SUPREME COURT, STATE OF COLORADO
2 East 14th Avenue
Denver, CO 80203

District Court of the City and County of Denver
Honorable Herbert L. Stern, III
Case 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 Kirsten Johnson; Tracey Weeks and Monty Weeks, as individuals and as parents of Jared Weeks and Jordyn Weeks; Terri Piland and Jeffrey 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 John Hickenlooper, in his official capacity as Governor of the State of Colorado.

□ COURT USE ONLY □

Case No. 2015SA22

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BRIEF OF *AMICI CURIAE*
IN SUPPORT OF PLAINTIFFS-RESPONDENTS

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 those rules. Specifically, the undersigned certifies that:

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

X It contains 5276 words.

It does not exceed 30 pages.

C.A.R. 28(k) does not apply to *amicus curiae* briefs.

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

/s/ Kathleen A. Sullivan

TABLE OF AUTHORITIES

Cases

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I. ISSUES PRESENTED FOR REVIEW

CASB, CASE, and CBA adopt the Statement of the Issues as set forth in Plaintiffs' Response to Order and Rule to Show Cause.

II. STATEMENT OF THE CASE

CASB, CASE, and CBA adopt the Statement of the Case as set forth in Plaintiffs' Response to Order and Rule to Show Cause.

III. STATEMENT OF FACTS

Since its inception, the Public School Finance Act of 1994[1], Colorado Revised Statutes §§ 22-54-101, *et seq*. ("PSFA") has established for Colorado a school finance formula that provides an annual base level of support for public education for each school district, referred to as its "total program" funding. C.R.S. § 22-54-104(1). The PSFA defines the "***total program***" as "the funding for a district, as determined pursuant to section 22-54-104 or section 22-54-104.3…." C.R.S. § 22-54-103(6).

Sections 104 and 104.3, both titled "total program", outline the school finance formula with per pupil funding and factors funding. C.R.S. §§ 22-54-104

[1] Colorado's current school finance act is still cited as the "Public School Finance Act of 1994." For purposes of this Brief, where necessary to explain the law in effect at the time Amendment 23 was passed in 2000, Amici include the year as part of the citation.

and 104.3. The first part, per pupil funding, is the dollar amount identified by the State for a school district with no unusual local conditions. The second part, factor funding, accounts for differences in local conditions by making adjustments for the number of at risk students in the district, the size of the district, and personnel costs. Every district in the state receives factor funding under the formula.[2]

In 2000, Colorado voters passed Amendment 23. Amendment 23 required increased state funding for kindergarten through twelfth grade education through mandated increases of inflation plus 1% from 2001-2011 and mandated increases of inflation after that time period. Colo. Const. art. IX, § 17(1). For a decade after the passage of Amendment 23, the Legislature increased school funding in accord with the Amendment.

In 2010, the Legislature passed legislation to reduce the state appropriation for public education by creating the so-called negative factor that it incorporated into the school finance formula in Colorado Revised Statute § 22-54-104(5)(g). In adopting the negative factor, the Legislature made clear its determination that "stabilization of the state budget requires a reduction in the amount of the annual appropriation to fund the state's share of ***total program funding*** for all districts…."

[2] Colo. Dep't of Educ., Pub. Sch. Fin. Act of 1994 Projected Fiscal Year 2014-15 Funding Summary (2014), *available at* http://www.cde.state.co.us/cdefinance/fy14-15districtbydistricttable ("Funding Summary").

C.R.S. § 22-54-104(5)(g)(I)(emphasis added). The negative factor applies to this total program funding, meaning both per pupil funds and factors funds, as a percentage reduction to shrink the State's expenditure to the size determined by the Legislature as permissible in the State's overall budget.

The negative factor's impacts can best be understood in application to real school districts and their students who will be affected. For example, the Silverton School District in southwest Colorado, a small and geographically isolated school district, currently receives $14,912.00 per pupil under the PSFA.[3] The School District loses per pupil funding of more than $2,200.00 due to the negative factor. If all factor revenues were removed from the PSFA, Silverton's per pupil funding fall to the statutory per pupil amount of $6,121.00[4] would mean a cut of almost 60% to its current annual budget. Approximately 50 other Colorado school districts, primarily rural, would face cuts of 40-60%, similar to Silverton's.[5]

[3] Funding Summary at p. 10 (2014).
[4] Under Petitioners' calculations, as adjusted by inflation and other requirements in the PSFA since 2000, Amendment 23 would have grown just the statutory per pupil component of the funding formula to $6,121.00 in the current 2014-2015 fiscal year.
[5] *See* Funding Summary.

