

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	
<p>City and County of Denver District Court No. 2014CV32543; Hon. Herbert L. Stern III</p>	
<p>In Re: Linda Dwyer, <i>et al.</i> v. State of Colorado, <i>et al.</i></p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
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<p style="text-align: center;">BRIEF OF THE COLORADO EDUCATION ASSOCIATION AS <i>AMICUS CURIAE</i> IN SUPPORT OF PLAINTIFFS/RESPONDENTS</p>	

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 contains 4,438 words.

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 and C.A.R. 32.

TABLE OF CONTENTS

CERTIFICATE OF COMPLIANCE..... ii

TABLE OF AUTHORITIESiv

STATEMENT OF THE IDENTITY AND INTEREST OF *AMICUS*..... 1

INTRODUCTION2

ARGUMENT3

 I. THE PEOPLE ENACTED AMENDMENT 23 BECAUSE
 COLORADO WAS LOSING GROUND ON EDUCATION
 FUNDING.....3

 II. THE NEGATIVE FACTOR HAS UNDERMINED THE CORE
 PURPOSES OF AMENDMENT 23.....12

CONCLUSION.....21

TABLE OF AUTHORITIES

Cases

<i>Abbott v. Burke</i> , 693 A.2d 417 (N.J. 1997)	7
<i>Bickel v. City of Boulder</i> , 885 P.2d 215 (Colo. 1994)	10
<i>Colorado Common Cause v. Bledsoe</i> , 810 P.2d 201 (Colo. 1991)	3,12
<i>Davidson v. Sandstrom</i> , 83 P.3d 648 (Colo. 2004)	3
<i>In re Submission of Interrogatories on House Bill 99–1325</i> , 979 P.2d 549 (Colo. 1999).....	3
<i>Ingram v. Cooper</i> , 698 P.2d 1314 (Colo. 1985)	10
<i>Lobato v. State</i> , 218 P.3d 358 (Colo. 2009).....	4
<i>Zaner v. City of Brighton</i> , 917 P.2d 280 (Colo.1996)	2

Statutes

Colo. Const. art. IX, § 17	3
C.R.S. § 2-4-203 (2015).....	3
C.R.S. § 22-54-104 (2013).....	10

Publications

Alliance for Excellent Education, <i>Saving Futures, Saving Dollars: The Impact of Education on Crime Reduction and Earnings</i> (2003)	12
Bruce Baker, Shanker Institute, <i>Revisiting the Age Old Question: Does Money Matter in Education?</i> (2012)	7-8,21

Elisabetta Basilico, <i>et al.</i> , Center for Tax Policy, <i>Teacher’s Salaries in Colorado: Reasons, Consequences, and Alternatives for Below Average Compensation</i> , 49 Taxpayer Report 2 (2002)	6-7
Ulrich Boser & Chelsea Straus, <i>Mid- and Late-Career Teachers Struggle with Paltry Incomes</i> , Center for American Progress (2014)	17
Jane Coggshall & Susan Sexton, National Association of State Directors of Teacher Education and Certification, <i>Teachers on the Move: A Look at Teacher Interstate Mobility Policy and Practice</i> (2008).....	19
Colorado Department of Education, <i>Personnel Turnover Rate by Position Categories</i> (2014)	19
Colorado School Finance Project, <i>Colorado and National Average Per Pupil Spending Trends</i> (2010).....	14
Colorado School Finance Project, <i>Per Pupil Spending & Ranking: Comparing Colorado and the US Average</i>	14
Colorado School Finance Project, <i>Quality Counts 2015 – How Much More Per Pupil?</i> (2015)	15-16
Colorado School Finance Project, <i>School Finance & Education Reform Timeline 1980-2017</i> (2015)	13
Colorado School Finance Project, <i>Trends in Per Pupil Spending: Dollar Amounts Colorado Spends Less than the National Average</i> (2014)	5
Colorado School Finance Project, <i>US Average & Colorado Per Pupil Spending – Adjusted for Inflation – FY 1996-FY2011</i> (2013)	13
David Figlio & Kim Rueben, <i>Tax Limits and the Qualifications of New Teachers</i> , 80 J. Pub. Econ, 49 (2001).....	18
Richard Ingersoll, <i>Teacher Turnover and Teacher Shortages: An Organizational Analysis</i> , 38 Am. Educ. Rsch. J. 499 (2001)	8

