DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street Denver, CO 80202 **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 **Attorneys for Defendants:** JOHN W. SUTHERS, Attorney General MICHELLE MERZ-HUTCHINSON, First Assistant Attorney General, Reg. No. 33306* ANTONY B. DYL, Senior Assistant Attorney General and Assistant Solicitor General, Reg. No. 15968* JONATHAN P. FERO, Senior Assistant Attorney General and Assistant Solicitor General, Reg. No. 35754*	▲COURT USE ONLY▲ Case No. 2014CV32543 Courtroom: 376

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MOTION TO DISMISS PLAINTIFFS' COMPLAINT	

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, pursuant to Rule 12(b)(1) and (5) of the Colorado Rules of Civil Procedure, hereby move for dismissal of Plaintiffs' Complaint in its entirety with prejudice.

C.R.C.P. 121 § 1-15 ¶ 8 CERTIFICATION

Undersigned counsel for Defendants has conferred in good faith with Plaintiffs' counsel Timothy R. Macdonald about this Motion, who has indicated Plaintiffs oppose dismissal of their Complaint.

INTRODUCTION

Since 2010, the Colorado General Assembly has included a negative factor in its public school finance formula to stabilize the state budget. Yet every year, it still has increased its base level of funding for students statewide, as required by Amendment 23 to the Colorado Constitution. Plaintiffs, a group of parents, school districts, and education associations, allege Amendment 23 requires more. Even though it refers by name to the "statewide base per pupil funding amount," Plaintiffs ask the judiciary to extend Amendment 23 to the total amount of state education funding. As discussed below, they fail to state a claim upon which relief can be granted, and they have not established this Court has subject matter jurisdiction over their claim for relief.

BACKGROUND

In 1994, the General Assembly adopted a public school finance formula that remains in effect today. §§ 22-54-101 et seq., 9 C.R.S. (1995 Repl. Vol.). The first

variable is the "statewide base per pupil funding" amount, which is the same for all school districts and set annually by the General Assembly. § 22-54-104(3), (5)(a). This amount is modified by certain factors to arrive at a unique "per pupil funding" amount for each school district:

> ((Statewide base per pupil funding x District personnel costs factor x District cost of living factor) + (Statewide base per pupil funding x District nonpersonnel costs factor)) x District size factor = District per pupil funding

Id., -104(3). The district per pupil funding amount is then multiplied by a district's funded pupil count and added to the district's at-risk funding to yield a "total program" amount for every district:

> (District per pupil funding x District funded pupil count) + District at-risk funding = District total program

§ 22-54-104(1)–(2)(a)–(b) (providing also alternative calculations to allow higher district total program amounts). On top of its total program amount, a school district may receive additional state funding to help pay for certain categorical programs like gifted education, English language development, and special education. *E.g.*, § 22-20-114(1)(c), C.R.S. (2013); § 22-20-205, C.R.S. (2013); §22-24-104, C.R.S. (2013).

In 2000, the People adopted Amendment 23 to the Colorado Constitution. 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." COLO. CONST. Art. IX, sec. 17(1). 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." *Id.*

While it has refined the school finance formula since 1994, adding for example, additional calculation for online and postsecondary students, the General Assembly has retained the basic equations described above. *Cf. generally* § 22-54-104, C.R.S. (2013) (reflecting cumulative amendments). Of course, the General Assembly has increased the statewide base per pupil funding amount over the years, from $3,390 in the 1994–95 budget year, § 22-54-104(5)(a)(I), to $ 6,121 in the current 2014–15 budget year, Ch. 244, H.B. 14-1298, Sec. 1, 69th Gen. Ass., 2d Reg., 2014 COLO. SESS. LAWS 919, at 919, *to be codified at* § 22-54-104(5)(a)(XXI), C.R.S. (2014). The General Assembly also has increased funding for categorical programs over the last 20 years. *Compare e.g.*, Ch. 283, S.B. 95-214, 60th Gen. Ass., 1st Reg., 1995 COLO. SESS. LAWS 1815, at 1860–61, *with, e.g.*, Ch. 420, H.B. 14-1336, 69th Gen. Ass., 2d Reg., 2014 COLO. SESS. LAWS 2381 at 2415.

In 2010, the General Assembly determined "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." § 22-54-104(5)(g)(I), C.R.S. (2013). To accomplish the reduction, the General Assembly added a negative factor to the school finance formula to ensure the total program funding for all districts did not exceed a sum certain to be determined annually:

> ((District per pupil funding x District funded pupil count)
> + District at-risk funding) x negative factor = District
> total program

Id., -104(5)(g)(I)(A)–(E).

