

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**To:** Dina Puente and Terrance Carroll

**From:** Legislative Council Staff and Office of Legislative Legal Services

**Date:** February 17, 2026

**Subject:** Proposed Initiative Measures 2025-2026 #229, #230, and #231, Concerning Public School Choice

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Legislative Council Staff 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 and questions to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council Staff and the Office of Legislative Legal Services is to provide comments and questions intended to aid designated representatives, and the proponents they represent, in determining the language of their proposal and to avail the public of the contents of the proposal. Our first objective is to be sure we understand your intended purposes of the proposal. We hope that the comments and questions in this memorandum provide a basis for discussion and understanding of the proposal. Discussion between designated representatives or their legal representatives and employees of the Legislative Council Staff and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

Proposed initiatives 2025-2026 #229 through #231 were submitted by the same designated representatives as a series of proposed initiatives. The comments and questions raised in this memorandum address proposed initiatives 2025-2026 #229 through #231.

## **Purposes**

### **Purposes for Proposed Initiative 2025-2026 #229**

The major purposes of the proposed amendments to the Colorado Revised Statutes appear to be:

1. Create a fundamental right to public school choice;
2. Prohibit tuition for public schools; and
3. Prohibit an appeal to a local school board's denial of a charter school application or renewal, and subsequently require the charter school's release to the state charter school institute.

### **Purposes for Proposed Initiative 2025-2026 #230**

The major purposes of the proposed amendments to the Colorado Revised Statutes appear to be:

1. Create a fundamental right to public school choice;
2. Prohibit tuition for public schools;
3. Prohibit public school fees that are excessive or not rationally related to the service or item provided;
4. Prohibit an appeal to a local school board's denial of a charter school application or renewal, and subsequently require the charter school's release to the state charter school institute; and
5. Require enrollment priority for students who apply to a school or program in which they were enrolled the prior year.

### **Purposes for Proposed Initiative 2025-2026 #231**

The major purposes of the proposed amendments to the Colorado Revised Statutes appear to be:

1. Create a fundamental right to public school choice;
2. Prohibit tuition for public schools; and

3. Require the charter school's release to the state charter school institute after an application or renewal denial by the local board of education when the charter school does not appeal the application or renewal denial.

## **Substantive Comments and Questions**

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

1. The following questions and comments relate to proposed initiatives #229, #230, and #231:
  - a. In *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973), the United States Supreme Court held that there is no fundamental right to education in the U.S. Constitution. Subsection (1) of proposed initiatives #229, #230, and #231 states that each kindergarten through twelfth grade child "has the fundamental right to public school choice, as directed by the child's parent(s) or guardian(s)." In light of the *Rodriguez* case, what is the intent of creating a statutory fundamental right to public school choice if there is not a constitutional right to education?
  - b. What do the proponents intend the proposed "fundamental right to public school choice" to mean?
  - c. Subsection (2) of proposed initiatives #229, #230, and #231 states that "[p]ublic school choice includes the opportunity to access neighborhood district schools, public charter schools, and public open enrollment options." "Opportunity to access" is vague and could be interpreted to imply that the only right created by "opportunity to access" is very limited, such as a right to fill out an application. What do you intend "opportunity to access" to mean?
  - d. In subsection (2) of proposed initiatives #229, #230, and #231, what is a "public open enrollment option"?
  - e. Article 36 of title 22, C.R.S., addresses general public school of choice requirements. How are proposed initiatives #229, #230, and #231 intended to interact with existing public school choice statutory requirements? In order to clarify intent and eliminate any conflicts, the proponents should include necessary revisions to existing statutes in the proposed initiatives.