Helen Ladd, <i>Teachers’ Perceptions of Their Working Conditions: How Predictive of Policy Relevant Outcomes?</i> , Working Paper 33, National Center for Analysis of Longitudinal Data in Education (2009)	7
Legislative Council of the Colo. Gen. Assembly, <i>Analysis of the 2000 Statewide Ballot Proposals and Recommendations on Retention of Justices</i> (Research Publ’n No. 475-6, 2000)	<i>passim</i>
National Center for Education Statistics, <i>Minimum and Average Teacher Salaries, by State: 1990-91, 1998-99, and 1999-2000</i> (June 2001)	6
National Center for Education Statistics, <i>Selected Statistics from the Public Elementary and Secondary Education Universe: School Year 2012-13</i> (2014)	20
National Education Association, <i>Rankings & Estimates: Rankings of the States 1999 and Estimates of School Statistics 2000</i> (1999)	6,8,16-17
National Education Association, <i>Rankings & Estimates: Rankings of the States 2013 and Estimates of School Statistics 2014</i> (2014)	9,15-17
New Teacher Center, <i>Cross-State Analyses of Results 2012-2013 6</i> (Fall 2013)	18-19
Jan Ondrich, Emily Pas, & John Yinger, <i>The Determinants of Teacher Attrition in Upstate New York</i> , 36 Public Finance Rev. 36 112 (2008)	18
Matthew Ronfeldt, <i>et al.</i> , <i>How Teacher Turnover Harms Student Achievement</i> , 50 Am. Educ. Research. J. 4 (2013)	8
Antonin Scalia & Bryan Garner, <i>Reading Law: The Interpretation of Legal Texts</i> (2013)	10
Diane Schanzenbach, <i>Does Class Size Matter?</i> Nat. Educ. Pol’y. Ctr. (2014)	9,21
Lori Taylor, <i>Putting Teachers in Context: A Comparable Wage Analysis of Wyoming Teacher Salaries</i> (2010)	19

TELL Colorado, *Research Brief: TELL Colorado Student Achievement and Teacher Retention Analysis* (2014).....7

Jaclyn Zubrzycki, *DPS Moves to Address “Crisis Level” Teacher Turnover*, Chalkbeat Colorado (Feb 3, 2015).....19

STATEMENT OF THE IDENTITY AND INTEREST OF *AMICUS*

On February 6, 2015, in its Order and Rule to Show Cause, this Court invited the Colorado Education Association (CEA) to file an *amicus curiae* brief in this case. Believing that Respondents' case is vital to the adequate funding of our schools, and that increased funding is necessary to the success of our students, the CEA offers its views.

CEA is a 36,500-member organization of education professionals employed in public schools throughout the State of Colorado, and is affiliated with the National Education Association (NEA), a national labor organization that represents over 3,000,000 education employees, the vast majority of whom serve in our public schools. CEA and NEA's core belief is that public education is the cornerstone of our social, economic, and political structure—and that students of all backgrounds have the right to quality public schools.

INTRODUCTION

In the late 1990's, Colorado was rapidly falling behind other states in education funding. Per-pupil funding was low, teacher salaries were near the bottom, and class sizes were large. Colorado voters did something about that when they passed Amendment 23. This constitutional amendment requires the General Assembly to make education funding a top priority. It specifically requires increases in per-pupil funding in an effort to increase teacher salaries and reduce class sizes.

We believe Amendment 23 is clear. But, if it is “reasonably susceptible to more than one interpretation,” this Court “must ascertain and give effect to the intent of the electorate adopting the amendment.” *Zaner v. City of Brighton*, 917 P.2d 280, 283 (Colo.1996). And the history of the Amendment shows that voters intended to require the General Assembly to make education the priority that it deserves to be.

The General Assembly has not fulfilled its constitutional obligation under Amendment 23, and has instead relied on accounting gimmickry to thwart the will of Coloradans. This maneuver has placed schools in an even worse position than if the Amendment had never been passed, including with respect to the very factors voters were concerned about in voting for its passage: per-pupil funding has

stagnated, teacher salaries have fallen, and class sizes are virtually unchanged. As CEA members know firsthand—and education researchers confirm—this harms children and diminishes educational outcomes in Colorado. We urge this Court to deny the State’s request for a declaration that the Negative Factor is Constitutional under Colo. Const. art. IX, § 17.

ARGUMENT

I. THE PEOPLE ENACTED AMENDMENT 23 BECAUSE COLORADO WAS LOSING GROUND ON EDUCATION FUNDING

When interpreting a constitutional amendment adopted by citizen's initiative, this Court “give[s] effect to the electorate's intent in enacting the amendment.” *Davidson v. Sandstrom*, 83 P.3d 648, 654 (Colo. 2004). In so doing, this Court “ascertain[s] the intent of the voters by considering other relevant materials such as the ballot title and submission clause and the biennial ‘Bluebook,’” *In re Submission of Interrogatories on House Bill 99–1325*, 979 P.2d 549, 554 (Colo. 1999). A “cogent element” in this analysis is a “consideration of the object to be accomplished and the mischiefs to be avoided” by the provision, so as to “prevent an evasion of its legitimate operation.”¹ *Colorado Common Cause v. Bledsoe*, 810

¹ Cf. C.R.S. § 2-4-203 (2015) (“If a statute is ambiguous, the court, in determining the intention of the general assembly, may consider. . . [t]he object sought to be attained; [t]he circumstances under which the statute was enacted; [t]he legislative

