Constitution of Colorado: Article X Revenue

Section 20. The Taxpayer’s Bill of Rights

(1) General provisions. This section takes effect December 31, 1992 or as stated. Its preferred interpretation shall reasonably restrain most the growth of government. All provisions are self-executing and severable and supersede conflicting state constitutional, state statutory, charter, or other state or local provisions. Other limits on district revenue, spending, and debt may be weakened only by future voter approval. Individual or class action enforcement suits may be filed and shall have the highest civil priority of resolution. Successful plaintiffs are allowed costs and reasonable attorney fees, but a district is not unless a suit against it be ruled frivolous. Revenue collected, kept, or spent illegally since four full fiscal years before a suit is filed shall be refunded with 10% annual simple interest from the initial conduct. Subject to judicial review, districts may use any reasonable method for refunds under this section, including temporary tax credits or rate reductions. Refunds need not be proportional when prior payments are impractical to identify or return. When annual district revenue is less than annual payments on general obligation bonds, pensions, and final court judgments, (4) (a) and (7) shall be suspended to provide for the deficiency.

(2) Term definitions. Within this section:
(a) "Ballot issue" means a non-recall petition or referred measure in an election.
(b) "District" means the state or any local government, excluding enterprises.
(c) "Emergency" excludes economic conditions, revenue shortfalls, or district salary or fringe benefit increases.
(d) "Enterprise" means a government-owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined.
(e) "Fiscal year spending" means all district expenditures and reserve increases except, as to both, those for refunds made in the current or next fiscal year or those from gifts, federal funds, collections for another government, pension contributions by employees and pension fund earnings, reserve transfers or expenditures, damage awards, or property sales.
(f) "Inflation" means the percentage change in the United States Bureau of Labor Statistics Consumer Price Index for Denver-Boulder, all items, all urban consumers, or its successor index.
(g) "Local growth" for a non-school district means a net percentage change in actual value of all real property in a district from construction of taxable real property improvements, minus destruction of similar improvements, and additions to, minus deletions from, taxable real property. For a school district, it means the percentage change in its student enrollment.

(3) Election provisions.
(a) Ballot issues shall be decided in a state general election, biennial local district election, or on the first Tuesday in November of odd-numbered years. Except for petitions, bonded debt, or charter or constitutional provisions, districts may consolidate ballot issues and voters may approve a delay of up to four years in voting on ballot issues. District actions taken during such a delay shall not extend beyond that period.
(b) At least 30 days before a ballot issue election, districts shall mail at the least cost, and as a package where districts with ballot issues overlap, a titled notice or set of notices addressed to "All Registered Voters" at each address of one or more active registered electors. The districts...
may coordinate the mailing required by this paragraph (b) with the distribution of the ballot information booklet required by section 1 (7.5) of article V of this constitution in order to save mailing costs. Titles shall have this order of preference: "NOTICE OF ELECTION TO INCREASE TAXES/TO INCREASE DEBT/ON A CITIZEN PETITION/ON A REFERRED MEASURE." Except for district voter-approved additions, notices shall include only:

(i) The election date, hours, ballot title, text, and local election office address and telephone number.

(ii) For proposed district tax or bonded debt increases, the estimated or actual total of district fiscal year spending for the current year and each of the past four years, and the overall percentage and dollar change.

(iii) For the first full fiscal year of each proposed district tax increase, district estimates of the maximum dollar amount of each increase and of district fiscal year spending without the increase.

(iv) For proposed district bonded debt, its principal amount and maximum annual and total district repayment cost, and the principal balance of total current district bonded debt and its maximum annual and remaining total district repayment cost.

(v) Two summaries, up to 500 words each, one for and one against the proposal, of written comments filed with the election officer by 45 days before the election. No summary shall mention names of persons or private groups, nor any endorsements of or resolutions against the proposal. Petition representatives following these rules shall write this summary for their petition. The election officer shall maintain and accurately summarize all other relevant written comments. The provisions of this subparagraph (v) do not apply to a statewide ballot issue, which is subject to the provisions of section 1 (7.5) of article V of this constitution.

(c) Except by later voter approval, if a tax increase or fiscal year spending exceeds any estimate in (b) (iii) for the same fiscal year, the tax increase is thereafter reduced up to 100% in proportion to the combined dollar excess, and the combined excess revenue refunded in the next fiscal year. District bonded debt shall not issue on terms that could exceed its share of its maximum repayment costs in (b) (iv). Ballot titles for tax or bonded debt increases shall begin, "SHALL (DISTRICT) TAXES BE INCREASED (first, or if phased in, final, full fiscal year dollar increase) ANNUALLY...?" or "SHALL (DISTRICT) DEBT BE INCREASED (principal amount), WITH A REPAYMENT COST OF (maximum total district cost), ...?"

(4) Required elections. Starting November 4, 1992, districts must have voter approval in advance for:

(a) Unless (1) or (6) applies, any new tax, tax rate increase, mill levy above that for the prior year, valuation for assessment ratio increase for a property class, or extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain to any district.

(b) Except for refinancing district bonded debt at a lower interest rate or adding new employees to existing district pension plans, creation of any multiple-fiscal year direct or indirect district debt or other financial obligation whatsoever without adequate present cash reserves pledged irrevocably and held for payments in all future fiscal years.

(5) Emergency reserves. To use for declared emergencies only, each district shall reserve for 1993 1% or more, for 1994 2% or more, and for all later years 3% or more of its fiscal year spending excluding bonded debt service. Unused reserves apply to the next year's reserve.
(6) Emergency taxes. This subsection grants no new taxing power. Emergency property taxes are prohibited. Emergency tax revenue is excluded for purposes of (3) (c) and (7), even if later ratified by voters. Emergency taxes shall also meet all of the following conditions:
(a) A 2/3 majority of the members of each house of the general assembly or of a local district board declares the emergency and imposes the tax by separate recorded roll call votes.
(b) Emergency tax revenue shall be spent only after emergency reserves are depleted, and shall be refunded within 180 days after the emergency ends if not spent on the emergency.
(c) A tax not approved on the next election date 60 days or more after the declaration shall end with that election month.
(7) Spending limits. (a) The maximum annual percentage change in state fiscal year spending equals inflation plus the percentage change in state population in the prior calendar year, adjusted for revenue changes approved by voters after 1991. Population shall be determined by annual federal census estimates and such number shall be adjusted every decade to match the federal census.
(b) The maximum annual percentage change in each local district's fiscal year spending equals inflation in the prior calendar year plus annual local growth, adjusted for revenue changes approved by voters after 1991 and (8) (b) and (9) reductions.
(c) The maximum annual percentage change in each district's property tax revenue equals inflation in the prior calendar year plus annual local growth, adjusted for property tax revenue changes approved by voters after 1991 and (8) (b) and (9) reductions.
(d) If revenue from sources not excluded from fiscal year spending exceeds these limits in dollars for that fiscal year, the excess shall be refunded in the next fiscal year unless voters approve a revenue change as an offset. Initial district bases are current fiscal year spending and 1991 property tax collected in 1992. Qualification or disqualification as an enterprise shall change district bases and future year limits. Future creation of district bonded debt shall increase, and retiring or refinancing district bonded debt shall lower, fiscal year spending and property tax revenue by the annual debt service so funded. Debt service changes, reductions, (1) and (3) (c) refunds, and voter-approved revenue changes are dollar amounts that are exceptions to, and not part of, any district base. Voter-approved revenue changes do not require a tax rate change.
(8) Revenue limits. (a) New or increased transfer tax rates on real property are prohibited. No new state real property tax or local district income tax shall be imposed. Neither an income tax rate increase nor a new state definition of taxable income shall apply before the next tax year. Any income tax law change after July 1, 1992 shall also require all taxable net income to be taxed at one rate, excluding refund tax credits or voter-approved tax credits, with no added tax or surcharge.
(b) Each district may enact cumulative uniform exemptions and credits to reduce or end business personal property taxes.
(c) Regardless of reassessment frequency, valuation notices shall be mailed annually and may be appealed annually, with no presumption in favor of any pending valuation. Past or future sales by a lender or government shall also be considered as comparable market sales and their sales prices kept as public records. Actual value shall be stated on all property tax bills and valuation notices and, for residential real property, determined solely by the market approach to appraisal.
(9) State mandates. Except for public education through grade 12 or as required of a local district by federal law, a local district may reduce or end its subsidy to any program delegated to
it by the general assembly for administration. For current programs, the state may require 90 days notice and that the adjustment occur in a maximum of three equal annual installments.
Appendix B

Resolution of Board of Education of Boulder Valley School District Re-2 Board Of Education

RESOLUTION 16-30


Recitals:

A. The Colorado Statehood Enabling Act of 1875, and Article IV, Section 4 of the United States Constitution require the State of Colorado to establish and maintain a "Republican Form of Government."

B. The Colorado Constitution requires the Colorado General Assembly to establish and maintain a thorough and uniform system of free public schools wherein the children of the state may be educated. Colo. Const. art. IX, § 2. The General Assembly also must provide for the organization of school districts governed by local boards of education elected by the qualified electors of the individual districts. Colo. Const. art. IX, § 15. The local boards of education are vested with the responsibility for control of instruction in the public schools of their respective districts. Id.

C. Each school district is authorized to sue and be sued. C.R.S. § 22-32-101.

D. Article IV, Section 4 of the United States Constitution, and the Colorado Statehood Enabling Act of 1875, each require Colorado to establish and maintain a republican form of government. A republican form of government, as intended by the Founders and explained by the authors of The Federalist Papers, requires the core functions of government, especially its fiscal powers, to be exercised by the officers of the representative branches of government, including the Commissioners, and not by means of plebiscite or direct democracy.

