DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	
PLAINTIFFS: Anthony Lobato, as an individual and as parent and natural guardian of Taylor Lobato and Alexa Lobato; Denise Lobato, as an individual and as parent and natural guardian of Taylor Lobato and Alexa Lobato; Jaime Hurtado and Coralee Hurtado, as individuals and as parents and natural guardians of Maria Hurtado and Evan Hurtado; Janet L. Kuntz, as an individual and as parent and natural guardian of Daniel Kuntz and Stacey Kuntz; Pantaleón Villagomez and Maria Villagomez, as individuals and as parents and natural guardians of Chris Villagomez, Monique Villagomez and Angel Villagomez; Linda Warsh, as an individual and as parents and natural guardian of Adam Warsh, Karen Warsh and Ashley Warsh; Elaine Gerdin, as an individual and as parent and natural guardian of N.T., J.G. and N.G.; Dawn Hartung, as an individual and as parent and natural guardian of Q.H.; Paul Lastrella, as an individual and as parent and natural guardian of B.L.; Woodrow Longmire, as an individual and as parent and natural guardian of Tianna Longmire; Steve Seibert and Dana Seibert, as individuals and as parents and natural guardians of Rebecca Seibert and Andrew Seibert; Olivia Wright, as an individual and as parent and natural guardian of A.E. and M.E.; Herbert Conboy and Victoria Conboy, as individuals and as parents and natural guardians of Tabitha Conboy and Timothy Conboy; Terry Hart, as an individual and as parent and natural guardian of Katherine Hart; Larry Howe-Kerr and Kathy Howe-Kerr, as individuals and as parents and natural guardians of Lauren Howe-Kerr and Luke Howe-Kerr; John T. Lane, as an individual; Jennifer Pate, as an individual and as parent and natural guardian of Ethan Pate and Evelyn Pate; Robert L. Podio and Blanche J. Podio, as individuals and as parents and natural guardians of Robert Podio and	▲ **COURT USE ONLY** ▲

Samantha Podio; Tami Quandt, as an individual and as parent and natural guardian of Brianna Quandt, Cody Quandt and Levi Quandt; Brenda Christian, as an individual and as parent and natural guardian of Ryan Christian; Toni L. McPeek, as an individual and as parent and natural guardian of M.J. McPeek, Cassie McPeek and Michael McPeek; Christine Tiemann, as an individual and as parent and natural guardian of Emily Tiemann and Zachary Tiemann; Paula VanBeek, as an individual and as parent and natural guardian of Kara VanBeek and Antonius VanBeek; Larry Haller and Pennie Haller, as individuals and as parents and natural guardians of Kelly Haller and Brandy Haller; Tim Hunt and Sabrina Hunt, as individuals and as parents and natural guardians of Shannon Moore-Hiner, Eris Moore, Darean Hunt and Jeffrey Hunt; Mike McCaleb and Julie McCaleb, as individuals and as parents and natural guardians Rebekka McCaleb, Layne McCaleb and Lynde McCaleb; Todd Thompson and Judy Thompson, as individuals and as parents and natural guardians of Garson Thompson and Tarek Thompson; Doug Vondy and Denise Vondy, as individuals and as parents and natural guardians of Kyle Leaf and Hannah Vondy; Brad Weisensee and Traci Weisensee, as individuals and as parents and natural guardians of Joseph Weisensee, Anna Weisensee, Amy Weisensee and Elijah Weisensee; Stephen Topping, as an individual and as parent and natural guardian of Michael Topping; Donna Wilson, as an individual and as parent and natural guardian of Ari Wilson, Sarah Patterson, Madelyn Patterson and Taren Wilson-Patterson; David Maes, as an individual and as parent and natural guardian of Cherie Maes; Debbie Gould, as an individual and as parent and natural guardian of Hannah Gould, Ben Gould and Daniel Gould; Lillian Leroux, as an individual and natural guardian of Ari Leroux, Lillian Leroux, Ashley Leroux, Alexandria Leroux and Amber Leroux; Theresa Wrangham, as an individual and natural guardian of Rachel Wrangham and Deanna Wrangham

and

Alamosa School District, No. RE-11J; Centennial School District No. R-1; Center Consolidated School District No. 26 JT, of the Counties of Saguache and Rio Grande and Alamosa; Creede Consolidated School District No. 1 in the County of Mineral and State of Colorado; Del Norte Consolidated School District No. C-7; Moffat, School District No. 2, in the County of Saguache and State of Colorado; Monte Vista School District No. C-8; Mountain Valley School District No. RE 1; North Conejos School District No. RE1J; Sanford, School District No. 6, in the County of Conejos and State of Colorado; Sangre de Cristo School District, No. RE-22J; Sargent School District No. RE-33J; Sierra Grande School District No. R-30; and South Conejos School District No. RE10,

and

PLAINTIFF-INTERVENORS: Armandina Ortega, individually and as next friend for her minor children S. Ortega and B. Ortega; Gabriel Guzman, individually and as next friend for his minor children G. Guzman, Al. Guzman and Ar. Guzman; Roberto Pizano, individually and as next friend for his minor children Ar. Pizano and An. Pizano; Maria Piña, individually and as next friend for her minor children Ma. Piña and Mo. Piña; Martha Lopez, individually and as next friend for her minor children S. Lopez and L. Lopez; M. Payan, individually and as next friend for her minor children C. Payan, I. Payan, G. Payan and K. Payan; Celia Leyva, individually and as next friend for her minor children Je. Leyva and Ja. Leyva; and Abigail Diaz, individually and as next friend for her minor children K. Saavedra and A. Saavedra.

v.