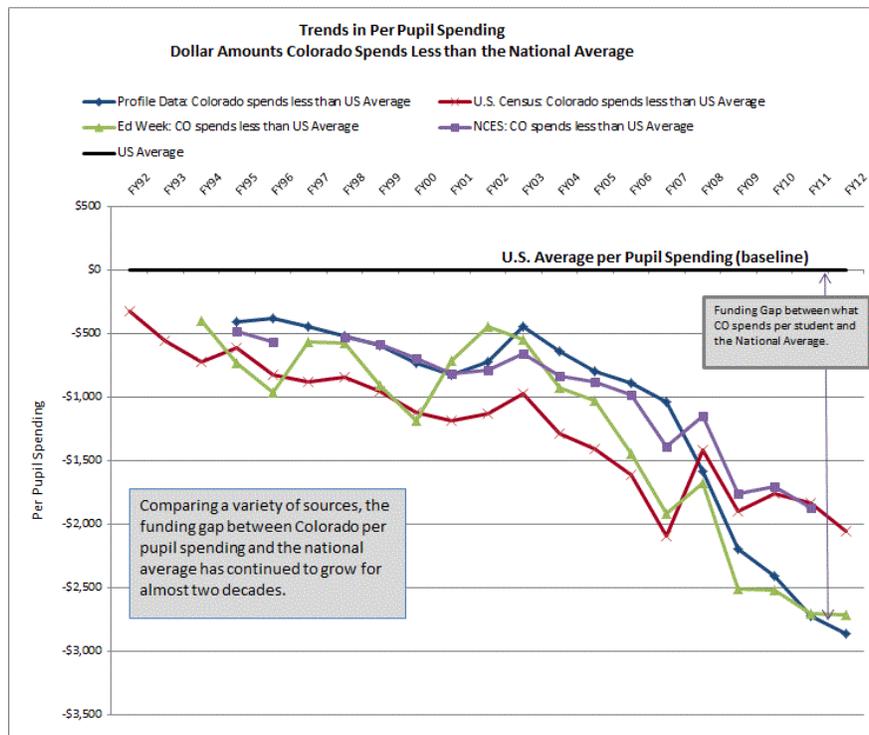
P.2d 201, 207 (Colo. 1991), *accord Lobato v. State*, 218 P.3d 358, 375 (Colo. 2009).

Amendment 23 was approved by voters at a time when Colorado was losing ground on educational funding, which as the Blue Book notes had been “eroding since the late 1980s.” Legis. Council of the Colo. Gen. Assembly, *Analysis of the 2000 Statewide Ballot Proposals and Recommendations on Retention of Justices* 11 (Research Publ’n No. 475-6, 2000) (“Blue Book”). By 2000, Colorado’s national rank in per-pupil education funding had dropped from 11th to 32nd over a seventeen-year period. Complaint Ex. B, at 8. Amendment 23, as the Blue Book described it, was a “proposal [to] increase[] funding to public schools” to counteract this erosion. Blue Book at 11. This “increased investment in education” was viewed as “necessary for Colorado students to be competitive in a global environment.” *Id.* at 12.

The proposal to increase funding was not driven by a desire to increase funding for its own sake. Rather, the amendment was principally concerned with addressing three “negative effect[s]” of the resource gap: “per pupil funding, teacher salaries, and class sizes.” *Id.* at 11.

history, if any. . . [t]he consequences of a particular construction. . . [and t]he legislative declaration or purpose.”).

Data available at the time of Amendment 23’s enactment illustrate the nature and extent of these three negative effects, and confirm that voters were right about the problems. Various analyses from both government and non-profit sources show that in the 2000 fiscal year, per-pupil spending in Colorado lagged the national average by between \$700 and \$1,200.²



Additional educational funding also was needed, the Blue Book told voters, because per teacher salaries in Colorado were below the national average, and the state had “the eighth highest teacher-to-student ratio in the country.” Blue Book at

² Colorado School Finance Project, *Trends in Per Pupil Spending: Dollar Amounts Colorado Spends Less than the National Average* (2014) (sourcing data from U.S. Census Bureau, Colorado Profile Data, Education Week Quality Counts, and the National Center for Education Statistics), <http://goo.gl/AgIzwx>.

11–12. This, the Blue Book accurately explained, “could impact the state's ability to attract and retain the best teachers.” *Id.* at 12.

When Amendment 23 was passed, the starting salary for Colorado teachers was \$24,875 versus a national average of just under \$28,000, and the average salary for all Colorado teachers was \$39,073 compared with a national average of \$41,820.³ These figures showed a real-dollar decline in salaries for Colorado teachers between 1990 and 2000.⁴ And while these numbers were significantly below average in absolute terms, they were even worse when measured against Colorado’s per capita income. Once per capita income was considered, Colorado ranked 46th among the states in teacher salaries.⁵ Colorado teachers not only faced low salaries and even lower purchasing power, but they also faced higher-than-average teaching loads.⁶ As many school districts recognized at the time, it was

³ National Center for Education Statistics, *Minimum and Average Teacher Salaries, by State: 1990-91, 1998-99, and 1999-2000* (June 2001) (sourcing data from American Federation of Teachers, *Survey and Analysis of Teacher Salary Trends*, various years), <http://nces.ed.gov/programs/digest/d01/dt079.asp>.