Plaintiffs, a group of parents, associations, and school districts bring this civil

action, alleging the negative factor and its resulting reductions violate Amendment 23. Specifically, Plaintiffs allege "the Negative Factor dramatically reduces the amount of per pupil spending . . . under the statutory formula" (Pls.' Compl., ¶35 at 9), and imposes a "[f]unding cap" that "negates the PSFA formula and the express will of Colorado's voters" (*id.*, ¶36 at 10). According to Plaintiffs, the negative factor "renders essentially meaningless the base in the PSFA formula" (*id.*, ¶38 at 10), which they allege "necessarily has [been] reduced" by the General Assembly (*id.*, ¶40 at 11). In their "Claim for Relief," Plaintiffs argue "Amendment 23 precludes the General Assembly from purporting to grow the base but then slashing overall education funding by fundamentally revamping or jettisoning the PSFA formula as in effect in 2000." (*Id.*, ¶43 at 11.)

Upon these allegations, Plaintiffs ask this Court to declare the negative factor violates Amendment 23, "[e]njoin Defendants from implementing [the negative factor,] and require that education funding be made consistently with Amendment 23." (*Id.* at 11–12.) Plaintiffs further pray that this Court will retain continuing jurisdiction until its orders "have in fact fully and properly [been] fulfilled." (*Id.* at 12.)

GROUNDS FOR DISMISSAL

I. Plaintiffs Fail to State a Claim upon Which Relief Can Be Granted.

STANDARD OF REVIEW

"A motion under C.R.C.P. 12(b)(5) 'to dismiss [a complaint] for failure to state a claim upon which relief can be granted serves as a test of the formal sufficiency of a plaintiff's complaint.'" *Qwest Corp. v. Colo. Div. of Prop. Taxation*, 304 P.3d 217, 221

(Colo. 2013) (quoting *Pub. Serv. Co. v. Van Wyk*, 27 P.3d 377, 385 (Colo. 2001)). Where "a plaintiff can prove no set of facts in support of her claim which would entitle her to relief," the motion to dismiss should be granted. *Qwest*, 304 P.3d at 221 (citing *Van Wyk*, 27 P.3d at 385–86). While "the court must accept all well-pleaded facts as true," it "is not required to accept as true legal conclusions couched as factual allegations," and "a complaint may be dismissed if the substantive law does not support the claims asserted." *Western Innovations, Inc. v. Sonitrol Corp.*, 187 P.3d 1155, 1158 (Colo. App. 2008) (citing cases).

LAW AND ANALYSIS

Amendment 23 does not extend to overall educational funding.

"Where the language of the Constitution is plain and its meaning clear, that language must be declared and enforced as written." *Colo. Ass'n of Pub. Employees v. Lamm*, 677 P.2d 1350, 1353 (Colo. 1984) (citing cases); *see also Bruce v. City of Colo. Springs*, 129 P.3d 988, 993 (Colo. 2006) ("We thereby enact the intent of the voter in the same manner as we would otherwise seek to enact the intent of the legislature."). "Each clause and sentence of either a constitution or statute must be presumed to have purpose and use, which neither the courts nor the legislature may ignore." *Colo. State Civil Serv. Employees Ass'n v. Love*, 448 P.2d 624, 630 (Colo. 1968). "Where a constitutional amendment or statute contains plain, clear language, we do not resort to rules of construction to construe its meaning." *Tivolino Teller House, Inc. v. Fagan*, 926 P.2d 1208, 1211 (Colo. 1996).

Amendment 23 plainly mandates increases to "the statewide base per pupil funding, as defined by the Public School Finance Act of 1994." COLO. CONST. Art. IX,

sec. 17(1). Plaintiffs recognize the Act as it existed on December 28, 2000, used this same exact phrase—"the statewide base per pupil funding"—as the starting variable in the finance formula, which it specified annually in precise dollar amounts. (Pls.' Compl., ¶¶ 38 at 10, 41 at 11); § 22-54-104(3), (5)(a)(I)–(XI), C.R.S. (2000). Amendment 23 does not refer to any other portion of the finance formula. It refers to the statewide base per pupil funding variable by name and statutory citation, leaving no question whatsoever that component of the finance formula—and that component only—must at least keep pace annually with the rate of inflation.

