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# STATE OF COLORADO

DEPARTMENT OF  
STATE

## CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal summary, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2023-2024 #205 'Parental Notification of Gender Incongruence'".....

.....**IN TESTIMONY WHEREOF** I have unto set my hand .....  
and affixed the Great Seal of the State of Colorado,  
at the City of Denver this 24<sup>th</sup> day of April, 2024.

*Jena Griswold*

SECRETARY OF STATE





Final Text 2023-2024 #205

*Be it Enacted by the People of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, **add 22-1-144** as follows:

**22-1-144. Parental rights - definitions - information regarding gender incongruence.**

(1) **Declaration.** WE THE VOTERS OF THE STATE OF COLORADO, HEREBY FIND THAT PARENTS HAVE A RIGHT TO BE NOTIFIED OF THEIR CHILD'S GENDER INCONGRUENCE.

(2) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CHILD" MEANS A PERSON LESS THAN EIGHTEEN YEARS OF AGE WHO HAS NOT BEEN EMANCIPATED.

(b) "GENDER INCONGRUENCE" MEANS A DIFFERENCE BETWEEN A CHILD'S BIOLOGICAL SEX AND THE CHILD'S PERCEIVED OR DESIRED GENDER.

(c) "PARENT" MEANS A NATURAL PARENT, ADOPTIVE PARENT, OR LEGAL GUARDIAN WHO HAS LEGAL CUSTODY OF A CHILD.

(d) "PUBLIC SCHOOL" MEANS ANY PRESCHOOL, PRIMARY, OR SECONDARY SCHOOL THAT RECEIVES STATE OR FEDERAL FUNDS.

(e) "PUBLIC SCHOOL REPRESENTATIVE" MEANS ANY PUBLIC SCHOOL ADMINISTRATOR, TEACHER, NURSE, COUNSELOR, SOCIAL WORKER, OR COACH.

(3) **Information regarding gender incongruence.** A PUBLIC SCHOOL REPRESENTATIVE WHO OBTAINS INFORMATION THAT A CHILD ENROLLED IN THE PUBLIC SCHOOL AT WHICH THEY WORK IS EXPERIENCING GENDER INCONGRUENCE SHALL NOTIFY THE PUBLIC SCHOOL PRINCIPAL WITHIN TWO BUSINESS DAYS AFTER RECEIVING SUCH INFORMATION. THE PUBLIC SCHOOL PRINCIPAL SHALL THEN NOTIFY AT LEAST ONE OF THE CHILD'S PARENTS WITHIN TWO BUSINESS DAYS AFTER THE DATE OF RECEIVING SUCH INFORMATION.

**SECTION 2. Effective date - applicability.** This measure shall be effective on and after the date it is declared by proclamation of the governor to have been adopted by the registered electors of the state and shall apply to instances occurring on or after the effective date.



## **Ballot Title Setting Board**

### **Proposed Initiative 2023-2024 #205<sup>1</sup>**

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

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.

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?

*Hearing April 3, 2024:*

*Single subject approved; staff draft amended; titles set.*

*Board members: Theresa Conley, Jeremiah Barry, Kurt Morrison*

*Hearing adjourned 2:20 P.M.*

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<sup>1</sup> Unofficially captioned "**Parental Notification of Gender Incongruence**" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.



## **Ballot Title Setting Board**

### **Proposed Initiative 2023-2024 #205<sup>1</sup>**

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

A change to the Colorado Revised Statutes concerning parental notification of a child's gender incongruence from a school representative, and, in connection therewith, requiring a 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; defining "gender incongruence" as the difference between the child's biological sex and their perceived or desired gender; and applying this requirement to a school representative, regardless of existing confidentiality requirements, which includes an administrator, teacher, nurse, counselor, social worker, or coach, and to any preschool through secondary school that receives any state or federal funds.

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 school representative, and, in connection therewith, requiring a 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; defining "gender incongruence" as the difference between the child's biological sex and their perceived or desired gender; and applying this requirement to a school representative, regardless of existing confidentiality requirements, which includes an administrator, teacher, nurse, counselor, social worker, or coach, and to any preschool through secondary school that receives any state or federal funds?