⁴ *Id.*

⁵ Elisabetta Basilico, *et al.*, Center for Tax Policy, *Teacher’s Salaries in Colorado: Reasons, Consequences, and Alternatives for Below Average Compensation*, 49 Taxpayer Report 2 (July 2002), available at <http://goo.gl/zVrBpi>.

⁶ National Education Association, *Rankings & Estimates: Rankings of the States 1999 and Estimates of School Statistics 2000* 17, Table C-6 (1999) (hereafter “NEA 1999 Rankings”). See also Blue Book at 12.

becoming increasingly difficult to attract qualified teachers.⁷ The Blue Book itself noted that the low teacher salaries “could impact the state’s ability to attract and retain the best teachers.” Blue Book at 12.

Voters’ belief that increasing educational funding would lead to higher (or at least not eroded) teacher salaries and better educational outcomes is well-supported by research. Adequate funding, while sometimes not sufficient, is absolutely necessary for student success.⁸ Favorable teaching conditions—including access to adequate facilities and resources and sufficient time to meet student needs—enable quality teaching and “predict as much as 15 percent of school aggregate achievement results.”⁹

Salary levels play a substantial role in this calculus: personnel costs constitute the vast majority of most school districts’ budgets. Diminished funding

⁷ Basilico, *supra* note 5, at 11.

⁸ See, e.g., Bruce Baker, Shanker Institute, *Revisiting the Age Old Question: Does Money Matter in Education?* 7 (2012), <http://goo.gl/vmw0vP>; *Abbott v. Burke*, 693 A.2d 417, 440 (N.J. 1997) (finding that funding levels were inadequate, while noting that “additional money will not, without more, solve the chronic problems of educating students [in poor districts]”).

⁹ TELL Colorado, *Research Brief: TELL Colorado Student Achievement and Teacher Retention Analysis 2* (2014), <http://goo.gl/Bh31Xy>, citing Helen Ladd, *Teachers’ Perceptions of Their Working Conditions: How Predictive of Policy Relevant Outcomes?*, Working Paper 33, National Center for Analysis of Longitudinal Data in Education (Dec. 2009).

tends to depress salaries and constrain hiring, resulting in larger class sizes.¹⁰ And depressed teacher salaries have a cascading negative effect on educational outcomes. As the Blue Book correctly noted, teacher salary levels “affect the quality of those who choose to enter the teaching profession, and whether they stay once they get in.”¹¹ Nearly half of teachers who leave the profession due to “dissatisfaction” cite low pay as a significant reason for their departure.¹² Lower salaries cause higher levels of teacher turnover, which has been recognized as detrimental to learning conditions in schools.¹³ Not only is teacher turnover costly for all these reasons, such turnover is the most significant cause of teacher shortages,¹⁴ which in turn often result in the assignment of teachers outside their areas of training and expertise, again to the detriment of student learning conditions.

As the Blue Book recognized, the lack of educational funding also led to increased class sizes. Prior to Amendment 23, Colorado “ha[d] the eighth highest

¹⁰ See Baker, *supra* note 8, at 9-10.

¹¹ *Id.* at 8.

¹² Richard Ingersoll, *Teacher Turnover and Teacher Shortages: An Organizational Analysis*, 38 Am. Educ. Rsch. J. 499, 521-23 (2001), available at <http://goo.gl/3uYEDD>.

¹³ *Id.* at 504-505, 525; Matthew Ronfeldt, *et al.*, *How Teacher Turnover Harms Student Achievement*, 50 AM. EDUC. RESEARCH. J. 4 (2013) (finding that turnover had a significant negative impact in student achievement notwithstanding the effectiveness ratings of teachers), available at <http://goo.gl/0zYZx0>.

¹⁴ Ingersoll, *supra* note 12.

teacher-to-student ratio in the country,” Blue Book at 12, with 18.4 students enrolled per teacher.¹⁵ While small class sizes are associated with “higher levels of student engagement, increased time on task, and the opportunity. . . [for teachers] to better tailor their instruction to the students in the class,”¹⁶ higher class sizes harm student outcomes, especially among at-risk student populations.¹⁷

In the face of all of this, Amendment 23 sought to make education funding a top state priority, and specifically requires increases in per-pupil funding in order to increase teacher salaries and reduce class sizes.

The voters did not intend, as the State argues, to require the General Assembly to increase “per pupil funding” only to see those increases taken away by the General Assembly’s use of an accounting gimmick. In 2010, the General Assembly explained the use of this accounting trick, stating that it had determined

¹⁵ NEA 1999 Rankings, *supra* note 6, at 17 Table C-6 (1999). Note that class sizes and student-teacher ratios are not the same; the latter term includes teachers in specialized roles. However, there is a strong correlation between the two measures, with class size typically at 9 to 10 students higher per teacher. National Education Association, *Rankings & Estimates: Rankings of the States 2013 and Estimates of School Statistics 2014* ix (2014) (hereafter “NEA 2013 Rankings”), available at <http://goo.gl/ebjZ1W>.