E. The limitations imposed by the so-called Taxpayer Bill of Rights ("TABOR"), art. X, § 20, of the Colorado Constitution on the authority of elected representatives to exercise authority to raise revenue and spend those funds for the general welfare and/or the specific governmental function assigned to the elected representatives directly contravene the powers and responsibilities of the elected representatives in contravention of Article IV, Section 4 of the Constitution.

F. The ability of Boulder Valley School District RE-2 to provide adequate education services to its students depends in part on its ability to convince the General Assembly to appropriately fund the Public School Finance Act.

G. The requirements and limitations imposed by TABOR have prevented the state and its local school districts from fulfilling their obligations, derived from the original state constitution and its derivation from the Enabling Act, adequately to fund the public schools of the state.

H. TABOR has caused the Boulder Valley School District RE-2 to incur costs,
delays and other injuries to its ability to provide for the education of its children occasioned by TABOR’s requirements for elections to approve any increases in the property tax mill levies.

I. The Board finds that it is necessary and appropriate to join in the challenge to the constitutionality of TABOR, and to its lawfulness under the Statehood Enabling Act, being pursued in federal court in the case of Kerr v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U.S. District Court for the District of Colorado. The Board is further informed and assured that representation of plaintiffs in the case has been undertaken and will continue to be handled by attorneys for the plaintiffs on a pro bono basis, without charge, and at no cost to the plaintiffs.

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of Boulder Valley District RE-2, as follows:

1. That, in accordance with its powers and responsibilities under the United States Constitution and the Constitution and laws of Colorado, Boulder Valley School District RE-2 shall enter the case of Kerr v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U. S. District Court for the District of Colorado, as a plaintiff; and further,

2. That no expenses for attorneys' fees or costs shall be incurred by the School District in connection with its involvement as a plaintiff in this case.

ADOPTED this 27th day of September, 2016.

BOULDER VALLEY SCHOOL DISTRICT RE-2

Sam Fuqua
President, Board of Education

ATTEST:

Secretary of the Board of Education
Appendix C

Resolution of Board of Education of Cheyenne Wells Re-5 School District Board Of Education


Whereas, by Article IX of the original Colorado Constitution, the State of Colorado undertook to provide its children with a universal system of free public education, and specifically, Section 2 of Article IX provided that “[t]he General Assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the State, wherein all residents of the State between the ages of six and twenty-one years may be educated gratuitously;” and

Whereas, in the several sections of the Colorado Revised Statutes known collectively as the “School Finance Act,” currently C.R.S. §22-54-101 et seq., as amended and reenacted by the General Assembly from time to time over recent years, the State of Colorado has prescribed the responsibility for fulfilling the obligations of Section 2 of Article IX as one shared by the State, acting through its fiscal processes, and local district school boards, acting through their authority to raise and expend funds in support of their local public schools, all intended to offset vast disparities in local school districts’ ability to raise money from local property tax; and

Whereas, Article IV, section 4, of the United States Constitution, and the Colorado Statehood Enabling Act of 1875, each require Colorado to establish and maintain a republican form of government, requiring the core functions of government, especially its fiscal powers, to be exercised by the officers of the representative branches of government, including the various school district Boards of Education, and not by means of plebiscite or direct democracy; and

Whereas, the limitations on the exercise of the Board’s fiscal powers imposed by the so-called Taxpayer Bill of Rights (“TABOR”), Art. X, §20, of the Colorado Constitution, directly contravene the powers and responsibilities of the Board and have undermined the District’s republican form of government; and

Whereas, TABOR has caused the District to incur costs, delays and other injuries to its ability to provide for the education of its children occasioned by TABOR’s effect on the state’s capacity to fund the public schools, in turn necessitating local district elections to approve certain “override” increases in the property tax mill levies, and by TABOR’s requirement for elections to approve retention of revenues generated that exceed the spending limits imposed by TABOR; and

Whereas, due to the requirements of TABOR, the Board and the School District have been forced to incur costs and expenses necessary to present to the voters of the School District for their decision matters affecting the exercise of the Board's fiscal powers of taxation and
appropriation that would otherwise have been within the powers and responsibilities of the Board on several occasions over the last twenty years, including the following:

i. Cheyenne County School District Re-5 voters approved a Mill Levy Override for a specific dollar amount of $217,915.00 on November 2, 1993

ii. Cheyenne County School District Re-5 voters de-Bruced on November 5, 1996

iii. Cheyenne County School District Re-5 voters approved a 6.1 Mill Levy Override on November 5, 2013 but the District was not able to collect the entire amount of mills due to a state law limiting the school district to 25% of its total program funding

Whereas, this Board finds that, in order to preserve its core fiscal powers and to restore its republican form of government, it is necessary and appropriate to join in the challenge to the constitutionality of TABOR, and to its lawfulness under the Statehood Enabling Act, being pursued in federal court in the case of Kerr et al. v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U. S. District Court for Colorado, and being informed and assured that representation of plaintiffs in the case has been undertaken and will continue to be handled by attorneys for the plaintiffs on a pro bono basis, without charge, and at no cost to the plaintiffs.

Therefore, the Board resolves:

That, in accordance its powers and responsibilities under the United States Constitution and the Constitution and laws of Colorado, the Board of Education of Cheyenne County School District Re-5, shall enter the case of Kerr et al. v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U. S. District Court for Colorado, as a plaintiff; and further,

That no expenses for attorneys’ fees or costs shall be incurred by the Board or the District in connection with its involvement as plaintiff in this case.

Done this ✓ day of September, 2016.

Chris Tallman
President of the Board

Debbie Knudsen
Secretary of the Board
Appendix D

Resolution of Board of Education of Colorado Springs District 11 Board Of Education

Resolution 2017-21

A resolution of the Board of Education of Colorado Springs School District 11 to enter as a plaintiff in the case of Kerr et al. v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U.S. District Court for Colorado

Whereas by Article IX of the original Colorado Constitution, the state of Colorado undertook to provide its children with a universal system of free public education, and specifically, Section 2 of Article IX provided that “[t]he General Assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the State, wherein all residents of the State between the ages of six and twenty-one years may be educated gratuitously;”

Whereas in the several sections of the Colorado Revised Statutes known collectively as the “School Finance Act,” currently C.R.S. §22-54-101 et seq., as amended and reenacted by the general assembly from time to time over recent years, the state of Colorado has prescribed the responsibility for fulfilling the obligations of Section 2 of Article IX as one shared by the state, acting through its fiscal processes, and local district school boards, acting through their authority to raise and expend funds in support of their local public schools, all intended to offset vast disparities in local school districts’ ability to raise money from local property tax;

Whereas Article IV, Section 4 of the United States Constitution, and the Colorado Statehood Enabling Act of 1875, each require Colorado to establish and maintain a republican form of government, requiring the core functions of government, especially its fiscal powers, to be exercised by the officers of the representative branches of government, including the various school district boards of education, and not by means of plebiscite or direct democracy;

Whereas the limitations on the exercise of the Board’s fiscal powers imposed by the so-called Taxpayer Bill of Rights (“TABOR”), Article X, §20 of the Constitution of Colorado, directly contravene the powers and responsibilities of the Board and have undermined the school district’s republican form of government;

Whereas prior to TABOR, local district school boards had authority, within statutory limits, to set the property tax mill levies, which are the principal local source of revenue to fund the public schools, and TABOR has caused local school districts to incur costs, delays, and other injuries to their ability to provide for the education of their children occasioned by TABOR’s requirements for elections to approve any increases in the property tax mill levies and to retain revenues generated by existing mill levies that exceed the spending limits imposed by TABOR;

Whereas due to the requirements of TABOR, the Board and the school district have been forced to incur costs and expenses necessary to present to the voters of the school district for their decision, matters affecting the exercise of the Board’s fiscal powers of taxation and appropriation that would otherwise have been within the powers and responsibilities of the Board on several occasions over the last twenty years, including the following:

i. 2000 Mill Levy Override Election – to supplement district programs – passed
ii. 2008 Mill Levy Override Election – failed
iii. 2016 Mill Levy Override Election – failed
iv. 2001 District 11 De-TABOR Election – failed
   - Restricts district’s entrepreneurial effort
   - Limits district revenues and expenditures
Whereas this board finds that, in order to preserve its core fiscal powers and to restore the republican form of government, it is necessary and appropriate to join in the challenge to the constitutionality of TABOR, and to its lawfulness under the Statehood Enabling Act, being pursued in federal court in the case of Kerr et al. v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U.S. District Court for Colorado, and being informed and assured that representation of plaintiffs in the case has been undertaken and will continue to be handled by attorneys for the plaintiffs on a pro bono basis, without charge, and at no cost to the plaintiffs; now therefore, be it

Resolved, that:

1. in accordance with its powers and responsibilities under the United States Constitution and the constitution and laws of Colorado, the Colorado Springs School District 11 Board of Education, shall enter the case of Kerr et al. v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U.S. District Court for Colorado as a plaintiff; and further,

2. no expenses for attorneys’ fees or costs shall be incurred by Colorado Springs School District 11 or its Board of Education in connection with its involvement as a plaintiff in the said case.

Adopted this 30th day of November, 2016.