By the 2013-14 fiscal year when the negative factor was more than $1 billion (and only about $600 million remained in the PSFA's factors funding), [6] small school districts were barely hanging on. Had the recession continued another year or two and the negative factor continued to grow along with it, any semblance of equalizing factors funding would have disappeared. And so too would dozens of school districts.

IV. SUMMARY OF ARGUMENT

The Petitioners ask this Court to take the extraordinary step of exercising its original jurisdiction in this case before trial or any other evidentiary record has been set to guide the Court's judgment. No district court order is poised to go into effect that would irretrievably prejudice the Petitioners' interests. In support of their petition, therefore, Petitioners rely only on vague factual allegations of harm to the State's budget and on their claim that the law requires judgment for them. Neither argument is sufficient to justify the extraordinary intervention by this Court at this time.

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[6] Todd Herreid, Staff of Colo. Legislative Council, Report on the State Educ. Fund, 1st Sess. at 7 (Feb. 1, 2013), *available at* http://www.colorado.gov/cs/Satellite?c=Document_C&childpagename=CGA-LegislativeCouncil%2FDocument_C%2FCLCAddLink&cid=1251639210528&pagename=CLCWrapper.

The linchpin for Petitioners' claims and arguments in this case is their assertion that Amendment 23 and the 1994 PSFA permit the Legislature to divide the formula used to calculate total district program per pupil funding for school districts into two parts, a base and factors, and treat those components differently. At its end, Petitioner's argument contends that only the first component, a base number, must be funded, and the other, factors, need not be funded at all irrespective of the overall impact on the State's K-12 expenditures.

The State's tortured construction of Amendment 23 relies on a definition of "base" that would create discord within the 1994 PSFA, with this Court's recent decisions construing other provisions in Article 9 of Colorado's Constitution, and within Amendment 23 itself. Further, the State all but admits it has to contravene the will of the voters expressed in Amendment 23 to find a way to reduce the overall expenditure on public education in order to meet the State's financial limitations imposed by other constitutional provisions. Though the Legislature has great flexibility in meeting its constitutional obligation to provide a "thorough and uniform" system of public schools, it cannot create a novel statutory device that takes a percentage reduction of state spending to dodge a voter-initiated constitutional spending mandate.

Amici submit the State's interpretation violates the Colorado Constitution and ignores the very real likelihood that such an interpretation will close the books and shut the doors in school districts across this great State of Colorado. Moreover, with respect to the Petition of a Rule to Show Cause, the State fails to establish any terrible consequences for the Legislature or the State's budget if this case proceeds through the normal procedure of trial and appeal. Rather, trial and appeal would ensure a judgment that fully comprehends the factual and legal issues at stake in this case. The Court must follow its well-established policy and discharge the Rule to Show Cause.

V. ARGUMENT

1. The Base Per Pupil Funding Amendment 23 Addresses Is The "Financial Base Of Support" All School Districts Must Receive Under the 1994 PSFA.

Amendment 23 mandates the State to increase "statewide base per pupil funding, as defined by the [1994 PSFA]." Colo. Const. art IX, §17. Among the many definitions in the 1994 PSFA, there is no definition of "statewide base per pupil funding." *See* C.R.S. § 22-54-103 (definitions). Instead, Petitioners snatch one phrase from a few subsections of the PSFA to contend the Legislature's invention of a new negative factor is a constitutional vehicle calculated to excise from the total program funding the amount necessary to bring the funding within

the State's budget allocation. But Petitioners' attempted reliance on this single phrase to construct a plain language argument fails. A proper legal analysis requires consideration of the Act as a whole to devise the operational definition necessitated by Amendment 23.

The PSFA as it existed when voters passed Amendment 23 carefully defined the funds each school district must receive as the "financial ***base*** of support for public education in that district" as "***the district's total program***." C.R.S. § 22-54-104(1)(emphasis added). These are the dollars available to fund the costs of providing public education budgeted and expended by the school district. *Id*. The PSFA defines the "***total program***" as "the funding for a district, as determined pursuant to section 22-54-104 or section 22-54-104.3" C.R.S. § 22-54-103(6). Sections 104 and 104.3, both titled "total program", frame the school finance formula and provide for both per pupil funding and factors funding.