Plaintiffs allege some broader intent behind Amendment 23 to increase the formula's total program funding yield. Yet that is not what is expressed in the amendment's language, which must be declared as written. *See, e.g.*, *Pub. Employees*, 677 P.2d at 1353; *Tivolino Teller House*, 926 P.2d at 1211; *cf. Bruce*, 129 P.3d at 993–94 (giving effect to definitions in TABOR and declining to extend technical meanings to other, undefined terms). Even if true, such an allegation is irrelevant as a matter of law and cannot state a claim contrary to Amendment's plain language. *Cf. Davidson v. Sandstrom*, 83 P.3d 648, 655 (Colo. 2004) (declaring any intent of proponents or drafters "not expressed in the language of the amendment, is not relevant" and "will not govern the court's construction"). The express will of the voters was to require inflationary increases to the statewide base per pupil funding in the General Assembly's finance formula—not the ultimate amount of total program funding.

Plaintiffs do not allege the statewide base per pupil funding itself has actually, in fact, decreased. Nor could they because it is beyond dispute as a matter of law that

the base has increased as Amendment 23 plainly requires. § 22-54-104(5)(a)(I)–(XXI). Their claim for relief rests instead on the allegation that the negative factor has reduced overall state funding for education. This is the stated purpose of the negative factor, and it is a legislative action Amendment 23 does not preclude. Had the People intended to mandate increases to the districts' total program amounts yielded by the finance formula, then Amendment 23 would have referenced the formula's yield rather than its first variable. *Cf.* COLO. CONST. Art. IX, sec. 17(5) (requiring also as "maintenance of effort" that General Assembly in fiscal years 2001–02 through 2010–11 "annually increase the general fund appropriation for **total program** under the 'Public School Finance Act of 1994'" by at least five percent of prior year's appropriation) (emphasis added). It does not, and Plaintiff's apparent attempt to impeach the amendment's plain language fails and must be dismissed.

II. This Court Lacks Subject Matter Jurisdiction.

STANDARD OF REVIEW

"[T]he plaintiff has the burden to prove jurisdiction." *Trinity Broad. of Denver, Inc. v. City of Westminster*, 848 P.2d 916, 925 (Colo. 1993), *accord Cash Advance & Preferred Cash Loans v. Colo. ex rel. Suthers*, 242 P.3d 1099, 1113 (Colo. 2010). A motion to dismiss for lack of subject matter jurisdiction may test the factual sufficiency of a complaint without converting to summary judgment. *Trinity Broad.*, 848 P.2d at 924 (citing authorities). "[I]f all relevant evidence is presented to the trial court, and the underlying facts are undisputed, the trial court may decide the jurisdictional issue as a matter of law . . . ." *St. Vrain Valley Sch. Dist. RE-1J v. A.R.L.*, 325 P.3d 1014, 1018 n.6 (Colo. 2014) (quoting *Medina v. State*, 35 P.3d 443,

452 (Colo. 2001)).

LAW AND ANALYSIS

A. Plaintiffs have not alleged how declaring this year's use of the negative factor unconstitutional would afford them present, effective relief.

Even if Plaintiffs have stated a claim, they have not alleged that relief actually can be granted. *See, e.g.*, *Qwest*, 304 P.3d at 221. "No court can appropriately adjudicate a matter—even one for declaratory judgment—in the absence of a showing that a judgment, if entered, would afford the plaintiff present relief." *Cacioppo v. Eagle County Sch. Dist. Re-50J*, 92 P.3d 453, 467 (Colo. 2004) (internal quotation omitted). "The duty of courts is to 'decide actual controversies by a judgment which can be carried into effect, not to declare principles or rules of law' which cannot affect the matter at issue before the court." *Well Augmentation Subdist. of Cent. Colo. Water Conservancy Dist. v. City of Aurora*, 221 P.3d 399, 416 (Colo. 2009) (citing *Barnes v. Dist. Ct. of Denver*, 607 P.2d 1008, 1009 (Colo. 1980)).

Plaintiffs do not say whether they seek a declaration against just the 2014–15 negative factor, the four prior years it was applied to the finance formula, or its potential future use. This is critical because the negative factor is not a permanent component of the finance formula. Since its first use in 2010, the negative factor has been an annual enactment—its necessity and magnitude determined year-by-year. § 22-54-104(5)(g)(I)(A)–(E).

