

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Marla Fernandez-Benavides and Debra Carroll
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: May 25, 2023
SUBJECT: Proposed initiative measure 2023-24 #67, 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.

Purposes

The major purposes of the proposed amendment to the Colorado constitution appear to be establishing the fundamental right of parents to direct the upbringing, education, and care of their minor children.

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 rather than after the headnote for article IX, section 11 of the Colorado constitution.
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. What will be the effective date of the proposed initiative?
4. What is the proponents' intent for the existing language in article IX, section 11 of the Colorado constitution? Whether it is retained, amended, or stricken, the existing language should be included in the proposed initiative.
5. If the proponents intend to strike the existing language in article IX, section 11 of the Colorado constitution and replace it with the proposed initiative language, how do the proponents intend to address compulsory education for children between the ages of six and eighteen years?
6. What is the meaning of a "good education"?
7. What is the meaning of "free people"?
8. What is the meaning of "upbringing"?
9. What is the meaning of "care"?
10. What is the meaning of "wellbeing"?
11. In saying, "[A] good education, being necessary for the security of a free people," do the proponents mean that a good education is necessary for the security of free people? If so, how is a good education necessary for the security of free people?
12. The connection between "a good education, being necessary for the security of a free people," and "a parent's right to direct the upbringing, education and care of their minor children is necessary for the wellbeing of every child;" isn't clear. Is there a word missing between these two phrases? Would making them separate sentences clarify the ambiguity?

13. What do the proponents mean by "to direct"? How do the proponents intend for a parent "to direct" the education of the parent's child in a public school?
14. In the proposed initiative language "a parent's right to direct the upbringing, education and care of their minor children is necessary for the wellbeing of every child," are the proponents referring to the well-being of every child of the parent?
15. Does the omission of a serial comma after "education" create an ambiguity?
16. Who determines what is considered the "wellbeing of every child"?
17. The following questions relate to the proposed initiative language that states "this right of parents to raise and train their children shall not be infringed":
 - a. This language is passive and does not identify the party who shall not infringe parents' rights. Who are the proponents referring to?
 - b. What do the proponents mean by "raise and train"?
 - c. Who determines whether a parent's right is infringed?
 - d. What are the repercussions if a parent's right is infringed?
 - e. Who enforces the repercussions?
18. How is the proposed initiative, which adds "Parents Rights" to article IX, section 11 of the Colorado constitution, different from the right to due process pursuant to article II, section 25 of the Colorado constitution?
19. The proposed initiative only refers to "parents." Do the proponents intend to include guardians and legal custodians if a child is not under the care of a parent?

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:

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 5 to article X as follows:"
3. 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.
4. 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.
5. There should be subject and verb agreement in the proposed initiative, so instead of "The People of Colorado finds" it should say, "The People of Colorado find."
6. "Wellbeing" should be hyphenated as "well-being."