In its explanation of what subsequently became the funding formula in the 1994 PSFA, the 1993 Interim Committee on School Finance explained the two distinct yet unified elements necessary to make the school finance formula work sensibly stating:

> This funding formula acknowledges that the cost of providing the same educational services varies by school district, and that these differing costs are due to circumstances beyond an individual school district's control. The formula accommodates these differing costs pressures by

> identifying a state-wide base per pupil funding amount and adjusting that amount to take the cost differences into account.[7]

The reason for these adjustments is also set forth in the act:

> The general assembly hereby finds and declares that this article is enacted in furtherance of the general assembly's duty under section 2 of article IX of the state constitution to provide for a thorough and uniform system of public schools throughout the state; **that a thorough and uniform system requires that all school districts operate under the same finance formula**….

C.R.S. § 22-54-102(1)(emphasis added). In sum, the base per pupil funding, including a per pupil amount and factor adjustments, was explicitly formulated by the Legislature to fulfill the thorough and uniform requirements of the State's Constitution.

In the other instances for which the PFSA calculates state and district per pupil amounts, the statute uses the total program funding amount divided by state or district pupil counts. C.R.S. § 22-54-103(9)(defining "per pupil operating revenues" as "the district's total program for any budget year divided by the

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[7] Interim Comm. on Sch. Fin., Report to Col. Legislative Council, 2nd Sess., at 8 (Dec. 1993), Colo. Legislative Council Research Publ'n No. 388, *available at* http://cospl.coalliance.org/fedora/repository/co:2918/ga49388internet.pdf.

Five years after voters approved Amendment 23 another interim school finance committee reinforced the importance of both elements of the formula. Interim Comm. on Sch. Fin., Report to Colo. Gen. Assembly: Recommendations for 2006, 2nd Sess., at 3-4 (Dec. 2005), Research Publ'n No. 545, *available at* http://cospl.coalliance.org/fedora/repository/co:874.

district's funded pupil count [minus C.R.S. § 24-54-105]"); C.R.S. § 22-54-103(12)(defining "state average per pupil operating revenues" as the average of the total program formula amount for all districts divided by the total student count in the state). Taken as a whole, the PSFA generates a carefully calibrated operational definition of statewide base per pupil funding as the total program funding on a per pupil basis that each school district must receive to deliver a complete educational program. It is this definition to which Amendment 23 must apply.

Though the Legislature theoretically constructed the negative factor to make cuts uniformly across school districts, the negative factor disproportionately impacts those school districts most dependent on the factors funding and those most reliant on state funding because of low local tax bases. Even a cursory review of the negative factor's disproportionate impact on school districts and students demonstrates why the statutory per pupil and factors funding cannot be split without shattering the formula's constitutional construct. More than just parsing numbers, Petitioners' arguments to fund one part of the formula and not the other will devastate Colorado's small and rural school districts.

For example, Logan County in northeast Colorado contains four school districts, and the effect of the negative factor can be dramatically illustrated within the confines of this one county. The largest school district is the Valley Re-1

School District (Sterling) with 2,200 students, and the smallest is the Plateau Re-5 School District (Peetz) with almost 180 students. Funding Summary, *supra* note 2, at 7. For the current year, without considering the negative factor, the total program funding per pupil in Peetz would be $13,293.00, and in Sterling $7,702.00. Yet the negative factor as applied in the 2014-15 fiscal year is $995.00 per pupil in Sterling and $1,718.00 per pupil in Peetz. Setting aside Amendment 23 for a moment, the negative factor completely destroys the integrity of the PSFA's formula. And with it, the capability of Peetz to deliver an education to its students substantially thorough and uniform with the education provided to the Sterling students has also, not coincidently, been destroyed. Through Amendment 23, Peetz and Sterling should both have additional resources available to meet the needs of their students.

