

DISTRICT COURT, CITY AND COUNTY OF  
DENVER, STATE OF COLORADO  
1437 Bannock Street  
Denver, CO 80202

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**Plaintiffs:**

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 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.

**Defendants:**

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

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**Attorneys for Defendants:**

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Ralph L. Carr Colorado Judicial Center  
Colorado Department of Law

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Case No. 2014CV32543

Courtroom: 376

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<b>ANSWER</b>	

Defendants 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 hereby answer Plaintiffs' Complaint as follows:

**RESPONSES TO PLAINTIFFS' ALLEGATIONS**

1. The People's intent in adopting constitutional amendments such as Amendment 23 is a question of law to which no answer is required. To the extent an answer is required, Plaintiffs' misconstrue Amendment 23, which is plain and unambiguous. Defendants therefore deny that when adopting Amendment 23, the People intended to prioritize education over competing budgetary demands. Defendants admit Amendment 23 is incorporated in the Colorado Constitution at Article IX, Section 17 and is the subject of this lawsuit. Defendants lack information sufficient to admit or deny why Plaintiffs' bring this lawsuit, and therefore deny this allegation at this time. Defendants admit the Colorado General Assembly first applied a negative factor to its public school finance formula in 2010. Defendants admit the negative factor has amounted \$380,708,163.06 in 2010–11, \$774,035,101.59 in 2011–12, \$1,011,401,170.57 in 2012–13, \$1,004,279,325.75 in 2013–14, and \$894,202,067.00 in 2014–15.

2. The requirements and goals of Amendment 23, as well as the intent of the People in enacting it, are questions of law to which no answer is required. To the extent an answer is required, Plaintiffs misconstrue Article IX, Section 17 of the Colorado Constitution, which is plain and unambiguous. Thus, Defendants admit that since 2011–12, Amendment 23 has required the statewide base per pupil funding amount and total state funding for categorical programs to increase by at least the rate of inflation, and Defendants deny all other allegations of Paragraph 2 of Plaintiffs' Complaint.

3. What is required by Amendment 23 is a question of law, to which no answer is required. To the extent an answer is required, Defendants deny the

General Assembly has violated Amendment 23 as Plaintiffs allege. In accordance with the plain language of Amendment 23, the statewide base per pupil funding amount has increased since 2000 from \$4,002 to \$6,121 in the current budget year. Defendants admit the negative factor is codified in subsection 22-54-104(5)(g), C.R.S., and it amounted \$380,708,163.06 in 2010–11, \$774,035,101.59 in 2011–12, \$1,011,401,170.57 in 2012–13, \$1,004,279,325.75 in 2013–14, and \$894,202,067.00 in 2014–15.

4. Defendants lack information sufficient to admit or deny Plaintiffs’ allegation that the negative factor is causing irreparable harm to students, districts, and educational organizations, and therefore deny it at this time.

5. Defendants admit Plaintiffs bring this action for declaratory and injunctive relief under Rules 57 and 65 of the Colorado Rules of Civil Procedure and the Uniform Declaratory Judgments Law, but deny that Plaintiffs are entitled to such relief.

6. Whether this Court has jurisdiction over this action is a question of law to which no answer is required. To the extent an answer is required, Defendants deny this Court has subject matter jurisdiction because a declaration as to past use of the negative factor would be moot, the propriety of future use, if any, is not ripe, and there are no allegations regarding how the named Defendants could afford relief from the negative factor in the current budget year. In addition, Defendants maintain Plaintiffs have not established standing as a matter of law. Defendants admit venue is proper in the City and County of Denver.

7. Defendants lack information sufficient to admit or deny Plaintiffs’ allegations regarding the Dwyers, and therefore deny them at this time.

8. Defendants lack information sufficient to admit or deny Plaintiffs’ allegations regarding the Siewiyumptewas and the Johnsons, and therefore deny them at this time.

9. Defendants lack information sufficient to admit or deny Plaintiffs’ allegations regarding the Weeks, and therefore deny them at this time.