Dr. Nicholas M. Giedrich, Superintendent

[Seal]

Doris Hensley, Secretary to the Board of Education

[Seal]

Lauren Long, President

Jim Mason, Vice President

Theresa Null, Secretary

Nora Brown, Treasurer

Mary Coleman, Director

Shawn Gullixson, Director

Elaine Naleski, Director
Appendix E

Resolution of Board of Education of Gunnison Watershed Re-1J School District


Whereas, by Article IX of the original Colorado Constitution, the State of Colorado undertook to provide its children with a universal system of free public education, and specifically, Section 2 of Article IX provided that “[t]he General Assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the State, wherein all residents of the State between the ages of six and twenty-one years may be educated gratuitously;” and

Whereas, in the several sections of the Colorado Revised Statutes known collectively as the "School Finance Act," currently C.R.S. §22-54-101 et seq., as amended and reenacted by the General Assembly from time to time over recent years, the State of Colorado has prescribed the responsibility for fulfilling the obligations of Section 2 of Article IX as one shared by the State, acting through its fiscal processes, and local district school boards, acting through their authority to raise and expend funds in support of their local public schools, all intended to offset vast disparities in local school districts’ ability to raise money from local property tax; and

Whereas, Article IV, section 4, of the United States Constitution, and the Colorado Statehood Enabling Act of 1875, each require Colorado to establish and maintain a republican form of government, requiring the core functions of government, especially its fiscal powers, to be exercised by the officers of the representative branches of government, including the various school district Boards of Education, and not by means of plebiscite or direct democracy; and

Whereas, the limitations on the exercise of the Board's fiscal powers imposed by the so-called Taxpayer Bill of Rights ("TABOR"), Art. X, §20, of the Colorado Constitution, directly contravene the powers and responsibilities of the Board and have undermined the School District's republican form of government; and

Whereas, prior to TABOR, local district school boards had authority, within statutory limits, to set the property tax mill levies which are the principal local source of revenue to fund the public schools, and TABOR has caused local school districts to incur costs, delays and other injuries to their ability to provide for the education of their children occasioned by TABOR's requirements for elections to approve any increases in the property tax mill levies and to retain revenues generated by existing mill levies that exceed the spending limits imposed by TABOR; and
Whereas, due to the requirements of TABOR, the Board and the School District have been forced to incur costs and expenses necessary to present to the voters of the School District for their decision matters affecting the exercise of the Board’s fiscal powers of taxation and appropriation that would otherwise have been within the powers and responsibilities of the Board on several occasions over the last twenty years, including the following:

i. 1997 De-Bruce question - Fiscal year spending limits pursuant to Article X, Section 20 of the state constitution
ii. 2004 1.3 million dollar Mill Levy override
iii. 2014 2.5 million dollar Mill Levy override

Whereas, this Board finds that, in order to preserve its core fiscal powers and to restore its republican form of government, it is necessary and appropriate to join in the challenge to the constitutionality of TABOR, and to its lawfulness under the Statehood Enabling Act, being pursued in federal court in the case of Kerr et al. v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U. S. District Court for Colorado, and being informed and assured that representation of plaintiffs in the case has been undertaken and will continue to be handled by attorneys for the plaintiffs on a pro bono basis, without charge, and at no cost to the plaintiffs.

Therefore, the Board resolves:

That, in accordance its powers and responsibilities under the United States Constitution and the Constitution and laws of Colorado, the Board of Education of the Gunnison Watershed School District Re-1J, shall enter the case of Kerr et al. v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U. S. District Court for Colorado, as a plaintiff; and further,

That no expenses for attorneys’ fees or costs shall be incurred by the Board or the School District in connection with its involvement as plaintiff in the said case.

# 09/12/16

[Signature]
GWSD RE-1J, President

Date

[Signature]
GWSD RE-1J Vice President

Date
Appendix F

Resolution of Board of Education of Pueblo County School District 70

Pueblo County School District 70

Resolution

(Authorizing Pueblo County School District 70 to enter as a plaintiff in the case of Kerr et al v. Hickenlooper)

Recitals:

A. The Colorado Statehood Enabling Act of 1985, and Article IV, Section 4 of the United States Constitution require the State of Colorado to establish and maintain a “Republican Form of Government.”

B. The Colorado Constitution requires the Colorado General Assembly to establish and maintain a thorough and uniform system of free public schools wherein the children of the state may be educated. Colo. Const. art. IX, § 2. The General Assembly also must provide the organization of school districts governed by local board of education elected by the qualified electors of the individual districts. Colo. Const. art. IX, § 15.

C. Each school district is authorized to sue and be sued. C.R.S. § 22-32-101.

D. A republican form of government In Colorado requires the core functions of government, especially its fiscal powers, to be exercised by elected representatives who possess legislative authority, including the Board of Education.

E. The limitations imposed by the so-called Taxpayer Bill of Rights (“TABOR”), art. X, § 20, of the Colorado Constitution, on the authority of elected representatives to exercise authority to raise revenue and spend those funds for the general welfare and or/ the specific governmental function assigned to the elected representatives directly infringe upon the powers and responsibilities of the elected representatives in contravention of Article IV Section 4 of the Constitution.

F. The ability of Pueblo County School District 70 to provide adequate education services to its students depends in part on its ability to convince the Colorado General Assembly to adequately fund the Public School Finance Act.

G. The Requirements and limitations imposed by TABOR have prevented the state and its local school districts from fulfilling their state constitutional obligations to adequately fund the public schools of the state.

H. TABOR has caused Pueblo County School District 70 to incur costs, delays and other injuries to its ability to provide for the education of its children due to TABOR’s requirements for elections to approve any increases in the property tax mill levies, including the following:

   i. 1997 DeBrung (approved)
   ii. 2011 mill levy override (failed)
   iii. 2016 mill levy override (failed)
1. This Board finds that, in order to preserve its core fiscal powers and to restore its republican form of government, it is necessary and appropriate to join in the challenge to the constitutionality of TABOR, and to its lawfulness under the Statehood Enabling Act, being pursued in federal court in the case of Kerr et al. v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U. S. District Court for Colorado, and being informed and assured that representation of plaintiffs in the case has been untaken and will continue to be handled by attorneys for the plaintiffs on a pro bono basis, without charge, and at no cost to the plaintiffs.

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of Pueblo School District 70, as follows:

1. That, in accordance with its powers and responsibilities under the United States Constitution and the Constitution and laws of Colorado, Pueblo County School District 70 shall enter the case of Kerr v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U. S. District Court for the District of Colorado, as a plaintiff; and further,

2. That no expenses for attorneys’ fees or costs shall be incurred by the School District in connection with its involvement as a plaintiff in this case.

ADOPTED this 15th day of November, 2016.

PUEBLO COUNTY SCHOOL DISTRICT 70

Ted Ortiz
President, Board of Education

ATTEST:

Pam Smith
Secretary of the Board of Education
Appendix G

Resolution of Board of Education of Pueblo City District 60

PUEBLO SCHOOL DISTRICT NO. 60

RESOLUTION

(Authorizing Pueblo School District No. 60 to enter as a plaintiff in the case of Kerr et al v. Hickenlooper.)

Recitals:

A. The Colorado Statehood Enabling Act of 1875, and Article IV, Section 4 of the United States Constitution require the State of Colorado to establish and maintain a "Republican Form of Government."

B. The Colorado Constitution requires the Colorado General Assembly to establish and maintain a thorough and uniform system of free public schools wherein the children of the state may be educated. Colo. Const. art. IX, § 2. The General Assembly also must provide for the organization of school districts governed by local board of education elected by the qualified electors of the individual districts. Colo. Const. art. IX, § 15.

C. Each school district is authorized to sue and be sued. C.R.S. § 22-32-101.

D. A republican form of government in Colorado requires the core functions of government, especially its fiscal powers, to be exercised by elected representatives who possess legislative authority, including the Board of Education.

E. The limitations imposed by the so-called Taxpayer Bill of Rights ("TABOR"), art. X, § 20, of the Colorado Constitution, on the authority of elected representatives to exercise authority to raise revenue and spend those funds for the general welfare and/or the specific governmental function assigned to the elected representatives directly infringe upon the powers and responsibilities of the elected representatives in contravention of Article IV Section 4 of the Constitution.

F. The ability of Pueblo School District No. 60 to provide adequate education services to its students depends in part on its ability to convince the Colorado General Assembly to adequately fund the Public School Finance Act.

G. The requirements and limitations imposed by TABOR have prevented the state and its local school districts from fulfilling their state constitutional obligations to adequately fund the public schools of the state.

H. TABOR has caused Pueblo School District No. 60 to incur costs, delays and other injuries to its ability to provide for the education of its children due to TABOR's requirements for elections to approve any increases in the property tax mill levies.

I. The Board finds that it is necessary and appropriate to join in the challenge to the constitutionality of TABOR, and to its lawfulness under the Colorado Statehood Enabling Act, as asserted in federal court in the case of Kerr v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U. S. District Court for the District of Colorado. The Board is further informed and
assured that representation of plaintiffs in the case has been undertaken and will continue to be handled by attorneys for the plaintiffs on a pro bono basis, without charge, and at no cost to the plaintiffs.

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of Pueblo School District No. 60, as follows:

1. That, in accordance with its powers and responsibilities under the United States Constitution and the Constitution and laws of Colorado, Pueblo School District No. 60 shall enter the case of Kerr v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U. S. District Court for the District of Colorado, as a plaintiff; and further,

2. That no expenses for attorneys' fees or costs shall be incurred by the School District in connection with its involvement as a plaintiff in this case.

ADOPTED this 27th day of September, 2016.

PUEBLO SCHOOL DISTRICT NO. 60

Phyllis K. Sanchez
President, Board of Education

ATTEST:

Geri Patrone
Secretary of the Board of Education
STATE OF COLORADO   )
COUNTY OF PUEBLO   )

AFFIDAVIT OF PHYLLIS K. SANCHEZ

Phyllis K. Sanchez, being first duly sworn upon oath, states as follows:

1. I am the duly elected President of the Board of Education of Pueblo School District No. 60 ("School District"), in Pueblo, Colorado.