The negative factor also inequitably impacts communities with high populations of at-risk students. The Pueblo City School District, with a student population of approximately 17,000 students and 11,250 at-risk students, this year loses to the negative factor on a per pupil basis $1,042.00. Funding Summary at pp. 9-10. The Littleton School District, at nearly the same size with approximately 15,000 students, and an at-risk student population of 2600 students, this year loses to the negative factor on a per pupil basis $1,005.00. *Id*. at p. 1. This means the

negative factor's impact is compounded in Colorado's school districts serving students with the biggest challenges. Assuming Pueblo City's student population, Pueblo City's larger negative factor takes $630,000.00 more out of Pueblo's general funds budget than would Littleton's negative factor.

It is not sufficient to claim that the negative factor can be made up by local voters. The Littleton Public School District, very much to its credit, has received from local voters approval for mill levy overrides which total approximately $29 million, about $1,947.00 per pupil, in the current fiscal year, more than enough to compensate for the negative factor.[8] On the other hand, the Pueblo City School District, despite valiant efforts, has zero dollars in mill levy override.[9] Again assuming Pueblo City's student population, the dollar per pupil amount of just restoring the negative factor would add more than $17 million dollars to the Pueblo City budget. Local voters may choose, as they did in Littleton, to compensate for the loss of the negative factor, or even to do more. But in communities where that support is not forthcoming, often in communities of higher need, the negative factor magnifies the effects of underlying inequities.

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[8] Colo. Dep't of Educ., Pub. Sch. Fin., FY 2014-15 Override Reconciliation (2014), *available at* http://www.cde.state.co.us/cdefinance/fy2014-15milllevyoverrides.

[9] Colo. Dep't of Educ., Pub. Sch. Fin., Final Mill Levy Summary FY 2014-15, at p. 10 (2014), *available at* http://www.cde.state.co.us/cdefinance/fy2014-15finalmilllevies.

The Petitioners' arguments to reduce the definition of base per pupil funding to a simple single number resemble the biblical story in which Solomon proposed to split the baby by literally cutting the baby in half. 1 *Kings* 3:16-28. Like Solomon, the Petitioners propose to split in half something which cannot survive in two separate parts. Unlike Solomon, the Petitioners seem blithely unaware of the consequence of what they propose and ask this Court to sanction. To divide that which cannot be divided disproportionately harms students and districts for which the PSFA most seeks to protect a base of support to maintain Colorado's Constitution's promise of a thorough and uniform system of public education. In so doing, Petitioners jettison not only the PSFA but also Amendment 23's clear direction to increase state funding for K-12 education.

2. The State's Argument that Its Feared Outcome Dictates the Legal Analysis and Process Must Be Rejected.

The Court's original jurisdiction under Rule 21 may only be invoked when no other remedy, including appeal from a trial court order, will suffice. Colo. App. R. 21. A party asking this Court to assert its jurisdiction under Rule 21 must present specific and concrete facts that show a compelling need. *Nickerson v. Network Solutions, LLC*, 339 P.3d 526 (Colo. 2014); *In re People ex rel. A.H.*, 216 P.3d 581, 584 (Colo. 2009). A bare assertion that a normal appeal would not be timely is insufficient to trigger the Court's jurisdiction under Rule 21. *In re People*

ex rel. A.H., 216 P.3d at 584. Nor does speculation alone suffice as a ground for this Court to intervene. *People v. Hoskins*, 333 P.3d 828, 836 (Colo. 2014). This Court treats relief under Rule 21 as an extraordinary remedy "limited in purpose and availability." *Id*. at 834 (internal citations omitted).

The Petitioners assert that the Legislature is worried about the outcome of this case and that this alleged worry is sufficient grounds for the extraordinary step of invoking the Court's original jurisdiction without trial. Pet. 13-14. The Petitioners cite no legal authority for this unusual notion of urgency. The only other facts alleged to the Court in support of this Petition, other than legislative anxiety, is the claim that funding the negative factor will require the Legislature "to cut that much in spending on **essential state services**." Pet. 13 (emphasis added). And to make sure this warning is not missed, Petitioners also hint that the potential outcomes in this case are akin to the damages and impact on the state budget that would have occurred as a result of a decision against the State in the *Lobato* case decided by this Court. Pet. 14; *see Lobato v. State*, 304 P.3d 1132 (Colo. 2013).

