

REFERENCE TITLE: parents' bill of rights

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SCR 1025

Introduced by
Senator Wadsack: Representatives Heap, Jones

A CONCURRENT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE II, CONSTITUTION OF ARIZONA, BY ADDING SECTION 38; RELATING TO THE PARENTAL RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the Senate of the State of Arizona, the House of
2 Representatives concurring:

3 1. Article II, Constitution of Arizona, is proposed to be amended
4 by adding section 38 as follows if approved by the voters and on
5 proclamation of the Governor:

6 38. Parents' bill of rights; governmental interference
7 restricted; definition

8 SECTION 38. A. THE LIBERTY OF PARENTS TO DIRECT THE
9 UPBRINGING, EDUCATION, HEALTH CARE AND MENTAL HEALTH OF THEIR
10 CHILDREN IS A FUNDAMENTAL RIGHT.

11 B. THIS STATE, ANY POLITICAL SUBDIVISION OF THIS STATE
12 OR ANY OTHER GOVERNMENTAL ENTITY SHALL NOT INFRINGE ON THESE
13 RIGHTS WITHOUT DEMONSTRATING THAT THE COMPELLING GOVERNMENTAL
14 INTEREST AS APPLIED TO THE CHILD INVOLVED IS OF THE HIGHEST
15 ORDER, IS NARROWLY TAILORED AND IS NOT OTHERWISE SERVED BY A
16 LESS RESTRICTIVE MEANS.

17 C. ALL PARENTAL RIGHTS ARE EXCLUSIVELY RESERVED TO A
18 PARENT OF A MINOR CHILD WITHOUT OBSTRUCTION OR INTERFERENCE
19 FROM THIS STATE, ANY POLITICAL SUBDIVISION OF THIS STATE, ANY
20 OTHER GOVERNMENTAL ENTITY OR ANY OTHER INSTITUTION, INCLUDING:

21 1. THE RIGHT TO DIRECT THE EDUCATION OF THE MINOR
22 CHILD.

23 2. ALL RIGHTS OF PARENTS AS PRESCRIBED BY STATUTE,
24 INCLUDING THE RIGHT TO ACCESS AND REVIEW ALL RECORDS RELATING
25 TO THE MINOR CHILD.

26 3. THE RIGHT TO DIRECT THE UPBRINGING OF THE MINOR
27 CHILD.

28 4. THE RIGHT TO DIRECT THE MORAL OR RELIGIOUS TRAINING
29 OF THE MINOR CHILD.

30 5. THE RIGHT TO MAKE ALL HEALTH CARE DECISIONS FOR THE
31 MINOR CHILD, UNLESS OTHERWISE PROHIBITED BY LAW.

32 6. THE RIGHT TO REQUEST, ACCESS AND REVIEW ALL WRITTEN
33 AND ELECTRONIC MEDICAL RECORDS OF THE MINOR CHILD UNLESS
34 OTHERWISE PROHIBITED BY LAW OR UNLESS THE PARENT IS THE
35 SUBJECT OF AN INVESTIGATION OF A CRIME COMMITTED AGAINST THE
36 MINOR CHILD AND A LAW ENFORCEMENT OFFICIAL REQUESTS THAT THE
37 INFORMATION NOT BE RELEASED.

38 7. THE RIGHT TO CONSENT IN WRITING BEFORE A BIOMETRIC
39 SCAN OF THE MINOR CHILD IS MADE.

40 8. THE RIGHT TO CONSENT IN WRITING BEFORE ANY RECORD OF
41 THE MINOR CHILD'S BLOOD OR DEOXYRIBONUCLEIC ACID IS CREATED,
42 STORED OR SHARED, EXCEPT AS PRESCRIBED BY STATUTE, OR BEFORE
43 ANY GENETIC TESTING IS CONDUCTED ON THE MINOR CHILD UNLESS
44 AUTHORIZED BY STATUTE OR A COURT ORDER.

1 9. THE RIGHT TO CONSENT IN WRITING BEFORE THIS STATE OR
2 ANY OF ITS POLITICAL SUBDIVISIONS MAKES A VIDEO OR VOICE
3 RECORDING OF THE MINOR CHILD, UNLESS THE VIDEO OR VOICE
4 RECORDING IS MADE DURING OR AS A PART OF A COURT PROCEEDING,
5 BY LAW ENFORCEMENT OFFICERS DURING OR AS PART OF A LAW
6 ENFORCEMENT INVESTIGATION, DURING OR AS PART OF AN INTERVIEW
7 IN A CRIMINAL OR CHILD SAFETY SERVICES INVESTIGATION OR TO BE
8 USED SOLELY FOR ANY OF THE FOLLOWING:

9 (a) SAFETY DEMONSTRATIONS, INCLUDING THE MAINTENANCE OF
10 ORDER AND DISCIPLINE IN THE COMMON AREAS OF A SCHOOL OR ON
11 PUPIL TRANSPORTATION VEHICLES.

