BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Mary Elizabeth Childs,
Objector,

v.

Lori Gimelshteyn and Erin Lee,
Proponents of Initiative 2023-2024 #115.

MOTION FOR REHEARING ON INITIATIVE 2023-2024 #115

Through their legal counsel, Mary Elizabeth Childs, registered elector of Douglas County, hereby files this motion for rehearing on Initiative 2023-2024 #115.

On January 17, 2024, the Title Setting Board set the following ballot title and submission clause for Initiative 2023-2024 #115:

> 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 expanding parental rights over their child , and, in connection therewith, requiring a parent's written consent prior to any mental health or medical treatment for their child thereby prohibiting a minor child from obtaining mental health or medical treatment without written consent from a parent or a court order; allowing a parent to obtain all mental health and medical records of a child; requiring a parent to be promptly notified by a school if their child is experiencing gender incongruence defined as a difference between their biological sex and perceived gender; allowing a parent to have access to all records related to books their child has borrowed or accessed at school and their child's health and educational records; and to allow a parent to direct the child's education, moral, and religious training?*

I. This initiative violates the single subject requirement.

In the 2021-2022 cycle, the Title Board considered a more narrow measure that amended the Colorado Open Records Act to allow access to "all written materials and electronic resources that an educator for a local education provider uses in teaching."[1] And an "educator" included teachers, support staff, administrators, contractors, and volunteers. *See* Proposed Sections 24-72-202(9)(a) and (b). The Title Board refused to set titles for this measure on single subject grounds. *See* Exhibit 1, attached (Title Board summary of actions taken on Initiative #94). While the Title

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[1] Exhibit 1 ("Initiative #94"); *see* https://www.coloradosos.gov/pubs/elections/Initiatives/titleBoard/filings/2021-2022/94Final.pdf

Board is not statutorily required to adhere to its earlier decisions, the Board's decision, finding single subject violations in a measure that did not reach as far as Initiative #115 does, is instructive to support for the contention that this measure also violates Colo. Const., art. V, sec. 1(5.5).

A. Initiative #115's grants rights as to a child's school library materials or materials accessed in a classroom.

Initiative 2023-2024 gives parents the right to see "**all** records of materials their child has borrowed from a school library or accessed in the classroom." *See* Proposed Section 19-1-132(5)(a). This provision does not limit a parent's right to materials borrowed from the child's school library; it applies to any school library a student may have visited or used as a place for studying. Alone, this would make a stronger case of single subject compliance, although even Initiative #94 fell short in that regard. But allowing parental control over a child's access to library materials is not the sole, or even the primary, purpose of Initiative #115.

As noted, this measure also creates a new parental right to inspect all materials that a child "accessed in the classroom." Proposed Section 19-1-132(5)(a). This applies to everything a child might see while in the classroom and every "record" – physical, electronic, or otherwise – that exists of such materials. And it applies whether those materials are in the possession of a school or not. Like the objections validated by the Title Board over Initiative #94, this means that parents can access materials seen by their child in a classroom – whether provided by teachers, other students, volunteers, or other parents. Per the Board's decision as to Initiative #94, this expansive authority violates the single subject rule.

B. Initiative #115 also grants parents the right to "direct" a child's education, a separate subject given all current legal authority that vests control of education in public schools to local school boards.

These two new rights discussed above are at least education-based. Of course, the measure is not limited to parental awareness of education materials provided to a child. In the education realm, it authorizes a parent – any parent – to "direct the upbringing, including the education… of his or her child." Proposed Section 19-1-132(4)(a).

As described by Proponents, this would allow parents to remove a child from a class or a school. But that overly narrow interpretation is at odds with the carefully chosen language used in their measure. Parents are allowed "to direct" the child's education. "Direct" is more specific in its meaning than Proponents have acknowledged so far. Effectively, it means to "control." "Direct" means to "manage or guide by advice, helpful information, instruction, etc.[;] . . . to regulate the course of; **control**[;] . . . to administer[,] manage[,] supervise[;] [or] to give authoritative instructions to; command; order or ordain[.]" *Burnette Foods, Inc. v. United States Dep't of Agric*., 920 F.3d 461, 468 (6th Cir. 2019), citing Random House Webster's Unabridged Dictionary 558-59 (2001).