¹⁶ Diane Schanzenbach, *Does Class Size Matter?* Nat. Educ. Pol’y. Ctr. 5-6 (Feb. 2014) (reviewing a wide range of studies on class size and concluding that “[t]he academic literature strongly supports the common-sense notion that class size is an important determinant of student outcomes.”), http://www.ctf-fce.ca/Research-Library/pb_-_class_size.pdf.

¹⁷ *Id.* at 10.

that “stabilization of the state budget require[d] a reduction in the amount of the annual appropriation to fund the state’s share of the total program funding for all districts.” C.R.S. § 22-54-104(5)(g)(I) (2013). But rather than being straightforward about the cuts to education, the General Assembly introduced a statutory funding cap implemented through a “Negative Factor” in the school finance formula. C.R.S § 22-54-104(5)(g)(I)(A)–(E) (2013). The Negative Factor more than counteracts any increases in base per-pupil funding required by Amendment 23.

The State argues that its creation and invocation of the Negative Factor does not violate Amendment 23 because the State is still increasing one element of the funding formula in the narrowest sense—but it is reducing the product of the formula via the funding cap, and therefore any so-called “per-pupil funding increases” are pyrrhic. The State’s evasion of Amendment 23 should not be accepted: constitutional interpretations that “defeat[] the legislative intent” of a measure or lead to an “absurd result” should be rejected. *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994); *Ingram v. Cooper*, 698 P.2d 1314, 1315 (Colo. 1985). Moreover, where there are two textually permissible constructions of a provision, the presumption against ineffectiveness dictates that the “interpretation that

further rather than obstructs the document's purpose should be favored." Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 63 (2013).

According to the State, if the Negative Factor is declared unconstitutional the General Assembly would have to raise revenue or cut other services to comply with Amendment 23's mandate. Pet. at 13. That is not a cognizable basis for the constitutional interpretation. The short and dispositive answer to the State's position is that the voters rejected such concerns when they adopted Amendment 23.

Moreover, these same predictions of impending doom were presented to the people by opponents of Amendment 23, who urged voters to reject the measure because it would prioritize education at the expense of other priorities, such as funding transportation (then Gov. Bill Owens), lowering taxes (then-Treasurer Mike Coffman), or constructing new prison beds (then-Corrections Chief John Suthers). Complaint, at 8. In the Blue Book itself, Amendment 23 opponents urged Coloradans to vote "no" because they claimed that the measure would be "similar to a tax increase" and would "reduce[] the state legislature's flexibility to respond to changing state needs because the constitution can only be modified by voter approval." Blue Book at 12-13.

Perhaps recognizing that investment in education can actually *save* governments money in the long term—by increasing the education of its residents, a state can both increase employment, grow its tax base, and decrease violent crime and incarceration rates¹⁸—the voters nevertheless passed Amendment 23 and directed the General Assembly to ensure “increased funding to public schools.” Blue Book at 11. Given this, the State’s similar proclamations of impending doom should not be taken seriously by this Court; they are merely rehashes of arguments that were lost the moment Coloradans passed Amendment 23. Even if the concerns the State raises were valid, they would not allow it to shirk its constitutional obligations under Amendment 23.

II. THE NEGATIVE FACTOR HAS UNDERMINED THE CORE PURPOSES OF AMENDMENT 23

The State’s interpretation of Amendment 23 undermined the Amendment’s purposes of increasing funding, increasing teacher salaries, and reducing class sizes, and has caused “an evasion of [its] legitimate operation.” *Bledsoe*, 810 P.2d

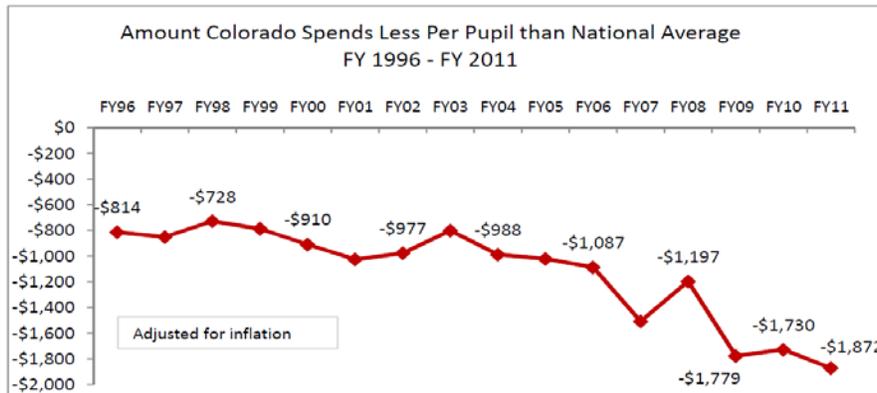
¹⁸ Alliance for Excellent Education, *Saving Futures, Saving Dollars: The Impact of Education on Crime Reduction and Earnings* 2, 9 (2003) (citing Bureau of Justice Statistics research indicating that “67 percent of inmates in America’s state prisons, 56 percent of federal inmates, and 69 percent of inmates in local jails did not complete high school,” and estimating that even a 5% increase in male graduation rates would save Colorado \$235M a year between reduced penitentiary costs and additional tax revenue), <http://all4ed.org/wp-content/uploads/2013/09/SavingFutures.pdf>.

at 207. The record is clear: Since, the General Assembly’s creation of the Negative Factor, per-pupil funding, teacher salaries, and class sizes have either reverted to 1999–2000 levels or even worsened.

