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SUPREME COURT
STATE OF COLORADO

2 East 14th Avenue
Denver, CO 80203

District Court of the city and County of Denver
Honorable Hebert L. Stern, III
Civil Action No. 2014CV32543

In Re:

Lindi Dwyer and Paul Dwyer, as individuals and parents of Jayda Dwyer, Joslyn Dwyer, Janesha Dwyer, and Jentri Dwyer; Terri Siewiyumptewa, as an individual and as parent and natural guardian of Shane Siewiyumptewa and Kristen Johnson; Tracey Weeks and Monty Weeks, as individuals and parents of Jared Weeks and Jordyn Weeks; Terri Piland and Jeffery Piland, as individuals and as parents of Joseph Piland and George Piland; Colorado Rural Schools Caucus a/k/a Rural Alliance; East Central Board of Cooperative Educational Services; Colorado PTA; Boulder Valley School District; Colorado Springs School District No. 11; Mancos School District; Holyoke School District; and Plateau Valley School District 50

v.

The State of Colorado; Robert Hammond, in his official capacity as Commissioner of Education of the State of Colorado; and

▲ **COURT USE ONLY** ▲

John Hickenlooper, in his official capacity as Governor of the State of Colorado.	
Attorneys for *Amici Curiae* : Name(s): Jason R. Dunn, #33011 Address: BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 Seventeenth Street, Suite 2200 Denver, CO 80202-4432 Phone Number: 303.223.1100 FAX Number: 303.223.1111 E-mail: jdunn@bhfs.com	Case Number: 2015SA22

AMICI CURIAE BRIEF OF COLORADO CONCERN, DENVER METRO CHAMBER OF COMMERCE, COLORADO COMPETITIVE COUNCIL, COLORADO MINING ASSOCIATION, COLORADO ASSOCIATION OF MECHANICAL AND PLUMBING CONTRACTORS, AND NATIONAL FEDERATION OF INDEPENDENT BUSINESS IN SUPPORT OF DEFENDANTS STATE OF COLORADO

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

Choose one:

☐ It contains _____ words.

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The brief complies with C.A.R. 28(k).

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It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R._____, p. _____), not to an entire document, where the issue was raised and ruled on.

☐ For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

☑ Filing parties are neither raising an issue on appeal nor responding to an issue within the meaning of C.A.R. 28(k).

☑ I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

/s/ Jason R. Dunn
Signature of attorney or party

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Pursuant to C.A.R. 29, and the Court's invitation in its Order and Rule to Show Cause, the entities listed below, through their undersigned counsel, file this *amici curiae* brief in support of Defendants State of Colorado, et. al., and state as follows:

THE *AMICI CURIAE*

The following six organizations (collectively, the "*Amici Curiae*") hereby participate as *amicus curiae*:

A. **Colorado Concern** is an alliance of top executives with a common interest in enhancing and protecting Colorado's business climate. Founded in 1986 by a dozen committed business leaders, membership now includes 116 CEOs from for-profit, non-profit and higher education organizations across Colorado.

B. **Colorado Competitive Council** is a leading business voice for dozens of companies and trade associations, organized for the purpose of directly advocating for sound business policies in Colorado that encourage growth of key industry clusters and attract high-quality jobs to Colorado.

C. **Colorado Mining Association** is an industry organization, founded in 1876, whose more than 1,000 members include the producers

of coal, metals, agricultural and industrial minerals throughout Colorado and the west, as well as organizations providing equipment, services and supplies to the mining industry. CMA works to promote sound and responsible mineral development in Colorado. The federal coal royalty payments—which benefit public education in Colorado—made by the CMA's members rank fourth nationally.

D. **Denver Metro Chamber of Commerce** is a leading voice for over 3,000 Denver-area businesses and their 300,000 employees across Colorado, providing advocacy for nearly 150 years at the federal, state and local levels and helping shape Colorado's economic and public policy landscape.

E. **The Colorado Association of Mechanical and Plumbing Contractors** is a management association representing owners and managers of firms involved in heating, air conditioning, refrigeration, ventilation, plumbing, piping, and mechanical service throughout Colorado since 1941.

F. **National Federation of Independent Business** is the leading advocacy group for small and independent businesses in Colorado.

