| | |
|---|---|
| **SUPREME COURT, STATE OF COLORADO**<br>101 West Colfax Avenue, Suite 800<br>Denver, CO 80202 | |
| Appeal from the District Court of the<br>City and County of Denver<br>Honorable Sheila A. Rappaport<br>Case No. 28005CV4794 | ▲ **COURT USE ONLY** ▲ |
| **Plaintiffs-Appellees:**<br><br>**Anthony Lobato**, as an individual and as parent and natural guardian of **Taylor Lobato** and **Alexa Lobato**; **Denise Lobato**, as an individual and as parent and natural guardian of **Taylor Lobato** and **Alexa Lobato**; **Miguel Cendejas** and **Yuri Cendejas**, individually and as parents and natural guardians of **Natalia Cendejas** and **Salina Cendejas**; **Pantaleon Villagomez** and **Maria Villagomez**, as individuals and as parents and natural guardians of **Chris Villagomez**, **Monique Villagomez** and **Angel Villagomez**; **Linda Warsh**, as an individual and as parent and natural guardian of **Adam Warsh**, **Karen Warsh**, and **Ashley Warsh**; **Herbert Conboy** and **Victoria Conboy**, as individuals and as parents and natural guardians of **Tabitha Conboy**, **Timothy Conboy** and **Keila Barish**; **Terry Hart**, as an individual and as parent and natural guardian of **Katherine Hart**; **Larry Howe-Kerr** and **Anne Kathleen Howe-Kerr**, as individuals and as parents and natural guardians of **Lauren Howe-Kerr** and **Luke Howe-Kerr**; **Jennifer Pate**, as an individual and as parent and natural guardian of **Ethan Pate**, **Evelyn Pate** and | **Case No. 2012SA25** |

| | |
|---|---|
| **Adeline Pate**; **Robert L. Podio** and **Blanche J. Podio**, as individuals and as parents and natural guardians of **Robert T. Podio** and **Samantha Podio**; **Tim Hunt** and **Sabrina Hunt**, as individuals and as parents and natural guardians of **Darean Hunt** and **Jeffrey Hunt**; **Doug Vondy**, as an individual and as parent and natural guardian of **Hannah Vondy**; **Denise Vondy**, as an individual and as parent and natural guardian of **Hannah Vondy** and **Kyle Leaf**; **Brad Weisensee** and **Traci Weisensee**, as individuals and as parents and natural guardians of **Joseph Weisensee**, **Anna Weisensee**, **Amy Weisensee** and **Elijah Weisensee**; **Stephen Topping**, as an individual and as parent and natural guardian of **Michael Topping**; **Debbie Gould**, as an individual and as parent and natural guardian of **Hannah Gould**, **Ben Gould** and **Daniel Gould**; **Lillian Leroux Sr.**, as an individual and as parent and natural guardian of **Lillian Leroux III**, **Ashley Leroux**, **Alixandra Leroux** and **Amber Leroux**; **Theresa Wrangham**; as an individual and as parent and natural guardian of **Rachel Wrangham**; **Lisa Calderon**, as an individual and as parent and natural guardian of **Savannah Smith**; **Jessica Spangler**, as an individual and as parent and natural guardian of **Rider Donovan Spangler**; **Jefferson County School District No. R-1**; **Colorado Springs School District No. 11, in the County of El Paso**; **Bethune School District No. R-5**; **Alamosa School District, No. RE-11J**; **Centennial School District No. R-1**; **Center Consolidated School District No. 26JT, of the Counties of Saguache and Rio Grande and Alamosa**; **Creede Consolidated School District No. 1 in the County of Mineral and State of Colorado**; | |

| | |
|---|---|
| **Del Norte Consolidated School District No. C-7**; **Moffat, School District No. 2, in the County of Saguache and State of Colorado**; **Monte Vista School District No. C-8**; **Mountain Valley School District No. RE 1**; **North Conejos School District No. RE 1J**; **Sanford, School District No. 6, in the County of Conejos and State of Colorado**; **Sangre de Cristo School District, No. RE-22J**; **Sargent School District No. RE-33J**; **Sierra Grande School District No. R-30**; **South Conejos School District No. RE10**; **Aurora Joint School District No. 28 of the Counties of Adams and Arapahoe**; **Moffat County School District Re: No. 1**; **Montezuma-Cortez School District No. RE-1**; and **Pueblo, School District No. 60 in the County of Pueblo and State of Colorado**;<br><br>**and**<br><br>**Plaintiffs-Intervenors-Appellees:**<br><br>**Armandina Ortega**, individually and as next friend for her minor children, **S. Ortega** and **B. Ortega**; **Gabriel Guzman**, individually and as next friend for his minor children, **G. Guzman**, **Al. Guzman** and **Ar. Guzman**; **Robert Pizano**, individually and as next friend for his minor children **Ar. Pizano** and **An. Pizano**; **Maria Pina**, individually and as next friend for her minor children **Ma. Pina** and **Mo. Pina**; **Martha Lopez**, individually and as next friend for her minor children **S. Lopez** and **L. Lopez**; **M. Payan**, individually and as next friend for her minor children **C. Payan**, **I. Payan**, **G. Payan** and **K. Payan**; **Celia Leyva**, individually and as next friend | |

| | | |
|---|---|---|
| for her minor children **Je. Leyva** and **Ja. Leyva**; and **Abigail Diaz**, individually and as next friend for her minor children **K. Saavedra** and **A. Saavedra**;<br>v.<br>**Defendants-Appellants:**<br><br>**The State of Colorado**; **Colorado State Board of Education**; **Robert K. 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. | | |
| **Attorneys for Amici** | | |
| Name:<br>Address:<br><br><br><br>Telephone:<br>Email: | Melissa Hart, Atty. Reg. # 34345<br>University of Colorado Law School<br>425 Wolf Law Building<br>401 UCB<br>Boulder, CO 80309-0401<br>(303) 735-6344<br>mhartcolorado@gmail.com | |
| Name:<br><br><br>Address:<br><br><br><br>Telephone:<br>E-mail: | Alicia L. Bannon*<br>Matthew Menendez<br>**pro hac vice application pending*<br>Brennan Center for Justice<br>161 Avenue of the Americas<br>12th Floor<br>New York, NY 10013<br>(646) 292-8310<br>alicia.bannon@nyu.edu | |
| **BRIEF OF *AMICI CURIAE* BRENNAN CENTER FOR JUSTICE AND PROFESSORS OF CONSTITUTIONAL LAW AND CIVIL PROCEDURE IN SUPPORT OF PLAINTIFFS-APPELLEES** | | |

## CERTIFICATE OF COMPLIANCE

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

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

- ☐ It contains _____ words.
- ☑ It does not exceed 30 pages.