10. Defendants lack information sufficient to admit or deny Plaintiffs’ allegations regarding the Pilands, and therefore deny them at this time.

11. Defendants admit the individual Plaintiffs seek to bring this suit on their own and their children’s behalf, but deny they have standing to do so.

12. Defendants lack information sufficient to admit or deny Plaintiffs’

allegations regarding the Colorado Rural Schools Caucus (“CRSC”), and therefore deny them at this time. Defendants admit CRSC seeks to bring this suit on its own and its school district members’ behalf, but denies it has standing to do so.

13. Defendants admit section 22-5-102, C.R.S., declares the Boards of Cooperative Services Act of 1965 was enacted “for the general improvement and expansion of educational services of the public schools in the state of Colorado,” “for the creation of boards of cooperative services whenever feasible for purposes of enabling two or more school districts to cooperate in furnishing services authorized by law,” and other stated purposes. Otherwise, Defendants lack information sufficient to admit or deny Plaintiffs’ allegations regarding the East Central Board of Cooperative Services (“BOCES”), and therefore deny them at this time. Defendants admit the East Central BOCES seeks to bring this suit on its own and its school district members’ behalf, but denies it has standing to do so.

14. Defendants lack information sufficient to admit or deny Plaintiffs’ allegations regarding the Colorado PTA, and therefore deny them at this time. Defendants admit the Colorado PTA seeks to bring this suit on its own and its members’ behalf, but denies it has standing to do so.

15. Defendants admit Boulder Valley School District, Colorado Springs School District No. 11, Mancos School District, Holyoke School District, and Plateau Valley School District 50 are bodies corporate and subdivisions of the State organized by the General Assembly pursuant to Article IX, Section 15 of the Colorado Constitution. Defendants further admit section 23-32-101, C.R.S., empowers regularly organized school districts to sue and be sued, but Defendants deny that this provision of law authorizes the School District Plaintiffs to sue the State and that they have standing to do so as a matter of law. Defendants lack information sufficient to admit or deny Plaintiffs’ allegations regarding the School District Plaintiffs’ injuries, and therefore deny them at this time.

16. Defendants lack information sufficient to admit or deny Plaintiffs’ allegations regarding the School District Plaintiffs’ ability to provide educational opportunities, and therefore deny them at this time.

17. Defendants lack information sufficient to admit or deny Plaintiffs’ allegation that the State of Colorado is a body politic, and therefore deny it at this time. Defendants admit the State of Colorado is a sovereign state admitted to the United States of America in 1876.

18. Defendants admit Robert Hammond is presently Commissioner of Education and pursuant to subsection 22-2-110(1), C.R.S., is the chief state school officer and executive officer of the Colorado Department of Education. Defendants admit that pursuant to sections 22-2-112 and -113, C.R.S., the Commissioner's duties include those alleged by Plaintiffs in Paragraph 18.

19. Defendants admit John Hickenlooper is presently the Governor of the State of Colorado and pursuant to Article IV, Section 2 of the Colorado Constitution, the supreme executive power of the State shall be vested in the Governor, who shall take care that the laws be faithfully executed.

20. Defendants admit that most state and local funding for public education is calculated pursuant to the Public School Finance Act of 1994 ("PSFA"), §§ 22-54-101 *et seq.* The remaining allegations of Paragraph 20 of the Complaint purport to state legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny the allegations because they reflect an incomplete and inaccurate characterization of the PSFA. Moreover, Defendants lack information on the source of the quoted phrase "weighted enrollment" sufficient to admit or deny Plaintiffs' allegations regarding its purpose and function, and therefore deny them at this time.

21. Plaintiffs purport to state legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny the allegations of Paragraph 21 of Plaintiffs' Complaint because they reflect an incomplete and inaccurate characterization of the PSFA. Moreover, Plaintiffs' use of the undefined phrase "weighted enrollment" in relation to the base is so vague and cryptic that no response can be given.