INTRODUCTION

The *Amici Curiae* are Colorado organizations representing a wide array of business, trade, and non-profit associations. Each is committed to advancing sound public policy and a strong economy at the state and local level. Individually and collectively, they dedicate significant financial and human resources toward developing state law and policy that ensures a favorable economic climate for not only their individual members and their employees, but for the state as a whole.

Among the *Amici Curiae's* shared values is the belief that a quality public education is, and should always be, a core principle of our state. Indeed, they believe that public education is perhaps the single most important component to ensuring our mutual success as Coloradans. To that end, the *Amici Curiae's* involvement in public education policy is extensive. For example, the *Amici Curiae* have been actively involved in drafting and passing education-related legislation on topics including teacher tenure and accountability, full-day kindergarten and preschool programs. Additionally, the *Amici Curiae* have actively opposed bills that would reduce education standards and teacher accountability.

ARGUMENT

I. THIS COURT SHOULD EXERCISE ITS DISCRETION AND ACCEPT JURISDICTION IN THIS CASE.

In Colorado, "[o]riginal proceedings are controlled by Colorado Appellate Rule 21(a)(1), which states that: 'relief under this rule is extraordinary in nature and is a matter wholly within the discretion of the Supreme Court. Such relief shall be granted only when no other adequate remedy . . . is available.'" *People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1227–28 (Colo. 2003) (quoting C.A.R. 21(a)(1)). Despite this Court's broad discretion in determining whether to invoke its jurisdiction, two general considerations have emerged. "First, the case must involve an extraordinary matter of public importance." *Id.* at 1228. (citing *Leaffer v. Zarlengo*, 44 P.3d 1072, 1077 (Colo. 2002)). "Second, there must be no adequate 'conventional appellate remedies.'" *Id.* (citing *Leaffer*, 44 P.3d at 1077).

Applied here, those considerations weigh heavily in favor of exercising jurisdiction under C.A.R. 21(a)(1). First, this case relates to a proposed construction of Amendment 23 which, if adopted, would dramatically alter the funding scheme for public schools and, if left unchecked, would ultimately consume the State's entire annual budget.

As a result, the case necessarily implicates both statewide educational funding and the State's overall budget—both of which are undoubtedly extraordinary matters of public importance. Next, the availability of an adequate remedy by traditional appeal is significantly undercut by the fact that the resolution of this case turns on legislative decision making. In other words, absent an immediate resolution of this issue, the legislative gears will grind to a halt whilst a billion-dollar annual funding shortfall is forced through years of litigation. Each of the two aforementioned considerations is addressed in further detail below.

A. This case involves extraordinary matters of public importance.

In prior decisions, this Court has accepted jurisdiction in a broad range of cases, including those relating to election rules, *see Hanlen v. Gessler*, 333 P.3d 41 (Colo. 2014), attorney disqualification, *see Fognani v. Young*, 115 P.3d 1268 (Colo. 2005), the scope of the involuntary intoxication defense, *see People v. Voth*, 312 P.3d 144 (Colo. 2013), and the proper manner for responding to subparts of interrogatories under C.R.C.P. 33, *see Leaffer*, 44 P.3d 1072. A consistent theme in all of those is that resolution of the underlying issues would invariably have an impact on large swaths of the Colorado population.

As is readily apparent from the arguments raised in the voluminous briefing before this Court, the legal issues to be resolved here will have a substantial impact on both statewide school funding and the overall legislative appropriations made by the Colorado General Assembly. As a result, the implications of this case are undoubtedly diffuse and will affect nearly the entire population of Colorado in one manner or another. Indeed, there can be little question that an annual appropriation of approximately $1,000,000,000 will affect statewide services from health care for elder adults, to transportation, to adolescent care programs.

In addition to having an objectively broad impact, this case raises important issues which have not been litigated in prior decisions. *See Leaffer*, 44 P.3d at 1077 (noting that this Court has "exercised [its] original jurisdiction to address issues of significant public importance which we have not yet examined." (internal quotation marks omitted)). The precise meaning and intent of Amendment 23 has never been squarely addressed by this—or any other—Court and is clearly an issue of first impression in Colorado. As a result, this factor favors an exercise of jurisdiction in this case.