Consequently, the legality of past years' implementation of the negative factor is moot, *see, e.g.*, *Barnes*, 607 P.2d at 1009, and it is unknown whether the General Assembly will make a future challenge ripe by applying the negative factor next year,

see, e.g., *Cowen v. Westminster Mall Co.*, 43 P.3d 622, 628 (Colo. App. 2001); *see also* Ch. 244, H.B. 14-1298, Sec. 3, 69th Gen. Ass., 2d Reg., 2014 COLO. SESS. LAWS 919, at 921, *to be codified at* § 22-54-104(5)(g)(I)(E), C.R.S. (2014) (striking "and each budget year thereafter" language from 2014–15 negative factor). The declaration of unconstitutionality Plaintiffs seek only could speak to the current budget year's negative factor. However, Plaintiffs have not alleged Defendants have either the money or power to reverse the negative factor in this year's budget, and they have not specified how this Court could affect relief through continuing supervision. On the face of their Complaint, Plaintiffs seek nothing more than a nonjusticiable advisory opinion. *See, e.g.*, *Cacioppo*, 92 P.3d at 467.

B. Plaintiffs have not established standing as a matter of law.

Citizen standing arises when a plaintiff has suffered a concrete and particularized injury to a legally protected interest. *Romer v. Bd. of County Comm'rs*, 956 P.2d 566, 573 (Colo. 1998); *see also City of Greenwood Village v. Pet'rs for the Proposed City of Centennial*, 3 P.3d 427, 437 (Colo. 2000) (explaining prudential limitations prohibit consideration of "an abstract, generalized grievance"). "Injury in fact may be demonstrated by showing that the action complained of has caused or has threatened to cause injury." *Syfrett v. Pullen*, 209 P.3d 1167, 1169 (Colo. App. 2008) (citing, *inter alia*, *Romer v. Colo. Gen. Ass.*, 810 P.2d 215, 218 (Colo. 1991)). An injury that is "indirect and incidental" will not confer standing. *Brotman v. East Lake Creek Ranch, LLP*, 31 P.3d 886, 891 (Colo. 2001).

For taxpayers, "the injury-in-fact requirement is satisfied when the alleged injury 'flow[s] from governmental violations of constitutional provisions that

specifically protect the legal interests involved.'" *Barber v. Ritter*, 196 P.3d 238, 247 (Colo. 2008) (quoting *Conrad v. City & County of Denver*, 656 P.2d 662, 668 (Colo. 1982)). There must be "some nexus between the plaintiff's status as a taxpayer and the challenged government action." *Hotaling v. Hickenlooper*, 275 P.3d 723, 727 (Colo. App. 2011); *see also Barber*, 196 P.3d at 246 (explaining injury in fact must not be overly indirect or incidental).

Whether an alleged citizen or taxpayer, a plaintiff "must demonstrate" that he has standing. *Greenwood Village*, 3 P.3d at 436–37; *see also Opala v. Watt*, 454 F.3d 1154, 1157 (10th Cir. 2006) (declaring plaintiff bears burden of establishing standing).

1. The individual plaintiffs have no legally protected interest in increased school funding.

Here, the individual plaintiffs assert a single, common injury—a "reduction in school funding." (Pls.' Compl., ¶11 at 4.) While they do not allege how such reduced funding has, in fact, injured them, as a matter of law, no such injury could be to any legally protected interest they may have as citizens. Education is not a fundamental right in Colorado, *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1017 (Colo. 1982), and the state Constitution does not guarantee any particular quality of education tied to levels of funding, *see Lobato v. State*, 304 P.3d 1132, 1140 (Colo. 2013). Even if it did, the bare allegation of reduced school funding is an abstract, generalized grievance that cannot establish standing. *See, e.g.*, *Greenwood Village*, 3 P.3d at 437.

The individual plaintiffs summarily state they are taxpayers, but they go no further. (Pls.' Compl., ¶11 at 4.) Whatever nexus might exist between the individual

plaintiffs' presumed payment of taxes and the negative factor is entirely unclear because none is alleged. *See, e.g.*, *Hotaling*, 275 P.3d at 727. As such, any injury in fact to the individual plaintiffs as taxpayers must be deemed overly indirect or incidental. *See Barber*, 196 P.3d at 246; *see also Anderson v. Suthers*, No. 12CA2313, 2013 COA 148, ¶17 (Colo. App. Nov. 7, 2013) ("Colorado has not adopted general public interest standing . . . .").

2. As political subdivisions, the school district and BOCES plaintiffs may not challenge the negative factor.

It is well established that political subdivisions of the state such as the plaintiff school districts and the East Central Board of Cooperative Services ("BOCES"), generally do not have standing to challenge the constitutionality of a state statute directing the performance of their duties. *Romer v. Fountain Sanitation Dist.*, 898 P.2d 37, 40 (Colo. 1995) (citing cases); *Florman v. Sch. Dist.*, 40 P. 469, 470 (Colo. App. 1895). The plaintiff school districts allege their statutory right to sue and be sued afforded by § 22-32-101, C.R.S. (2013), is sufficient exception. (Pls.' Compl. ¶15 at 6.) However, identical provisions applicable to other political subdivisions have been held not to include the authority to sue the state. *Fountain Sanitation*, 898 P.2d at 42; *Bd. of County Comm'rs v. Love*, 470 P.2d 861, 863 (Colo. 1970).