22. Defendants lack information sufficient to admit or deny Plaintiffs' allegation that prior to the negative factor, the General Assembly determined the base for a budget year by using the prior year's base as a reference point and therefore deny the allegation at this time. In addition, Plaintiffs' use of the undefined phrase "weighted enrollment" in relation to the base is so vague and cryptic that no response can be given. Defendants further deny the allegations of Paragraph 22 of Plaintiffs' Complaint to the extent they purport to state legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny the allegations because they reflect an incomplete and inaccurate characterization of the PSFA. Moreover, Defendants lack information on the source and intended meaning of the undefined phrase "weighted enrollment" sufficient to admit or deny Plaintiffs'

allegation regarding its magnitude and therefore, deny it at this time.

23. Because Plaintiffs' allegations regarding the comparative levels of school funding are qualified and provided without reference to any documentary source, no response can be given. To the extent a response is nonetheless required, Defendants lack information sufficient to admit or deny these allegations, and therefore deny them at this time.

24. Because Plaintiffs' allegations regarding the comparative levels of school funding are vague and provided without reference to any documentary sources, no response can be given. To the extent a response is nonetheless required, Defendants lack information sufficient to admit or deny these allegations, and therefore deny them at this time.

25. Defendants admit Plaintiffs have accurately quoted a portion of Article IX, Section 17 of the Colorado Constitution. Plaintiffs' allegation as to why the People adopted Amendment 23 is a question of law to which no answer is required. To the extent an answer is required, Defendants deny the allegation because the text of Amendment 23 is plain and unambiguous, and it does not state the precise intent Plaintiffs ascribe to it.

26. Defendants lack information as to what the voters understood sufficient to admit or deny Plaintiffs' allegation, and therefore deny it at this time. Moreover, the People's intent in adopting constitutional amendments such as Amendment 23 and the effects thereof are questions of law to which no answer is required. To the extent an answer is required, Plaintiffs' allegation that the voters elected to prioritize education funding even in times of economic downturn misconstrues the plain and unambiguous language of Article IX, Section 17 of the Colorado Constitution, and as a result, Defendants deny it.

27. Defendants admit Plaintiffs have accurately quoted a portion of *An Analysis of the 2000 Statewide Ballot Proposals*, published by the Legislative Council of the Colorado General Assembly. To the extent Plaintiffs discern intent from these excerpts, they state a legal conclusion to which no answer is required. To the extent an answer is required, Defendants deny the allegation because Amendment 23's plain, unambiguous language does not allow resort to extrinsic aids, and even if it did, the Blue Book confirms it is the statewide base per pupil funding and not some other unspecified per pupil amount that must increase.

28. Defendants lack information as to why individuals voted for Amendment 23 sufficient to admit or deny Plaintiffs' allegation that voters rejected arguments of prominent opponents, and therefore deny it at this time. Defendants also lack information sufficient to admit or deny Plaintiffs' allegations regarding the arguments of prominent opponents, and therefore deny it at this time. Moreover, the People's intent in adopting constitutional amendments such as Amendment 23 and the effects thereof are questions of law to which no answer is required. To the extent an answer is required, Plaintiffs' allegation that the voters made education funding a constitutional priority misconstrues the plain and unambiguous language of Article IX, Section 17 of the Colorado Constitution, and as a result, Defendants deny it.

29. Defendants admit Amendment 23 provided that for the 10 fiscal years from 2001–02 to 2010–11, the “statewide base per pupil funding” and “total state funding for all categorical programs” “shall grow annually at least by the rate of inflation plus an additional one percentage point”; thereafter, Amendment 23 provides that both the “statewide base per pupil funding” and the “total state funding for all categorical programs” “shall grow annually at a rate set by the general assembly that is at least equal to the rate of inflation.”

30. The allegations in Paragraph 30 of Plaintiffs' Complaint state legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny the allegations because “statewide base per pupil funding” was defined in the Public School Finance Act as it existed in December 28, 2000, as the first variable in the finance formula, which then amounted “\$3,878 supplemented by \$123.70 to account for inflation.” Defendants further deny the allegations because they reflect an incomplete and inaccurate characterization of the PSFA, which speaks for itself.