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

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

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

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

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

Alicia L. Bannon, Esq.

## TABLE OF CONTENTS

## TABLE OF AUTHORITES

**Cases**

**Consitutional Provisions**



**Other Authorities**

## INTERESTS OF *AMICI CURIAE*

*Amici curiae* are the Brennan Center for Justice at N.Y.U. School of Law and seven law professors with expertise in constitutional law and civil procedure. As described in greater detail below, *amici* share expertise regarding the scope of judicial power and a common interest in preserving the integrity of the judicial branch in our state constitutional systems, including in Colorado.

The Brennan Center for Justice is a nonpartisan public policy and law institute focused on the fundamental issues of democracy and justice. Through public education, litigation, and advocacy, the Brennan Center's Fair Courts Project works to preserve fair and impartial courts and their role as the ultimate guarantor of equal justice in our constitutional democracy.

Paul D. Carrington is a Professor of Law at Duke Law School, where he served as dean from 1978 to 1988. He is an expert on civil procedure and on the history of the legal profession, and he has published 13 books and over 100 law review articles. From 1985 to 1992, he served as reporter to the committee of the Judicial Conference of the United States advising the Supreme Court on changes in the Federal Rules of Civil Procedure. He served on the Ann Arbor School Board from 1970 to 1973.

Erwin Chemerinsky is the founding dean and distinguished professor of law at the University of California, Irvine School of Law, with a joint appointment in

Political Science. His areas of expertise include constitutional law, federal practice, and civil rights and civil liberties. He is the author of seven books and nearly 200 articles in top law reviews, and his academic work has been frequently cited by courts.

James A. Gardner is a SUNY Distinguished Professor at SUNY Buffalo Law School, as well as the Joseph W. Belluck and Laura L. Aswad Professor of Civil Justice and the Director of the Jaeckle Center for Law and Democracy. His areas of expertise include state constitutional law and constitutional theory, and he is the author of four books and numerous articles. His most recent book is *New Frontiers of State Constitutional Law: Dual Enforcement of Norms* (Oxford University Press 2010).

Helen Hershkoff is the Herbert M. and Svetlana Wachtell Professor of Constitutional Law and Civil Liberties and Co-Director of the Arthur Garfield Hays Civil Liberties Program at N.Y.U. School of Law. She teaches civil procedure and federal courts, and her scholarship concerns state constitutions and civil procedure. Her academic work was cited by the Colorado Supreme Court in *Lobato v. State* (*Lobato I*), 218 P.3d 358 (Colo. 2009). She is also a member of the Board of Directors for the Brennan Center for Justice.

Burt Neuborne is the Inez Milholland Professor of Civil Liberties at N.Y.U. School of Law and the founding Legal Director of the Brennan Center for Justice.

He is the author of three books and over 20 law review articles on diverse areas of constitutional law and procedure, and his academic work was cited by the Colorado Supreme Court in *Lobato I*, 218 P.3d 358.

Gene Nichol is the Boyd Tinsley Distinguished Professor of Law and Director of the Center on Poverty, Work and Opportunity at UNC School of Law. He also served as the 26th president of the College of William and Mary from 2005-2008. He is a nationally recognized expert on constitutional law, civil procedure, and civil rights law, and is a co-author of *Federal Courts* (West, 2d ed. 2011) (with Wells, Marshall & Yackle) and a contributing author of *Where We Stand: Voices of Southern Dissent* (NewSouth 2004).

James E. Ryan is the William L. Matheson & Robert M. Morgenthau Distinguished Professor of Law, the F. Palmer Weber Research Professor of Civil Liberties and Human Rights, and the Director of the Program in Law and Public Service at the University of Virginia Law School. He is an expert on law and education and constitutional law, and is the author of *Five Miles Away, A World Apart*, which was published in 2010 by Oxford University Press.

****

*Amici* submit this brief to respond to the assertion by the Defendants and by *amici curiae* Former Colorado Governors Bill Ritter, Bill Owens, Roy Romer, and Richard Lamm (the "Former Governors") that Plaintiffs' claims under the

Education Clause of the Colorado Constitution pose a nonjusticiable "political question," which precludes the courts from exercising their ordinary responsibility to adjudicate disputes and interpret the law. Although Defendants and the Former Governors cast their argument as relying upon the "separation of powers," they fundamentally misapprehend what separation of powers requires in state constitutional systems, like Colorado's, that provide for the protection of affirmative rights, including the right to a thorough and uniform system of public education. Far from requiring judicial silence, separation of powers principles demand that the judicial branch ensure that the legislative and executive branches fulfill their constitutional duties. To conclude otherwise eliminates a vital check against the violation of constitutional rights by the political branches – a concern that is heightened where, as here, the right at issue impacts politically powerless and vulnerable populations.

## PRELIMINARY STATEMENT

As this Court already recognized in this very lawsuit, it is the responsibility of the judicial branch to determine whether the legislative and executive branches have met their duty to provide a thorough and uniform system of public education to Colorado's children. Defendants and the Former Governors seek to reopen this holding, arguing that resolving Plaintiffs' claims is outside the scope of the judicial power and constitutes a "political question." *Amici* agree with Plaintiffs that this argument is belied by constitutional text, binding precedent, and the law of the case. *See* Pl. Br. 17-35. *Amici* submit this brief to emphasize that Defendants and the Former Governors also fundamentally misapprehend the proper role of the judicial branch in a constitutional system, like Colorado's, that provides for the protection of affirmative rights.

When state constitutions create affirmative rights and impose affirmative duties on the political branches in areas such as education, it is not only appropriate but necessary for courts to assess whether the executive and legislative branches are meeting their constitutional obligations, including providing required funding. This is particularly so where, as here, the constitutional right protects children – including low-income and special needs students and English language learners – a population ill-equipped to assert its rights in the political sphere.