DEFENDANTS: The State of Colorado; the Colorado State Board of Education; Dwight D. Jones, in his official capacity as Commissioner of

<table>
<tr><td>Education of the State of Colorado; and Bill Ritter, in his official capacity as Governor of the State of Colorado</td><td></td></tr>
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<tr><td colspan="2" align="center">COMPLAINT IN INTERVENTION</td></tr>
</table>

Plaintiff-Intervenors Armandina Ortega, individually and as next friend for her minor children S. Ortega and B. Ortega; Gabriel Guzman, individually and as next friend for his minor children G. Guzman, Al. Guzman and Ar. Guzman; Roberto Pizano, individually and as next friend for his minor children Ar. Pizano and An. Pizano; Maria Piña, individually and as next friend for her minor children Ma. Piña and Mo. Piña; Martha Lopez, individually and as next friend for her minor children S. Lopez and L. Lopez; M. Payan, individually and as next friend for her minor children C. Payan, I. Payan, G. Payan and K. Payan; Celia Leyva, individually and as next friend for her minor children Je. Leyva and Ja. Leyva; and Abigail Diaz, individually and as next friend for her minor children K. Saavedra and A. Saavedra file this Complaint in Intervention against Defendants State of Colorado, *et al.*, challenging the constitutionality of the public school finance system of Colorado, and seeking declaratory and injunctive relief. Plaintiff-Intervenor schoolchildren and their respective school districts face ever-rising

performance standards, but the funding made available by Defendants to meet those standards and for building safe and secure school facilities is not rationally related to the constitutional mandate of article IX, section 2 of the Colorado Constitution that the Colorado General Assembly provide a 'thorough and uniform' system of public education. The inadequately funded Colorado school finance system, particularly for low income and English Language Learner students, also prevents low wealth communities from exercising meaningful local control over their educational programs, in violation of article IX, section 15 of the Colorado Constitution. In support, Plaintiff-Intervenors state as follows:

I. BACKGROUND

1. This case was filed by Plaintiffs Anthony Lobato, *et al.*, on June 23, 2005 against Defendants alleging the unconstitutionality of the Colorado school finance system. Defendants immediately moved for dismissal, arguing that the plaintiffs did not have standing and that the claims were nonjusticiable. The district court granted dismissal and that decision was affirmed by the intermediate court of appeals. *See Lobato v. State,* No. 06CA0733, 2008 Colo. App. LEXIS 69 (Colo. App Jan. 24, 2008). A joint petition for certiorari was granted by the Supreme Court of Colorado.

2. On October 19, 2009, the Supreme Court of Colorado reversed the dismissal, holding that the claims were justiciable and charging this Court with the duty to "determine whether the state's public school financing system is rationally related to the constitutional mandate that the General Assembly provide a 'thorough and uniform' system of public education." *Lobato v. Colorado*, 218 P.3d 358, 363 (Colo. 2009).

3. The case was remanded to the trial court, and Plaintiff-Intervenors now seek intervention to prove their claim that Defendants have not fulfilled their constitutional duty of providing a thorough and uniform system of public education and have stripped Plaintiff-Intervenors of exercising meaningful local control of their respective school districts.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to article VI, section 9(1) of the Colorado Constitution.

5. Venue in Denver County, Colorado is proper under Colorado Rules of Civil Procedure 98(b)-(c).

III. PARTIES

6. Plaintiff-Intervenor Armandina Ortega resides in Rocky Ford, Colorado. Plaintiff-Intervenor's children, S. Ortega and B. Ortega, attend schools in Rocky Ford R-2 School District. Plaintiff-Intervenor Ortega also pays taxes to pay for the education of Plaintiff-Intervenor's children.

7. Plaintiff-Intervenor Gabriel Guzman resides in Rocky Ford, Colorado. Plaintiff-Intervenor's children, G. Guzman, Al. Guzman and Ar. Guzman, attend schools in Rocky Ford R-2 School District. Plaintiff-Intervenor Guzman also pays taxes to pay for the education of Plaintiff-Intervenor's children.

8. Plaintiff-Intervenor Roberto Pizano resides in Rocky Ford, Colorado. Plaintiff-Intervenor's children, Ar. Pizano and An. Pizano, attend schools in Rocky Ford R-2 School District. Plaintiff-Intervenor Pizano also pays taxes to pay for the education of Plaintiff-Intervenor's children.