These factual allegations as set forth in the Petition fall well short of "specific facts demonstrating a compelling need." *In re People ex rel. A.H.*, 216 P.3d at 584. The allegation of legislative anxiety is not even a fact. It is pure

speculation. There is absolutely nothing in the record of this case before the Court that warrants even an inference that the Legislature is in anyway deterred in the conduct of its business because it is fretting over when or how this lawsuit will be decided. Such groundless speculation may never suffice to invoke this Court's jurisdiction.

Similarly, Petitioners' suggestion that this case will cause some immediate harm to the State's budget if this case follows its regular procedural course is wrong in both its procedural and factual premises. On the procedural front, the State argues the Legislature must know its bounds because its 2015 term has already opened. Pet. 13-14. However, even an immediate decision by this Court on this Petition will come too late for any action during the 2015 Legislative term.[10]

In the ordinary course of events, this case would have been tried as set for trial in November 2015, and a trial court ruling would have issued (and, assuming a decision unfavorable to the State, been properly stayed pending appeal) at or around the time of the opening of the 2016 term of the Legislature. In the event of an appeal, this Court then would have the benefit of a fully developed trial record

[10] By this Court's orders, the Respondents Brief in this matter is due to the Court on March 23, and Petitioners Brief is due to the Court 30 days later, on April 22. The 2015 term of this Legislature will close on May 6, barely more than two weeks following the close of briefing and certainly before this Court may reasonably issue any order on this Petition to Show Cause.

in its consideration of this case. Moreover, the timing and circumstance of this Court's jurisdiction in response to that appeal would not be notably different in relation to the 2016 term of the Legislature than consideration of this Petition at this time is in relation to the 2015 term.

Factually, the Plaintiffs ask only for a declaratory judgment that the legislation creating the negative factor violates Amendment 23, not damages. Compl. ¶¶ A-E. Whether such a declaratory judgment, if it is entered at all, enters in two months or 42 months, the impact of that order on the Petitioners under the current pleadings would be no different. Compl. ¶ B. Again, Petitioners merely speculate that the Plaintiffs will seek further relief either by amending their complaint or filing a subsequent action based on such a declaratory order. A more reasonable theory, based on the nature of the complaint in this case and the relief requested, is that the Plaintiffs would work with the State to fashion an appropriate remedy going forward. Regardless, nothing about Petitioners' speculation establishes the factually based compelling need for this Court to invoke its extraordinary Rule 21 jurisdiction at this time. *Hoskins*, 333 P.3d at 836.

Finally, Petitioners' assertion that this case, like the *Lobato* case, calls into question the State's entire budget is simply wrong. In the first instance, Petitioners' claim implies a false equivalency between the issues and potential remedies in this

case and those in *Lobato*. In addition, the potential remedy sought in this case, even if translated into a specific dollar amount, does not call into question the entire State budget.

In *Lobato*, the Court was asked to define a standard for an "adequate" education in Colorado as required by the thorough and uniform clause in the Constitution. *Lobato v. State*, 218 P.3d 358, 364-67 (Colo. 2009). This Court ruled in its final *Lobato* decision that the courts are not equipped or empowered to create such a definition absent clear guidance in Colorado's Constitution. *Lobato v. State*, 304 P.3d 1132, 1139-1141 (Colo. 2013). It was clear, however, that had Plaintiffs prevailed in that litigation, the potential additional funding for education by the State may well have amounted to several billions of dollars each year. *Id*. at 1147-50 (Bender, C.J., dissenting).[11]

This case is not remotely similar to *Lobato*. The contours of the negative factor are known and its amount defined, even if Plaintiffs prevail. The negative factor is currently less than $900 million, or less than 10% of this year's general

[11] It is worth noting that from the time the complaint in the *Lobato* litigation was initially filed until this Court issued its final decision in 2013, there occurred two appeals to this Court and a six-week trial over the course of eight years. In that case, notwithstanding the large potential damages and on-going involvement of the Court's jurisdiction, appeal of a final order was still the proper remedy.

operating budget.[12] At this writing, the State Education Fund balance is over $660 million.[13] Moreover, the State is now projected to receive over the next several years hundreds of millions of dollars each year over its Revenue Limit.[14] There are several options, not all requiring a statewide vote, which could make all or parts of these revenues available to the State's general fund without raising taxes.[15] Again, at best, it is speculation at this stage of the case to claim that the State's budget would suffer irreparable harm were this case to return to the trial court for final order and appeal. It is all the more speculative given Plaintiffs seek only declaratory relief.