After Amendment 23’s enactment, per-pupil funding in Colorado trended slightly upward. Although it made little progress against the national average and was subject to several rescissions even before the Negative Factor became law, progress was being made.¹⁹ But since the creation of the Negative Factor, per-pupil funding has dropped precipitously compared to the national average. Adjusted for inflation, national statistics show that the per-pupil funding gap between Colorado and the national average more than doubled by 2011. Colorado spent \$910 less per pupil than the National Average when Amendment 23 was passed, and that number hovered around \$1000 for most of the decade—but it ballooned to nearly \$1,872 by 2011.²⁰

¹⁹ See *infra* note 20; Colorado School Finance Project, *School Finance & Education Reform Timeline 1980-2017* (2015) (reflecting both mid-year and Negative Factor rescissions), <http://goo.gl/x8Yopy>.

²⁰ Colorado School Finance Project, *US Average & Colorado Per Pupil Spending – Adjusted for Inflation – FY 1996-FY2011* (Summer 2013), <http://goo.gl/RZRNsh> (sourcing data from National Center for Education Statistics, *Common Core of Data*, (2013), <http://nces.ed.gov/pubs2013/2013342.pdf>).

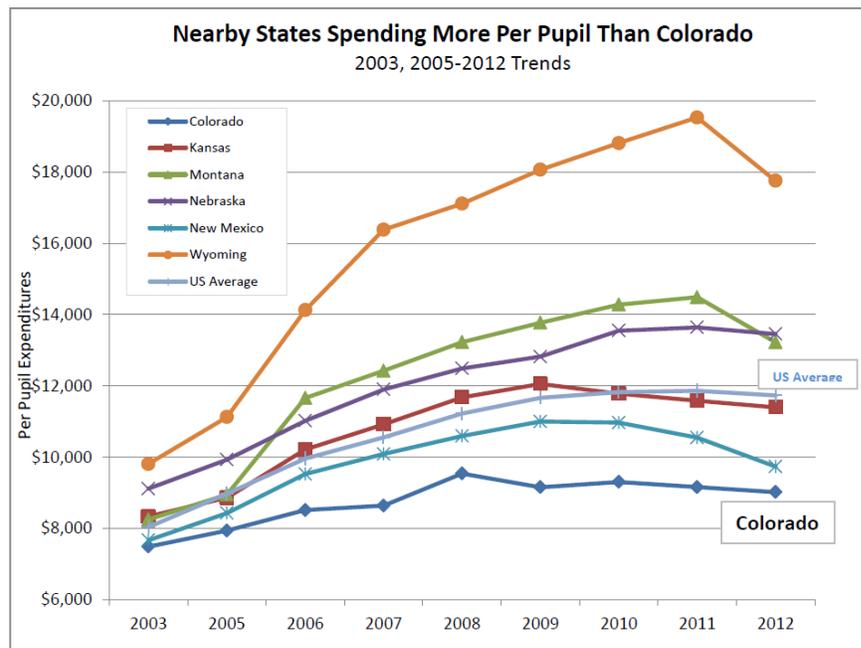


State statistics, meanwhile, paint an even bleaker picture: they show that Colorado’s per-pupil spending went from \$438 below the national average in 2000 to \$2,198 below the national average in 2009.²¹ By 2011, Colorado’s per-pupil spending rank had fallen from 34th place to 42nd.²² This decline has been steady since the Negative Factor’s enactment, and given continued application of the Negative Factor in 2013 and 2014, data (which remains largely unavailable for those years or is based only on estimates) will likely show continued decline.

²¹ Colorado School Finance Project, *Colorado and National Average Per Pupil Spending Trends* (2010), <http://goo.gl/5ZIVGe>, (sourcing data from Augenblick, Palaich & Associates, *Colorado: Profile Reports*, Colorado Department of Education Data; and National Education Association, *Rankings and Estimates* June 2005, 1994-95 to 1998-99; Dec. 2009, 1999-00 to 2008-09).

²² Colorado School Finance Project, *Per Pupil Spending & Ranking: Comparing Colorado and the US Average 2* (2013) (sourcing from US Census Data 1991-92 thru 2010-11), <http://goo.gl/0P59po>.

Colorado’s lackluster education funding looks even worse when compared to some of its neighbors.²³ As the chart below shows, while other states were increasing per-pupil funding before the Great Recession, Colorado was treading water even with the assistance of Amendment 23.