12 (b) A PURPOSE RELATED TO A LEGITIMATE ACADEMIC OR
13 EXTRACURRICULAR ACTIVITY.

14 (c) A PURPOSE RELATED TO REGULAR CLASSROOM INSTRUCTION.

15 (d) SECURITY OR SURVEILLANCE OF BUILDINGS OR GROUNDS.

16 (e) A PHOTO IDENTIFICATION CARD.

17 10. THE RIGHT TO BE NOTIFIED PROMPTLY IF AN EMPLOYEE OF
18 THIS STATE, ANY POLITICAL SUBDIVISION OF THIS STATE, ANY OTHER
19 GOVERNMENTAL ENTITY OR ANY OTHER INSTITUTION SUSPECTS THAT A
20 CRIMINAL OFFENSE HAS BEEN COMMITTED AGAINST THE MINOR CHILD BY
21 SOMEONE OTHER THAN A PARENT, UNLESS THE INCIDENT HAS FIRST
22 BEEN REPORTED TO LAW ENFORCEMENT AND NOTIFYING THE PARENT
23 WOULD IMPEDE A LAW ENFORCEMENT OR CHILD SAFETY SERVICES
24 INVESTIGATION. THIS PARAGRAPH DOES NOT CREATE ANY NEW
25 OBLIGATION FOR SCHOOL DISTRICTS AND CHARTER SCHOOLS TO REPORT
26 MISCONDUCT BETWEEN STUDENTS AT SCHOOL, SUCH AS FIGHTING OR
27 AGGRESSIVE PLAY, THAT IS ROUTINELY ADDRESSED AS A STUDENT
28 DISCIPLINARY MATTER BY THE SCHOOL.

29 11. THE RIGHT TO OBTAIN INFORMATION ABOUT A CHILD
30 SAFETY SERVICES INVESTIGATION INVOLVING THE PARENT AS
31 PRESCRIBED BY STATUTE.

32 D. THIS SECTION DOES NOT AUTHORIZE OR ALLOW A PARENT TO
33 ENGAGE IN CONDUCT THAT IS UNLAWFUL OR TO ABUSE OR NEGLECT A
34 CHILD IN VIOLATION OF THE LAWS OF THIS STATE. THIS SECTION
35 DOES NOT PROHIBIT COURTS, LAW ENFORCEMENT OFFICERS OR
36 EMPLOYEES OF A GOVERNMENT AGENCY RESPONSIBLE FOR CHILD WELFARE
37 FROM ACTING IN THEIR OFFICIAL CAPACITY WITHIN THE SCOPE OF
38 THEIR AUTHORITY. THIS SECTION DOES NOT PROHIBIT A COURT FROM
39 ISSUING AN ORDER THAT IS OTHERWISE ALLOWED BY LAW.

40 E. ANY ATTEMPT TO ENCOURAGE OR COERCE A MINOR CHILD TO
41 WITHHOLD INFORMATION FROM THE CHILD'S PARENT IS GROUNDS FOR
42 DISCIPLINE OF AN EMPLOYEE OF THIS STATE, ANY POLITICAL
43 SUBDIVISION OF THIS STATE, ANY OTHER GOVERNMENTAL ENTITY OR
44 ANY OTHER INSTITUTION, EXCEPT FOR LAW ENFORCEMENT PERSONNEL.

1 F. UNLESS THOSE RIGHTS HAVE BEEN LEGALLY WAIVED OR
2 LEGALLY TERMINATED, PARENTS HAVE INALIENABLE RIGHTS THAT ARE
3 MORE COMPREHENSIVE THAN THOSE LISTED IN THIS SECTION. THIS
4 SECTION DOES NOT PRESCRIBE ALL RIGHTS OF PARENTS OR PREEMPT OR
5 FORECLOSE CLAIMS OR REMEDIES IN SUPPORT OF PARENTAL RIGHTS
6 THAT ARE AVAILABLE UNDER THIS CONSTITUTION OR THE STATUTES OR
7 COMMON LAW OF THIS STATE. UNLESS OTHERWISE REQUIRED BY LAW,
8 THE RIGHTS OF PARENTS OF MINOR CHILDREN SHALL NOT BE LIMITED
9 OR DENIED.