Under #115, parents can therefore "control" whether a certain concept or text is taught (or not taught) to their child. Similarly, they can "control" how their child is to be taught (or not taught) in every single class in which the child is enrolled.

By controlling their child's education, a parent can "direct" that one or more textbooks not be used to educate their child and that a teacher not test the child about that book or the information contained in it. Likewise, the parent can "direct" that the child not be graded on the substance of the excluded materials. And the parent can "direct" the school not to have the child participate in, or even be in the classroom listening to, discussions among classmates of the text(s) in question.

This new parental veto power over what a child is taught is at odds with the current constitutional and statutory system of education management. For one, the Colorado Constitution does not allow for parental control of instruction. It specifically vests control in the directors of each local school board.

> The general assembly shall, by law, provide for organization of school districts of convenient size, in each of which shall be established a board of education, to consist of three or more directors to be elected by the qualified electors of the district. **Said directors shall have control of instruction in the public schools of their respective districts.**

Colo. Const. art. IX, § 15 (emphasis added).

For more than a century, the Supreme Court has viewed this provision as "a constitutional **mandate that instruction** in the public schools of every school district **shall be under the control of the directors** thereof." *Sch. Dist. No. 16 v. Union High Sch. No. 1*, 152 P. 1149 (Colo. 1915). Initiative #115 would take that unqualified right of district boards to determine "instruction in the public schools" and give every parent the right to modify it for his or her child.

Since at least 2008, Colorado statute has recognized the constitutional imperative that there be a "thorough and uniform statewide system of public education" and that "the control of instruction in the schools" is "grant[ed] to each school district board of education." C.R.S. § 22-32.5-102(1)(a). That doesn't mean parents are without a voice. They are to be given "great opportunity for input regarding the educational services their children receive." C.R.S. § 22-32.5-102(1)(b). But parental "input" is not the same as, and does not override, school board "control" of curriculum.

However, Initiative #115 changes that and allows parents to pick and choose what their children will read, hear, study, and learn. If directing a student's education was really just about deciding what school he or she attends, the Proponents would have limited their provision accordingly by stating the right be "to direct… the choice of schools in which his or her child is enrolled" rather than "to direct… the education… of his or her child."

As such, the element of Initiative #115 that purports to take from school districts the ability to direct every student's education and transfers that authority to parents is a distinct subject. That change in powers is different in nature from the control of other unrelated issues such as a child's mental and medical health or transgender identity. *See In re Title, Ballot Title, & Submission Clause for 2015-2016 #132*, 2016 CO 55, ¶35 (reallocation of constitutional power, in addition to other legal changes, violated single subject rule).

C. Initiative #115 provides establishes rights to control all aspects of a child's mental and medical health care which is a separate subject from the various education-related concerns discussed above.

Initiative 2021-2022 #94 did not even address the issues that Initiative 2023-2024 #115 addresses the panoply of health related rights. The array of rights granted under this measure include the rights to:

- "direct the… care of his or her child;"
- "make mental and medical health care decisions for his or her child;"
- "access and review all mental and medical health records or his or her child unless limited by a court order;"
- "with regard to their child's education,… access all of their child's… health records;" and
- requiring consultation with and specific written or documented consent by a parent before providing, soliciting, or arranging treatment, whether it is for mental or medical health.

See Proposed Section 19-1-132(4)(a)-(c), (5)(b), (6). Only one of these (the fourth on the above list) has anything to do with schools or education. None of the other prerogatives, reserved by this measure to "a parent," is related to the education focus of the balance of the measure.

D. Initiative #115's expansion of who is a "parent" – and under this initiative can control a wide array of matters affecting a child – is also a separate subject.

This measure defines "person" to include a legal guardian. Proposed Section 19-1-132(3)(c). As a result, a non-parent possesses rights as to all affected realms – education, medical treatment, mental health, gender identity, educational material access, etc. – in the same manner as a biological or adoptive parent. This is a significant departure from current law.

Right now, although "a guardian or custodian has the authority to make many decisions on behalf of the child," that does not mean "the fundamental liberty interest in rearing children belongs to guardians as well as to biological parents." *In re M.G.*, 58 P.3d 1145, 1147 (Colo. App. 2002). As such, their rights are not equal.