The fact that this analysis implicates policy decisions does not transform Plaintiffs' claims into a "political question;" to the contrary, as has been recognized by this and countless other courts and scholars, interpreting the scope of Colorado's right to a "thorough and uniform" system of public education, developing standards to guide in this evaluation, and ultimately determining whether the political branches are meeting their constitutional duties falls squarely within the traditional scope of judicial power. To refuse to exercise this power would be to strip the Colorado Constitution's Education Clause of any meaning.

Thus, while Defendants and the Former Governors are correct that this lawsuit implicates the separation of powers, they misconstrue how: separation of powers demands that this Court affirm its power to adjudicate constitutional disputes and protect constitutional rights by finding this case to be justiciable.

## ARGUMENT

### I. Separation of Powers Necessitates Adjudication of Plaintiffs' Constitutional Claims, Which Fall Squarely Within the Traditional Judicial Role.

The separation of powers among three coequal branches of government is codified in Colorado's Constitution and fundamental to Colorado's constitutional structure. *See* Colo. Const. art. III ("[N]o person or collection of persons charged with the exercise of powers properly belonging to one . . . department[] shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted."). This structure reflects a system of "checks and balances," where each branch of government "cooperate[s] with and complement[s]" the others while being supreme in its own domain. *Smith v. Miller*, 384 P.2d 738, 741 (Colo. 1963) (internal quotation marks omitted).

As this Court has explained, the separation of powers imposes upon the judiciary not only "a proscription against interfering with the executive or legislative branches," but also "a duty to perform its constitutional and statutory obligations with complete independence." *Pena v. Dist. Court of Second Judicial Dist. in and for City and County of Denver*, 681 P.2d 953, 956 (Colo. 1984). Recognizing this duty, this Court held – in this very lawsuit – that because the Colorado Constitution provides for a "constitutional mandate that the General Assembly provide a 'thorough and uniform' system of public education," it "is the

responsibility of the judiciary" to determine whether this mandate has been fulfilled and that accordingly, Plaintiffs' lawsuit asserting that Defendants have failed to meet their duties under the Education Clause is justiciable. *Lobato I*, 218 P.3d at 363; Colo. Const. art. IX, § 2.

Defendants and the Former Governors object to this holding, arguing that the Colorado Constitution dictates that the judicial branch abstain from adjudicating Plaintiffs' claims altogether because they constitute a "political question," such that resolving Plaintiffs' claims would violate the separation of powers. This argument, which suggests that the Court cannot hear Plaintiffs' claims without "disrespecting the legislative and executive branches of government," Def. Opening Br. 11, and that "judicial intervention in this realm impedes the executive policy-making process," Former Gov. Br. 3, fundamentally misapprehends the role of the judicial branch in Colorado's constitutional system and reflects a dangerous call for the judicial branch to abdicate its responsibility to adjudicate constitutional questions.

"It is incumbent upon each department to assert and exercise all its powers whenever public necessity requires it to do so; otherwise, it is recreant to the trust reposed in it by the people." *Smith*, 384 P.2d at 741 (internal quotation marks omitted). Here, because it is the role of the judicial branch to say what the law is and to ensure that the political branches follow the law and the Constitution,

separation of powers not only permits but requires that the judicial branch adjudicate Plaintiffs' claims that Defendants have violated their rights under the Education Clause.

**A. The Judicial Branch Has a Duty to Adjudicate Plaintiffs' Claims.**

It is well established that the role of the judicial branch is to interpret the law, including determining whether the political branches are complying with their constitutional duties. As this Court has explained, "interpretation of the constitution" is "a function at the very core of the judicial role," *Colorado Gen. Assembly v. Lamm*, 704 P.2d 1371, 1379 (Colo. 1985), and "the judiciary is the final arbiter of what the laws and the constitutions provide," *Board of County Comm'rs v. Vail Assocs.*, 19 P.3d 1263, 1272 (Colo. 2001); *see also Washington County Bd. of Equalization v. Petron Dev. Co.*, 109 P.3d 146, 149 (Colo. 2005) ("Only the judicial branch holds the ultimate authority to construe the constitution's meaning."); *cf. Marbury v. Madison*, 5 U.S. 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is."); *Washakie County Sch. Dist. No. One v. Herschler*, 606 P.2d 310, 318 (Wyo. 1980) ("Declaring the validity of statutes in relation to the constitution is a power vested in the courts as one of the checks and balances contemplated by the division of government into three departments legislative, executive and judicial ever since first enunciated in *Marbury v. Madison* . . . .").

Where, as here, the Constitution creates an affirmative right – and imposes concordant duties – it falls within the core of the judicial role to determine whether the political branches have met the requirements of the Constitution. The fact that this evaluation may require assessing funding decisions made by the political branches does not change this analysis. As the Connecticut Supreme Court explained, "[j]ust as the legislature has a constitutional duty to fulfill its affirmative obligation to the children who attend the state's public elementary and secondary schools, so the judiciary has a constitutional duty to review whether the legislature has fulfilled its obligation." *Connecticut Coalition for Justice in Educ. Funding, Inc. v. Rell*, 990 A.2d 206, 220 (Conn. 2010) (internal quotation marks omitted). Undertaking this analysis requires assessing a series of legal and factual questions, a common task for courts and one that falls well within the traditional judicial role.

For example, to assess Plaintiffs' claims on the merits, a court must first interpret the Colorado Constitution's Education Clause, including determining what rights and duties it creates and developing doctrine and standards for assessing whether its requirements have been met – all legal questions that plainly fall within the capacity of the judiciary to evaluate. As the Kentucky Supreme Court explained in interpreting its own constitution's education clause, "[t]he judiciary has the ultimate power, and the duty, to apply, interpret, define, [and] construe all words, phrases, sentences and sections of the Kentucky Constitution as

necessitated by the controversies before it." *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 209 (Ky. 1989); *see also* James E. Ryan, *A Constitutional Right to Preschool?*, 94 Cal. L. Rev. 49, 85 (2006) (arguing that "constitutional language requires interpretation and implementation, including language in state constitutions that creates an affirmative right to education").