2. I am generally knowledgeable about the School District and, for purposes of this affidavit, have relied upon District staff to research and retrieve information relevant to the statements contained herein.

3. On September 27, 2016, the Board of Education unanimously adopted a Resolution, authorizing the School District to join in the case of Kerr v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U.S. District Court for the District of Colorado ("TABOR Case"), as a plaintiff, to challenge the constitutionality of Colo. Const. art. IX, § 2, the so-called Taxpayer Bill of Rights ("TABOR").

4. The Board of Education found it necessary to enter the TABOR Case for, among other reasons, that TABOR has caused the School District to incur costs, delays, and other injuries to its ability to provide for the education of its children occasioned by TABOR’s requirements for elections to approve any increases in the property tax mill levies and to permit the School District to keep and use all revenues raised when they exceed the revenue limits imposed by TABOR.

5. On November 3, 1998, the School District sought and obtained voter approval for a limited exemption from TABOR based upon the following ballot question:

“Provided that no local tax rate or mill levy shall be increased without further voter approval, shall Pueblo School District No. 60 be authorized to collect, retain, and expend all excess revenues not to exceed $950,000 from the State of Colorado in the 1998-99 budget year for the purpose of continuing the reduction of class size in kindergarten through 3rd grade, accelerate the purchase of textbooks and related instructional supplies notwithstanding the limitations of Article X, Section 20 of the Colorado Constitution or any other law?”

6. Again, on November 7, 2000, the School District found it necessary to seek and obtain voter approval for the following related to TABOR:

“Shall Pueblo School District No. 60 be authorized to collect, retain and expend all revenues and other funds collected in this fiscal year and in each fiscal year thereafter from any source, including without limitation the full revenues authorized under the Colorado Public School Finance Act of 1994 as amended or under any successor act, notwithstanding the limitations of Article X, Section 20 of the Colorado Constitution, provided, however, that no property tax mill levy shall be increased at any time nor shall

Appendix H

Affidavit of Phyllis K. Sanchez, President of Board of Education of Pueblo City District 60
any new tax be imposed without prior approval of the voters of Pueblo School District No. 60?"

7. Since TABOR became effective, the School District has tried, without success, to pass a local mill levy override election in order to raise sufficient funds to provide a free public education for its students, including at the election held on November 4, 2008, where its proposed mill levy override budget question 3A was defeated by the voters.

8. TABOR has prevented the State of Colorado from fulfilling its constitutional obligation to adequately fund public schools, including schools in the School District.

9. TABOR has caused, and continues to cause, injury to the School District and its ability to provide for the education of its students.

Phyllis K. Sanchez, President
Board of Education
Pueblo School District No. 60

Subscribed and sworn to before me this 13th day of February, 2017.

Witness my hand and official seal.

My commission expires: 1/1/2017

Joan M. McDonald
Notary Public

Joan M. McDonald
Notary Public

STATE OF COLORADO
NOTARY ID 19934017626
MY COMMISSION EXPIRES NOVEMBER 18, 2017
Appendix I

Resolution of Board of Education of Poudre School District


Whereas, the Colorado Statehood Enabling Act of 1875, and Article IV, Section 4 of the United States Constitution require the State of Colorado to establish and maintain a "Republican Form of Government."; and

Whereas, the Colorado Constitution requires the Colorado General Assembly to establish and maintain a thorough and uniform system of free public schools wherein the children of the state may be educated. Colo. Const. art. IX, § 2. The General Assembly also must provide for the organization of school districts governed by local boards of education elected by the qualified electors of the individual districts. Colo. Const. art. IX, § 15. The local boards of education are vested with the responsibility for control of instruction in the public schools of their respective districts; and

Whereas, each school district is authorized to sue and be sued. C.R.S. § 22-32-101; and

Whereas, in the several sections of the Colorado Revised Statutes known collectively as the “School Finance Act,” currently C.R.S. §22-54-101 et seq., as amended and reenacted by the General Assembly from time to time over recent years, the State of Colorado has prescribed the responsibility for fulfilling the obligations of Section 2 of Article IX as one shared by the State, acting through its fiscal processes, and local district school boards, acting through their authority to raise and expend funds in support of their local public schools, all intended to offset vast disparities in local school districts’ ability to raise money from local property tax; and

Whereas, Article IV, Section 4 of the United States Constitution, and the Colorado Statehood Enabling Act of 1875, each require Colorado to establish and maintain a republican form of government. A republican form of government, as intended by the Founders and explained by the authors of The Federalist Papers, requires the core functions of government, especially its fiscal powers, to be exercised by the officers of the representative branches of government, including the various school district Boards of Education, and not by means of plebiscite or direct democracy; and

Whereas, the limitations on the exercise of the Board's fiscal powers imposed by Article X, §20, of the Colorado Constitution, directly contravene the powers and responsibilities of the Board and have undermined the District’s republican form of government; and

Whereas, the requirements and limitations imposed by Article X, §20, of the Colorado Constitution, have prevented the state and its local school districts from fulfilling their obligations, derived from the original state constitution and its derivation from the Enabling Act, adequately to fund the public schools of the state; and

Whereas, Article X, §20, of the Colorado Constitution has caused the District to incur costs, delays and other injuries to its ability to provide for the education of its children occasioned by its affect on the state's capacity to fund the public schools, in turn necessitating local district
elections to approve certain “override” increases in the property tax mill levies, and by the
requirement for elections to approve retention of revenues generated that exceed the spending
limits imposed by Article X, §20, of the Colorado Constitution; and

*Whereas*, this Board finds that, in order to preserve its core fiscal powers and to restore its
republican form of government, it is necessary and appropriate to join in the challenge to the
constitutionality of Article X, §20, of the Colorado Constitution, and to its lawfulness under the
Statehood Enabling Act, being pursued in federal court in the case of Kerr et al. v. Hickenlooper,
case no. 1:11-cv-01350-RM- NYW, U. S. District Court for Colorado, and being informed and
assured that representation of plaintiffs in the case has been undertaken and will continue to be
handled by attorneys for the plaintiffs on a pro bono basis, without charge, and at no cost to the
plaintiffs.

Now, therefore, be it resolved by the Poudre R-1 School District Board of Education:

That, in accordance with its powers and responsibilities under the United States Constitution and
the Constitution and laws of Colorado, the Poudre R-1 School District Board of Education, shall
enter the case of Kerr et al. v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U. S. District
Court for Colorado, as a plaintiff; and further,

That no expenses for attorneys’ fees or costs shall be incurred by the Board or the District in
connection with its involvement as plaintiff in this case.

Adopted this 22\textsuperscript{nd} day of November, 2016.

Poudre R-1 School District Board of Education

\[Signature\]

Cathy Kipp, Board of Education President

\[ATTEST\]

Tessa Oppenheimer, Board of Education Secretary
STATE OF COLORADO

COUNTY OF LARIMER

) ss.

AFFIDAVIT OF CATHY KIPP

Cathy Kipp, being first duly sworn upon oath, states as follows:

1. I am the duly elected President of the Board of Education of the Poudre School District ("School District"), in Larimer County, Colorado.

2. I am generally knowledgeable about the School District and, for purposes of this affidavit, have relied upon District staff to research and retrieve information relevant to the statements made in this affidavit.

3. On November 22, 2016, the Board of Education unanimously adopted a Resolution to join the case of Kerr v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U.S. District Court for the District of Colorado ("TABOR Case"), as a plaintiff, to challenge the constitutionality of Colo. Const. art. IX, § 2, the so-called Taxpayer Bill of Rights ("TABOR").

4. The Board of Education found it necessary to enter the TABOR Case due, among other reasons, to the costs, delays, and other injuries to its ability to provide for the education of its children occasioned by TABOR’s requirements for elections to approve any increases in the property tax mill levies and to permit the School District to keep and use all revenues raised when they exceed the revenue limits imposed by TABOR.

5. TABOR has, since its enactment in 1992, caused the School District to incur the costs and delays entailed in placing measures on the ballot and seeking voters' approval for measures as follows, all dealing with fiscal matters which would have been within the discretion and legal authority of the Board of Education to have decided on its own except for the requirements of TABOR:

   a. November 2016 $8 million mill levy override passed
   b. November 2010 $16 million mill levy override passed
   c. November 2000 $10 million mill levy override passed
   d. November 1998 Removal of revenue restrictions; so called "De-brucing" passed
   e. November 1996 $5.96 million mill levy override passed
   f. November 1994 $3.74 million mill levy override failed

6. TABOR has prevented the State of Colorado from fulfilling its constitutional obligation to adequately fund public schools, including schools in the School District.
7. TABOR has caused, and continues to cause, injury to the School District and its ability to provide for the education of its students.

Cathy Kipp, President
Board of Education
Poudre School District

Subscribed and sworn to before me this 5th day of December, 2016.

Witness my hand and official seal.

My commission expires: 6-16-2019

THERESA S. PIPKIN
Notary Public
State of Colorado
Notary ID 19994016348
My Commission Expires June 16, 2019
Appendix K

Resolution of Board of Education of Denver County Public Schools Board Of Education

Resolution No. 3725

September 15, 2016

A Resolution of the Board of Education of School District Number 1 in the City and County of Denver, to enter as a plaintiff in the case of Kerr et al. v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U. S. District Court for Colorado.