10 G. EXCEPT AS PRESCRIBED IN SUBSECTIONS H AND I OF THIS
11 SECTION, THIS STATE, A POLITICAL SUBDIVISION OF THIS STATE OR
12 ANY OTHER GOVERNMENTAL ENTITY, OR ANY OFFICIAL OF THIS STATE,
13 A POLITICAL SUBDIVISION OF THIS STATE OR ANY OTHER
14 GOVERNMENTAL ENTITY ACTING UNDER COLOR OF LAW, SHALL NOT
15 INTERFERE WITH OR USURP THE FUNDAMENTAL RIGHT OF PARENTS TO
16 DIRECT THE UPBRINGING, EDUCATION, HEALTH CARE AND MENTAL
17 HEALTH OF THEIR CHILDREN. A PARENT MAY BRING SUIT AGAINST A
18 GOVERNMENTAL ENTITY OR OFFICIAL DESCRIBED IN THIS SUBSECTION
19 BASED ON ANY VIOLATION OF THE RIGHTS SET FORTH IN THIS SECTION
20 OR ANY OTHER ACTION THAT INTERFERES WITH OR USURPS THE
21 FUNDAMENTAL RIGHT OF PARENTS TO DIRECT THE UPBRINGING,
22 EDUCATION, HEALTH CARE AND MENTAL HEALTH OF THEIR CHILDREN IN
23 THE SUPERIOR COURT IN THE COUNTY IN WHICH THE VIOLATION OR
24 OTHER ACTION OCCURS OR IN FEDERAL COURT, IF AUTHORIZED BY
25 FEDERAL LAW, OR BEFORE AN ADMINISTRATIVE TRIBUNAL OF
26 APPROPRIATE JURISDICTION. A PARENT MAY RAISE A VIOLATION OF
27 THIS SECTION AS A CLAIM OR A DEFENSE.

28 H. IN ANY ACTION UNDER SUBSECTION G OF THIS SECTION,
29 THE GOVERNMENTAL ENTITY OR OFFICIAL DESCRIBED IN SUBSECTION G
30 OF THIS SECTION HAS THE BURDEN OF PROOF TO DEMONSTRATE BOTH OF
31 THE FOLLOWING:

32 1. THAT THE INTERFERENCE OR USURPATION IS ESSENTIAL TO
33 ACCOMPLISH A COMPELLING GOVERNMENT INTEREST OF THE HIGHEST
34 ORDER, AS LONG RECOGNIZED IN THE HISTORY AND TRADITIONS OF
35 THIS STATE IN THE OPERATION OF ITS REGULATORY POWERS.

36 2. THAT THE METHOD OF INTERFERENCE OR USURPATION USED
37 BY THE GOVERNMENT IS NARROWLY TAILORED AND IS NOT OTHERWISE
38 SERVED BY A LESS RESTRICTIVE MEANS.

39 I. A GOVERNMENTAL ENTITY OR OFFICIAL DESCRIBED IN
40 SUBSECTION G OF THIS SECTION MAY INTERFERE WITH OR USURP THE
41 FUNDAMENTAL RIGHT OF PARENTS TO DIRECT THE UPBRINGING,
42 EDUCATION, HEALTH CARE AND MENTAL HEALTH OF THEIR CHILDREN
43 ONLY IF THE GOVERNMENTAL ENTITY OR OFFICIAL SUCCESSFULLY
44 DEMONSTRATES BOTH ELEMENTS DESCRIBED IN SUBSECTION G OF THIS
45 SECTION. IF THE GOVERNMENTAL ENTITY OR OFFICIAL IS

1 UNSUCCESSFUL, THE COURT SHALL GRANT APPROPRIATE RELIEF, SUCH
2 AS DECLARATORY OR INJUNCTIVE RELIEF, COMPENSATORY DAMAGES AND
3 ATTORNEY FEES, BASED ON THE FACTS OF THE CASE AND THE LAW AS
4 APPLIED TO THE FACTS.

5 J. FOR THE PURPOSES OF THIS SECTION, "PARENT" MEANS THE
6 NATURAL OR ADOPTIVE PARENT OR LEGAL GUARDIAN OF A MINOR CHILD.

7 2. The Secretary of State shall submit this proposition to the
8 voters at the next general election as provided by article XXI,
9 Constitution of Arizona.