Nor is it the case that no standards can be devised. As Plaintiffs point out, in *Lobato I* this Court outlined how to evaluate whether the Education Clause's mandate has been satisfied, explaining that "the General Assembly's own laws and pronouncements, as well as other courts' interpretations of similar state education clauses, can assist the court in assessing whether the General Assembly has adequately implemented the 'thorough and uniform' mandate of the education clause." *Lobato I*, 218 P.3d at 372 (citing *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005, 1025 (Colo. 1982)). On remand, the trial court applied these instructions, concluding that "a basic measure of the constitutionality of the public school finance system is whether it is rationally related to providing funding sufficient to permit school districts to meet the mandates of the educational accountability system and provide an education that results in student achievement of the performance outcomes set by state law and regulation." Findings, p.12, II(B), ¶ 14.[1] These standards give specific content to the broad provisions of the

[1] "Findings" refers to the trial court's December 9, 2011 Findings of Fact.

Education Clause, no differently than how courts ordinarily interpret and develop standards for broadly-worded constitutional provisions. As the Wyoming Supreme Court observed, "One need only examine the litany of case law, state and federal, interpreting the broad language of such constitutional provisions as the due process and equal protection provisions and establishing standards on which to invoke the rights enshrined in those fundamental laws to reject the disingenuousness of the 'absence-of-standards' rationale. If one were to take seriously this rationale, a huge portion of judicial constitutional review would be without basis." *State v. Campbell County Sch. Dist.*, 32 P.3d 325, 335-36 (Wyo. 2001).

It is also fully within the judicial role to order relief in the event that a court finds that Defendants failed to meet their constitutional obligations under the Education Clause, as the trial court did in this lawsuit. Courts enjoy "broad discretion to formulate the terms of injunctive relief when equity so requires." *Colorado Springs Bd. of Realtors, Inc. v. State*, 780 P.2d 494, 498 (Colo. 1989); *see also State v. Campbell County Sch. Dist*., 32 P.3d at 333 ("When [political process] defects lead to continued constitutional violations [of affirmative rights], judicial action is entirely consistent with separation of powers principles and the judicial role."). Indeed, this Court laid out a road map for ordering just such relief in this case, in the event the trial court found that Defendants had violated the Education Clause. *See Lobato I*, 218 P.3d at 375 ("If the court finds that the

current system of public finance is irrational, then the court must provide the legislature with an appropriate period of time to change the funding system so as to bring the system in compliance with the Colorado Constitution.").

The fact that the relief ordered may be difficult or complex is no basis to find this dispute non-justiciable. "[T]he idea that the judiciary may be precluded from constitutional adjudication because the issue is 'too complex' is fundamentally antithetical to constitutionalism itself. If one accepts judicial review as a means to defend the constitution against violations by the other departments, particularly the legislature, one must accept that the complexity of the issue presented is irrelevant to the propriety of judicial review." Michael D. Blanchard, *The New Judicial Federalism,* 60 U. Pitt. L. Rev. 231, 267 (1998) (discussing state constitutions) (internal quotation marks omitted).

Recognizing these principles, "the vast majority of jurisdictions 'overwhelmingly' have concluded that claims that their legislatures have not fulfilled their constitutional responsibilities under their education clauses are justiciable." *Connecticut Coalition for Justice in Educ. Funding, Inc.*, 990 A.2d at 226 n.24; *see, e.g., Neeley v. West Orange–Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 780-81 (Tex. 2005) ("Like the majority of these states, we conclude that the separation of powers does not preclude the judiciary from determining whether the Legislature has met its constitutional obligation to the people to

provide for public education."); *Columbia Falls Elementary Sch. Dist. No. 6 v. State*, 109 P.3d 257, 261 (Mont. 2005) ("As the final guardian and protector of the right to education, it is incumbent upon the court to assure that the system enacted by the Legislature enforces, protects and fulfills the right."); *Leandro v. State*, 488 S.E.2d 249, 254 (N.C. 1997) ("[I]t is the duty of this Court to address plaintiff-parties' constitutional challenge to the state's public education system."); *DeRolph v. State*, 677 N.E.2d 733, 737 (Ohio 1997) ("We will not dodge our responsibility by asserting that this case involves a nonjusticiable political question. To do so is unthinkable."); *Campbell County Sch. Dist. v. State*, 907 P.2d 1238, 1264 (Wyo. 1995) ("Constitutional provisions imposing an affirmative mandatory duty upon the legislature are judicially enforceable in protecting individual rights, such as educational rights.").

Numerous scholars have likewise concluded that "positive rights, like their negative rights counterparts, invite judicial interpretation." Jeffrey Omar Usman, *Good Enough for Government Work: The Interpretation of Positive Constitutional Rights in State Constitutions*, 73 Alb. L. Rev. 1459, 1519 (2010); *see, e.g.*, Blanchard, *supra*, at 268 ("[Q]uestions of the constitutional adequacy or equality of education finance strongly implicate a delicate balance between the judicial and legislative spheres. But the complexity of distinguishing between spheres of power is not an appropriate grounds for conceding authority altogether."); Jonathan

Feldman, *Separation of Powers and Judicial Review of Positive Rights Claims*, 24 Rutgers L.J. 1057, 1099 (1993) ("[C]ourts which take these constitutions [providing for affirmative rights] seriously are merely enforcing the constitutionally-ordained priorities."). Simply put, when a state constitution provides for an affirmative right, "[t]he legislature can choose the means to carry out a constitutional goal, but it cannot claim to meet its constitutional duty if the means chosen evade, undermine, or fail to carry out the prescribed end." Helen Hershkoff, *Welfare Devolution and State Constitutions*, 67 Fordham L. Rev. 1403, 1414 (1999).