9. Plaintiff-Intervenor Maria Piña resides in Denver, Colorado. Plaintiff-Intervenor's children, Ma. Piña and Mo. Piña, attend schools in Sheridan 2 School District. Plaintiff-Intervenor Piña also pays taxes to pay for the education of Plaintiff-Intervenor's children.

10. Plaintiff-Intervenor Martha Lopez resides in Sheridan, Colorado. Plaintiff-Intervenor's children, S. Lopez and L. Lopez attend schools in Sheridan 2 School District. Plaintiff-Intervenor Lopez also pays taxes to pay for the education of Plaintiff-Intervenor's children.

11. Plaintiff-Intervenor M. Payan resides in Colorado. Plaintiff-Intervenor's children, C. Payan, I. Payan, G. Payan and K. Payan, attend schools in Sheridan 2 School District. Plaintiff-Intervenor Payan also pays taxes to pay for the education of Plaintiff-Intervenor's children.

12. Plaintiff-Intervenor Celia Leyva resides in Denver, Colorado. Plaintiff-Intervenor's children, Je. Leyva and Ja. Leyva, attend schools in Mapleton 1 School District. Plaintiff-Intervenor Leyva also pays taxes to pay for the education of Plaintiff-Intervenor's children.

13. Plaintiff-Intervenor Abigail Diaz resides in Greeley, Colorado. Plaintiff-Intervenor's children, K. Saavedra and A. Saavedra, attend schools in Greeley 6 School District. Plaintiff-Intervenor Diaz also pays taxes to pay for the education of Plaintiff-Intervenor's children.

14. Defendant State of Colorado is responsible for enacting the laws that together form the Colorado school finance system.

15. Defendant Colorado State Board of Education ("SBE") is the governmental body responsible for the general supervision of public schools, including the adoption of model content standards for twelve curriculum areas.

16. Defendant Dwight D. Jones is the Commissioner of Education of the State of Colorado and is sued in his official capacity. Defendant Commissioner Jones is "the chief state school officer and executive officer of the department of education." COLO. REV. STAT. § 22-2-110(1) and has the authority "[t]o perform all duties which may be required by law."

17. Defendant Bill Ritter is the Governor of the State of Colorado and is sued in his official capacity. Defendant Governor Ritter is vested with the supreme executive power of the State and is responsible for ensuring that the laws of the State of Colorado are faithfully executed.

IV. FACTS

A. Thorough and Uniform System

18. Article 9, section 2 of the Colorado Constitution (the "Education Clause") mandates, in part, that the General Assembly "shall provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state . . ."

19. Article 9, section 15 of the Colorado Constitution (the "Local Control Clause") requires that the General Assembly "shall, by law, provide for organization of school districts of convenient size, in each of which shall be established a board of education, to consist of three or more directors to be elected by the qualified electors of the district. Said directors shall have control of instruction in the public schools of their respective districts."

20. The aforementioned clauses are not satisfied if adequate resources are not made available by Defendants to each school district and those resources are not rationally related to a thorough and uniform system. The aforementioned clauses are also not satisfied if each school district is not given the control necessary to implement locally this mandate for all students.

21. Plaintiff-Intervenors agree with Lobato Plaintiffs (*see* Lobato Compl. at 4 ¶ 5) that a constitutionally thorough and uniform system of free public schools includes, at a minimum, a quality education that enables all students to participate meaningfully in the civic, political, economic, social and other activities of society, and to exercise the basic civil and other rights of citizens of the State of Colorado and the United States of America.

22. Plaintiff-Intervenors further agree with Lobato Plaintiffs (*see id.* at 5-7, 16-25) that additional State standards-based reform efforts and accountability requirements further define a constitutionally thorough and uniform system of free public schools, including but not limited to, a quality education that enables: all students to have the educational experiences needed to achieve the state model content standards in each of the twelve priority areas defined by the State of Colorado; all school districts to develop and administer assessments to measure adequately each student's progress toward achieving adopted content standards; all school districts to address the different educational needs of students of different backgrounds and abilities, including English Language Learner ("English Language Learner" or "ELL" students)

students and low income students, and eliminate barriers to equity within the public schools; and all school districts to provide professional development for educators in standards-based education.

23. A constitutionally thorough and efficient system furthermore enables all students to acquire the knowledge, skills and behaviors essential for high school graduates to be prepared to enter college and the workforce and to compete in the global economy, as described by the Colorado Department of Education and Department of Higher Education under their definition of "postsecondary and workforce readiness."

B. Basic School Finance Structure

24. Colorado's public school finance system for the 178 public school districts is provided mainly through the Public School Finance Act of 1994 (as amended) ("PSFA").

25. Generally, funding through the PSFA is based on a school district's enrollment on October 1 of a given school year, or the nearest official school day, from which a school district's "Total Program" funding is calculated.

26. Full-time students in grades 1-12 are counted as full-time students for funding purposes but students in kindergarten, in preschool for special education, and a limited number of at-risk students in preschool are counted as part-time, as well as those students in grades 1-12 not attending school full-time.