Under Initiative #115, the priority of a parent to exercise control for a child, as compared to any such rights of a guardian, is eliminated. After all, a guardian has equal rights "to direct the upbringing, including the education, moral, and religious training, and care" of a child to a biological or adoptive parent. Proposed Section 19-1-132(4)(a). This reconfiguration of the role of a legal guardian to be as much in control of a child's education, health care, and other areas is a significant legal change that is "coiled in the folds," *In re Title, Ballot Title and Submission Clause for 2007-2008 #17*, 172 P.3d 871, 875 (Colo. 2007), of what is portrayed as a "parents' rights" measure. That makes it a separate subject.

II. This initiative's language is too unclear to allow for title setting.

As multiple Board members commented at the January 17 hearing, this measure is vaguely written and extends to an unknown array of potential parent-child interactions.

The measure contains a "parent's bill of rights" and then also sets out a list of "parent's rights for their child's education." Proposed Section 19-1-132(4), (5). As discussed above, the so-called "bill of rights" is not limited to educational rights. And one portion of that so-called bill of rights authorizes parents to "direct the upbringing, including the education, moral, and religious training of his or her child."

As the Title Board chair noted, "I'm not sure exactly what this measure does in terms of" the rights granted under Proposed Section 19-2-132(4)(a).[2] No other Board member provided clarity on that point. And neither did the Proponents.

Where the Board cannot understand a measure, it cannot set titles. "Before a clear title can be written, the Board must reach a definitive conclusion as to whether the initiatives encompass multiple subjects. Absent a resolution of whether the initiatives contain a single subject, it is axiomatic that the title cannot clearly express a single subject." *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #25*, 974 P.2d, 468-69 (Colo. 1999). Here, the Board's inability to absorb this measure is understandable. Proponents have used vague terminology and then layered into it a measure that addresses multiple subjects.

This approach conceals the operative, underlying issue that Proponents seek to change – school-based acknowledgement of transgender identity. One Proponent makes use of a nonprofit group she heads to highlight this issue;[3] the other Proponent has used the courts – to date, unsuccessfully.[4] But the provision in #115 dealing with this central concern is buried in the initiative text as: "the right to be promptly notified by the school if their child is experiencing 'gender incongruence.'" Proposed Section 19-1-132(5)(c). Likewise, it is a single line in the titles:

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[2] Comments of Theresa Conley, Title Board Rehearing, Jan. 17, 2023 at 1:57:40-44 https://csos.granicus.com/player/clip/425?view_id=1&redirect=true&h=730dc4a4ab099c3b37599fbf991f2b8f.

[3] Exhibit 2; The Aurora Sentinel, "*EDITORIAL: CPAN, similar 'parental rights' activists, present public danger with mental-health disinformation campaigns*," Nov. 15, 2023 ("CPAN members, mirroring national far-right extremists, have attempted to force the school district to ban books and instructional materials from school libraries and classrooms… focused on policies and materials providing equity and respect toward children who are transgender, concerned about gender or sexuality, or come from families with LTBGQ+ parents or other family members."); (https://sentinelcolorado.com/opinion/editorial-cpan-similar-parental-rights-activists-present-public-danger-with-mental-health-disinformation-campaigns/) (last viewed Jan. 24, 2024).

[4] Exhibit 3; Colorado Newsline, *Lawsuit from Colorado parents who claimed harm from after-school sexuality meeting dismissed*, Dec. 22, 2023 (https://coloradonewsline.com/2023/12/21/lawsuit-colorado-parents-school-sexuality-meeting/) (last viewed Jan. 24, 2024).

"requiring a parent to be promptly notified by a school if their child is experiencing gender incongruence defined as a difference between their biological sex and perceived gender."

The single subject requirement was adopted, in part, to stop the inclusion of provisions in an initiated measure under the cover of other provisions that are not part of the same subject. Its purpose was, then, to "**prevent surreptitious measures** and apprise the people of the subject of each measure by the title, that is, to prevent surprise and fraud from being practiced upon voters." C.R.S. § 1-40-106.5(1)(e)(II) (emphasis added).

Initiative #115 uses vague language and seemingly benign requirements (e.g., knowing what books a child has borrowed from a school library) to achieve a very different goal, but this tactic violates Art. V. sec. 1(5.5) of the Constitution.