Finally, the justiciability of Plaintiffs' suit is further supported by the principles of broad access to the courts embodied in the Colorado Constitution – much broader than the access provided in the federal courts. As this Court already recognized, "important differences exist between federal and state constitutional law on judicial power and the separation of powers," making the "mechanical[]" application of federal standards regarding justiciability inappropriate. *Lobato I*, 218 P.3d at 369-70.[2] Colorado courts in fact differ profoundly from federal courts

[2] Thus, while as Plaintiffs persuasively show in their brief, this case meets the federal requirements for justiciability most famously articulated in *Baker v. Carr*, 369 U.S. 186 (1962), this Court also "should not assume one common analysis in the face of legal differences that are truly constitutional – that is to say, 'constitutive' of government – and for which state courts take on responsibilities that federal courts decline." Hans A. Linde, *The State and the Federal Courts in Governance: Vive La Différence!*, 46 Wm. & Mary L. Rev. 1273, 1273 (2005); s*ee*

in the broader scope of their power and jurisdiction. *See, e.g.*, Colo. Const. art. VI, § 3 (stating that the Colorado Supreme Court shall give advisory opinions "when required by the governor, the senate, or the house of representatives"); Colo. Const. art. VI, § 9 (Colorado district courts are courts of general jurisdiction); *City of Greenwood Vill. v. Petitioners for Proposed City of Centennial*, 3 P.3d 427, 437 nn.7-8 (Colo. 2000) (Colorado courts do not adopt federal standing requirement that injury be "concrete and particularized" and "actual or imminent, not conjectural or hypothetical"); *see also Lobato I*, 218 P.3d at 370 (discussing distinctions between federal and state courts). Colorado's Bill of Rights likewise codifies "a procedural right to a judicial remedy" whenever "a substantive right . . . accrues under Colorado law." *Allison v. Industrial Claim Appeals Office of State of Colo.*, 884 P.2d 1113, 1119 (Colo. 1994); *see* Colo. Const. art. II, § 6 ("Courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property, or character."). Thus, Colorado's constitutional structure provides courts with even broader power and jurisdiction than that which

---

*also Kellas v. Dep't of Corr.*, 145 P.3d 139, 143 (Or. 2006) ("[W]e cannot import federal law regarding justiciability into our analysis of the Oregon Constitution and rely on it to fabricate constitutional barriers to litigation with no support in either the text or history of Oregon's charter of government."); Helen Hershkoff, *State Courts and the "Passive Virtues": Rethinking the Judicial Function*, 114 Harv. L. Rev. 1833, 1940 (2001) ("[S]tate courts, because of their differing institutional and normative position, should not conform their rules of access to those that have developed under Article III.").

exists in the federal system, making them particularly well-suited to adjudicate Plaintiffs' claims.

Under these circumstances, the judicial branch has not only the authority but also the responsibility to adjudicate Plaintiffs' claims, and this Court should reaffirm its prior decision that Plaintiffs' lawsuit is justiciable.

### B. Adjudicating Plaintiffs' Claims is Respectful of the Political Branches.

Defendants and the Former Governors further suggest that this suit raises a non-justiciable "political question" because adjudicating Plaintiffs' claims would be disrespectful of the political branches and the political process. *See* Def. Br. 11-12, 22-25; Former Gov. Br. 9-10. Of course, "simply because the case has a connection to the political sphere [is not] an independent basis for characterizing an issue as a political question." *Office of the Governor v. Select Comm. of Inquiry*, 858 A.2d 709, 729 (Conn. 2004) (internal quotation marks omitted). Nor can the mere fact of legislative recalcitrance in fulfilling constitutional duties transform a justiciable claim into a political question. As this Court has explained, there is a fundamental difference between "reviewing controversies concerning policy choices and value determinations that are constitutionally committed for resolution to the legislative or executive branch," and determining whether the State's policy decisions "were properly within its discretion" as limited by its statutory and constitutional duties. *Busse v. City of Golden*, 73 P.3d 660, 664

(Colo. 2003). While the judiciary "must refrain from reviewing" the former, it is well within its powers to review the latter, "which does not require formulating . . . legislative policy or developing standards not legal in nature." *Id.*

Here, Defendants and the Former Governors seek to treat Plaintiffs' right to a thorough and uniform system of education as purely a matter of politics and policy. But this argument effectively reads the Education Clause's mandatory language, that "[t]he general assembly *shall*, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state," out of the Constitution. Colo. Const. art. IX, § 2 (emphasis added); *see also People v. Dist. Court, Second Judicial Dist.*, 713 P.2d 918, 921 (Colo. 1986) (use of the word "shall" "usually deemed to involve a mandatory connotation"); Usman, *supra*, at 1520 (warning that "[t]o treat positive rights provisions as . . . matters purely of politics despite their constitutionalization, is to effectively read these provisions out of state constitutions or at least to eliminate the role of a tripartite system of checks and balances with regard to these constitutional rights"). The Constitution's requirement that Colorado's school system be "thorough and uniform" further demonstrates its mandatory nature. As the Texas Supreme Court held in evaluating its own Education Clause, which mandates that the Legislature "make suitable provision for the support and maintenance of an efficient system of public free schools," Tex. Const. art. vii, § 1,

"[i]f the framers had intended the Legislature's discretion to be absolute, they need not have mandated that the public education system be efficient and suitable; they could instead have provided only that the Legislature provide whatever public education it deemed appropriate." *Neeley*, 176 S.W.3d at 778. As in Texas, the Colorado Constitution's requirement that the school system be thorough and uniform sets a standard of attainment for the Legislature. It is firmly within the judicial role to interpret and apply that standard to the facts of this case, including determining whether the Legislature's educational funding scheme meets its responsibilities under the Constitution.

Nor is this a case where the text of the Constitution reserves the power to determine compliance with the Education Clause with another branch of government. *Cf. Sheff v. O'Neill*, 678 A.2d 1267, 1275 (Conn. 1986) ("In the absence of such a textual reservation . . . it is the role and the duty of the judiciary to determine whether the legislature has fulfilled its affirmative obligations within constitutional principles."). Nowhere in the text of the Education Clause does the Constitution suggest that the legislative or executive branches are to determine their own compliance with the mandate to provide a thorough and uniform public school system. In contrast, other provisions of the Colorado Constitution provide for just such textual delegations. *See, e.g.*, Colo. Const. art. v, § 10 ("Each house shall . . . judge the election and qualification of its members."). Had the

constitutional framers intended to delegate to the legislative or executive branches the authority to determine compliance with the Education Clause, they could have used similar language. *See Connecticut Coalition for Justice in Educ. Funding, Inc.*, 990 A.2d at 221 (constitutional drafters "could have used more restrictive language[] had they wished to avert completely the potential involvement of the judiciary in [the Education Clause's] enforcement and implementation, regardless of the propriety of those legislative acts").