27. Total Program funding for a school district is calculated by multiplying the October 1 pupil count by the amount of total per-pupil funding; additional monies are added for variances in cost of living, personnel costs and size of districts. Limited supplemental costs are also made available for at-risk students and special categories of students and programs, including but not limited to gifted and talented students, English Language Learner students, transportation and special education students.

28. The PSFA is funded primarily from state taxes (including state income and sales and use tax revenues) and local property. The State contributes approximately 60.8% of the Total Program funding. The remainder is comprised of local property taxes (approximately 32.6%), federal stimulus funds (approximately 4%) and vehicle registration taxes (2.6%).

29. School districts are required to levy property taxes to raise their share of Total Program funding. Because assessed property values vary widely among high property and low property wealth school districts, the ability to generate local funds is more severely restricted in low wealth school districts. The State's share contributes additional funds to those school districts that do not generate sufficient funds for the minimum guarantee of Total Program funding.

30. Two amendments to the Colorado Constitution, the Gallagher Amendment (COLO. CONST., art. X, §3(1)(b)) and the Taxpayer Bill of Rights ("TABOR," COLO. CONST., art. X, §20), further restrict local school communities from generating additional revenues needed to provide a thorough and uniform system and to exercise meaningful local control.

31. The Gallagher Amendment was approved in 1982 and was meant to stabilize property values and assessments by fixing tax rates for nonresidential and residential real property. For nonresidential property, assessment rates were set at 29% of the actual value. For residential property, the rate was initially reduced from 30% to 21% of the actual value, but a provision in the amendment required the rate to decrease further when statewide residential property values grew faster than nonresidential property values.

32. As a result of the Gallagher Amendment, rates for residential assessments have fallen from 21% of the actual value to 7.96%. Thus, a school district that levies one mill of tax (equal to one-tenth of 1%, or .001) on a residential property valued at $100,000 generates only $7.96. This limitation is applied to all school districts based on the growth of residential property values statewide, and thus applies even in those school districts with declining residential property values.

33. Similarly, TABOR also places restrictions on local school districts' abilities to generate local funds for education. TABOR states, in part, that "districts must have voter approval in advance for . . . any new tax, tax rate increase, mill levy above that for the prior year . . . or a tax policy change directly causing a next tax revenue gain to any district." COLO. CONST. art. X, § 20(4). Essentially, TABOR requires mill levy rates to reduce automatically when the total taxable value of properties in a school district increases. In school districts where the total taxable value of properties decreases, the mill levy cannot increase without voter approval.

34. These two amendments are further discussed in detail by the Lobato Plaintiffs in their Complaint. *See* Compl. at 38-41 (fully incorporated by reference).

C. At-Risk Students

35. The number of students from low income families (those on the National School Lunch Act's Free and Reduced Price Lunch Program)[1] has increased considerably over the years and now accounts for approximately 39% of all Colorado public schoolchildren. The school districts attended by Plaintiff-Intervenor children contain much higher rates of low income enrollment, from 57% in Greeley 6 School District to 78% in Sheridan School District in the 2009-10 school year.

[1] To be eligible for free lunch under the NSLA, a student's household income must be at or below 130 percent of federal income poverty guidelines; reduced price lunch eligibility includes children from households with incomes between 131 percent and 185 percent of poverty guidelines.

36. Students from low-income families often lack educational capital in the home and in the community and therefore require additional educational programs and resources in order to access a quality education and meet the rising performance standards, including but not limited to programs such as preschool, tutoring, summer school and extended day.

37. Defendants recognize that supplemental funding is necessary for students who, due to socio-economic status and other factors, are identified as "at-risk" of performing poorly in school or dropping out of school. However, Defendants irrationally exclude certain low income students through eligibility rules and Defendants impose other arbitrary restrictions on funding by way of statute or regulation.

38. Regarding eligibility for at-risk funding, the various definitions of an at-risk student under federal and state laws do not correspond with the definition of at-risk students for purposes of funding under the PSFA. For example, an at-risk pupil is defined in Colorado's Charter School Act as one "who, because of physical, emotional, socio-economic or cultural factors, is less likely to succeed in a conventional educational environment." COLO. REV. STAT. § 22-30.5-103(1)(a) (2004). The No Child Left Behind Act and Colorado's Consolidated State Plan define "economically disadvantaged" students as those whose families are eligible for free and reduced-price lunch (FRPL) under the National School Lunch Act (NSLA).

39. At-risk funding through the PSFA however irrationally excludes students on the reduced price lunch program and limits eligibility for at-risk funding to those students whose families are eligible for free lunch. In 2008-09, Colorado identified 60,000 students (7%) on the reduced price lunch program who would not receive supplemental funding. In Rocky Ford R-2 School District, for example, one out of every seven students is eligible for reduced price lunch only, and therefore, does not receive any additional funds. The PSFA, for no valid educational reason and contrary to the practice in other states, excludes children from families that are eligible for reduced price lunch from its definition of at-risk pupils, thereby under-funding necessary supplemental resources.