III. The title is misleading.

A. Each reference to "parent" in the title should be "parent, legal guardian, or other person who has legal custody of a child" or, alternatively, the title should include the full definition of "parent" from the initiative text.

The initiative defines "parent" as "a person who has legal custody of a child, including a **natural parent, adoptive parent, or legal guardian**." Proposed Section 19-1-132(3)(c) (emphasis added). That definition is a broad expansion of the currently applicable definition of "parent" as it applies to Title 19, article 1:

> As used in this title 19 or in the specified portion of this title 19, unless the context otherwise requires:
>
> * * * *
>
> (a) "Parent" means **either a natural parent** of a child, as may be established pursuant to article 4 of this title 19, **or a parent by adoption**.
>
> (b) "Parent", as used in sections 19-1-114, 19-2.5-501, and 19-2.5-611, includes a natural parent having sole or joint custody, regardless of whether the parent is designated as the primary residential custodian, or a parent allocated parental responsibilities with respect to a child, or an adoptive parent. For the purposes of section 19-1-114, "parent" does not include a person whose parental rights have been terminated pursuant to the provisions of this title 19 or the parent of an emancipated minor.

C.R.S. § 19-1-103(105) (emphasis added).

Under current law, a "legal guardian" is a "responsible person" for a child but is not a "parent." Compare C.R.S. § 19-1-103(105) and (120). Given that current law does not reflect this expansive change, voters must know that the measure gives added control and access to records to

someone who is not actually a “parent” – in title or by law. The broadened standard of who is a “parent” for this initiative should therefore be clear in the titles.

It is noteworthy that, where a guardian is appointed with the consent of the parties, a guardian’s rights over the “day-to-day decisions affecting the child” takes precedence over that of the parents. *Sidman v. Sidman (In re D.I.S.)*, 249 P.3d 775, 783 (Colo. 2011). In such a case, “The parents may not interfere with the guardian’s decisions authorized under the guardianship order; if this were not so, the child would be faced with conflicting decisions inconsistent with the delegation of custody the parents have consented to.” *Id.* Initiative #115 creates exactly this circumstance because it gives no priority to one rather than another of the authorized “parent” decision makers. At the very least, voters should be told in the titles that they are authorizing co-equal powers among potentially conflicting adults, as one may “direct” actions that another parent of the same child “directs” not be taken. Voters should know this measure has been drafted to allow conflicting decisions as to the same activities for the same child.

B. Each reference to “a” parent should be “any” parent.

The initiative does not limit the rights of every parent to direct a child’s upbringing, his or her medical or mental health care, or access educational as well as medical and mental health materials accessed at school. Given the real potential for parents with legal custody rights to disagree (whether separate, divorced, or of different opinions) or for a parent and a legal guardian of the same child to disagree about these matters, voters should know that the measure creates a loophole for such conflict in dealing with school as well as medical or mental health professionals.

C. The title’s reference to “parental rights over their child” should be corrected to establish that what the measure actually addresses are parental decisions “that preempt authority of persons or institutions that are legally responsible for educating or treating a child.”

This measure does not deal with what parents can do as to their child so much as it restricts what various professionals (educational, medical, mental health, etc.) can do as to such children. The single subject statement that portrays this measure as one that “expand[s]” parents’ rights is substantively inaccurate. Parents’ rights are not expanded by limiting the acts that the aforementioned professionals may undertake. Therefore, this single subject statement is misleading and should be restated to reflect the measure’s substance.

WHEREFORE, Objectors seek appropriate relief in light of the above claims, including the striking of the titles set and return of Initiative #115 to Proponents for failure to comply with the single subject requirement of Article V, sec. 1(5.5) of the Colorado Constitution, or correction of the misleading ballot title set.

Respectfully submitted this 24th day of January, 2024.