Thus, as this Court previously recognized in this very lawsuit, the decision by the people to commit the State to provide a "thorough and uniform" public education system is not mere verbal surplusage: it imposes affirmative duties on the political branches to ensure adequate education funding to Colorado's schools. The Education Clause thus transforms educational adequacy from an "aspirational goal[]" to "a part of the constitutional fabric and a nondiscretionary feature of the legal order." Helen Hershkoff, *Positive Rights and State Constitutions*, 112 Harv. L. Rev. 1131, 1156 (1999). As a result, "[a] shortfall in enforcement may not simply be remitted to politics; it instead implicates the judiciary in a collaborative process of elaborating the constitutional mandate." *Id.*

This conclusion is dispositive: the judiciary does not "encroach into the legislative field of policy making" when it enforces non-discretionary duties imposed by the Constitution on the political branches; to the contrary, "the

judiciary has the constitutional duty to declare unconstitutional that which transgresses the state constitution." *Campbell County Sch. Dist. v. State*, 907 P.2d at 1264. Indeed, this Court has "decided numerous other cases that have raised issues of whether legislative actions violated statutory or constitutional provisions, and we have not held that the nature of such questions automatically renders them nonjusticiable political questions." *Colorado Common Cause v. Bledsoe*, 810 P.2d 201, 206 (Colo. 1991).

Courts around the country have come to exactly this conclusion in the context of education funding suits, explaining that "[w]e see nothing in the plaintiffs' claim of unconstitutionality . . . that would, if we were to undertake to decide it or if it were found to be meritorious, involve the courts in expressing a lack of due respect for coordinate branches of government. . . . Performing such a task simply exemplifies the fundamental judicial burden of determining whether a statute meets constitutional standards." *Connecticut Coalition for Justice in Educ. Funding, Inc.*, 990 A.2d at 225 (quoting *Seymour v. Region One Bd. of Educ.*, 803 A.2d 318, 326 (Conn. 2002)). These courts have recognized that the "duty [to interpret and apply the Constitution] must be exercised even when such action serves as a check on the activities of another branch of government or when the court's view of the constitution is contrary to that of other branches, or even that of the public." *Rose*, 790 S.W.2d at 209; *see also McCleary v. State*, 269 P.3d 227,

246 (Wash. 2012) (describing the judicial branch's duty to interpret the Education Article "even when that interpretation serves as a check on the activities of another branch or is contrary to the view of the constitution taken by another branch") (quoting *Seattle Sch. Dist. No. 1 of King County v. State*, 585 P.2d 71, 83–84 (Wash. 1978)); *Washakie County School Dist. No. One*, 606 P.2d at 319 ("Though the supreme court has the duty to give great deference to legislative pronouncements and to uphold constitutionality when possible, it is the court's equally imperative duty to declare a legislative enactment invalid if it transgresses the state constitution.").

Indeed, to refuse to hear this case out of concern for disagreement with the political branches would itself undermine separation of powers, as this Court has repeatedly recognized:

> [W]hen legislative action exceeds the boundaries of the authority delegated by the Constitution, and transgresses a sacred right guaranteed to a citizen, final decision as to the invalidity of such action must rest exclusively with the courts. It cannot be forgotten that ours is a government of laws and not of men, and that the judicial department has imposed upon it the solemn duty to interpret the laws in the last resort. However delicate that duty may be, we are not at liberty to surrender, or to ignore, or to waive it.

*In re Legislative Reapportionment*, 374 P.2d 66, 68 (Colo. 1962) (quoting *Asbury Park Press, Inc. v. Woolley*, 161 A.2d 705, 710 (N.J. 1960)). As the Kansas Supreme Court explained, "To avoid deciding the case because of 'legislative

discretion,' 'legislative function,' etc. would be a denigration of our own constitutional duty. To allow [the Executive or Legislature] to decide whether its actions are constitutional is literally unthinkable." *Montoy v. State of Kansas*, 112 P.3d 923, 930 (Kan. 2005) (quoting *Lake View Sch. Dist. No. 25 v. Huckabee*, 91 S.W.3d 472, 485 (Ark. 2002)). To do otherwise would allow "the other branches of government . . . to interpret the constitution for us. That would be an abject abdication of our role in the American system of government." *Idaho Sch. for Equal Educ. Opportunity v. Evans*, 850 P.2d 724, 734 (Idaho 1993); *see also Edgewood Ind. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 394 (Tex. 1989) ("If the system is not 'efficient' or not 'suitable,' the legislature has not discharged its constitutional duty and it is *our* duty to say so.").

Defendants and the Former Governors thus fundamentally misapprehend the role of the courts – and the role of the political branches – in Colorado's constitutional system. The judicial branch has not only the authority but the responsibility to interpret and apply the Education Clause – including holding the political branches accountable for any failure to meet their constitutional duties.

## II. Judicial Oversight is Particularly Important Where, As Here, the Constitutional Right at Issue Protects Populations Unable to Protect Themselves Through the Political Process.

While these principles of justiciability are applicable to any challenge under the Colorado Constitution, the judicial branch's duty to adjudicate Plaintiffs'

claims is especially strong here. Plaintiffs' claims involve rights that impact students who are too young to participate and protect their interests through the political process, including particularly vulnerable populations such as low-income and special needs students and English language learners. Because the Education Clause protects populations than cannot protect their own interests through the political process, deference to the political branches is particularly inappropriate, and the judicial branch should exercise its duty to adjudicate Plaintiffs' claims and find this case justiciable.

It is beyond dispute that "[t]he Judiciary has the duty of implementing the constitutional safeguards that protect individual rights," a duty that "cannot be shirked." *Trop v. Dulles*, 356 U.S. 86, 103-04 (1958); *see also Sigman v. Seafood Ltd. P'ship I*, 817 P.2d 527, 533 (Colo. 1991) ("[I]f a right does accrue under the law, the courts will be available to effectuate such right.") (internal quotation marks omitted). And while the judicial branch must always be vigilant in ensuring that the political branches abide by their constitutional duties, this responsibility is especially strong when the right at issue impacts vulnerable and politically marginalized populations. *See United States v. Carolene Prods.*, 304 U.S. 144, 152 n.4 (1938) (suggesting a "more searching judicial inquiry" is necessary when "prejudice against discrete and insular minorities . . . tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect

minorities"). As former U.S. Supreme Court Justice Lewis Powell explained when delivering the Harlan Fiske Stone lecture at Columbia Law School thirty years ago, "there are certain groups that cannot participate effectively in the political process. And the political process therefore cannot be trusted to protect these groups in the way it protects most of us." Lewis F. Powell, Jr., *Carolene Products Revisited*, 82 Colum. L. Rev. 1087, 1088 (1982). The right to a thorough and uniform system of public education is exactly the kind of constitutional right that requires judicial vigilance, "because of the tendency of majority politics to leave behind the voiceless. Children growing up with grossly inadequate educational opportunities are exactly those citizens whom courts must protect." Julia A. Simon-Kerr & Robynn K. Sturm, *Justiciability and the Role of Courts in Adequacy Litigation*, 6 Stan. J. Civ. Rts. & Civ. Liberties 83, 121 (2010). Thus, when "our elected representatives in fact are not representing the interests of those whom the system presupposes they are," it is a core duty of the judicial branch to step in to remedy this "malfunction." John Hart Ely, *Democracy and Distrust* 103 (1980).