31. Because Defendants lack information sufficient to admit or deny Plaintiffs' allegations regarding potential means of requiring annual education funding increases and the necessary effect of increasing the base in 2000, they deny them at this time. In addition, Plaintiffs' allegations regarding district equity and legislative power are so vague and cryptic that no response can be given.

32. What Amendment 23 requires is a question of law to which no answer is required. To the extent an answer is required, Defendants admit the General Assembly complied with Amendment 23. To the extent Plaintiffs' use of the word “initially” alleges such compliance ended, Defendants deny the allegation because the General Assembly has increased the statewide base per pupil funding amount since

2000 from \$4,002 to \$6,121. Defendants admit Plaintiffs accurately quote subsection 22-55-101(3)(a), C.R.S.

33. Defendants admit the General Assembly increased the base between 2001 and 2010 as required by Amendment 23. Defendants lack information on the source of Plaintiffs unspecified 1988 funding levels sufficient to admit or deny Plaintiffs' comparison to 2010 education funding, and therefore deny the allegation at this time. What Amendment 23 mandates is a question of law to which no answer is required. To the extent an answer is required, Defendants deny the allegation because Amendment 23 is plain and unambiguous, and it states no requirement that education funding reach 1988 levels.

34. Defendants admit the Colorado General Assembly first applied a negative factor to its public school finance formula in 2010. Defendants lack information as to the documentary source of CDE's characterization of the negative factor sufficient to affirm or deny Plaintiffs' allegation, and therefore deny it at this time.

35. Defendants admit the negative factor reduces the overall amount of state funding for public education. Because Plaintiffs' use of the undefined phrase "per pupil spending" is vague, Defendants lack information sufficient to admit or deny Plaintiffs' allegations regarding its reduction, and therefore deny them at this time. Moreover, what Amendment 23 requires, as referenced in Plaintiffs' chart, is a question of law to which no answer is required. To the extent an answer is required, Defendants deny the comparative allegations because the General Assembly has increased the statewide base per pupil funding amount since 2000 from \$4,002 to \$6,121.

36. Paragraph 36 of Plaintiffs' Complaint contains numerous legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny the allegations because they misconstrue the plain and unambiguous text of Amendment 23, as well as the PSFA. Since Plaintiffs do not identify any documentary sources, Defendants lack information sufficient to admit or deny the accuracy of the monetary values in Paragraph 36, and therefore deny them at this time.

37. Paragraph 37 of Plaintiffs' Complaint states a legal conclusion to which no answer is required. To the extent an answer is required, Defendants deny the allegation because it misconstrues the PSFA. Moreover, Defendants deny the

negative factor has reduced funding attributable to the base because the statewide base per pupil funding amount has increased since 2000 from \$4,002 to \$6,121. Since Plaintiffs do not identify any documentary sources, Defendants lack information sufficient to admit or deny the accuracy of the percentage of reduction, and therefore deny the allegation at this time.

38. Defendants admit the annual statewide base per pupil funding amount is codified at subsection 22-54-104(5)(a), C.R.S. Defendants deny the negative factor negates or renders meaningless the statewide base per pupil funding amount because pursuant to the PSFA, the base has increased since 2000 from \$4,002 to \$6,121, and there are other variables in the finance formula.

39. Paragraph 39 of Plaintiffs' Complaint states legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny the allegations because they misconstrue the PSFA. In addition, Defendants lack information on the source and intended meaning of the undefined phrase weighted enrollment sufficient to admit or deny Plaintiffs' allegations regarding its comparative ratios, and therefore deny it at this time.

40. Defendants admit the statewide base per pupil amount is the only variable in the finance formula that is the same for all school districts, and Defendants admit subsection 22-54-104(5)(g), C.R.S., sets sums of the total program funding for all school districts for each year a negative factor has been applied. Defendants lack information on the source and intended meaning of the undefined phrase weighted enrollment sufficient to admit or deny Plaintiffs' allegation regarding its stability, and therefore deny it at this time. Defendants also deny the negative factor reduced the statewide base per pupil amount by 15.49% in the 2013–14 fiscal year, as the General Assembly increased the base from \$5,843.26 in 2012–13 to \$5,954.28 in the following year.