RECHT KORNFELD, P.C.

s/ Mark G. Grueskin
Mark Grueskin
David Beller
1600 Stout Street, Suite 1400
Denver, CO 80202
Phone: 303-573-1900
Email: mark@rklawpc.com
david@rklawpc.com

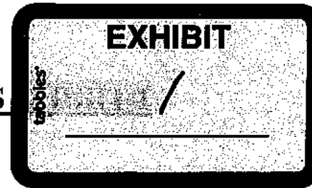
CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate **copy of the MOTION FOR REHEARING ON INITIATIVE 2023-2024 #115** was sent this day, January 24, 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/ Mark G. Grueskin

OBJECTOR'S 

#94 Educational Materials Under the Colorado Open Records Act* ▼ Details

Status: Denied title setting

Designated representatives

Jon Caldara
727 E 16th Avenue
Denver, CO 80203
303-279-6536

Tim Geitner
12482 Handles Peak Way
Falcon, CO 80831
719-749-1044

Agenda & meeting summary

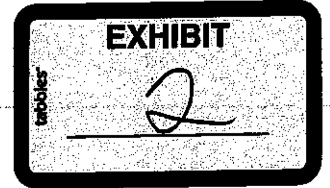
- April 20, 9:00 AM - Rehearing
  Motion for Rehearing granted. Title setting denied based on the measure does not constitute a single subject (2-1, Meyer dissented). Adjourned: 7:04 PM.
- April 6, 9:00 AM - Hearing
  Single subject approved; staff draft amended; titles set.y
  Board members: Theresa Conley, Julie Pelegrin, David Powelly
  Hearing adjourned 4:30 PM.

Filings (PDF)

- Original text
- Amended text
- Final text
- Waiver letter
- Fiscal summary
- Motion for rehearing

Petition status

- Title denied: 4/20/2022
- Title board hearing: 4/6/2022
- Original text filed with title board: 3/22/2022, 10:52 AM



OPINION

EDITORIAL: CPAN, similar 'parental rights' activists, present public danger with mental-health disinformation campaigns

School and state officials should work to call out this group's fraudulent claims and politicized goals

by **BY THE SENTINEL EDITORIAL BOARD**
November 15, 2023

A statewide group claiming to bolster the rights of parents in areas of education and government has crossed a dangerous line in the organization's political zeal to impose its will in the public arena, especially regarding mental health programs.

The Colorado Parental Advocacy Network is a locally-based group of political activists that has become increasingly involved in public policy and elections in the metroplex, particularly the Cherry Creek schools district. The group is similar to a national movement of activists calling themselves Moms for Liberty, which lobbies state and local governments in an effort to impose far-right, and often erroneous, changes in school policies, curricula and instruction.

Until now, that's been the case for CPAN, whose members have appeared at Cherry Creek schools board meetings and made endorsements in the most-recent school board election.

The group has recently targeted mental health crisis programs.

"We're going to be talking about the evidence of real harm to children across the state under the guise of mental health," Lori Gimelshteyn, executive director of Colorado Parent Advocacy Network, told participants in a social-media broadcast rally earlier this month," ***Sentinel* reporter Kristin Oh reported last week**.

The group appears to be part of a national trend of far-right activists focused primarily on efforts to prevent public schools from offering equity and information to LGTBQ+ children and their families, and in particular, transgender children.

Privacy - Ten

CPAN members, mirroring national far-right extremists, have attempted to force the school district to ban books and instructional materials from school libraries and classrooms it deems offensive or inappropriate. Most of these efforts are focused on policies and materials providing equity and respect toward children who are transgender, concerned about gender or sexuality, or come from families with LTBGQ+ parents or other family members.

National groups have also pushed back against history curricula surrounding the creation of the United States and its historical role in slavery.

Like Moms for Liberty, the group mistakenly insists that Cherry Creek schools, and other schools, usurp the rights of parents by forcing political philosophies on children without parental knowledge or consent.

It's a lie, one that CPAN and similar groups use propaganda and disinformation to purport and support.

While the group has, until now, been a distraction to the school district as it works to address a wide-range of serious and pervasive educational challenges, the group is poised to become a very real threat to public health.

The *Sentinel* **last week reported on a social-media based CPAN rally** of sorts where group officials and participants worked to create fear and distrust of mental-health crisis lines, as well as suicide-prevention hotlines.

The group's chief complaint is that the crisis lines, by design, take calls from anyone, including teenagers — considering self-harm or suicide — without parental consent.

Programs the group has targeted include the Colorado Crisis Services hotline and recent efforts by Cherry Creek to bolster mental-health services for students.

The CPAN group members are especially critical of suicide-prevention crisis lines offering support and resources to students distressed about their gender identity or sexuality, and they want school districts and other state agencies to refuse services to minors.

The demand is nothing more than a fraudulent political encroachment on public health and education that endangers lives.