B. No adequate remedy exists through traditional appeal.

The second consideration in determining whether to accept jurisdiction is the existence of an adequate remedy through traditional appellate routes. *See Voth*, 312 P.3d at 148 (characterizing the second requirement for jurisdiction as whether "the normal appellate process would prove inadequate"). As explained, the issue to be resolved in this case centers on the propriety of the General Assembly's budgetary decisions relating to nearly $1 billion. Without an expedited decision on the issue, the legislature will be forced into limbo and unable to proceed with its imperative function of allocating the state budget.

As the Court is well aware, Colorado's state budgeting process is a complex system of constitutional spending requirements, revenue limitations, statutory mandates, and discretionary public policy choices. It is a process that has been developed by the voters and their elected representatives since the formation of our constitution in 1876 and the earliest days of statehood. *See generally Lujan v. Colo. State Bd. of Ed.*, 649 P.2d 1005, 1025–1028 (Colo. 1982) (Erickson, J., concurring); *see also id.* at 1026 ("Colorado's system for funding education, as a whole, is not the result of a haphazard approach by the General Assembly, but

has been developed through decades of experience in Colorado and elsewhere."). If this case is not resolved expeditiously by this Court, the entire system by which the General Assembly makes annual appropriations will be thrown into disarray. The inevitable ramifications of such a reality would be tremendously costly to all Coloradans. Accordingly, because obtaining relief through traditional appeal would necessarily require years of further litigation and delays, definitively resolving the issue presently before the Court is in the best interest of both Colorado as a whole and the individual parties in this case.

II. THIS COURT SHOULD REVERSE THE DECISION OF THE DISTRICT COURT AND ENTER AN ORDER DISMISSING THE PLAINTIFFS' CLAIMS.

In the proceedings below, the State moved to dismiss the Plaintiffs' action pursuant to C.R.C.P. 12(b)(5) for failure to state a claim. State's Mot. to Dismiss. In particular, the State asserted that the plain language of Amendment 23 requires only that the General Assembly increase two elements of the overall school funding formula on an annual basis. *Id.* at 5–7. In accordance with that language, the General Assembly increased the so-called "statewide base per-pupil

rate" and the "total state funding for all categorical programs," but concurrently added a negative factor, which decreased annual funding in the aggregate. Nonetheless, because Amendment 23's language clearly only required annual increases to those two aspects of the funding formula—as opposed to school funding as a whole—the State argued that the General Assembly had fulfilled its constitutional mandate and the Plaintiffs had therefore failed to meet their burden of establishing a cognizable claim. *Id.*

With minimal discussion, the District Court denied the State's Motion to Dismiss, stating bluntly:

> Amendment 23 prescribes minimum increases for state funding of education. *Lobato v. State*, 218 P.3d at 376. Plaintiffs assert, that when implemented, Subsection (g) reduces the amount of funding for school districts below the level required by Amendment 23. Plaintiffs have alleged sufficient facts.

See District Court Order Dated Nov. 12, 2014 at 4. The District Court's superficial analysis, however, failed to meaningfully grapple with the underlying legal issues. Had the District Court engaged in a proper legal discussion, it would have recognized that the text of Amendment 23 is clear and compels no more than the General Assembly has done.

A. The General Assembly complied with the mandate of Amendment 23.

The school funding scheme applicable for Colorado public schools is codified at C.R.S. §§ 22-54-101 *et seq*.. As relevant here, one of the key aspects of the funding formula is the "statewide base per pupil funding." *See* C.R.S. § 22-54-104(3), (5)(a). In 2000, the people of Colorado passed Amendment 23. In pertinent part, Amendment 23 requires that following certain appropriations between 2001 and 2011, the General Assembly must increase, on an annual basis, both "statewide base per pupil funding" and the "total state funding for all categorical programs." *See* Colo. Const. art. IX, sec. 17(1). For a decade after Amendment 23 was passed, the General Assembly made the annual appropriations in accordance with Amendment 23 and coincidentally increased overall funding for public schools.