Whereas, by Article IX of the original Colorado Constitution, the State of Colorado undertook to provide its children with a universal system of free public education, and specifically, Section 2 of Article IX provided that “[t]he General Assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the State, wherein all residents of the State between the ages of six and twenty-one years may be educated gratuitously;” and

Whereas, in the several sections of the Colorado Revised Statutes known collectively as the “School Finance Act,” currently C.R.S. §22-54-101 et seq., as amended and reenacted by the General Assembly from time to time over recent years, the State of Colorado has prescribed the responsibility for fulfilling the obligations of Section 2 of Article IX as one shared by the State, acting through its fiscal processes, and local district school boards, acting through their authority to raise and expend funds in support of their local public schools, all intended to offset vast disparities in local school districts’ ability to raise money from local property tax; and

Whereas, Article IV, section 4, of the United States Constitution, and the Colorado Statehood Enabling Act of 1875, each require Colorado to establish and maintain a republican form of government, requiring the core functions of government, especially its fiscal powers, to be exercised by the officers of the representative branches of government, including the various school district Boards of Education, and not by means of plebiscite or direct democracy; and

Whereas, the limitations on the exercise of the Board's fiscal powers imposed by the so-called Taxpayer Bill of Rights (“TABOR”), Art. X, §20, of the Colorado Constitution, directly contravene the powers and responsibilities of the Board and have undermined the District’s republican form of government; and

Whereas, TABOR has caused the District to incur costs, delays and other injuries to its ability to provide for the education of its children occasioned by TABOR's effect on the state's capacity to fund the public schools, in turn necessitating local district elections to approve certain “override” increases in the property tax mill levies, and by TABOR's requirement for elections to approve retention of revenues generated that exceed the spending limits imposed by TABOR; and

Whereas, this Board finds that, in order to preserve its core fiscal powers and to restore its republican form of government, it is necessary and appropriate to join in the challenge to the constitutionality of TABOR, and to its lawfulness under the Statehood Enabling Act, being pursued in federal court in the case of Kerr et al. v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U. S. District Court for Colorado, and being informed and assured that representation of plaintiffs in the case has been undertaken and will continue to be handled by attorneys for the plaintiffs on a pro bono basis, without charge, and at no cost to the plaintiffs.
Resolution No. 3725

Therefore, the Board resolves:

That, in accordance with its powers and responsibilities under the United States Constitution and the Constitution and laws of Colorado, the Board of Education of School District Number 1 in the City and County of Denver, shall enter the case of Kerr et al. v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U. S. District Court for Colorado, as a plaintiff; and further,

That no expenses for attorneys' fees or costs shall be incurred by the Board or the District in connection with its involvement as plaintiff in this case.

Anne Rowe, President

Allegra "Happy" Haynes, Secretary

September 15, 2016
STATE OF COLORADO
CITY AND COUNTY OF DENVER

Mark Ferrandino, being first duly sworn upon oath, states as follows:

1. I am the duly appointed Executive Director of Financial Services ("Chief Financial Officer") of the School District 1 ("School District"), in Denver, Colorado.

2. I am generally knowledgeable about the School District and, for purposes of this affidavit, have relied upon District staff to research and retrieve information relevant to the statements made in this affidavit.

3. On September 15, 2016, the Board of Education unanimously adopted Resolution 3275 to join the case of Kerr v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U.S. District Court for the District of Colorado ("TABOR Case"), as a plaintiff, to challenge the constitutionality of Colo. Const. art. IX, § 2, the so-called Taxpayer Bill of Rights ("TABOR").

4. The Board of Education found it necessary to enter the TABOR case due, among other reasons, to the costs, delays, and other injuries to its ability to provide for the education of its children occasioned by TABOR’s requirements for elections to approve any increases in the property tax mill levies and to permit the School District to keep and use all revenues raised when they exceed the revenue limits imposed by TABOR.

5. TABOR has, since its enactment in 1992, caused the School District to incur the costs and delays entailed in placing measures on the ballot and seeking voters’ approval for measures as follows, all dealing with fiscal matters which would have been within the discretion and legal authority of the Board of Education to have decided on its own except for the requirements of TABOR. Due to the requirements of TABOR, the School District has been forced to incur costs and expenses necessary to present to the voters of the School District for their decision matters affecting the exercise of the Board’s fiscal powers of taxation and appropriation that would otherwise have been within the powers and responsibilities of the Board on several occasions over the last twenty years, including the following:

c. November 1999 "De-Brusing" – passed
d. November 2003 Mill Levy Override – passed
e. November 2005 Pro-Comp Override – passed
f. November 2012 Mill Levy Override – passed
g. November 2016 Mill Levy Override – passed
6. TABOR has prevented the State of Colorado from fulfilling its constitutional obligation to adequately fund public schools, including schools in the School District.

7. TABOR has caused, and continues to cause, injury to the School District and its ability to provide for the education of its students.

Mark Ferrandino  
Denver School District 1

Subscribed and sworn to before me this 13th day of February, 2017.

Witness my hand and official seal.

My commission expires: March 29, 2017

[Signature]
Notary Public
Resolution of Board of County Commissioners of Boulder County

RESOLUTION 2016-97

A Resolution of the Board of County Commissioners of Boulder County to enter as a plaintiff in the case of Kerr et al. v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U. S. District Court for Colorado.

Recitals:

A. The Colorado Statehood Enabling Act of 1875, and Article IV, Section 4 of the United States Constitution require the State of Colorado to establish and maintain a "Republican Form of Government."

B. The County’s Commissioners are constitutional officers; their duties and powers as a board are statutory. Robbins v. Hoover, 50 Colo. 610, 115 P. 526 (1911); Skidmore v. O’Rourke, 152 Colo. 470, 383 P.2d 473 (1963).

C. The powers of counties include the power to sue. Section 30-11-101, C.R.S. Section 30-11-103, C.R.S., authorizes the Commissioners to exercise the powers of the county.

D. Section 30-11-107, C.R.S., provides that the board of county commissioners of each county has power at any meeting; to settle all accounts of the receipts and expenses of the county; to examine and settle and allow all accounts chargeable against the county; and, inter alia, to apportion and order the levying of taxes as provided by law. Section 30-11-107 further provides that the board of county commissioners of each county has exclusive power to adopt the annual budget for the operation of the county government, including all offices, departments, boards, commissions, other spending agencies of the county government, and other agencies which are funded in whole or in part by county appropriations.

E. Article IV, Section 4, of the United States Constitution, and the Colorado Statehood Enabling Act of 1875, each require Colorado to establish and maintain a republican form of government. A republican form of government, as intended by the Founders and explained by the authors of The Federalist Papers, requires the core functions of government, especially its fiscal powers, to be exercised by the officers of the representative branches of government, including the Commissioners, and not by means of plebiscite or direct democracy.

F. The limitations on the exercise of the county’s fiscal powers imposed by the so-called Taxpayer Bill of Rights ("TABOR"), art. X, § 20, of the Colorado Constitution, directly contravene the powers and responsibilities of the Commissioners and have undermined the county’s republican form of government.

G. Due to the unconstitutional requirements of TABOR, on several occasions over the last twenty years the County has been forced to incur costs and expenses necessary to present matters affecting the exercise of the County’s fiscal powers of taxation and appropriation to the voters of Boulder County for their decision that would
otherwise have been within the powers and responsibilities of the Commissioners as listed in paragraph E of this Resolution, including the following:

i. Boulder County’s Open Space Sales Tax, passed originally in 1993 and extended in 1999, 2004, 2008, and 2010 (and proposed to be extended in 2016), to support the preservation of open space purchases, the management and conservation of native habitats, and support of recreational opportunities.

ii. The Worthy Cause Sales Tax originally passed in 1998 and extended in 2000 and 2008, which helps with debt reduction and funding of capital facilities for nonprofit organizations.

iii. The Transportation Sales Tax, originally passed in 2001 and extended in 2007, which helps to fund roadway improvements, mobility, priority transit programs, pollution reduction, congestion reduction, safety, efficiency of alternative modes and traffic flows, and road widening projects.

iv. The 2002 Developmental Disabilities/Health and Human Services Property Tax

v. The 2003 Public Safety Sales Tax, to fund a jail expansion, a new addition recovery center, and alternative programs such as PACE that reduce overcrowding and criminal recidivism.

vi. The Temporary Safety Net Property Tax, passed in 2010, to help backfill funding cuts to crucial human services in Boulder County.

vii. The Flood Recovery Sales and Use Tax, passed in 2014, to fund costs associated with immediate flood response, repair of public infrastructure, restoration of waterways, and assistance to county residents impacted by the 2013 flood.

H. This Board finds that, in order to preserve its core fiscal powers and to restore the county's republican form of government, it is necessary and appropriate to join in the challenge to the constitutionality of TABOR, and to its lawfulness under the Statehood Enabling Act, being pursued in federal court in the case of Kerr v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U. S. District Court for the District of Colorado. The Board is further informed and assured that representation of plaintiffs in the case has been undertaken and will continue to be handled by attorneys for the plaintiffs on a pro bono basis, without charge, and at no cost to the plaintiffs.
Therefore, the Board resolves:

1. That, in accordance with its powers and responsibilities under the United States Constitution and the Constitution and laws of Colorado, the Board of County Commissioners of Boulder County, Colorado, shall enter the case of Kerr v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U.S. District Court for the District of Colorado, as a plaintiff; and further,

2. That no expenses for attorneys’ fees or costs shall be incurred by the County in connection with its involvement as a plaintiff in the said case.

ADOPTED this 25th day of August 2016.