In context, credible public health and pediatric officials have long been sounding the alarm about an extraordinary number of children suffering from a variety of mental-health maladies and anxieties. Some of these issues have been the result of or exacerbated by the isolation and disruption from the pandemic. Other causes include social media and a vast range of societal pressures, creating unique problems for children and young adults.

Suicide and suicide-attempt rates have grown alarmingly, including across Colorado, according to a wide range of credible sources.

While more research certainly needs to be conducted on best practices for crisis intervention, and especially ensuring long-term benefits, there is no proof that crisis lines do anything other than save lives by offering provably effective resources to children, or anyone, considering suicide.

The crisis of pediatric mental illness and suicide is so pervasive and alarming that experts from Children's Hospital Colorado and others have repeatedly worked to draw attention the growing quandary.

"Fully a third of Colorado high school students say they consistently feel sad and hopeless, a key warning sign, and 17% admitted considering suicide," Children's Hospital Colorado experts say in an online effort to save lives by helping parents understand the problem. "Seven percent actually made an attempt. The numbers for LGBTQ-identified youth are triple that. And very often, kids who are struggling don't go to parents first."

The non-scientific, alarmist and disinformation-ridden efforts by CPAN and others to undermine critical state, regional and national suicide-prevention efforts creates real danger for all of Colorado.

School and state officials should work to call out this group's fraudulent claims and politicized goals and ensure the school district and the state continue to expand critical mental-health offerings to all who need them.

If you or someone you know is thinking of suicide, call the national suicide hotline at 988. The Colorado Crisis Hotline is also available by texting "talk" to 38255.

skankhunt42

November 15, 2023 at 10:58 am

I love editorials here. I know I can read the opinion headline and safely assume the exact opposite is true. I love my local paper!!

Jeff Ryan

November 16, 2023 at 10:12 am

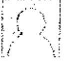
Why do you read it then?

Factory Working Orphan

November 16, 2023 at 8:30 am

But rad-lefty Tim Hernandez is quoted as saying, "Education is political. Teaching is political." This is part of the whole Freirean ethos.

So what's the problem when people who don't share your ideology adopt the very same pretense? Or is it that only movements from your side of the political aisle are allowed to indulge in such behavior?



Patrick Henry

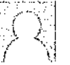
November 17, 2023 at 5:28 am

Is no one alarmed by the correlation of the rise in SEL, "Signs of Suicide", and other harmful programming with the rise in child suicide? Schools need to get out of this business because they are no good at it. They are doing harm, not good. Leave it to parents and the child to address these problems themselves and we will see suicide rates start coming down.

Don Perl

November 18, 2023 at 1:32 pm

Thank you very much for this exposé of CPAN. Surely their agenda seeks to sow doubt into the bulwark of democracy, our public schools.



GeneD

November 21, 2023 at 5:07 pm

With the alarming growth of pediatric mental illness and suicide, why wouldn't thinking, caring parents welcome other additional professional resources to help them look after and support their children and, indeed, all children in need or distress?

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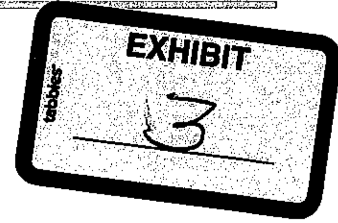

EDUCATION JUSTICE

Lawsuit from Colorado parents who claimed harm from after-school sexuality meeting dismissed

BY: **SUZIE GLASSMAN** - DECEMBER 21, 2023 4:00 AM

A view of the Alfred A. Arraj U.S. Courthouse in downtown Denver on May 30, 2023. (Quentin Young/Colorado Newsline)

U.S. District Judge Nina Wang dismissed a civil case Tuesday brought by the parents of two Poudre School District middle schoolers who alleged the district violated their parental rights, guaranteed under the due process clause of the 14th Amendment, to direct the upbringing of their children.

Wang's decision throws a wrench into a growing conservative parents rights movement that aims to limit what schools can teach about gender, sexuality and race without the express written consent of parents. The case gained national attention from outlets

like Fox News, which claimed a Colorado mother was suing the school district over a "secret gender transition club."

