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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: February 27, 2023

SUBJECT: Proposed initiative measure 2023-2024 #18, concerning school choice in K-12 education.

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 purpose of the proposed amendment to the Colorado constitution appears to be to establish a right to school choice for families.

Substantive Comments and Questions

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

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 the proposed initiative?
2. What will be the effective date of the proposed initiative?
3. What constitutes "school choice"?
4. Section 1 of the proposed initiative is prefaced as "purpose and findings." It appears this is a legislative declaration, but Section 1 may also be interpreted to create substantive rights. Is the proponent's intent to create substantive law under Section 1? If so, the proposed initiative should more clearly separate the declaration from substantive law.
5. Section 1 of the proposed initiative states that "all children have the right to equal opportunity to access a quality education."
 - a. What constitutes an "equal opportunity"? Is it the proponents' intent that a child who does not reside in a school district receive an equal opportunity to access a district's schools as a child who does reside in the school district? Is it the proponents' intent that all children have the equal opportunity to access a private school, notwithstanding a private school's eligibility or cost requirements?
 - b. What constitutes "access"? Is it the proponents' intent that a child who wants to attend a school must be enrolled, notwithstanding the school's resources or capacity?
 - c. What constitutes "quality education"?
6. Section 1 of the proposed initiative states that "parents have the right to direct the education of their children; and that school choice includes ...".
 - a. Are "direct the education of their children" and "that school choice" intended to be synonymous? If so, the proposed initiative should use identical language. If not, what is the distinction between these two phrases?
 - b. What constitutes "direct the education of their children"? Is it the proponents' intent that parents have discretion to direct all matters concerning their child's education, including, but not limited to, deciding what curriculum, assignments, and assessments their child receives or completes, notwithstanding the school or educational program the child is enrolled in?

- c. Is it the proponents' intent to limit this right to parents only, or is the intent to extend the right to legal guardians or persons having legal custody of or responsibility for a child? If the intent is to extend the right, would you consider revising the language for clarity?
- 7. Section 1 of the proposed initiative states that "school choice includes ... open enrollment options." What constitutes "open enrollment options"?
- 8. Section 2 of the proposed initiative states that "each K-12 child has the right to school choice."
 - a. Section 2 of the proposed initiative assigns the right to school choice to a K-12 child, but Section 1 of the proposed initiative states parents have the right to direct the education of their children, which could include school choice. What is the intent of the proposed initiative regarding who holds the right to school choice?
 - b. Is the proponents' intent to limit this right to children only, so that a K-12 student who is eighteen years of age or older does not have the right to school choice?
 - c. Is the proponents' intent that by assigning the right to school choice to the child, parental consent to the child's choice is eliminated?
- 9. Section 2 of the proposed initiative states that "[e]ach K-12 child has the right to more than one quality public option within each school district."
 - a. Article IX, section 2 of the Colorado constitution requires that "[o]ne or more public schools shall be maintained in each school district within the state...." What is the proponents' intent with respect to harmonizing article IX, section 2 of the Colorado constitution, which only requires one public school per school district, and the proposed initiative, which requires more than one quality public option within each school district?
 - b. What constitutes "quality"?
 - c. What constitutes "option"? Is it the proponents' intent that a child who wants to attend the school must be provided enrollment, notwithstanding the school's resources or capacity?
 - d. What is the proponents' intent by including nonpublic education options, including home school and private schools, in Section 1 of the proposed initiative but excluding nonpublic education options from Section 2 of the proposed initiative?

- e. Is the school district, the state, or another entity responsible for ensuring multiple quality public options exist within a school district?
 - f. Is the proponents' intent that each child has the right to more than one public option in every school district in the state, or is the right limited to the school district where the child resides?
10. Section 2 of the proposed initiative refers to "K-12," which is a colloquial abbreviation used to describe elementary and secondary education. The proposed initiative should be revised to clearly articulate the students who are contemplated by the proposed initiative.

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. Each section in the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to the entire section 18, proposed to be added to the Colorado constitution.
2. The Colorado constitution is divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

Section 18. Headnote. (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

3. The amending clause should state "**add** section 18 to article IX as follows."
4. The proponents should strike "Section 1." and substitute "(1)."
5. The proponents should strike "Section 2." and substitute "(2)."