Indeed, in 2011, Nebraska spent around 50% more per pupil than Colorado.²⁴ Wyoming, even after recent spending cuts, spends around *twice* as much to educate each of its public school students.²⁵ And even Kansas, which has

²³ Colorado School Finance Project, *Quality Counts 2015 – How Much More Per Pupil?* (2015), <http://goo.gl/256Dni>, (sourcing data from Education Week, *Quality Counts 2006-2015*, <http://www.edweek.org/ew/qc/>).

²⁴ *Id.*

²⁵ *Id.* These differences cannot be explained by arguing that Nebraska and Wyoming have more funding at their disposal for each student. In Nebraska,

made headlines for its state funding cuts since the 2008 recession and has a smaller tax base, manages to spend about 30% more than Colorado.²⁶

Teacher salaries also have been adversely affected by the Negative Factor. Since teacher salaries comprise the most significant portion of school district budgets and there is now significantly less money available, the purchasing power of teacher salaries has fallen dramatically in this period. As of 2012, Colorado teacher salaries averaged \$49,049,²⁷ equivalent to around \$36,700 in 2000 dollars. This is more than \$3,300 less than what Colorado teachers made in real dollars in 2000.²⁸ Colorado has fallen from 23rd in salary rankings at the time of Amendment 23's enactment to 30th in 2013.²⁹ In constant dollars, Colorado teacher salaries were 8% lower in 2012 than in 2002—one of the largest declines in the country, and over six times the decline in the national average teacher salary during this

personal income per student—the amount of income that state residents earn for each child that they educate—was \$269,791 in 2011 compared with \$268,028 in Colorado—a miniscule difference. *See* NEA 2013 Rankings, *supra* note 15, at 28, Table D-7. Wyoming boasts a higher personal income per student: \$316,684, roughly 18% higher than Colorado, *id.*, but nowhere near enough to close its 100% funding lead.

²⁶ *Id.*

²⁷ NEA 2013 Rankings, *supra* note 15, at 18 Table C-19.

²⁸ NCES *Teacher Salaries*, *supra* note 3.

²⁹ *Compare* NEA 1999 Rankings, *supra* note 6, at 19 Table C-11, *with* NEA 2013 Rankings, *supra* note 15, at 19, Table C-11.

period.³⁰ As a result, Colorado teachers often struggle financially. A report released last year found that 21.5% of Colorado teachers take jobs outside of the school system in order to make ends meet.³¹ Only six other states have a higher percentage of teachers with second and third jobs.³² Colorado also offers one of the lowest mid-career salaries, even before adjusting for cost of living factors.³³ At the same time, Colorado teachers' work load remains above the national average, ranking ninth in pupil per teacher compared to its eighth-place ranking when Amendment 23 was ratified.³⁴

Lack of funding also has deprived teachers and students of the learning tools and environment needed for success. In a 2013 survey of teachers from states participating in the "Teaching, Empowering, Leading and Learning" ("TELL") Survey, Colorado received the second lowest score from its teachers when they were asked if they had "sufficient access to instructional technology, including

³⁰ NEA 2013 Rankings, *supra* note 15, at 20 Table C-14.

³¹ Ulrich Boser & Chelsea Straus, *Mid- and Late-Career Teachers Struggle with Paltry Incomes*, Center for American Progress 6 (2014) (citing NCES data), <http://goo.gl/4LHfVE>. This data excludes teachers who take second jobs only over the summer. *Id.* at 2.

³² *Id.* at 6.

³³ *Id.* at 3.

³⁴ *Compare* NEA 2013 Rankings, *supra* note 15, at 17 Table C-6, *with* NEA 1999 Rankings, *supra* note 6, at 17 Table C-6.

computers, printers, software and internet access.”³⁵ And it received the lowest score—by far—when teachers were asked if “[t]he physical environment of classrooms. . . supports teaching and learning.”³⁶ When asked if class sizes were “reasonable such that teachers have the time available to meet the needs of all students,” 43% replied in the negative.³⁷

All of these circumstances have serious implications for another factor cited in the Blue Book: Colorado’s ability to attract and retain teachers.³⁸ Blue Book at 12. Indeed, almost every aspect of Colorado’s school funding and teacher pay system seems designed to encourage teachers to look elsewhere for work. Because Colorado’s in-state preparation programs produce fewer than 60% of the teachers needed to fill open teaching positions—one of the lowest rates in the country—it is

³⁵ New Teacher Center, *Cross-State Analyses of Results 2012-2013* 6 (Fall 2013), available at <http://goo.gl/mU1Vqc>.

³⁶ *Id.*

³⁷ *Id.* at 20.