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In 2021, Jonathan and Erin Lee and Nicholas and Linnaea Jurich had middle schoolers who attended an after-school Genders and Sexualities Alliance meeting at Wellington Middle School, now called Wellington Middle-High School. The parents claimed both children experienced lasting emotional harm after the meetings, which led them to question their gender identities. Soon after the meeting, the parents elected to remove their children from the school district.

Attorneys from Illumine Legal and the America First Policy Institute, a conservative think tank dedicated to advancing policies that put "Americans first," earlier this year sued the Larimer County district and its board of education on behalf of the families, citing the 2000 Supreme Court ruling in Troxel v. Granville that the U.S. Constitution's 14th Amendment guarantees the rights of parents to oversee the care of their children, including their education.

Parents rights advocates often use this ruling to justify district policies that require parents to be notified if their children opt to go by pronouns other than those associated with the sex assigned to them at birth.

However, lawyers for the school district argued that nothing in the 14th Amendment gives parents a constitutional right to receive notice about topics discussed in curriculum and at after-school, voluntary extracurricular clubs that they may find objectionable, or the right to excuse their children from those discussions.

Wang agreed with the district.

"Troxel concerned parental visitation rights," she wrote. "It did not discuss a right of parents to direct the policies of or lessons taught in public schools or a right to receive notice about topics planned for discussion."

"The right of parents to direct the care, custody, and control of their children 'is perhaps the oldest of the fundamental liberty interests recognized by the Supreme Court,' but several U.S. district circuits have already ruled that those rights extend only so far," Wang said.

Based in Ohio, the 6th U.S. District Court defined those limits in an earlier decision. The ruling states, "While parents have a right to decide whether to send their child to public school, they don't have a fundamental right generally to direct how a public school teaches their child. Whether it is the school curriculum, the hours of the school day, school discipline, the timing and content of examinations, the individuals hired to teach at the school, or the extracurricular activities offered at the school or, as here, a dress code, these issues of public education are generally 'committed to the control of state and local authorities.'"

Wang also wrote in her decision that nothing in the 2000 Supreme Court ruling says parents have a constitutional right to exercise control over extracurricular activities.

The parents' attorneys also alleged that the Poudre School District violated Colorado law that states parents must be notified and allowed to opt out of educational materials that discuss sexually explicit content.

However, the judge ruled that a state-law requirement doesn't equate to a constitutional right and that a district or school principal's failure to follow the opt-out requirements doesn't necessarily rise to the level of a constitutional complaint.

Equal protection claim

Wang also dismissed the lawsuit's second claim that the district denied the Lees' other child equal protection when it refused to allow them to fill out a gender support plan for the cis 7-year-old.

The parents wanted to ensure the district would only ever be able to use their son's birth name and gender pronouns even though their son is not a transgender student. They claimed it was a violation of the 14th Amendment's equal protection clause to provide gender support plans for transgender but not cis students.

Again, the judge disagreed, opting to rule in favor of the district's argument that gender support plans are meant to provide transgender students access to a supportive environment. Cis students already "inherently" have access to such an environment, according to the ruling.

Attorneys for the parents have until Jan 9 to file a motion to amend the court order; otherwise, the case will be closed.

Newsline contacted representatives of the Poudre School District, Illumine Legal, and the America First Policy Institute for comment but had not received a reply by the time of publication.

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SUZIE GLASSMAN

Suzie Glassman is a freelance writer and reporter covering education and politics. Her work has been featured in The New York Times, Wired, Parents, Insider, Health, SheKnows, The Girlfriend and more. She is also a contributing writer to Forbes Health and Forbes Education. She lives in Douglas County with her husband, two kids, and two rescue dogs. Suzie is a member of the American Society of Journalists and Authors and the Education Writers Association.

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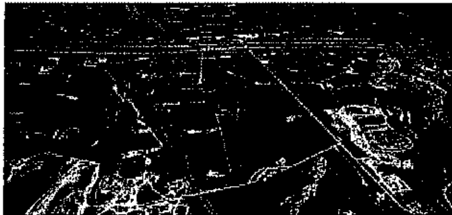

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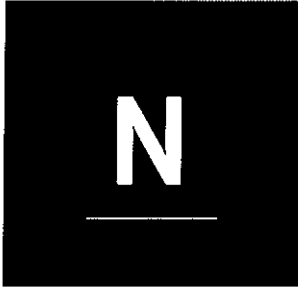

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