

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Margaret Bobb, Jonathan Wright, and Janet Wright,
Objectors,

v.

Lori Gimelshteyn and Erin Lee,
Proponents of Initiative 2023-2024 #205.

**MOTION FOR REHEARING ON
INITIATIVE 2023-2024 #205**

Through their legal counsel, Margaret Bobb, registered elector of Denver County, and Jonathan Wright and Janet Wright, registered electors of Larimer County, hereby file this motion for rehearing on Initiative 2023-2024 #205.

On April 3, 2024, the Title Setting Board set the following ballot title and submission clause for Initiative 2023-2024 #205:

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes concerning parental notification of a child's gender incongruence from a public school representative, and, in connection therewith, requiring a public school representative who obtains information that a child enrolled in the school is experiencing gender incongruence to notify the school's principal within two days; requiring the school's principal to notify the child's parent within two days after receiving the information; and defining "gender incongruence" as the difference between the child's biological sex and their perceived or desired gender, "public school representative" as an administrator, teacher, nurse, counselor, social worker, or coach, and "public school" as any preschool through secondary school that receives any state or federal funds?

Violations of the Single Subject Requirement

- I. Initiative #205 makes every school that receives "state or federal funds" a public school, meaning that private schools will be subject to this disclosure requirement.**

This measure purports to apply only to "public schools." But it has much broader application than that. "Public school" is defined to mean "any preschool, primary, or secondary school that receives state or federal funds." (Proposed C.R.S. § 22-1-144(2)(d).) Many religious

and private educational institutions providing services to pre-college students accept state or federal funds.

For instance, the universal preschool program in Colorado uses and funds private providers, specifically all “Home, Center Based, Private, and Faith Based Providers.” See <https://drive.google.com/file/d/1tmgMu9cxqKqpviYWjlah0S7yvKnq22JV/view> at 6 (last viewed April 8, 2024); see also C.R.S. § 26.5-4-203(14)(a), (b), (defining “preschool provider” to include family child care home and child care center). “The Department of [Education’s] Early Childhood’s Universal Preschool (UPK) Colorado program allows families to choose the right setting for their child, whether it is in a licensed community-based, school-based or home-based setting.” <https://upk.colorado.gov/searches/976330cd-4c2d-42ec-a167-0090f86ccb04> (last viewed April 10, 2024). For private preschool programs, there is a 25-page contract allowing them to access state funds in return for the provision of an agreed upon level of educational services. <https://docs.google.com/document/d/1G5LJyJZT4tF-MZ46FxAYujjKXctrm3kX90xseXzNPCU/edit?userstoinvite=lynda.jenson@gmail.com&sharimgaction=manageaccess&role> (Exhibit A) (last viewed April 8, 2024). There can be no question that private institutions and companies are, under #205’s definition, “public schools.”

In addition, according to the Colorado Department of Education, there are at least ten (10) programs of federal funding that are offered to private schools in Colorado through the No Child Left Behind Act of 2001 (“NCLB”).

The programs for which Private School children and teachers may be eligible as stated in Section 9501(b) of NCLB are:

- Title I, Part A – Improving the Academic Achievement of the Disadvantaged
- Title I, Part B – Reading First and Even Start
- Title I, Part C – Migrant Education
- Title II, Part A – Preparing, Training and Recruiting High Quality Teachers and Principals
- Title II, Part B – Preparing Tomorrow’s Teachers to use Technology
- Title II, Part D – Enhancing Education Through Technology
- Title III, Part A – Language Instruction for Limited English Proficient and Immigrant Students
- Title IV, Part A – Safe and Drug-Free Schools and Communities
- Title IV, Part B – Rural and Low-Income School Programs
- Title V, Part A – Innovative Programs
- Title V, Part D – Gifted and Talented Students

See https://www.cde.state.co.us/choice/nonpublic_programs (last viewed April 8, 2024). And various other programs end up putting money into private schools, one example of which is the program that provided federal funds during the pandemic. See <https://www.denver7.com/news/investigations/colorado-private-schools-publicly-funded-charter-schools-get-millions-in-coronavirus-ppp-loans> (last viewed April 8, 2024). Private schools accepting any of these programs’ federal funds become, under this definition, “public schools.”

In addition, a “public school representative” is any “public school” administrator, nurse, teacher, counselor, social worker or coach. (Proposed C.R.S. § 22-1-144(2)(e).) Because private schools are “public schools” under Initiative #205, this measure regulates the staff at private schools as well.

The portrayal of this record disclosure requirement as being limited to “public schools” is substantively wrong. The inclusion of private schools is a surreptitious change in that law that is coiled in the folds of this measure. Even the Title Board at the initial hearing on this matter did not raise this issue. As such, it is an additional subject that violates Art. V., sec. 1(5.5) of the Constitution.

II. Initiative #205 requires “any public school... nurse, counselor, [or] social worker... working in a public school” to breach confidentiality of information about a child who has disclosed if it is perceived as qualifying as related to “experiencing gender incongruence.”

As a general matter, nurses, counselors, and social workers who provide health care or mental health services all receive information, subject to privilege that protects the confidentiality of these communications. C.R.S. § 13-90-117(1)(d), (g). This privilege protects interchanges which take place so that a person may seek treatment. *B.B. v. People*, 785 P.2d 132 (Colo. 1990).

As to the guaranteed privacy of these communications, licensed school social workers and counselors (covered professionals under #205) must preserve the confidentiality of matters communicated to them. *See* C.R.S. § 12-245-216(1)(d)(IV). But these professionals cannot keep the information that is addressed by this initiative confidential. Changing such an important doctrine without disclosing to voters that this is what this measure will achieve is a surreptitious element and tactic. It violates the single subject requirement.

WHEREFORE, Objectors seek appropriate relief in light of the above claims, including the striking of the titles set and return of Initiative #205 to Proponents for failure to comply with the single subject requirement of Article V, sec. 1(5.5) of the Colorado Constitution.

Respectfully submitted this 10th day of April, 2024.

RECHT KORNFELD, P.C.

s/ Mark G. Grueskin

Mark Grueskin

Nathan Bruggeman

1600 Stout Street, Suite 1400

Denver, CO 80202

Phone: 303-573-1900

Email: mark@rklawpc.com

nate@rklawpc.com

CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2023-2024 #205** was sent this day, the 10th day of April, 2024, via first-class mail, postage paid to:

Lori Gimelshteyn
26463 East Caley Drive
Aurora, CO 80016

Erin Lee
6787 Hayfield St.
Wellington, CO 80549

s/ Erin Mohr
Erin Mohr