This lawsuit implicates vulnerable populations in a number of ways. As an initial matter, because children cannot vote and lack access to the legislature, they are ill-equipped to seek protection through the political sphere. Thus, investing in education "requires present voters to sacrifice in order to increase the returns enjoyed by a future generation." Lynn A. Stout, *Some Thoughts on Poverty and*

*Failure in the Market for Children's Human Capital*, 81 Geo. L.J. 1945, 1956 (1993). Absent "perfect altruism" among voters, it is unlikely that government officials will sufficiently invest in education, because "that future generation lacks voting power at the time the decision to invest must be made." *Id.* at 1956-57.

Even more significantly, however, it is those children who are most likely to be harmed by weak educational opportunities – including the poor, children with special needs, and English language learners – who are least likely to enjoy political clout, and most likely to suffer from "the danger of legislative indifference." Usman, *supra*, at 1521-22. Recognizing this fact, "the courts have taken a role in ensuring that political processes do not operate to deprive politically powerless groups of children of the educational services to which they are entitled under state constitutions and state laws." Scott R. Bauries, *State Constitutional Design and Education Reform*, 40 J.L. & Educ. 1, 13 (2011). Because of the vulnerable populations at issue, it is particularly important that this Court fulfill its duty to interpret and apply the Education Clause – and to do so precisely *because* it implicates the actions of political branches that may not be responsive to the needs of those whose interests the Constitution was designed to protect.

This need for judicial action is borne out in Colorado's own experience: as the trial court found, Colorado's history of education funding has been "irrational," leaving school districts without "the funds necessary to fulfill the mandates of the

standards-based system" adopted by the Legislature itself. Findings, p.40, V, ¶¶ 1-2. For example, with respect to English language learners, the trial court found that State funding "bears no relationship to the cost of meeting the standards and requirements mandated by the State." Findings, p.95, XIV(D), ¶ 10. Among other deficiencies, funding under the Colorado English Language Proficiency Act (ELPA) is only available for a student's first two years in the state, even though four to seven years of instruction is necessary for acquisition of full proficiency. Findings, p.95, XIV(D), ¶ 6.

Likewise, on numerous achievement measures, Colorado has fallen behind. Approximately 400,000 of Colorado's students, nearly half of the entire population, fall below proficiency on Colorado Student Assessment Program (CSAP) tests. Findings, p.55, VIII(A), ¶ 2. This failure hits underserved populations particularly hard: Colorado has an approximately 30% achievement gap, one of the worst in the country. Findings, p.55, VIII(A), ¶ 2; p.56, VIII(B), ¶ 2. Colorado's education funding failures thus demonstrate just how politically powerless the state's children are, further establishing the importance of judicial oversight in protecting their constitutional rights.

The stakes, moreover, are profoundly high. As this Court has "recognize[d] unequivocally," public education "plays a vital role in our free society. It can be a major factor in an individual's chances for economic and social success as well as

a unique influence on a child's development as a good citizen and on his future participation in political and community life." *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005, 1017 (Colo. 1982). Indeed, the "American people have always regarded education and [the] acquisition of knowledge as matters of supreme importance," *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923), recognizing "the public schools as a most vital civic institution for the preservation of a democratic system of government," *School Dist. of Abington Tp., Pa. v. Schempp*, 374 U.S. 203, 230 (1963) (Brennan, J., concurring). And the denial of judicial review can itself weaken the political branches' respect for the mandates of the Education Clause and encourage continued violations of their duty to provide a thorough and uniform education to all of Colorado's children. "[G]uaranteeing these rights without the prospect of enforcement would result in degrading the efficacy of rights in the public consciousness," setting the precedent for ignoring the Constitution. Usman, *supra*, at 1531-32 (internal quotation marks omitted).

In providing for an affirmative right to a thorough and uniform system of education, the framers of Colorado's Constitution sought to protect children from the vicissitudes of legislative action and inaction – a decision that Colorado's education funding experience demonstrates is urgently necessary. Far from intruding on the political spheres, adjudicating Plaintiffs' claims falls within the

core of the judicial role, to protect the constitutional rights of vulnerable populations.

## CONCLUSION

For the foregoing reasons, *amici* urge this Court to reaffirm its earlier ruling that Plaintiffs' action is justiciable.

Respectfully submitted,

_____

Melissa Hart
Atty. Reg. # 34345
University of Colorado Law School
425 Wolf Law Building
401 UCB
Boulder, CO 80309-0401
Phone Number: (303) 735-6344
Fax Number: (303) 492-1200
melissa.hart@colorado.edu
*Attorney for Amici Curiae Brennan Center for Justice and Professors of Constitutional Law and Civil Procedure*

Alicia L. Bannon*
Matthew Menendez
**Pro hac vice application pending*
Brennan Center for Justice
161 Avenue of the Americas
12th Floor
New York, NY 10013
(646) 292-8310
alicia.bannon@nyu.edu
*Attorneys for Amici Curiae Brennan Center for Justice and Professors of Constitutional Law and Civil Procedure*

Dated: September 26, 2012

## CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2012, an original and 10 copies of the foregoing brief of *amici curiae* Brennan Center for Justice and Professors of Constitutional Law and Civil Procedure were filed with the clerk of the Colorado Supreme Court via overnight U.S. mail, addressed to the following:

Colorado Supreme Court
Clerk of the Court
101 West Colfax Avenue, Suite 800
Denver, CO 80202

I further certify that a true and correct copy of the foregoing brief was served on each of the following parties via U.S. mail and electronic mail, addressed to the following:

Kathleen J. Gebhardt, Esq.
Jennifer Weiser Bezoza, Esq.
Kathleen J. Gebhardt LLC
1900 Stony Hill Road
Boulder, Colorado 80305
kgebhardt@childrens-voices.org
jbezoza@childrens-voices.org
*Attorneys for Plaintiffs-Appellees Anthony Lobato, et al.*

Marcy G. Glenn
Craig Stewart
Brooke H. McCarthy
Clarissa M. Raney
Holland & Hart, LLP
555 Seventeenth Street, Suite 3200
Denver, Colorado 80201-8749

MGlenn@hollandhart.com
CStewart@hollandhart.com
BHMcCarthy@hollandhart.com
CMRaney@hollandhart.com
*Attorneys for Plaintiff-Appellees Anthony Lobato, et al.*

Mark B. Wiletsky, Esq.
Holland & Hart, LLP
One Boulder Plaza
1800 Broadway Street, Suite 300
Boulder, Colorado 80302
MBWiletsky@hollandhart.com
*Attorney for Plaintiffs-Appellees Anthony Lobato, et al.*

Kenzo Kawanabe Esq.
Terry R. Miller, Esq.
Davis, Graham & Stubbs, LLP
1550 Seventeeth Street, Suite 500
Denver, Colorado 80202
kenzo.kawanabe@dgslaw.com
terry.miller@dgslaw.com
*Attorneys for Plaintiffs-Appellees Anthony Lobato, Denise Lobato, Taylor Lobato, Alexa Lobato, Aurora Joint School District No. 28, Jefferson County School District No. R-1, Colorado Springs School District No. 11, Monte Vista School District No. C-8, and Alamosa School District No. RE-11J*

Alexander Halpern, Esq.
Halpern Meacham
1790 30th Street, Suite 280
Boulder, CO 80301
alhalpern@halpernllc.com
*Attorney for Plaintiffs-Appellees Anthony Lobato, et al.*

Kyle C. Velte, No. 31093
University of Denver Sturm College of Law

2255 East Evans Avenue, Room 365L
Denver, Colorado 80208
kvelte@law.du.edu
*Attorney for Plaintiffs-Appellees Creede Consolidated School District No. 1; Del Norte Consolidated School District No. C-7; Moffat, School District No. 2; and Mountain Valley School District No. RE 1*

Jess A. Dance, Esq.
Zane Gilmer, Esq.
Perkins Coie, LLP
1900 16th Street, Suite 1400
Denver, Colorado 80202
jdance@perkinscoie.com
zgilmer@perkinscoie.com
*Attorneys for Plaintiffs-Appellees Sanford School District 6J, North Conejos School District RE-1J, South Conejos School District RE-10, and Centennial School District No. R-1*

Jessica E. Yates, Esq.
Snell & Wilmer LLP
One Tabor Center, Suite 1900
Denver, Colorado 80202
jyates@swlaw.com
*Attorney for Plaintiffs-Appellees Alixandra, Amber, Ashley, Lillian III and Lillian Leroux Snr.*

David Hinojosa, Esq.
Marisa Bono, Esq.
Rebecca M. Couto, Esq.
Mexican American Legal Defense and Education Fund (MALDEF)
110 Broadway, Suite 300
San Antonio, Texas 78205
dhinojosa@maldef.org
mbono@maldef.org
rcouto@maldef.org

*Attorneys for Plaintiff-Intervenors-Appellees Armandina Ortega, et. al.*

Manuel L. Martinez, Esq.
Steven J. Perfrement, Esq.
Bryan Cave HRO LLP
1700 Lincoln Street, Suite 4100
Denver, Colorado 80203
Manuel.martinez@bryancave.com
Steven.perfrement@bryancave.com
*Attorneys for Plaintiff-Intervenors-Appellees Armandina Ortega, et al.*

Jonathan P. Fero, Esq.
John T. Lee, Esq.
Erica Weston, Esq.
Carey Taylor Markel, Esq.
Office of the Colorado Attorney General
1525 Sherman Street, 7th Floor
Denver, Colorado 80203
jon.fero@state.co.us
jtlee@state.co.us
erica.weston@state.co.us
markel_c@cde.state.co.us
*Attorneys for Defendants-Appellants*

Dustin R. Sparks, Esq.
Law Offices of Brad A. Miller
P.O. Box 2661
Monument, Colorado 80132
dustin@bradmillerlaw.com
*Attorney for Amicus Curiae Colorado League of Charter Schools*

Jessica Johnson, Esq.
Colorado League of Charter Schools
725 South Broadway Street
Denver, Colorado 80209

jmjohnson@coloradoleague.org
*Attorney for Amicus Curiae Colorado League of Charter Schools*

Jason R. Dunn, Esq.
Michael D. Hoke, Esq.
Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, Colorado 80202-4432
jdunn@bhfs.com
*Attorneys for Amici Curiae Colorado Concern, et al.*

Richard A. Westfall, Esq.
Peter J. Krumholz, Esq.
Matthew W. Spengler, Esq.
Hale Westfall, LLP
1430 Market Street, Suite 300
Denver, Colorado 80202
rwestfall@halewestfall.com
pkrumholz@halewestfall.com
spengler@halewestfall.com
*Attorneys for Amici Curiae Colorado Behavioral Healthcare Council and Alliance*

David Wm. Foster, Esq.
Chip G. Schoneberger, Esq.
Foster Graham Milstein & Calisher, LLP
360 South Garfield Street, 6th Floor
Denver, Colorado 80209
david@fostergraham.com
cschoneberger@fostergraham.com
*Attorneys for Amici Curiae Former Colorado Governors Bill Ritter, Bill Owens, Roy Romer, and Richard Lamm*

William P. Bethke, Esq.
Kutz & Bethke LLC
363 South Harlan, Suite 104

Lakewood, Colorado 80226
wpbethke@lawkb.com
*Attorney for Amici Curiae Colorado League of Charter Schools and National Alliance for Public Charter Schools*

Patrick T. O'Rourke, Esq.
Jeremy Hueth, Esq.
Office of University Counsel
1800 Grant Street, Suite 700
Denver, Colorado 80203
Patrick.orourke@cu.edu
Jeremy.hueth@cu.edu
*Attorneys for Amicus Curiae Regents of the University of Colorado*

_____

Alicia L. Bannon, Esq.