Moreover, even it the State's budget were at overwhelming risk, it is not the task of this Court to resolve which parts of the public sector should be protected

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[12] Funding Summary, *supra*, at 12; State of Colo. Joint Budget Comm., FY 2014-15 Budget Package and Long Bill Narrative, 2nd Sess., at 1 (2014), *available at* http://www.tornado.state.co.us/gov_dir/leg_dir/jbc/14LBNarrative.pdf.

[13] Todd Herreid, Staff of Colo. Legislative Council, Report on the State Educ. Fund, 1st Sess., at 3, 8, 11 (Feb. 2, 2015), *available at* http://www.colorado.gov/cs/Satellite?c=Document_C&childpagename=CGA-LegislativeCouncil%2FDocument_C%2FCLCAddLink&cid=1251660848278&pagename=CLCWrapper.

[14] Staff of Colo. Legislative Council Econom. Section, Focus Colo.: Econom. and Revenue Forecast, 1st Sess., at 11-12 (March 18, 2015), *available at* http://www.leg.state.co.us/lcs/econforecast.nsf/vwfile/1503/$file/2015MarchForecast.pdf.

[15] *See, e.g.*,Colo. Futures Center, Colo. State Univ., Financing Colo.'s Future – A Fresh Look at the Funding of State Gov't, Executive Summary 5-8 (2013) *available at* webcom.colostate.edu/coloradofutures/files/2013/12/Sustainability-Study-Summary-FINAL1.pdf.

from the effects of conflicting Constitutional provisions and which should not. These problems are before this Court for resolution only because one constitutional provision, Amendment 23, mandates spending, and one limits the revenues the state may raise and keep, The Taxpayer's Bill of Rights (TABOR). Colo. Const. art. IX, § 17; Colo. Const. art. X, § 20.

The short answer to the Petitioners' argument that this Court must protect the State's budget from risk is that the very purpose of Amendment 23 was to ensure the spending the Legislature now seeks to avoid. *See City of Trinidad v. Haxby*, 315 P.2d 204, 208 (Colo. 1957). If the Constitution is too restrictive, "The remedy lies with the people who have the power to repeal the limitation at the polls." *Id*. at 208. As the U.S. Supreme Court recently noted in another context: "Members of this Court are vested with the authority to interpret the law; we possess neither the expertise nor the prerogative to make policy judgments." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S.Ct. 2566, 2579-2580 (2012). If the Court determines that the State has violated Amendment 23 through the invention of the negative factor, the policy judgments as to how to reconcile Amendment 23 with the other constitutional mandates will be the work of the Legislature.

Despite the alleged legislative anxiety and concerns for the state budget, Petitioners fail to establish compelling reasons for the Court to exercise its Rule 21

authority. This Court has long disfavored the use of an original writ where an appeal would be an appropriate remedy. *See People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1251 (Kourlis, J., dissenting)(Colo. 2003). This policy merely acknowledges the well-accepted principle that permitting the facts and the law of a case to be fully developed before appeal, in almost every instance, will permit a better judgment for the parties and a better use of this Court's time and resources.

3. The Relief Requested By Petitioners Would Violate Other Constitutional Provisions.

When construing constitutional provisions a court must seek a construction that harmonizes those provisions with other existing constitutional provisions. *Zaner v. City of Brighton*, 917 P.2d 280, 283, 286 (Colo. 1996). If one provision authorizes what another forbids, a conflict exists. *Bickel v. City of Boulder*, 885 P.2d 215, 228-29 (Colo. 1994). The courts will presume that a newly enacted constitutional provision has been framed and adopted in the light and understanding of existing laws. *Colo. Common Cause v. Bledsoe*, 810 P.2d 201, 207 (Colo. 1991). Finally, the courts should avoid interpretations of constitutional provisions that lead to unjust, absurd or unreasonable results. *Huber v. Colo. Mining Assoc.*, 264 P.3d 884, 889 (Colo. 2011)(*citing Bickel*, 885 P.2d at 229).

a. Sections 2 and 15 of Article IX of the Colorado Constitution Do Not Permit the State to Hack Up the PSFA.