Following the financial crisis between 2007 and 2009, however, the General Assembly surmised that it was no longer financially viable to continue growing school funding unchecked. As a result, in 2010 the General Assembly added a negative factor to the school finance formula, which effectively capped funding for all school districts at a certain level. *See* C.R.S. § 22-54-104(5)(g)(I). Once in effect, the negative

factor resulted in a reduction in school funding during fiscal year 2014-2015 of $894,202,067.00. Notwithstanding the overall reduction in funding over that period, the General Assembly continued to raise both the statewide base per pupil funding and state funding for all categorical programs, as required by Amendment 23.

B. The plain language of Amendment 23 required no further action by the General Assembly.

When interpreting the Colorado Constitution, this Court will review the issues on a de novo basis. *See Lobato v. State*, 304 P.3d 1132, 1138 (Colo. 2013). If a constitutional provision or amendment "contains plain, clear language, [this Court will] not resort to rules of construction to construe its meaning." *Tivolino Teller House, Inc. v. Fagan*, 926 P.2d 1208, 1211 (Colo. 1996); *see also Colo. Ass'n of Pub. Emps. v. Lamm*, 677 P.2d 1350, 1353 (Colo. 1984) ("Where the language of the Constitution is plain and its meaning clear, that language must be declared and enforced as written.") In the context of a constitutional amendment passed by popular vote, this Court will "consider the intent of the voters in enacting the provision, and to that end, [the Court] must give the words of the amendment their natural and popular meaning." *Lamm*, 677 P.2d at 1353. Additionally, enactments of the legislature

carry a presumption of constitutionality, and the presumption "can be overcome only by showing that the enactment is unconstitutional beyond a reasonable doubt." *Id.*

Applying the aforementioned principles of constitutional interpretation, there is no question that by ensuring annual increases to both the "statewide base per pupil funding" and "state funding for all categorical programs," the legislature fulfilled its constitutional mandate under Amendment 23. Indeed, there is nothing facially ambiguous about the Amendment's language—it requires annual adjustments to certain aspects of the school funding formula. And, the Plaintiffs do not contend that the legislature ever failed to fund those required elements. Rather, the Plaintiffs' assertions are premised on a misguided and overbroad application of secondary tools of constitutional interpretation. Viewed objectively, the scope of Amendment 23 is inherently narrow and the legislature has operated well within its bounds. For that reason, because the Plaintiffs have failed to assert any facts tending to show that the legislature did not comply with the letter of Amendment 23, their claim invariably fails and the District Court should have granted the State's Motion to Dismiss.

C. The Plaintiffs' approach to constitutional interpretation is neither controlling nor persuasive.

The Plaintiffs attempt to overcome Amendment 23's plain language by manufacturing ambiguity in its terms. In doing so, however, the Plaintiffs completely fail to apply standard principles of constitutional interpretation and instead rely on an over-inclusive analysis of "voter intent." Tellingly, the Plaintiffs' Answer Brief cobbles together a loose framework for constitutional interpretation using only principles that apply where a provision is clearly ambiguous. *See* Answer Brief at 4, 22. In particular, the Plaintiffs place substantial reliance on a nearly limitless construction of inferences which may be drawn from "contemporaneous interpretation of those promoting the amendment." *See id.* at 4 (citing *Lobato v. State*, 218 P.3d 358, 375 (Colo. 2009). Similarly, the Plaintiffs contend that applying the interpretation forwarded by the State would undermine the overarching purpose of Amendment 23 and create absurd results. For the following reasons, however, those assertions fail.

i. The persuasiveness of "contemporaneous interpretations" is far narrower than the plaintiffs contend.

In their Answer, the Plaintiffs stretch language from this Court's decision in *Lobato* to create a theory of constitutional interpretation which, if taken to its logical conclusion, lacks any meaningful boundaries. Specifically, the Plaintiffs point to this Court's statement in *Lobato* that, when construing a constitutional amendment, "[e]vidence of the 'contemporaneous interpretation of those actively promoting the amendment' may also be given weight." 218 P.3d at 375 (quoting *Bedford v. Sinclair*, 147 P.2d 486, 489 (Colo. 1944)). According to the Plaintiffs, that language justifies reliance on newspaper articles and out-of-context quotations as a measuring post for the meaning of constitutional amendments. That position is clearly afield from this Court's clear language indicating both that (i) contemporaneous understandings *may* be given weight, and (ii) those understandings must be made by "those actively promoting the amendment." *See id.*

In their brief, the Plaintiffs do not cite to any language from a proponent of Amendment 23, but rely exclusively on newspaper articles from the *Rocky Mountain News* and the *Denver Post*. *See* Answer at 6.