40. State law sets the funding for at-risk students at the level equal to 12% of a district's total per-pupil funding and the funding percentage increases as the percentage of at-risk students in a given district rises above the statewide average. However, the at-risk funding is then arbitrarily capped at a maximum of 30%. For example, in 2008-2009, the statewide average of at-risk students was approximately 32.61%. The Sheridan School District, whose FRPL student population in 2008-09 was approximately 81.90%, received a 12% adjustment in funding for 32.61% of its at-risk students. Funding for the remaining eligible students (not include the reduce-price lunch students), however, is capped at 30% for no valid educational purpose.

41. In 2006, an adequacy study conducted for the Colorado School Finance Project by Augenblick, Palaich and Associates, Inc. of Denver, Colorado, found Colorado's statutory amounts for at-risk funding to be up to four times lower than the amount needed to meet state performance and accreditation requirements.

42. Funding for at-risk students is also affected irrationally by the Charter School Act. Under Colorado law, charter schools are entitled to receive a school district's total program funding average (minus 5% for overhead), which includes funding for the district's students identified as "at-risk." Charter schools in Colorado typically enroll fewer at-risk students than the adjacent public schools within a public school district, yet public school districts are required to share the average amount with a charter school, thus depriving at-risk public school students of the full entitlement of the at-risk funding.

43. For example, Greeley 6 School District enrolls 50% of its students in the Free Lunch Program. The local charter schools Frontier, Union Colony and University School enroll between 8-12% of their students in the Free Lunch Program. Despite the low percentage of at-risk students in the charter schools, those schools nevertheless receive the same amount of funding per student as the Greeley at-risk students.

44. The funding that is made available at 12% does not cover the cost of, and is not rationally related to, providing at-risk students with a thorough and uniform education. Additionally, the insufficient and irrational funding for at-risk students impedes and frustrates the local school communities from exercising local control by forcing school districts to choose between shortchanging at-risk students or re-directing funds away from other necessary programs which prevents the districts from providing a thorough and uniform education to the district's other students.

45. School districts are thus unable to provide the full range of quality compensatory education services to their low income students in order to achieve the standards set for all students.

D. English Language Learner Students

46. The number of Colorado public school students whose dominant language is not the English language ("English Language Learner" or "ELL" students) has more than tripled over the past 15 years. Presently, there are approximately 100,000 ELL students in Colorado who speak over 200 different languages. ELL students now account for approximately one out of every eight students in Colorado's public schools.

47. In the school districts attended by Plaintiff-Intervenor children, the ELL enrollment is near or in excess of the statewide ELL average, ranging from 11.29% in Rocky Ford to 37.38% in Mapleton.

48. ELL students require additional educational services above and beyond the general education program in order to receive a thorough and uniform education. For example, school districts must ensure that teachers serving ELL students receive specialized training and professional development, that appropriate materials and textbooks in the students' native language are available, that proper assessments are in place to monitor the academic learning of

the English language and summer school is available so ELL students do not lose their English skills.

49. Defendants recognize that supplemental funding is necessary for ELL students to comprehend and learn academic English and, in turn, access a quality education and achieve the rising performance standards.

50. In adopting the English Language Proficiency Act (ELPA), the General Assembly declared "that, in order to improve educational and career opportunities for every student in this state, it is the purpose of this article to provide for the establishment of an English language proficiency program in the public schools and facility schools and to provide for the distribution of moneys to the several school districts, the state charter school institute, and facility schools to help defray the costs of such program. COLO. REV. STAT. § 22-24-102 (2004).

51. The ELPA requires school districts to: 1) identify those students whose dominant language may not be English; 2) assess such students; and 3) administer and provide programs for these students. *Id.*

52. The ELPA further provides that ELL students are to be placed into three categories: Category A: "NEP" for no English language proficiency; Category B: "LEP" for limited English proficiency; and Category C: "FEP" for ELL students whose dominant language is not fully understood.

53. Although the school districts are theoretically free to adopt and implement educational programs for ELL students of their own choosing, the limited availability of funds and restrictions on funding frustrate and impede school districts' efforts to provide a thorough and uniform education to their ELL students and to exercise meaningful control over the direction of the districts' language programs.

54. For example, under state law, Colorado is expected to provide school districts funding for ELL programs in an amount greater than $400 per student per year or 20 percent of the state average per pupil operating revenues for Category A and B students. COLO. REV. STAT. ANN. § 22-24-104(4)(c)(II) (2007). For Category C students, the amount of funding is the greater of $200 per student per year or an amount equal to ten percent of the state average per pupil operating revenues for Category C students. *Id.* § 22-24-104(4)(c)(II).

55. Defendants, however, never appropriate amounts for ELPA programs sufficient to fulfill the statutory requirements, much less an amount that is rationally related to the constitutional mandate of providing a thorough and uniform system.

56. In 2007-08, the State allocated a mere $7.2 million for the approximately 100,000 ELL students, an average of $72 per student. By contrast, the funding for gifted and talented students (an enrichment program) was $8 million for the approximately 56,000 identified gifted and talented students in Colorado, an average of $142 per gifted and talented student. Even in

the year 2009-10, only $12 million was allocated by the General Assembly for the approximately 100,000 ELL students enrolled in Colorado's public schools.