³⁸ See, e.g., Jan Ondrich, Emily Pas, & John Yinger, *The Determinants of Teacher Attrition in Upstate New York*, 36 Public Finance Rev. 36 112, 138 (2008) (finding that “teachers in districts with higher salaries relative to non-teaching salaries in the same county are less likely to leave teaching and that a teacher is less likely to change districts when he or she teaches in a district near the top of the teacher salary distribution in that county.”), available at <http://goo.gl/ieIVuw>; David Figlio & Kim Rueben, *Tax Limits and the Qualifications of New Teachers*, 80 J. Pub. Econ, 49, 69 (2001) (“Our research provides consistent evidence that tax limits systematically reduce the quality on average of education majors, as well as new public school teachers”), available at <http://goo.gl/8rX5Sz>.

critical that Colorado attract out-of-state teachers.³⁹ Yet teachers considering a move to Colorado confront relocation costs, low pay, and above-average workloads. And even when teachers do choose to come to Colorado, the vast majority of them will quit over within five years; teacher turnover in the state is now “at a crisis level,” with over 20% of personnel and 17% of teachers leaving each year.⁴⁰

At the same time that teaching conditions in Colorado encourage turnover, neighboring states give teachers every reason to relocate. For example, large number of Colorado teachers reside relatively close to Wyoming’s largest school district, Laramie, which boasts some of the most competitive teacher pay in the country—especially when compared to its cost of living.⁴¹ The difference for the job-seeking teacher is enormous. In the 2014–2015 school year, a teacher in Denver with a bachelor’s degree started at a salary of \$38,765, while the same

³⁹ Jane Coggshall & Susan Sexton, National Association of State Directors of Teacher Education and Certification, *Teachers on the Move: A Look at Teacher Interstate Mobility Policy and Practice* 8 (2008), <http://goo.gl/ij43DX>.

⁴⁰ Jaclyn Zubrzycki, *DPS Moves to Address “Crisis Level” Teacher Turnover*, Chalkbeat Colorado (Feb 3, 2015), <http://goo.gl/A70Gcw>; Colorado Department of Education, *Personnel Turnover Rate by Position Categories* (2014) <http://www.cde.state.co.us/cdereval/2013-14turnoverreportpdf>.

⁴¹ See generally Lori Taylor, *Putting Teachers in Context: A Comparable Wage Analysis of Wyoming Teacher Salaries* (2010), available at <http://goo.gl/xmGLfC>.

teacher in Laramie started at \$48,132.⁴² The Laramie teacher also fares much better in the middle and later stages of her career.⁴³

The story is similar when one compares rural areas between Colorado and Nebraska: one comparison shows that starting teachers in rural Nebraska make at least \$2,500 more than their rural counterparts in Colorado.⁴⁴ Colorado fares no better when it comes to class size. Wyoming schools have one of the most favorable teacher-student ratios in the nation at 12.5 students per teacher, whereas Colorado has one of the worst at 17.7 students per teacher.⁴⁵ And Nebraska teachers, on average, have a more manageable class sizes than Colorado as well, with 13.7 students compared to Colorado's 17.7.⁴⁶

⁴²Compare Denver Public Schools, *ProComp Salary Setting 2014-2015 Salary Schedule*, <http://goo.gl/KR00F6> with Laramie County School District Number One, *Certified Personnel 2014-2015 Salary Schedule*, <http://goo.gl/OkmHZw>.

⁴³ *Id.*

⁴⁴ *Compare* Salary Schedule for RE-1 Valley Schools in Colorado, <http://goo.gl/b4IfXT> with North Platte, Nebraska Public Schools, Master Agreement, North Platte Board of Education and North Platte Education Association Appendix A, <http://goo.gl/ESvw51> (even though the salary schedule from this rural Colorado school district is recent, and the salary schedule from a rural Nebraska district across the border is from 2010-11, the Nebraska teacher's starting salary is about \$2,500 higher.)

⁴⁵ National Center for Education Statistics, *Selected Statistics from the Public Elementary and Secondary Education Universe: School Year 2012-13* 7 (2014), <http://nces.ed.gov/pubs2014/2014098.pdf>.

⁴⁶ *Id.*

None of this is good for Colorado students. Even if, contrary to research,⁴⁷ the best teachers still choose to come to Colorado notwithstanding poor salaries and working conditions, their effectiveness when they arrive will be impacted by a lack of resources and class sizes that do not enable them to give students the individualized attention they deserve.⁴⁸ And given the superior pay and working conditions available nearby, rather than “attract[ing] and retain the best teachers” there is a significant risk that Colorado will see increasingly dire teacher turnover rates.

CONCLUSION

Amendment 23 was designed to reverse a decade-plus decline in education funding. Voters sought to increase teacher salaries and reduce class sizes. They did this so that Colorado students would have access to the best teachers and a greater opportunity to learn. The Negative Factor has undermined those efforts. Due to the Negative Factor, Colorado is once again rapidly losing ground on these key educational indicators. The Respondents are right: the General Assembly’s accounting gimmickry violates Amendment 23 and should not be countenanced by

⁴⁷ Baker, *supra* note 8, at 8.

⁴⁸ Schanzenbach, *supra* note 16, at 5-6.

this Court. The CEA respectfully requests that this Court rule in favor of Respondents.

Respectfully submitted,

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