The only limiting factor that can be discerned from the Plaintiffs' proposed analysis is whether the communication is related to the amendment. Taken to its logical conclusion, the Plaintiffs' theory of construction would arguably apply to casual dinner conversations or bumper stickers, on the condition that they relate to a proposed amendment. Clearly that was not the intent of this Court's language in *Lobato*.

The irony of the Plaintiffs' assertions regarding contemporaneous understandings is that there is clear evidence demonstrating that the proponents of Amendment 23 actually understood that it *would not* increase overall education funding. *See* Memorandum from Office of Legislative Legal Services to Representative Keith King, 9–10 n.22 (January 22, 2003). In particular, the proponents "acknowledged that their intent was to require statewide base per pupil funding, *and not total program funding*, to increase by inflation plus one percent." *Id.* (emphasis added). The proponents' rationale was that all of the other factors in the education funding formula are "very fluid" and implicitly subject to some exercise of legislative discretion.

In addition to the generalized statements by the proponents regarding the intent of Amendment 23, the testimony of former Colorado State Treasurer Cary Kennedy provides further evidence of the underlying intent:

> Proponent Cary Kennedy: ". . . Will every single district receive exactly one percent? I mean, it's the total program that's going to grow by a percent, the total appropriation, not . . ."
>
> LCS Assistant Director Deb Godshall: "No, see that's not what I picked up . . ."
>
> Proponent Cary Kennedy: "It's, it's per pupil . . . if per pupil grows by one percent, then each district would grow by one percent. Okay."
>
> LCS Assistant Director Deb Godshall: "If they're losing 10% of their kids, they might not get one percent total funding, but their per pupil funding will grow by one percent."
>
> Proponent Cary Kennedy: "Okay, good. I think that is . . . that is our intent."

Id. at Addendum D. Based on that exchange, it is apparent that the intent of Amendment 23 was to ensure only that per pupil funding increased on an annual basis. Indeed, the exchange clarifies that it is entirely possible that overall funding could be reduced so long as it is accompanied by a corresponding increase to per pupil funding. That is

precisely the interpretation that the State has advocated for, albeit on a larger scale.

The *Amici Curiae* concede that some external materials may be considered in connection with constitutional interpretation, but only in limited circumstances. Specifically, this Court has emphasized that, when an amendment is ambiguous, "a court may ascertain the intent of the voters by considering other relevant materials such as the ballot title and submission clause and the biennial 'Bluebook,' which is the analysis of ballot proposals prepared by the legislature." *In re Submission of Interrogatories on House Bill 99-1325*, 979 P.2d 549, 554 (Colo. 1999). Of course, consideration of positions contained in the Bluebook is ultimately contingent on a determination that Amendment 23 is ambiguous, which is simply not the case.

ii. The State's interpretation of Amendment 23 would not create absurd results.

The Plaintiffs also assert that if the State's interpretation of Amendment 23 is given effect, the results would be absurd. *See* Answer at 22–25. In making that assertion, the Plaintiffs rely on unfounded statements regarding the intent of the Amendment. At bottom, the

Plaintiffs' argument turns on their view that Colorado's voters intended something more than the plain language of Amendment 23 requires. Indeed, the Plaintiffs do not—and cannot—contend that the result created by the State's interpretation would be in any way inconsistent with the terms of Amendment 23. In other words, the Plaintiffs' absurdity argument is inherently tethered to their argument that the Amendment should be given an effect that is not clearly discernable from its language. As a result, this argument is effectively a false syllogism, and should be categorically disregarded.