57. In a 2006 adequacy study conducted for the Colorado School Finance Project by Augenblick, Palaich and Associates, Inc. of Denver, Colorado, researchers found Colorado's statutory dollar amounts for ELPA funding to be at least five times lower than the amount needed to meet state performance and accreditation requirements.

58. The irrational funding for ELL students is further compounded by the arbitrary two-year limitation for ELPA funding. Under the ELPA, funding to school districts is restricted to two years per ELL student, which is wholly irrational when compared to the amount of time that research indicates is necessary for ELL students to become academically proficient in the English language. Research indicates that it takes a minimum of four to seven years to become academically proficient in English and this is especially important where, as here, all students are held to the same achievement standards in the public schools.

59. By limiting the available ELPA funding to students attending their first or second year of schooling, ELPA funding is unavailable for roughly 60,000 ELL students who are in their third or later year of language instruction.

60. Furthermore, the arbitrary two-year restriction of ELPA funding places school district communities at risk of violating federal law when they are forced to use federal funding to supplant, rather than supplement, programs for ELL students. School districts receive federal funds for ELL programs under Title III of the No Child Left Behind Act but state and local education agencies are prohibited from using those funds to supplant local and state funding. Thus, the irrational and insufficient funding made available to school districts, coupled with the arbitrary two-year restriction on state funding, forces school districts to supplant (in violation of federal law) rather than supplement local dollars for ELL students.

61. Neither the statutory amount nor the appropriated amount for ELL students covers the costs of providing ELL students with a thorough and uniform education. Neither are they rationally related to providing ELL students with a thorough and uniform education. Additionally, the insufficient and irrational funding for ELL students impedes and frustrates local school communities from exercising local control by forcing school districts to choose between shortchanging the education of ELL students or re-directing funds away from other necessary programs, and thus, preventing the districts from providing a thorough and uniform education to the district's other students.

62. School districts are thus unable to provide the full range of quality language programs and services to their ELL students in order to achieve the standards set for all students.

E. Preschool for ELL and At-Risk Students

63. Research has proven that effective preschool programs are particularly important for low income and ELL students, who require such programs at an early age in order to accelerate their academic learning and prevent them from falling behind other students.

64. Defendants recognize the necessity of quality preschool programs for ELL and low income students, as well as other at-risk students, stating that the Colorado Preschool Program Act ("CPP") aims to serve preschool children between the ages three and five who lack overall learning readiness due to family risk factors related to the lack of educational capital in the home or are in need of language development, or are neglected or dependent children. COLO. REV. STAT. § 22-28-101 (2004).

65. The main objective of the CPP is to provide quality early education support to children whose significant risk factors increase their chances of early school failure. *Id.* § 22-28-104.

66. Despite the obvious need for quality preschool programs, only limited funding for preschool programs is provided through the CPP.

67. The CPP provides funding through the PSFA formula for certain preschool and full-day kindergarten children by adding each eligible CPP child as a half-day pupil to a school district's funded pupil count. However, the number of children who may participate in the CPP is arbitrarily limited in number. In 2008-09 for example, the limited amount of funding was only made available for up to 20,160 preschool children, although the number of eligible schoolchildren far exceeded that number.

68. The lack of sufficient and rational funding for preschool programs is particularly troubling for low-wealth school districts that enroll higher percentages of ELL and low income students because they do not have the capacity to raise sufficient funds for quality preschool programs. Those school districts are then confronted with ELL and low income students entering Grade 1 far behind other students; when taking into account the insufficient and irrational funding for at-risk and ELL students described earlier, those school districts must stretch their budgets even further in their attempt to provide a thorough and uniform education.

F. Facilities

69. Safe and secure school buildings and facilities that are adequately equipped are essential components of a quality education and a thorough and uniform system of free public schools.

70. Facility needs include but are not limited to the acquisition of land and pre-existing buildings, the construction of new schools, and the maintenance and repair of existing school facilities.

71. School districts are largely left with meeting their facility needs by contracting bonded indebtedness through voter elections. Low property wealth school districts have low tax bases, and therefore, must tax at higher amounts in order to raise funds for facilities. In addition, school districts may not contract out bonded indebtedness that exceeds the greater of either 20% of the assessed value of the taxable property or 6% of the actual value of taxable property in the district.

72. Even when low-wealth school communities identify specific facility needs for delivering a quality education, low tax bases coupled with various property tax reform efforts in Colorado cripple low-property wealth school districts, resulting in many failed attempts to carry forward bond elections.

73. For example, Mapleton 2 and Greeley 6 School Districts sought bond elections in recent years to improve their schools and quality of education. However, those elections failed to pass and the districts are now scrambling, including the closing and consolidation of schools which will take many schoolchildren away from their neighborhood schools.

74. Although many community members sympathize with the obvious facility needs of their local school districts, the drastic tax increases needed to support the bonds often take precedence in voters' minds and result in a failed election.

G. Rising Curriculum Standards, Testing and Accountability

75. Defendants' educational accountability program is designed to measure objectively the quality and efficiency of the educational programs offered by the public schools of Colorado. Colo. Rev. Stat. 22-7-102(1).

