

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Dr. Manuel Luis Espinoza and Adria Padilla-Chavez
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: November 10, 2021
SUBJECT: Proposed initiative measure 2021-2022 #48, concerning education as a fundamental right

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:

1. To establish education as a fundamental right for all people; and
2. To establish and maintain public schools as safe and healthy spaces.

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.
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. A proposed initiative must indicate where the text of the proposed measure will be located in the Colorado constitution. Where specifically should the proposed initiative be placed within the Colorado constitution?
4. What do proponents mean by "pertaining to article IX, section 2"? Is the intent to replace the current language in article IX, section 2 of the Colorado constitution? Or is the intent to effect a change to the definition of the current language?
5. What will be the effective date of the proposed initiative?
6. It appears that the initiative is intended to create constitutional rights and then also explains why those rights are important in the same paragraph. Would the proponents consider separating the created rights into one paragraph and the explanations into a statement of intent?
7. When the proponents refer to "the State" does this mean the "Colorado General Assembly"?
8. The following questions relate to the language "establishment and maintenance of public schools":
 - a. What does "establishment and maintenance of public schools" mean?
 - b. How is this idea different from the current Colorado constitutional provision in article IX, section 2, which provides for "the establishment and maintenance of a thorough and uniform system of free public schools throughout the state"?
 - c. How will this constitutional amendment interact with local control pursuant to article IX, section 15 of the Colorado constitution?

- d. In using the word "establishment," do the proponents believe there should be new public schools created as a result of the proposed initiative?
9. The following questions relate to the language "human persons":
- a. Toward the beginning of the proposed initiative, proponents use the term "human persons," but toward the end of the proposed initiative, the proponents use the term "people." Would proponents consider using the same term throughout the proposed initiative?
 - b. Is there an age requirement for "human persons"?
10. The following questions relate to the language "incursions by any entity":
- a. What does it mean that the "State will defend the right to education against all incursions by any entity, public or private"?
 - b. What do proponents consider as "any entity"?
 - c. What are some examples of an "incursion"?
11. The following questions relate to the language "guided by the principles of integrity and equity":
- a. What are the principles of "integrity" and how are they measured?
 - b. What are the principles of "equity" and how are they measured?
 - c. Does achieving certain academic outcomes demonstrate "equity" in education?
 - d. Who determines "equity"?
 - e. Does "equity" require equal per student funding through the State's school finance formula?
 - f. Does "equity" require that the State funding be adequate? If so, adequate to achieve what objectives? If so, who determines adequacy? The State?
12. The following questions relate to the language "ongoing and diverse opportunities to meaningfully participate in their education":
- a. What does it mean "to meaningfully participate"?
 - b. How does the State "ensure that all public school students have ongoing and diverse opportunities to meaningfully participate in their education"?

- c. Who determines the criteria for "ongoing and diverse opportunities"?
 - d. What is the criteria for "ongoing and diverse opportunities"?
 - e. Would "ongoing and diverse opportunities" include required funding for arts education or other programs that are not currently provided in every school district or public school?
13. The following questions relate to the language "safe and healthy spaces":
- a. How does the State "create and maintain public schools as safe and healthy spaces"?
 - b. Who determines the criteria for "safe" or "healthy"?
 - c. What happens if a school does not meet the criteria for "safe" or "healthy"?
14. What does the language "unfits the individual for servitude" mean?
15. What does the language "public schools are sanctuaries" mean?
16. The following questions relate to the language "inherent dignity":
- a. What does "experience their inherent dignity" mean?
 - b. How is faithfulness to a student's "inherent dignity" expressed?
 - c. What is the action the State is going to take to meet a student's fundamental right to dignity?
 - d. If a student or a parent does not feel their "inherent dignity" is met, do they have a right to sue?
17. Do proponents believe that education as a fundamental right should include funding private schools or providing public money directly to a parent to obtain education outside of the public school system?
18. Do the proponents believe that education as a fundamental right will increase the cost of public education? Will it change how state or local funding is distributed to school districts or individual schools?
19. Do proponents believe that the State is currently meeting students' dignity through the current K-12 public education and funding levels? If not, how would the State achieve this?

20. Do proponents believe if a school underperforms, then one's fundamental right is violated? What is the remedy for a violation of the fundamental right to education?
21. Do proponents intend for education as a fundamental right to apply to higher education? If so, do proponents believe that education as a fundamental right will impact the cost of higher education?
22. What do proponents believe is the impact of a constitutional amendment declaring education as a fundamental right?
23. Have any other states or countries included a fundamental right to education in their constitutions? If so, how has that right impacted education in that state or country and do the proponents expect the same impact in Colorado?

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, **add** article XXX as follows:
2. Each constitutional 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, **add** section ___ to article X as follows:"
3. Each section in the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to section ___ of the proposed initiative and be in bold-face type.
4. It is standard drafting practice to use SMALL CAPITAL LETTERS to show the language being added to the Colorado constitution.

5. 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.