Furthermore, the Plaintiffs completely ignore the fact that although "an unjust, absurd, or unreasonable result should be *avoided* when construing a constitutional provision," *Bickel v. City of Boulder*, 885 P.2d 215, 229 (Colo. 1994), no canon of constitutional construction requires this Court to rewrite amendments in a manner that overcomes an otherwise unusual result. In other words, that approval of Amendment 23's narrow funding requirements may create a somewhat bizarre result does not require this Court to conclude that the outcome is "absurd." On its face, Amendment 23 is precise in its wording with respect to which aspects of Colorado's school funding scheme require

annual adjustments. If anything, the limited scope of Amendment 23 reflects an intent by the voters to protect only certain aspects of the school funding formula while leaving other aspects in the sound discretion of the legislature.

D. The Plaintiffs are seeking a judicial resolution of a legislative issue.

A final consideration, which is not addressed substantively in the State's brief, is that the Plaintiffs are seeking judicial intervention into an issue which is most appropriately suited for resolution by the legislature. The General Assembly's decision on how to best fund education programs in Colorado is precisely that—a legislative decision that is properly subject to the legislature's discretion. Concerns with such an exercise of discretion are more appropriately addressed through the electoral process whereby the unpopular actions of state legislators are subject to popular scrutiny at the ballot box.

III. ANY RULING IN FAVOR OF THE PLAINTIFFS WOULD BE ECONOMICALLY RUINOUS FOR COLORADO.

If this Court entertains the arguments forwarded by the Plaintiffs and agrees that they have adequately stated a claim, the potential economic impacts on the entire state are severe. Indeed, were this Court to concur that Amendment 23 requires that the General

Assembly increase overall educational funding on an annual basis, the legislature would be faced with two equally unappealing and inoperable solutions: reduce (to near zero levels) funding for all other state-funded programs or seek voter approval to impose additional taxes. Were either scenario to reach fruition, the negative consequences to Colorado's economy and those who receive state services will be dramatic.

A. Adopting Plaintiffs' view would virtually eliminate all other State programs.

There is no dispute that, as a result of the negative factor introduced by the legislature into the school funding formula, annual school funding has been reduced in an amount nearing $1 billion. The legislature made those cuts not with any malicious purpose, but rather in order to cope with the financial realities of a state economy attempting to weather a deep financial crisis. The Plaintiffs' analysis of Amendment 23 would remove the legislature's discretion and declare those cuts categorically unconstitutional. As a result, the General Assembly would be forced to reallocate precious resources from other state-funded programs, thereby either markedly reducing or possibly eliminating essential services.

To put that $1 billion in context, the total state General Fund appropriation for FY 2011–12 was approximately $7 billion. *See* UNIVERSITY OF DENVER, FINANCING COLORADO'S FUTURE: AN ANALYSIS OF THE FISCAL SUSTAINABILITY OF STATE GOVERNMENT, 10 (2011). During that same time period, K–12 education received approximately 46 cents of every dollar appropriated from the general fund, or more than $3 billion. *Id.* at 30. In addition to education, the primary recipients of state funding were Medicaid and other health care ($1.5 billion), and corrections ($624 million). Together, those three programs constituted nearly 75% of the overall budget. Because such a substantial portion of the State's overall budget is already allocated to education, Amendment 23 necessarily walks a delicate line between properly funding education while concurrently leaving sufficient resources to fund other essential programs.

Were this (or any other) Court to agree with the Plaintiffs' interpretation of Amendment 23, K–12 education funding *alone* would represent almost 60% of Colorado's General Fund appropriations. And, because the Plaintiffs' interpretation would compel the legislature to make year-over-year increases to education funding, the percentage of

Colorado's budget devoted exclusively to that purpose would steadily increase until it consumed the entire budget. As a result, it is indisputable that virtually every other major budget priority and program would be eliminated or severely cut. Indeed, programs for some of Colorado's most needy would necessarily be reduced, including essential medical services for at-risk populations including low-income, destitute, and elderly persons.

Eliminating state-funded programs will, of course, have widespread impacts in Colorado beyond the immediate loss of services. For example, a reduction in services would be directly linked to corresponding public employee layoffs. The financial devastation will be compounded by a macro-economic climate that is highly unattractive to employers looking to relocate or expand in Colorado. Hiring will thus shrink further, private-sector job losses will increase, and companies will leave Colorado for more favorable states. The net result will be reduced state tax revenue, making it harder to fund education, which could in turn require further reallocation to meet the court ordered funding levels. The cycle will then repeat itself and the economy will spiral down further.