- f. Subsection (3) of proposed initiatives #229, #230, and #231 states that if a local board of education denies a charter school's application or renewal, the state board of education is required to "[release] the charter school to the Colorado charter school institute."
    - i. Part 1 of article 30.5 of title 22, C.R.S., addresses procedures for charter school application, renewal, and appeal requirements. How are proposed initiatives #229, #230, and #231 intended to interact with these existing requirements? In order to clarify intent and eliminate any conflicts, the proponents should include necessary revisions to existing statutes in the proposed initiatives.
    - ii. What do the proponents intend "[release] the charter school to the Colorado charter school institute" to mean?
  - g. Subsection (3) of proposed initiatives #229, #230, and #231 states that open enrollment in public schools is available "as space allows."
    - i. Similar to the question and comments in 1.c. of this memo, this condition seemingly supports the interpretation of "as space allows" to mean that the fundamental right is very limited. Do you intend that "as space allows" limits the exercise of the fundamental right?
    - ii. Who determines what constitutes allowable space? Because available space limits the proposed initiatives' fundamental right to public school choice, would the proponents consider clarifying what this limitation means, who determines it, and what parameters must be satisfied for this limitation to be used?
2. The following question relates to proposed initiative #229:
    - a. 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. The following questions and comments relate to proposed initiative #230:
    - a. 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?

- b. Proposed subsection (3)(b) states that any fee “[must] not be excessive and [must] be rationally related to the cost of the activity, school supply, or equipment that is the subject of the fee.” What constitutes “excessive”? What constitutes “rationally related”?
  - c. Proposed subsection (3)(e) requires a school district to “give priority to pupils who apply for enrollment at a school district’s school or program in which they were enrolled in the prior year.” Is the proponents’ intent that these students be given top priority among other potential priority considerations? Or is it the intent that they be given some sort of priority that may not be the top priority when compared to other potential priority considerations?
- 4. The following questions and comments relate to proposed initiative #231:
  - a. 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?
  - b. Proposed subsection (3)(b) states that the charter school “may appeal to the State Board of Education and, in the absence of an appeal, shall be released to the Colorado charter school institute [...]” This proposed subsection (3)(b) does not address what is required based on the result of the appeal. If the charter school loses the appeal, is the charter school required to be released to the charter school institute? If they win the appeal, is the local board of education required to accept the charter school’s application or renewal?

## **Technical Comments**

The following comments address technical issues raised by the form of the proposed initiatives. These comments will be read aloud at the public meeting only if the designated representatives 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 follows:

- 1. Each statutory section being amended, repealed, or added is preceded by a separate clause, referred to as the “amending clause,” that explains how the law is

being changed. Amending clauses are written in lowercase type and follow a specific format. The proposed initiatives' amending clause should be written as:

**SECTION 1.** In Colorado Revised Statutes, **add** 22-1-151 as follows:

2. It is standard drafting practice to use lowercase letters for all but the first word in headnotes. The proposed initiatives' headnote should be "**22-1-151. Right to public school choice.**"
3. It is standard drafting practice to spell out "kindergarten through twelfth grade."
4. Since section 2-4-102, C.R.S., states the statutory rule of construction that the singular includes the plural, it is standard drafting practice to use the singular form of nouns. In subsection (1) of proposed initiatives #229, #230, and #231, "parent(s)" and "guardian(s)" should be "parent" and "guardian."
5. It is standard drafting practice to not capitalize standalone titles of government officers or names of agencies. In this case, "State Board of Education" should not be capitalized.
6. A provision should end with a semicolon if it follows an introductory portion and is not a complete sentence. In proposed initiative #229, subsection (3)(a) should end in a semicolon. In proposed initiative #230, subsections (3)(a), (3)(b), and (3)(d) should end with semicolons, and subsection (3)(d) also needs an "and" or an "or" after the semicolon.
7. Section 2-4-101, C.R.S., states that the statutory rule of construction is that "shall" means that a person has a duty, whereas "must" means that a person or thing is required to meet a condition for a consequence to apply. Because all of the uses of "shall" in the proposed initiatives do not refer to a person's duty, rather to a requirement, all instances of "shall" should be changed to "must."