*Hearing April 3, 2024:*

*Single subject approved; staff draft amended; titles set.*

*Board members: Theresa Conley, Jeremiah Barry, Kurt Morrison*

*Hearing adjourned 2:20 P.M.*

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<sup>1</sup> Unofficially captioned "**Parental Notification of Gender Incongruence**" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

*Rehearing April 19, 2024:*

*Motion for rehearing (Bobb, Wright) granted only to the extent the Board made changes to the title (3-0).*

*Board Members: Theresa Conley, Jeremiah Barry, Kurt Morrison*

*Hearing adjourned: 1:05 P.M.*



**BEFORE THE COLORADO BALLOT TITLE SETTING BOARD**

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

v.

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

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

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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](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

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**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

Members of the Colorado Title Board  
Thursday, April 11th, 2024  
Remarks in response to Initiative #205

To The Members of the Colorado Title Board:

My name is Margaret Bobb and I am submitting remarks for the record on the concerns I have regarding single subject in Initiative #205. As a Colorado teacher for 26 years in Denver Public Schools, I am concerned about the broad reach of the disclosure requirement and the expectation to breach confidentiality.

My first objection is that Initiative #205 is too complex and will require voters to decipher competing legal requirements and therefore does not meet the single subject requirement. My primary role as a teacher is to keep students safe; requiring teachers to report on *perceived* "gender" could obstruct mandatory reporting on abuse and negligence. There might be evidence of abuse that I need to report to the State of Colorado and evidence of gender incongruence that I need to report to the family. That report to the family of gender-incongruence could lead to more harm to the child and leave me liable for a lawsuit and loss of my teaching license. This initiative does not include a confidentiality exception for mandatory reporting, and the voting public will be unaware of how Initiative #205 will impact these competing requirements.

My second objection is that the definition of gender-incongruence in Initiative #205 is too subjective and complicated for voters and teachers to understand, therefore it does not meet the single subject standard. The initiative defines gender incongruence as the "difference between the child's biological sex and their perceived or desired gender" - but does not define "perceived or desired gender." A public school representative would have to report a student's gender appearance if they *perceive* the student is outside of the binary. Would this include a female student wearing pants and having a short haircut? Or a male student growing his hair past his shoulders? What about intersex students? What is the perceived or desired gender that Intersex people should embody? The definition is too broad and will lead to unequal enforcement of this requirement and open up the state, school districts, schools, and teachers to lawsuits for discrimination.

My third objection is that Initiative #205 is so expansive in nature it would require teachers to make subjective conclusions about students and therefore does not meet single subject requirements. For teachers to be expected to make judgements about gender incongruence requires that they get involved with issues that expand beyond the classroom and school. How am I supposed to know what a child's desired gender is, unless I ask them to tell me personal details about their life? It is not the job of teachers to judge the identities or dress of students in school, it is our responsibility to teach them state standards. This adds an additional scope of work to the teachers job description and expands beyond the classroom and school, and does not meet the single subject requirement.

My final objection is that Initiative #205 will regulate private, public and charter schools equally, therefore it does not meet the single subject requirement. As a public school teacher, I am regulated by different laws than private schools. Initiative #205 defines public schools as "every school that receives state or federal funds", which is a new definition that does not clearly explain the inclusion of private schools in this initiative. Voters who are not involved in schools will not know this initiative impacts private and public schools - therefore it does not meet the single subject standard.

Thank you for your consideration,

Margaret Bobb  
Denver County Registered Elector





# Initiative 205

## Legislative Council Staff

*Nonpartisan Services for Colorado's Legislature*

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## Fiscal Summary

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**Date:** March 19, 2024

**Fiscal Analyst:** John Armstrong (303-866-6289)

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### LCS TITLE: PARENTAL NOTIFICATION OF GENDER INCONGRUENCE

#### Fiscal Summary of Initiative 205

This fiscal summary, prepared by the nonpartisan Director of Research of the Legislative Council, contains a preliminary assessment of the measure's fiscal impact. A full fiscal impact statement for this initiative is or will be available at [leg.colorado.gov/bluebook](https://leg.colorado.gov/bluebook). This fiscal summary identifies the following impact.

**State and local government spending.** The measure requires that any public school representative who obtains information that a child in the public school is experiencing gender incongruence must notify the school principal within two days of receiving the information. The principal must then notify at least one of the child's parents within two days. The measure may increase workload for school districts to establish policies and guidance for principal and parental notification, and for the state to provide technical assistance to public schools. The exact impacts cannot be estimated, as they will depend on the number of notifications and individuals experiencing gender incongruence statewide and in each school district.

**Economic impacts.** Overall, the measure is not expected to have a direct economic impact on the state.