Colorado's Constitution requires the General Assembly to establish and maintain a thorough and uniform system of free public schools throughout the state and to ensure that at least one public school shall be maintained in each school district within the state. Colo. Const. art. IX, § 2. A thorough and uniform system of public education is one that is complete, comprehensive and consistent across the state. *Lobato*, 304 P.3d at 1139; *see also Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1011 (Colo. 1982).

The Colorado Constitution also requires that each school district in the state shall have a locally elected school board, which "shall have control of instruction" in the schools in its school district. Colo. Const. art. IX, § 15. This Court has consistently ruled that a local school board has control over instruction when it has control over local funds and is able, consistent with this provision in the Constitution, to have the opportunity "for experimentation, innovation, and a healthy competition for educational excellence." *Lujan*, 649 P.2d at 1023. Together, Sections 2 and 15 in Article IX, are satisfied as long as a local school board has control over sufficient resources to direct and operate at least one public school within its district in some rough manner consistent with the schools in other schools districts across the state.

Colorado school districts are barely able to meet the State's educational mandates and local school boards have few discretionary dollars to decide how to spend. The negative factor and cuts over the last four years already have taken over $1 billion annually out of school finance. Petitioners' interpretation of Amendment 23 would allow the State to cut further. With this thinking, the majority of some 50 school districts, many in rural areas, would face budget cuts of an additional 40-60% of their total budgets.

Most could no longer continue to operate with cuts of the magnitude permitted under Petitioners' arguments. For those that might survive, they could not hope to operate at anything like the current calendar or provide anything that approaches the current level of educational services. Fifty school districts across the state providing no education services to their students, or only a drastically reduced level of education services, clearly would violate the requirements of Sections 2 and 15. The Petitioners' interpretation of Amendment 23 cannot be harmonized with either the express language contained in Sections 2 and 15, or with this Court's case law interpreting those sections.

b. The maintenance of effort requirements of section 5 of Amendment 23 conflict with Petitioners' interpretation of section 1.

Though section 5 of Amendment 23 lapsed after ten years, consideration of this text further shows that Petitioners' interpretation of Amendment 23's section 1 funding increase provision creates constitutional discord—here through a conflict within the Amendment itself. Subsection 5 provides, *inter alia*, that during the first ten years of Amendment 23, the General Assembly must "annually increase the general fund appropriation for total program under the Public School Finance Act of 1994, or any successor act, by an amount not below 5% of the prior year general fund appropriation for total program." Colo. Const. art. IX §17(5). This so-called maintenance of effort provision requires the Legislature to continue a similar level of funding support for K-12 Education from its general operating budget and not succumb to the temptation to simply prop up the school finance formula with State Education Fund revenues while spending the general fund dollars on other state expenditures.

During the first ten years of Amendment 23's implementation, section 1 required annual increases of at least inflation plus 1%; Section 5 required state total program funding annual increases of not below 5% of the prior year's expenditure. Colo. Const. art IX, §17(1) and (5). Reading these two provisions in harmony, it is patently clear that Amendment 23 requires increased school finance funding.

Petitioners' interpretation that Amendment 23's section 1 applies to only select elements of the PSFA's formula, but permits cuts to other elements of the same formula contorts the constitutional provision. In other words, Petitioners say the voters mandated the State to increase funds for education with one hand and allowed the State to take it away with the other. Under Petitioners' arguments, the Legislature could have cut the state support for K-12 education even during those years that Amendment 23's section 5 clearly obligated increases of no less than 5% over the previous year's general fund appropriations. To do so, the State would have to perform additional sleights of hand—moving funds from one place to another in the overall school finance formula to create the impression that the State increased K-12 funding without actually providing more funds to local school districts. In other words, the Petitioners' arguments would permit the Legislature to do under section 1 what section 5 prohibited. Such argument, particularly when considered in the context of section 5, is simply nonsensical and reaches an absurd result.

VI. Conclusion

For the reasons set forth above the Court must discharge its Rule to Show Cause and return this case to the Trial Court for trial and judgment.

Respectfully submitted this 23rd day of March, 2015.

COLORADO ASSOCIATION OF SCHOOL BOARDS

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2015, a true and complete copy of the foregoing Brief of Amici Curiae was filed with the Court and served upon all parties herein via ICCES as follows:

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