BOARDS OF COUNTY COMMISSIONERS OF BOULDER COUNTY

Elise Jones, Chair

Cindy Domenico, Vice Chair

Deb Gardner, Commissioner

ATTEST:

Clerk to the Board
Appendix N

Resolution of Board of Directors of Gunnison County Metropolitan Recreation District

Gunnison County Metropolitan Recreation District
RESOLUTION # 2016-03

Resolution to enter as a plaintiff in the case of Kerr et al. v. Hickenlooper

A Resolution of the Board of Directors of the Gunnison County Metropolitan Recreation District, to enter as a plaintiff in the case of Kerr et al. v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U.S. District Court for Colorado.

Whereas, Article 1 of Title 32 of the Colorado Revised Statutes known as the “Special Districts Act”, currently C.R.S. §32-1-101 et seq., has prescribed the responsibility of and authority for a variety of special districts to fulfill various obligations undertaken as subdivisions of the state for the benefit of the people organized under law in such districts, including the authority to levy taxes on the property within such district’s jurisdiction and to expend the tax revenues generated for the purposes of such districts; and

Whereas, Article IV, section 4, of the United States Constitution, and the Colorado Statehood Enabling Act of 1875, each require Colorado to establish and maintain a republican form of government, requiring the core functions of government, especially its fiscal powers, to be exercised by the officers of the representative branches of government, including the various Special District Boards, and not by means of plebiscite or direct democracy; and

Whereas, the limitations on the exercise of the Board's fiscal powers imposed by the so-called Taxpayer Bill of Rights (“TABOR”), Art. X. §20, of the Colorado Constitution, directly contravene the powers and responsibilities of the Board and have undermined the Special District’s republican form of government; and

Whereas, prior to TABOR, special district boards had authority, within statutory limits, to set the property tax mill levies to fund their functions, and TABOR has caused special districts to incur costs, delays and other injuries to their ability to provide for the needs of their districts occasioned by TABOR's requirements for elections to approve any increases in the property tax mill levies and to retain revenues generated by existing mill levies that exceed the spending limits imposed by TABOR; and

Whereas, due to the requirements of TABOR, the Gunnison County Metropolitan Recreation District has been forced to incur costs and expenses necessary to present to the voters of the District, for their decision, matters affecting the exercise of the Board's fiscal powers of taxation and appropriation that would otherwise have been within the powers and responsibilities of the Board on several occasions over the last twenty years, including the following:

i. November 6, 2001
ii. November 4, 2003
iii. November 7, 2006
iv. November 4, 2014
etc.; and

Whereas, this Board finds that in order to preserve its core fiscal powers and to restore its republican form of government, it is necessary and appropriate to join in the challenge to the constitutionality of TABOR, and to its lawfulness under the Statehood Enabling Act, being pursued in federal court in the case of Kerr et al. v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U.S. District Court for Colorado, and being informed and assured that representations of plaintiffs in the case has been undertaken and will continue to be handled by attorneys for the plaintiffs on a pro bono basis, without charge, and at no cost to the plaintiffs.

Therefore, the Board of Directors of the Gunnison County Metropolitan Recreation District resolves:

That, in accordance with its powers and responsibilities under the United States Constitution and the Constitution and laws of the Gunnison County Metropolitan Recreation District, shall enter the case of Kerr et al. v. Hickenlooper, case no. 1:11-cv-01350-RM-NYW, U.S. District Court for Colorado, as a plaintiff; and further,

That no expenses for attorney's fees or costs shall be incurred by the Board or the District in connection with its involvement as plaintiff in the said case.

Adopted on September 19, 2016

David Clayton, President

Date

Lori Parlin, Secretary

Date

9/29/16
Appendix O


<table>
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<tr>
<th>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</th>
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<tr>
<td>1437 Bannock Street</td>
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<tr>
<td>Denver, Colorado 80202</td>
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**PLAINTIFFS:** Anthony Lobato, et al.

and

**PLAINTIFFS-INTERVENORS:** Armandina Ortega, et al.

vs.

**DEFENDANTS:** The State of Colorado, et al.

**Attorneys for Defendants:**

JOHN W. SUTHERS, Attorney General

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*

Case Number: 05 CV 4794
Div: 9

**DEFENDANTS’ MOTION FOR DETERMINATION OF QUESTIONS OF LAW PURSUANT TO C.R.C.P 56(h)**
Defendants' counsels have conferred in good faith with respective counsel for Plaintiffs and Plaintiff-Intervenors, Kenzo Kawanabe and David G. Hinojosa, respectively. Plaintiffs and Plaintiff-Intervenors oppose this motion.

INTRODUCTION

Education is of paramount importance to the State of Colorado. The Governor, Board of Education, and Department of Education work every day to provide all Colorado children an opportunity for a free public education. Colorado is a national leader in education reform efforts and continues to provide substantial financial support to its public school system. As the traditional base of local financial support for public schools has eroded, the State has taken on an increasingly larger share—now nearly two-thirds of the total funding for K-12 education. Indeed, the State dedicates almost half of its constitutionally constrained general fund budget to the public school system, leaving the remainder to be shared by all other state services such as higher education, health and human services, corrections, and the courts.

Unsatisfied with the State's efforts, Plaintiffs, a group of school districts and parents, filed suit alleging the General Assembly's funding decisions were irrational. (Pls.' 2d Am. Compl. lin 3-4.) An additional group of parents subsequently joined as Plaintiff-Intervenors. According to both Plaintiffs and Plaintiff-Intervenors, the allegedly irrational funding of public schools precludes Colorado school children from receiving a constitutionally adequate education and infringes on school districts' constitutional guarantee of local control over instruction. (Pls.' 2d Am. Compl. In 2-3; Pl.-Intervenors' Compl. at 4-5.) What Plaintiffs and Plaintiff-Intervenors do not acknowledge, however, is that the Constitution guarantees opportunities—not outcomes, and that the actual delivery, adequacy and quality of education are dependent upon the constitutionally-empowered choices and decisions of local boards of education. Moreover, Plaintiffs seek either a dramatic reallocation of funds to public education and away from constitutionally mandated public services, or a massive spending increase despite the fact that Colorado's citizens have enacted strict constitutional revenue limitations, including the TABOR Amendment. Plaintiffs and Plaintiff-Intervenors' claims ignore the deference owed to the General Assembly's budgetary decisions, made within these constitutional constraints, and seek to impose a qualitative educational standard not found in, or sanctioned by, the Colorado Constitution.

Pursuant to C.R.C.P. 56(h), Defendants move this Court to determine the questions of law set forth below. Resolution of these threshold issues, which set the legal standards by which this case must be judged, is critical to enable an efficient trial for both this Court and the parties.

STANDARD OF REVIEW

"At any time after the last required pleading, with or without supporting affidavits, a party may move for determination of a question of law. If there is no genuine issue of any material fact necessary for the determination of the question of law, the court may enter an order.
deciding the question." C.R.C.P. 56(h). "The purpose of Rule 56(h) is, 'to allow the court to address issues of law which are not dispositive of a claim (thus warranting summary judgment) but which nonetheless will have a significant impact upon the manner in which the litigation proceeds.' Resolving such issues will enhance the ability of the parties to prepare for and realistically evaluate their cases . . . and allow the parties and the court to eliminate significant uncertainties on the basis of briefs and argument, and to do so at a time when the determination is thought to be desirable by the parties." Matter of B1% of County Comm'rs of County of Arapahoe, 891 P.2d 952, 963 n.14 (Colo. 1995) (quoting 5 Robert Hardaway & Sheila Hyatt, Colorado Civil Rules Annotated § 56.9 (1985)).

QUESTIONS PRESENTED

Defendants present the following questions of law for determination:

1. Plaintiffs and Plaintiff-Intervenors must prove their allegations beyond a reasonable doubt.

2. Plaintiffs and Plaintiff-Intervenors must establish the General Assembly's education funding decisions are not rationally related to the constitutional mandate of a through and uniform system of free public schools and protection of local control over instruction.

3. The Education Clause guarantees individuals aged six to twenty-one years an opportunity to receive a free public education.

4. The Education Clause does not guarantee any qualitative educational outcome.

5. The Education Clause must be harmonized with all other constitutional provisions, including TABOR.

6. Any appropriations required by the Education Clause are constrained by TABOR's revenue restrictions.

7. The rational basis standard requires that significant deference be afforded to the General Assembly's fiscal and policy judgments.

8. Elementary and secondary education is not the only required or important state service.

9. It is rational for the General Assembly to control the public debt.

10. It is rational for the General Assembly to further local control over instruction.

11. It is rational for the General Assembly to balance appropriations among public services.
12. TABOR authorizes the General Assembly to impose unfunded educational mandates on local school districts.

13. This Court may neither coerce nor restrain the General Assembly through injunctive relief.

ARGUMENT

A. Plaintiffs and Plaintiff-Intervenors Must Prove Beyond a Reasonable Doubt that the General Assembly Has Acted Irrationally.

Both Plaintiffs and Plaintiff-Intervenors seek to have the General Assembly's funding decisions declared unconstitutional. (See, e.g., Pls.' 2d Am. Compl. ¶ 3; Pl.-Intervenors' Am. Compl. at 4.) As they ask this Court to undertake "one of the gravest duties impressed upon" it, *Mesa County Bd. of County Comm'rs v. State*, 203 P.3d 519, 527 (Colo. 2009) (quoting *City of Greenwood Vill. v. Petitioners for the Proposed City of Centennial*, 3 P.3d 427, 440 (Colo. 2000); *Meyer v. Lamm*, 846 P.2d 862, 876 (Colo. 1993)), the proper standard of review must be definitively established before trial.