41. The meaning of Amendment 23 is a question of law to which no answer is required. To the extent an answer is required, Defendants admit that since 2011–12, Amendment 23 has required the statewide base per pupil funding amount as defined by the PSFA and total state funding for categorical programs to increase by at least the rate of inflation. Moreover, Defendants deny Plaintiffs' allegation that "statewide base per pupil funding" was not defined in the PSFA as it existed in December 28, 2000, as the base is plainly identified as the first variable in the finance formula, which then amounted "\$3,878 supplemented by \$123.70 to account for inflation." Defendants further deny the allegations because they reflect an incomplete and inaccurate characterization of the PSFA, which does not

subordinate the other formulaic factors on the number, needs, and distribution among districts of future students. Because Defendants lack information sufficient to admit or deny Plaintiffs' allegations regarding the efficacy of alternate means of requiring annual education funding increases, they deny them at this time.

42. Plaintiffs' allegation regarding the narrowest construction of Amendment 23 is so vague and stated without context that no response can be given. The levels of funding required by Amendment 23 are questions of law to which no answer is required. To the extent an answer is required, Defendants deny the negative factor violated Amendment 23 in 2013–14 because the statewide base per pupil funding amount increased with the rate of inflation from \$5,843.26 in the previous year.

43. The meaning and intent of Amendment 23 are questions of law to which no answer is required. To the extent an answer is required, Defendants deny the language of Amendment 23, which is plain and unambiguous, sought to increase overall education funding. Because Amendment 23 requires inflationary increases to the statewide base per pupil funding amount and not the total funding districts receive, Defendants further deny the General Assembly is precluded from reducing the state's overall funding by employing a negative factor in its finance formula.

44. Defendants deny the negative factor reduced overall education funding by \$1 billion annually because the negative factor amounted \$380,708,163.06 in 2010–11, \$774,035,101.59 in 2011–12, \$1,011,401,170.57 in 2012–13, \$1,004,279,325.75 in 2013–14, and \$894,202,067.00 in 2014–15. Defendants also deny the negative factor cut the base. The levels of funding required by Amendment 23 are questions of law to which no answer is required. To the extent an answer is required, Defendants deny the negative factor violates or has violated Amendment 23.

### **GENERAL DENIAL**

Defendants deny all of Plaintiffs' allegations not specifically admitted herein. In addition, Defendants deny Plaintiffs are entitled to any form of relief.

### **DEFENSES AND AFFIRMATIVE DEFENSES**

1. Plaintiffs' Complaint fails to state a claim upon which relief may be granted. Defendants incorporate by reference their Motion to Dismiss and Reply in support thereof and assert all arguments and defenses contained therein.

2. Plaintiffs' claim is nonjusticiable. Defendants incorporate by reference their Motion to Dismiss and Reply in support thereof and assert all arguments and defenses contained therein.

3. Plaintiffs lack standing. Defendants incorporate by reference their Motion to Dismiss and Reply in support thereof and assert all arguments and defenses contained therein.

4. Plaintiffs' Complaint fails to join necessary and indispensable parties.

5. Plaintiffs' claim is barred by the doctrine of laches.

6. Plaintiffs require that this Court order increased public education funding, but to do so would violate the separation of powers in the Colorado Constitution.

7. Plaintiffs require that this Court override the plain, unambiguous language of Amendment 23, but to do so would fail to give effect the plenary power of the People of the State of Colorado.

8. Defendants reserve the right to assert additional defenses and affirmative defenses.

**WHEREFORE**, Defendants request that this Court enter judgment in their favor and against Plaintiffs, award Defendants their costs and attorney's fees as provided by law, and enter such other relief to Defendants as the Court deems just and appropriate.

Respectfully submitted this 8th day of December, 2014.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 8th day of December, 2014, the foregoing **ANSWER** upon all parties herein via ICCES as follows:

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