76. Defendants' educational accountability program consists of curriculum standards, assessments and evaluations under state and federal guidelines.

77. Defendant State Board of Education has adopted model content standards for curriculum in twelve different subject areas (art, civics, economics, foreign language, geography, history, math, music, physical education, science, reading and writing). Color Rev. Stat. § 22-7-406). Although local school communities are free to adopt their own content standards, district standards must meet or exceed the State's model standards.

78. There are a number of different assessments used by the CDE to determine the quality of educational programs. These include the Colorado Student Assessment Program ("CSAP"), the CSAP-Alternative ("CSAP-A"), the Colorado English Language Acquisition Proficiency Assessment ("CELApro"), and the Colorado ACT.

79. The CSAP tests are developed by the CDE and are intended to determine the degree to which students have mastered the Model Content Standards. The CSAP tests grades 3-

10 in reading, writing and mathematics and grades 5, 8 and 10 in science. The current CSAP is being revised to conform to the revised Model Content Standards, as well as the postsecondary and workforce readiness definition. The new, more rigorous CSAP is set to be administered in the 2011-12 school year and will place additional financial constraints on local school communities.

80. The CSAP-A test is an alternative to the CSAP for special education students who are not able to participate in the CSAP and is administered to students in grades 3-10.

81. The CELApro test evaluates ELL students' proficiency in the English language and is administered in grades K-12. The CELApro tests the ELL students' English language proficiency in the areas of listening, speaking, writing, oral language and comprehension skills.

82. The Colorado ACT is the ACT college entrance exam and is administered to all 11th grade students. The Colorado ACT tests student's knowledge in English, Math, Science and Reading. It is used by colleges and universities for admissions and placement purposes, as well as for determining the award of various college scholarships.

83. There are a number of different state and federal evaluations based on standardized test results and other indicia of success. For example, CSAP scores are used to determine a school or school district's academic performance rating, which could be excellent, high, average, low or unsatisfactory. Various sanctions and corrective actions for schools and school districts result from unsatisfactory ratings.

84. In addition, school districts are accredited by Defendant State Board of Education. The local boards of education and Defendant SBE enter into accreditation contracts, defining various standards and goals. There are 11 indicators used to determine accreditation, including district completion and implementation of an educational improvement plan, closing student achievement gaps, complying with the Safe Schools and Colorado Basic Literacy Acts and district completion and implementation of plans for educational technology and information literacy, retention and recruitment of teachers, and compliance with budgeting and accounting requirements. Various sanctions and corrective actions for school districts result from districts failing to meet their contractual obligations.

85. In addition, there are federal accountability requirements under the No Child Left Behind Act of 2001. Under NCLB, school districts are required to hire highly qualified teachers, expand the scope and frequency of student testing and ultimately close the achievement gaps altogether between the various disaggregated students groups by race, income and language.

86. Colorado develops its own plan for meeting Adequate Yearly Progress ("AYP") as mandated by NCLB. Colorado's present plan includes, for example, AYP targets requiring 73.5% of the disaggregated groups to meet proficiency in high school math in 2010 and that target rises to 86.75% in 2011. Various sanctions and corrective actions for schools and school districts result from districts failing to meet AYP.

87. The rising accountability standards, accreditation standards, as well as the standards imposed by the No Child Left Behind Act (¶¶ 84-92) increase financial pressures on school districts and create new challenges that are difficult to overcome because the State's funding formulas fail to reflect the true costs of educating students with special needs in their districts, particularly ELL and low income students.

H. Performance of ELL and Low Income Students

88. By statute, the General Assembly has declared that the purpose of education reform related to standards and assessment is to create an accountability system that defines and measures the academic quality in educational programs, and thus, to help public schools achieve quality and expand the life opportunities and options for Colorado's public schoolchildren. *See* COLO. REV. STAT. § 22-7-102.

89. Not surprisingly, the rising state and federal standards and accountability measures, coupled with the irrational and insufficient funding for ELL and low income students, the performance of ELL and low income students statewide indicates a failing system.

90. For example, on the Fifth Grade CSAP Science test, 76% of low income students on the FRPL failed to score "proficient;" by contrast, 40% of non-FRPL students failed to score "proficient. On the same test, two out of three (66%) FEP students failed to score "proficient," as well as 94% of LEP students and 96% of NEP students.

91. On the Eighth Grade CSAP Math test, 71% of low income students on the FRPL failed to score "proficient;" by contrast, 38% of non-FRPL students failed to score "proficient." On the same test, six out of ten (59%) FEP students failed to score "proficient," as well as 88% LEP students and 92% of NEP students.

92. On the Tenth Grade CSAP Reading test, 47% of low income students on the FRPL failed to score "proficient;" by contrast, 19% of non-FRPL students failed to score "proficient." On the same test, four out of ten (40%) FEP students failed to score "proficient," as well as 79% of LEP and 90% of NEP students.