"The presumption of a statute's constitutionality can be overcome only if it is shown that the enactment is unconstitutional beyond a reasonable doubt." *Barber v. Ritter*, 196 P.3d 238, 247 (Colo. 2008) (citing * Colo. Ass'n of Pub. Employees v. Bd. of Regents of the Univ. of Colo.*, 804 P.2d 138, 142 (Colo. 1990)), accord *Mesa County*, 203 P.3d at 523, 527. Under this burden, "the conflict between the law and the constitution [must be] clear and unmistakable." *Greenwood Vill.*, 3 P.3d at 440 (quoting *People v. Goddard*, 7 P. 301, 304 (Colo. 1885)). "A reviewing court must assume that the "'legislative body intends the statutes it adopts to be compatible with constitutional standards.'" *Mesa County*, 203 P.3d at 527 (quoting *Meyer*, 846 P.2d at 876).

Plaintiffs and Plaintiff-Intervenors' challenges are subject to rational basis review. *Lobato v. State*, 218 P.3d 358, 374 (Colo. 2009) (citing *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1024-26 (Colo. 1982)). As the Supreme Court explained in this case, "[t]o be successful, [Plaintiffs and Plaintiff-Intervenors] must demonstrate that the school finance scheme is not rationally related to the constitutional mandate of a 'thorough and uniform' system of public education." *Lobato*, 218 P.3d at 374 (quoting Colo. Const. art. 9, § 2). Thus, to prevail, Plaintiffs and Plaintiff-Intervenors must prove beyond a reasonable doubt that the General Assembly's education funding decisions are not rationally related to the constitutional mandate requiring it to establish a through and uniform system of free public schools and the constitutional protection of local control over instruction.

Under this "minimally-intrusive" rational basis standard, a "court must give significant deference to the legislature's fiscal and policy judgments." *Lobato*, 218 P.3d at 373-75, accord *Lujan*, 649 P.2d at 1018, 1025 (emphasizing establishment of school finance system properly lies within legislative domain and declining judicial intrusion to devise "better" system); see also *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (cautioning rational basis review does not
authorize "judiciary [to] sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations"). "If any conceivable set of facts would lead to the conclusion that a classification serves a legitimate purpose, a court must assume those facts exist." HealthONE v. Rodriguez, 50 P.3d 879, 893 (Colo. 2002) (quoting Christie v. Coors Transp. Co., 933 P.2d 1330, 1333 (Colo. 1997)), accord Lujan, 649 P.2d at 1022. Indeed, the challenging party bears the burden of "negat[ing] every conceivable basis," Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 364 (1973), "[a] State . . . has no obligation to produce evidence to sustain the rationality," Heller v. Doe, 509 U.S. 312, 320 (1993), and "a legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data," Fed. Communications Comm'n V. Beach Communication, Inc., 508 U.S. 307 at 315 (1993). "The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted." Vance v. Bradley, 440 U.S. 93, 97 (1979). Accordingly, this "court's task is not to determine 'whether a better system could be devised,' but rather to determine whether the system passes constitutional muster." Lobato, 218 P.3d at 374 (quoting Lujan, 649 P.2d at 1025).

Therefore, Defendants request this Court determine that:

1. Plaintiffs and Plaintiff-Intervenors must prove their allegations beyond a reasonable doubt; and

2. Plaintiffs and Plaintiff-Intervenors must establish the General Assembly's education funding decisions are not rationally related to the constitutional mandate of a through and uniform system of free public schools and protection of local control over instruction.

B. The Education Clause Guarantees Opportunities Rather Than Qualitative Outcomes.

The Education Clause of the Colorado Constitution, article IX, section 2, requires the General Assembly to "provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state." "On its face, [this provision] merely mandates action by the General Assembly—it does not establish education as a fundamental right, and it does not require that the General Assembly establish a central public school finance system restricting each school district to equal expenditures per student." Lujan, 649 P.2d at 1017. Although the General Assembly must establish "guidelines" for a system of free public education, it need not effectuate any particular qualitative experience or outcome. See id. As the Colorado Supreme Court has made clear, the Education Clause merely "mandates the General Assembly to provide to each school age child the opportunity to receive a free education." Id. at 1018-19 (emphasis added). While recognizing this opportunity standard (see, e.g., Pls.’ 2d Am. Compl. ¶ 63), both Plaintiffs and Plaintiff-Intervenors repeatedly suggest the Education Clause guarantees outcomes, and significant ones at that (see, e.g., Pls.’ 2d Am. Compl. ¶ 2; Pl-Intervenors’ Am. Compl. ¶ 21). This suggestion is wrong.
The actual delivery, adequacy and quality of education are dependent upon the constitutionally-empowered choices and decisions of local boards of education. See Lujan, 649 P.2d at 1022-23, 1025. The Local Control Clause of the Colorado Constitution, article IX, section 15, vests in local school boards—not the General Assembly—"power or authority to guide and manage both the action and practice of instruction as well as the quality and state of instruction." Bd. of Educ. of Sch. Dist. No. 1 v. Booth, 984 P.2d 639, 648 (Colo. 1999). As the Supreme Court emphasized in Lujan, evaluating opportunities is difficult enough; interpreting the Education Clause to guarantee outcomes would prove even more unmanageable: "courts are ill-suited to determine what equal educational opportunity is, especially since fundamental disagreement exists concerning the extent to which there is a demonstrable correlation between educational expenditures and the quality of education." 649 P.2d at 1018 (citing, inter alia, San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 43 n.86 (1973)).

Nor can the Education Clause be construed to create any individual right to receive a thorough and uniform education. Courts interpret constitutional language according to its common and ordinary meaning. E.g., Washington County Bd. of Equalization v. Petron Dev. Co., 109 P.3d 146, 149 (Colo. 2005). Where the Colorado Constitution guarantees individual rights, it does so in plain terms. Cf. Colo. Const. art. II, § 3 ("All persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness."). The words "thorough and uniform" in the Education Clause refer, not to the specific educational program of each individual student, but to the overall "system of free public schools." See Lujan, 649 P.2d at 1017-19. The only reference to individuals is in the succeeding clause, which provides that "all residents of the state, between the ages of six and twenty-one years, may be educated gratuitously." Colo. Const. art. IX, § 2. Thus, although the Education Clause entitles all residents aged six to twenty-one to a free education, People ex rel. Vollmar v. Stanley, 255 P. 610, 614 (Colo. 1927), overruled on other grounds, Conrad v. City and County of Denver, 656 P.2d 662, 670 n.6 (Colo. 1982), it does not guarantee to individuals that this gratuitous education be thorough and uniform.

As already stated, a contrary construction of the Education Clause would overburden the courts with determinations they are ill suited to make. If individuals are constitutionally entitled to a particular educational experience, then they potentially could seek a judicial forum for any number of complaints—ranging from the failure to secure admittance to an Ivy League college or the right to have Advanced Placement physics taught to a single interested child to any number of purported "individual educational rights." See Lujan, 649 P.2d at 1018. In sum, Plaintiffs and Plaintiff-Intervenors' suggestion of a fundamental qualitative right to a particular educational experience for a given individual student redrafts the Education Clause. The constitutional right at issue in this case is the mandate that the General Assembly provide a thorough and uniform system of education that provides Colorado's six- to twenty-one-year-olds the opportunity to attend free public schools.

Therefore, Defendants request this Court determine that:

App. O cont'd
3. The Education Clause guarantees individuals aged six to twenty-one years an opportunity to receive a free public education; and

4. The Education Clause does not guarantee any qualitative educational outcome. C.

**Any Funding Required By The Education Clause Is Constrained By TABOR.**

Whatever the meaning of the Education Clause as originally adopted, its reach has been limited by the People's subsequent actions. It is well established "the Constitution, including all amendments thereto, must be construed as one instrument, and as a single enactment." *People v. Field*, 181 P. 526, 527 (Colo. 1919), accord, *e.g.*, *Town of Frisco v. Baum*, 90 P.3d 845, 847 (Colo. 2004) ("[I]t is essential that we take the Constitution as it is, including every part thereof relating to the subject-matter under consideration, and construe the instrument as a whole, causing it, including the amendments thereto, to harmonize, giving to every word as far as possible its appropriate meaning and effect."). *Colo. State Civil Serv. Employees Ass'n v. Love*, 448 P.2d 624, 630 (Colo. 1968) ("Each clause and sentence of either a constitution or statute must be presumed to have purpose and use, which neither the courts nor the legislature may ignore.").

This maxim precludes reading the Education Clause in isolation; rather, it must be construed in concert with not just the Local Control Clause, but also the TABOR amendment, article X, section 20, the Gallagher Amendment, article X, section 3, and all other constitutional provisions. Thus, to the extent the Education Clause, Local Control Clause, or Amendment 23, article IX, section 17, require allocation of monies to the public education system, harmonization means the level of that allocation is restricted by the strict revenue limitations imposed by TABOR. The General Assembly cannot be constitutionally required to expend revenue the Constitution does not allow it to obtain.

Even if this Court were to find an irreconcilable conflict between these constitutional provisions, TABOR prevails. First, TABOR is an amendment rather than an original provision like the Education or Local Control Clauses. "Where an amendment to a constitution is anywise in conflict or in any manner inconsistent with a prior provision of the constitution, the amendment controls." *In re Interrogatories by Gen. Ass., H. Joint Res. No. 1008*, 467 P.2d 56, 59 (Colo. 1970) (citing cases). Second, TABOR states that it "supersed[es] conflicting state constitutional . . . provisions." Colo. Const. art. X, § 20(1). Thus, if Plaintiffs and Plaintiff-Intervenors' vision of the Education and Local Control Clause cannot be reconciled with the subsequently adopted TABOR amendment, it is the Education and Local Control Clauses, not TABOR, that must yield. *See, e.g.*, *City of Wheat Ridge v. Cerveny*, 913 P.2d 1110, 1124 (Colo. 1996) (recognizing TABOR's purpose "is to place in the electorate, not government officials, control over state and local government finance, spending, and taxation").