In addition, a state budget predominantly allocated to public education could restrict the state's ability to participate in long-term infrastructural projects such as state highways and buildings. Nonetheless, even assuming limited funds are available, Colorado's credit rating will be reduced and the bond markets will almost certainly view future revenue streams as speculative at best.

While the Plaintiffs may try to dismiss the impacts of such cuts as hyperbole, the predictions come from experience. The *Amici Curiae* dedicate significant resources and time to studying what drives Colorado's economy and job growth. In short, employers doing business in Colorado and those looking to relocate here care about a few fundamental aspects of the economy: the transportation system (roads, mass transit and airports), higher education, public K–12 education, the tax and regulatory structure, and labor force skills. *See generally* Mark Arend & Adam Bruns, Force Field, SITE SELECTION (Nov. 2007), *available at* http://www.siteselection.com/issues/2007/nov/cover/. Evidence and decades of experience by *Amici Curiae* and their members running Colorado businesses shows that the poorer the quality of these services (or their total elimination, as is possible here), the less likely

businesses are to operate and hire in Colorado or relocate their operations here. Ultimately, a well-educated child that cannot find work upon graduation from high school or college has not been well served.

B. The General Assembly could instead seek large-scale tax increases that would create a constitutional quagmire and be equally devastating to the economy.

Rather than shifting another $1 billion of the General Fund to education, the General Assembly could instead seek voter approval under TABOR to raise the funds through massive tax increases. If imposed through either an increase in the state income taxes or sales and use tax, the legislature would have raise rates by several percentage points. And while many other options and combinations for tax increases surely exist, there is little doubt that such increases would not only be unprecedented in Colorado, but that they would have a profound and equally devastating impact on the economy equal to the reallocation of the entire budget described above.

Putting aside the financial impact, there is also a very real question about how such a tax would be imposed. Unlike any other state that has litigated education funding, Colorado requires a

statewide vote under TABOR to impose any new tax or to increase an existing tax rate. *See,* Colo. Const. art. X, sec. 20. If the Plaintiffs' interpretation of Amendment 23 is adopted, the practical impact will be that a court imposes a version of the Amendment which differs from its plain language as originally passed. Convincing a majority of qualified voters to fund a judicially-created interpretation of Amendment 23 would stand little chance of success.

It is not difficult to imagine the underlying issues in this case causing an intergovernmental brawl between the individual branches. Such a dispute would invariably be accompanied by protracted litigation and unproductive infighting. This Court can avoid that outcome by reversing the District Court's decision and ordering that the Plaintiffs' claims be dismissed entirely.

C. Alternatively, the General Assembly could make piecemeal adjustments to the funding formula.

Rather than shifting a massive portion of the budget to education funding or raising taxes, the General Assembly does have a third option: take intermediate steps which would almost certainly fail to adequately address the issue. Here, the Plaintiffs' only requested relief is a declaration that the legislature's imposition of a negative factor in

the overall funding formula is unconstitutional. *See* Complaint at 11–12. As a result, the legislature could simply allow the Negative Factor to lapse—and thereby satisfy the Plaintiffs' requested relief—and concurrently tinker with other aspects of the education funding formula in any attempt to reach a constitutionally satisfactory outcome.

The net result of such a scenario is predictable: the case will enter a revolving door of legislative fights and litigation that will go on for decades. Moreover, the Colorado trial and appellate courts will become the *de facto* legislature, joint budget committee, state commissioner of education, and local school board, forced to make detailed decisions about how the additional education revenue is raised and how much is allocated to individual education priorities, all with no appreciable gains in student achievement but creating significant uncertainty to the state's economy and harm to it.

CONCLUSION

Because the language of Amendment 23 is clear and unambiguous, the Court should accept jurisdiction and resolve this important issue of law. The *Amici Curiae* respectfully request that the

Court reverse the decision of the District Court and order that the Plaintiff's case be dismissed.

Respectfully submitted this 22nd day of April, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2015, a true and correct copy of this ***AMICUS CURIAE*** **BRIEF OF COLORADO CONCERN, *ET AL.*** was filed with the clerk of court via the ICCES program which will send notification of such filing and service upon the following:

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