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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
54th Legislature, 1st Session, 2019

Bill Number	<u>HJR7</u>	Sponsor	<u>Schmedes/Brown</u>
Tracking Number	<u>.212413.4</u>	Committee Referrals	<u>HCPAC/HJC</u>
Short Title	<u>Parental Rights, CA</u>		
Analyst	<u>Force</u>	Original Date	<u>2/11/19</u>
		Last Updated	<u></u>

BILL SUMMARY

Synopsis of House Joint Resolution

House Joint Resolution 7 (HJR7) proposes to amend Article II – the Bill of Rights – of the New Mexico Constitution by adding a new section granting parents the right to direct the upbringing, education, and care of their children. This proposed parental right includes the right to choose private, religious, or home schools as an alternative to public schools, as well as the right to make reasonable choices within the public school system. The resolution would only permit the state to interfere with these rights by showing that its governmental interest is of the “highest order.” HJR7 notes that the proposed constitutional amendment is not to be construed to apply to parental action that would end life.

If HJR7 successfully passes the Legislature, it will be submitted to the people for approval at the next general election or a special election called for that purpose.

FISCAL IMPACT

HJR7 does not contain an appropriation.

Under Section 1-16-13 NMSA 1978 and the New Mexico Constitution, the Secretary of State (SOS) is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to 10 percent of the registered voters in the state. SOS is also required to publish them once a week for four weeks preceding the election in newspapers in every county in the state. If the ballot size is greater than one page, front and back, it would increase the cost of conducting the general election. In addition to the cost of the ballot, there will be added time for processing voters to vote and would mean additional ballot printing systems would be required to avoid having lines at voting convenience centers. SOS estimates the cost per constitutional amendment to be between \$50 thousand and \$100 thousand based on 2016 actual expenditures.

SUBSTANTIVE ISSUES

HJR7 appears to be based on a proposed Parental Rights Amendment to the United States Constitution, which contains provisions identical or very similar to HJR7. The Parental Rights Amendment has been proposed to every Congress, with some variation, since the 110th Congress (2007-2008). Several states have adopted resolutions calling on the U.S. Congress to propose the amendment to several states for ratification, including Florida, Idaho, Louisiana, Montana, South Dakota, and Wyoming.

The amendment to the New Mexico Constitution proposed by HJR7 notes that the state may only infringe upon parental rights when it demonstrates that its governmental interest is of the “highest order.” “Highest order,” however, is neither defined, nor is it a constitutional standard ordinarily applied to governmental action. Generally, laws purporting to interfere with a fundamental right must be reviewed through the lens of one of three levels of constitutional scrutiny. For laws implicating fundamental rights or appearing to discriminate on the basis of race, national origin, religion, or alienage must pass strict scrutiny, which means the government must demonstrate “a compelling state interest” and that the law is “narrowly tailored” to achieve its result. For laws that appear to discriminate on the basis of sex or gender – and for some states and federal appellate courts, sexual orientation – the government must satisfy intermediate scrutiny by showing the law serves an “important government objective,” and is “substantially related” to achieving its objective. The final level of scrutiny is referred to as “rational basis review,” and requires the person challenging the law to show that the government has “no legitimate interest” in the law, or that there is no “reasonable, rational link” between the interest and the challenged law.

According to the National Constitution Center, a nonpartisan organization established by Congress to increase the awareness and understanding of the U.S. Constitution, interpretation suggesting a fundamental legal right of parents to control the upbringing of their children is incomplete and anachronistic. Rather, our legal tradition supports the idea that the state entrusts parents with the custody of their children so long as parents meet their legal duty to properly care for their children, making parental right over their children contingent upon the welfare of children and the needs of the state. Under this trust model of parent-child relations, biology does not beget rights; rather it engenders responsibilities for the protection of children who are the actual bearers of fundamental rights: the right to appropriate parental care and an education leading to the eventual and natural enfranchisement from parental authority.

As the Children, Youth and Families Department (CYFD) indicates, both federal and state case law have established that parents have a protected liberty interest in the care and control of their children, so that the Article II, Section 8 of the New Mexico constitution, the Due Process Clause, already mandates that liberty interest cannot be infringed upon without due process. However, the interest of the state in the welfare of children is also well established. For CYFD, due process is provided to parents through the Children’s Code, as well as court rules and case law interpreting the code. The amendment proposed by HJR7 may limit the state’s ability to safeguard the welfare of children by imposing a higher standard to infringe upon parental rights than currently exists. Further, Section 32A-4-35 NMSA 1978 provides that all children in abuse or neglect proceedings are to be provided with an educational decision-maker, which is to be the child’s parent unless the children’s court determines that it is contrary to the interests of the child.

The New Mexico Attorney General’s office (AG) notes New Mexico courts have held that all schools, public or private, are affected with a public interest, and are therefore subject to reasonable regulation under the state’s police power. Further, the AG indicates case law generally supports

the idea that the state may impose minimum scholastic and training standards, including teacher qualifications, for both private and public nurseries, kindergartens, and schools.

SOURCES OF INFORMATION

- LESC files
- New Mexico Attorney General (AG)
- Children, Youth and Families Department (CYFD)

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