93. On the college admissions test -- the Colorado ACT -- low income and ELL students also struggled. The average ACT composite score was 20.0, but for FRLP students it was 16.2 and for LEP and NEP students, the ACT scores ranged between 11.2 and 16.1.

94. The State of Colorado is left with low income and ELL students graduating at low rates and dropping out at high rates.

95. In 2009, even when looking at the State's reported Grade 7-12 dropout rate which likely underestimates the actual dropout rate, ELL students are dropping out statewide at rates

nearly twice as high as the State average. Regarding four-year graduation rates, only 53% of ELL students and 61% of low income students are graduating from high schools in Colorado.

96. The General Assembly itself acknowledges that "Colorado continues to experience an unacceptable high dropout rate, inequalities in the academic achievement levels of students from different racial and socioeconomic groups and low rates of enrollment and persistence in postsecondary education." COLO. REV. STAT. § 22-7-301. Yet the resources needed to close the achievement gaps and to provide a thorough and uniform system of free public schools, particularly for ELL and low income students, is absent from Colorado's school finance system.

97. Many of the students who do graduate are not properly prepared to enter postsecondary education. A report released by the Colorado Commission for High Education revealed that one out of three first-year college students in 2008 required remedial courses and in the community colleges, more than half (52%) of first-year college students required remedial courses.

V. CAUSES OF ACTION

A. Denial of a Thorough and Efficient System Under Article IX, § 2 of the Colorado Constitution

98. Plaintiff-Intervenors repeat and re-allege paragraphs 1-98 as fully set forth herein.

99. The current system of school finance for Colorado public schools is not thorough and efficient as required under article IX, section 2 of the Colorado Constitution.

100. Due to the constitutional inadequacies in the Colorado school finance system, school communities and their taxpayers, including Plaintiff-Intervenors, are unable to build, equip and maintain facilities consistent with those needed to provide a thorough and uniform system; hire and retain quality teachers; hire more specialized support staff; offer a broader, nationally and internationally competitive curriculum; provide for special needs students; and provide opportunities to all of their students to achieve their potential and fully participate in the social, economic, and educational opportunities of this State and nation. Low income and ELL students, including Plaintiff-Intervenor children, are unable to obtain the thorough and uniform education needed to achieve their potential and fully participate in the social, economic and educational opportunities of this State and nation. These students are not able to acquire the knowledge, skills and behaviors essential for high school graduates to be prepared to enter college and the workforce and to compete in the global economy.

101. The irrational and insufficient funding for ELL and low income students, who are most in need of compensatory educational services, depresses their performance level on statewide assessments and causes their respective low graduation rates and high dropout rates.

In addition, the lack of a rational funding system for capitol construction prevents local communities and their taxpayers from maintaining and building safe and secure school facilities.

B. Denial of Local Control Under Article IX, § 15 of the Colorado Constitution

102. Plaintiff-Intervenors repeat and re-allege paragraphs 1-101 as fully set forth herein.

103. The current system of school finance for Colorado public schools denies local communities and their taxpayers from exercising meaningful local control of instruction in the public schools of their respective districts, in violation of article IX, section 15 of the Colorado Constitution.

104. The irrational and insufficient funding for ELL and low income students, who are most in need of compensatory education services as demonstrated by their performance level on statewide assessments, their respective low graduation rates and high dropout rates, forces local school communities and their taxpayers from exercising meaningful control of their educational programs. In addition, the lack of sufficient state aid for capitol construction, coupled with limits on taxing capacities, prevents low property wealth school district communities in particular from exercising discretion in determining and meeting the facility needs of their respective school districts. Low income and ELL students in these districts, including Plaintiff-Intervenor children, are, in turn, unable to obtain the thorough and uniform education needed to achieve their potential and fully participate in the social, economic and educational opportunities of this State and nation. These students also are not able to acquire the knowledge, skills and behaviors essential for high school graduates to be prepared to enter college and the workforce and to compete in the global economy.

VI. PRAYER AND RELIEF

Plaintiff-Intervenors respectfully ask this Court to:

105. Declare the Colorado school finance system for funding the education of at-risk and ELL students unconstitutionally inadequate and in violation of article IX, § 2 of the Colorado Constitution;

106. Declare the Colorado school finance system for funding school facilities unconstitutionally inadequate and in violation of article IX, § 2 of the Colorado Constitution;

107. Declare that due to the inadequate funding of at-risk and ELL students in the Colorado school finance system and Defendants' failure to fund adequately capital construction in low-wealth school districts, Defendants have stripped local communities and their taxpayers of their ability to exercise meaningful local control of their educational programs in violation of article IX, section 15 of the Colorado Constitution;

108. Enjoin Defendants from giving force and effect to any school finance system unless it satisfies the principles of adequacy established under Colorado law and remedies the constitutional violations identified in the declaratory relief requested above;

109. Grant Plaintiff-Intervenors reasonable and necessary attorneys' fees and costs as provided by law; and

110. Grant any and all such other relief to Plaintiff-Intervenors as so entitled.

DATED: February 26, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of February, 2010, true and complete copies of this **Complaint in Intervention was** sent by United States Mail, first class postage prepaid, to:

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