Therefore, Defendants request this Court determine that:

5. The Education Clause must be harmonized with all other constitutional provisions, including TABOR; and
6. Any appropriations required by the Education Clause are constrained by TABOR's revenue restrictions.

D. The General Assembly's Budget Allocations Are Owed Significant Deference.

Despite the General Assembly's significant financial allocations to public schools and its obligation to satisfy other constitutionally-imposed mandates, Plaintiffs contend the public K-12 education system should receive nearly $3 billion additional dollars, as well as billions more for capital funding, in order to be "adequate." (See Pls.' 2d Am. Compl. cc 6-7, 143.) Plaintiffs make this request even though TABOR precludes the General Assembly from either raising new general fund revenue without the People's approval or spending beyond any annual inflation and population growth. Colo. Const. art. X, § 20(4), (7)-(8). Thus, Plaintiffs seek either a judicial repeal of TABOR (see Pls.' 2d Am. Compl. ¶ 192) or to usurp the role of the General Assembly by urging the reallocation of almost the entire general fund to public education, without regard to the effect such a reallocation would have on other crucial state services such as higher education, health and human services, corrections, and the courts (see Plaintiffs' Reply in Further Support of Motion to Strike Affirmative Defense at 3).

This repeal or reallocation argument suffers from three fundamental flaws. First, as already discussed, in the event of an irreconcilable conflict, it is the Education and Local Control Clauses which must yield to the subsequently adopted TABOR amendment—not vice versa. See Colo. Const. art. 10, § 20(1); Interrogatories, 467 P.2d at 59. Second, Plaintiffs erroneously assume education is the only constitutional mandate borne by the General Assembly. For example, article VIII, section 1 provides that "[e]ducational, reformatory, and penal institutions, and those for the benefit of insane, blind, and mute, and such other institutions as the public good may require, shall be established and supported by the state, in such a manner as may be prescribed by law." The Constitution also vests the judicial power of the state in a number of courts, requires compensation of judges, and guarantees the courts shall be open to every person. Colo. Const. art. II, § 6, art. VI, §§1, 10, 18. Moreover, the Constitution declares several named educational institutions to be state institutions of higher learning and authorizes the establishment of other such institutions. Colo. Const. art. VIII, § 5. These are just a few of the many areas of constitutional or public policy impor the General Assembly must consider when allocating the State's constitutionally limited revenues.

Third, Plaintiffs criticize the General Assembly for making "political" decisions (Pls.' 2d Am. Compl. ¶ 115), but the legislature is a political body, composed of representatives elected by the People, and empowered by the Constitution "to make laws and to appropriate state funds," MacManus v. Love, 499 P.2d 609, 610 (Colo. 1972). Colo. Const. arts. III, V, § 1. "It is the peculiar and exclusive province of the legislature, so far, at least, as the judiciary is concerned, to judge of the necessity or desirability from a political or economic stand-point of each and every act proposed." In re Senate Res. Relating to S. Bill No. 65, 21 P. 478, 479 (Colo. 1889) (emphasis added). Accordingly, "it is incumbent upon the legislature to balance myriad competing interests and to allocate the State's resources for the performance of those services important to the health, safety, and welfare of the public." Lienhard v. State, 431 N.W.2d 861,
App. O cont'd

867 (Minn. 1988); see also Barone v. Dep't of Human Servs., 526 A.2d 1055, 1063 (N.J. 1987) ("State funds available for public assistance programs are limited. It is the Legislature that has the duty to allocate the resources of the State."). "The problems of government are practical ones and often justify, if not require, a rough accommodation of variant interests." Dawson By and Through McKelvey v. Public Employees' Retirement Ass'n, 664 P.2d 702, 708 (Colo. 1983) (citing Mathews v. Lucas, 427 U.S. 495 (1976)), accord Heller, 509 U.S. at 321. Recognizing that this case rests upon inherently political decisions, the Colorado Supreme Court instructed that when determining whether the General Assembly rationally established and maintains a system providing an opportunity to attend free public schools, "significant deference" must be given "to the legislature's fiscal and policy judgments." Lobato, 218 P.3d at 374-75 (emphasis added).

Exercising "legislative power," Colo. Const. art V, sec. 1, to appropriate limited funds among important state priorities is not irrational. Controlling the public debt, furthering local control over education, and balancing appropriations among public services are all legitimate state purposes evidencing rational legislative action. In Lujan, the Court held the use of local property taxation to partly finance Colorado's schools is rationally related to effectuating local control over the public schools of the state. 649 P.2d at 1023. The Court upheld statutory limits on local districts' taxing power because "[t]he purpose of such limitations is essentially to prevent the present pledging of future public funds," and "controlling the public debt" is a "legitimate state purpose." Lujan, 649 P.2d at 1024; see also City and County of Broomfield v. Farmers Reservoir and Irrigation Co., 239 P.3d 1270, 1279 (Colo. 2010) (holding "classification between governmental and non-governmental entities under Rule 54(d) is rationally related to the goal of protecting the public treasury because the rule prohibits a water court from awarding costs to a party who prevails against the government"). Thus, deciding to fund prisons, courts, human services, and higher education as well as public K-12 education embodies rationality and demands judicial deference.

Therefore, Defendants request this Court determine that:

7. The rational basis standard requires that significant deference be afforded to the General Assembly's fiscal and policy judgments;

8. Elementary and secondary education is not the only public service required by the Constitution;

9. It is rational for the General Assembly to control the public debt;

10. It is rational for the General Assembly to further local control over instruction; and

11. It is rational for the General Assembly to balance appropriations among public services.
E. TABOR Authorizes Unfunded Educational Mandates.

In addition to challenging the General Assembly's fiscal and policy discretion, Plaintiffs attack the General Assembly's decision to pass legislation without an accompanying appropriation. Plaintiffs allege the General Assembly's "failure to provide funding sufficient to meet [its own legislative and regulatory] requirements violates the rights guaranteed by the Education Clause." (Pls.' 2d Am. Compl. ¶ 179.) Article X, Section 20(9), however, provides that "[e]xcept for public education through grade 12 or as required of a local district by federal law, a local district may reduce or end its subsidy to any program delegated to it by the general assembly for administration." This provision "expressly contemplates the state's separate constitutional obligation to provide a uniform system of free public schools throughout the state and acknowledges the state's ability to impose unfunded mandates on local districts to accomplish this goal." Mesa County, 203 P.3d at 528. Consequently, the General Assembly may enact education statutes requiring local district action without providing attendant funding.

Therefore, Defendants request this Court determine that:

12. TABOR authorizes the General Assembly to impose unfunded educational mandates on local school districts.

E. This Court May Not Enjoin the General Assembly.

Plaintiffs' complaint requests "interim and permanent injunctions compelling Defendants to establish, fund, and maintain a thorough and uniform system of free public schools" that fulfills the qualitative mandate of the Education Clause and the requirements of Local Control and that "provides and assures that adequate, necessary and sufficient funds are available to accomplish" those purposes. (Pls.' 2d Am. Compl., Prayer for Relief.) In later briefing, Plaintiffs contend they are requesting nothing more than an injunction to "compel Defendant to exercise the discretion delegated to them by the General Assembly to supervise, accredit, and manage public school funds in a manner consistent with the Education and Local Control Clauses." (Pls.' Reply to Defs.' Resp. to Mot. to Strike at 13.) These positions are contradictory; either Plaintiffs seek to compel legislative action or they do not.

To the extent Plaintiffs do, injunctive relief may not be granted. To respect the fundamental boundary between the legislature and the judiciary, it has been long established that a mandatory injunction may not issue against the General Assembly. E.g., Colo. Common Cause v. Bledsoe, 810 P.2d 201, 208-09, 11 (Colo. 1991). As the Colorado Supreme Court explained, "[i]t is a general principle in the governmental system of this country that the judicial department has no direct control over the legislative department," and "[l]egislative action by the general assembly cannot be coerced or restrained by judicial process." Lewis v. Denver City Waterworks Co., 34 P. 993, 994 (Colo. 1893), quoted in Common Cause, 810 P.2d at 208. Given this precedent and Plaintiffs' contradictory positions, it is imperative that this Court make clear no injunction may issue to compel the "establish[ment]" or "fund[ing]" of the public school system.
The power to fund, granted by the Constitution and constrained by its strict revenue limitations, lies with the General Assembly alone and not with any of the Defendants.

Therefore, Defendants request this Court determine that:

13. This Court may neither coerce nor restrain the General Assembly through injunctive relief.

CONCLUSION

The qualitative debate over public education is properly left to the legislative and executive branches of government and the People of the State of Colorado. As instructed by the Supreme Court, then, Plaintiffs and Plaintiff-Intervenors must prove beyond a reasonable doubt that the General Assembly's chosen school finance scheme is irrational. Significant deference is owed to the legislature's fiscal and policy judgments, and this Court's task is not to determine whether a better financing system could be devised, but rather to determine whether the system passes minimal constitutional muster. Resolution of the presented questions of law is critical to the efficient resolution of this case and will enable all parties and this Court to focus on the substantially deferential and narrow legal standards at issue.

Dated: February 25, 2011

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within DEFENDANTS' MOTION FOR DETERMINATION OF QUESTIONS OF LAW PURSUANT TO C.R.C.P 56(h) upon all parties herein electronically through LexisNexis File & Serve or U.S. Mail this 25th day of February 2011, addressed as follows:

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