawsuit for breach of contract.

**Parental consent for health care services. —**

1. Except as otherwise provided by law, a health care practitioner, or an individual employed by such health care practitioner **may not** provide or solicit or arrange to provide health care services or prescribe medicinal drugs to a minor child without first obtaining written parental consent.
2. Except in life threatening conditions to save the life of the child, or by a court order, a provider may not allow a medical procedure to be performed on a minor child in its facility without first obtaining written parental consent.

3. This section applies to abortion procedures.
4. This section does not apply to services provided by a clinical laboratory, unless the services are delivered through a direct encounter with the minor and minor is accompanied by parent or legal guardian at the clinical laboratory facility. For purposes of this subsection, the term “clinical laboratory” means the doctor’s office, hospital, or medical facility.
- 5.
6. A health care practitioner or other person who violates this section is subject to disciplinary action and commits a misdemeanor of the first degree, punishable by Colorado criminal law.