

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

To: Suzanne Taheri and Michael Fields

From: Legislative Council Staff and Office of Legislative Legal Services

Date: February 5, 2025

Subject: Proposed initiative measure 2025-2026 #22, concerning the right to school choice

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 to establish a fundamental right to school choice for families and K-12 children.

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"? Do proponents intend for school choice to be limited to K-12 education?
4. Subsection (1) of the proposed initiative is prefaced as "purpose and findings." It appears that this is a declaration, but subsection (1) may also create substantive rights. Is the proponents' intent to create substantive law under subsection (1)? If so, the proposed initiative should more clearly separate the declaration from the substantive portion of law.
5. Subsection (1) of the proposed initiative states that "all families have the fundamental right to equal opportunity to access a quality education."
 - a. What constitutes "all families"? Is it the proponents' intent that anyone in a family has a fundamental right to equal opportunity to access a quality education?
 - b. By using the phrase "fundamental right," is it the proponents' intent for courts to apply the strict scrutiny judicial standard in a cause of action that arises under this clause?
 - c. What constitutes "equal opportunity"? Is it the proponents' intent that all families have the equal opportunity to access a private school, notwithstanding a private school's eligibility or cost requirements?
 - d. What constitutes "access"? Is it the proponents' intent that all families attend a school, notwithstanding the school's resources or capacity?
 - e. What constitutes "quality education"?
6. Subsection (1) of the proposed initiative states that "parents have the fundamental right to direct the education of their children."
 - a. What constitutes "fundamental right to 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?

- b. Is it the proponents' intent to limit this right to parents only, or is the intent to extend the right to legal guardians or people with legal custody of or responsibility for a child? If the intent is to extend this fundamental right, would you consider revising the language for clarity?
- 7. Subsection (1) of the proposed initiative states that "school choice includes neighborhood, charter, private, and home schools, open enrollment options, and future innovations in education."
 - a. Is it the proponents' intent to expand the state's school finance funding formula to include private schools and home schools?
 - b. What constitutes "open enrollment options"?
 - c. What constitutes "future innovations in education"?
- 8. Subsection (2) of the proposed initiative states that "[e]ach K-12 child has the fundamental right to school choice."
 - a. Subsection (2) of the proposed initiative assigns the fundamental right to school choice to a K-12 child, but subsection (1) of the proposed initiative states parents have the fundamental 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 it the proponents' intent to limit this right to children only, so that a K-12 student who is 18 years of age or older does not have the right to school choice?
 - c. Is the proponents' intent that by assigning the fundamental right to school choice to the child, parental consent to the child's choice is eliminated?

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. There is an extra comma after "section" in the amending clause.

2. "**School Choice**" should be in all lowercase letters.
3. There should be a period after "**Choice.**"