Moreover, the Supreme Court repeatedly has observed "'the directors of the school district, are merely the instruments of the state government chosen for the purpose of effectuating its policy in relation to schools.'" *Denver Ass'n for Retarded Children v. Sch. Dist. No. 1*, 535 P.2d 200, 204 (Colo. 1975) (quoting, *inter alia*, *Hazlet v. Gaunt*, 250 P.2d 188, 191 (Colo. 1952)). The subordinate role occupied by the school

districts and boards of cooperative services, in relation to the state, deprives of them of the ability to challenge the funding amounts granted them by the legislature to carry out their duty to administer education within their boundaries.

Even if they could escape their status as political subdivisions, the school district and BOCES plaintiffs lack standing because they too allege an injury that is not legally protected. It is of no legal import that they allege "[t]he reduction in school funding has impaired the[ir] ability . . . to provide educational opportunities to their students." (Pls.' Compl. ¶16 at 7.) As already discussed, the General Assembly's chosen school finance system, which includes the negative factor, passes constitutional muster, and school districts are not guaranteed funding sufficient to provide any particular quality of education. *See Lobato*, 304 P.3d at 1140; *see also Boulder Valley Sch. Dist. Re-2 v. Colo. State Bd. of Educ.*, 217 P.3d 918, 924 (Colo. App. 2009) ("[N]othing in the state constitution grants school districts a legally protected interest in state funding for schools.").

Additionally, an "impaired ability" to provide unspecified "educational opportunities" is an abstract, generalized grievance insufficient to establish standing. *See, e.g.*, *Greenwood Village*, 3 P.3d at 437. Nor could such be blamed on the negative factor. *See, e.g.*, *Syfrett*, 209 P.3d at 1169. The actual delivery, adequacy and quality of education are dependent upon the constitutionally-empowered decisions of local school districts. *See Bd. of Educ. of Sch. Dist. No. 1 v. Booth*, 984 P.2d 639, 648 (Colo. 1999); *Lujan*, 649 P.2d at 1022–23, 1025.

3. Neither the association plaintiffs nor their members have a legally protected interest in greater school funding.

A membership association may prove standing by either "seeking judicial relief from injuries to its own rights (derivative capacity), or by seeking to vindicate whatever rights its members may enjoy (representative capacity)." *Conestoga Pines Homeowners' Ass'n. v. Black*, 689 P.2d 1176, 1177 (Colo. App. 1984). Plaintiff the Colorado Rural Schools Caucus ("CRSC"), whose members are all school districts, challenges the negative factor in both capacities. (Pls.' Compl., ¶12 at 4.) Similar to the other plaintiffs, CRSC alleges individual injury in the form of reduced funding, which it alleges relates to its mission of "provid[ing] every student in rural Colorado with a high quality education that will prepare him/her for life after education." (*Id.*) Again, the interest of providing a quality of education contingent on a higher level of funding is not a legally protected one, *see Lobato*, 304 P.3d at 1140, and even if it was, CRSC's abstract, generalized grievance cannot establish standing, *see, e.g.*, *Greenwood Village*, 3 P.3d at 437. Furthermore, the negative factor could not have caused such injury, *see, e.g.*, *Syfrett*, 209 P.3d at 1169, because school districts—not the General Assembly—are responsible for the delivery, adequacy and quality of education, *see Booth*, 984 P.2d at 648; *Lujan*, 649 P.2d at 1022–23, 1025.

Plaintiff the Colorado Parent Teacher Association ("PTA") alleges damage to its mission of increasing school funding and damage to its parent members via less school funding creating decreased "educational opportunities, achievement, future earnings, and life-long economic interests" for their children. (Pls.' Compl. ¶14 at 6.) Rather than any direct economic harm, this allegation describes a frustration of its

aspiration to increase money for schools. As with the other plaintiffs, such an injury is abstract and generalized to all who desire more funding for schools. *See, e.g.*, *Greenwood Village*, 3 P.3d at 437. Even if PTA suffers some injury in fact, it flows from this preference rather than any legally protected interest. Neither PTA nor its member parents have any legally protected interest in the "educational opportunities, achievement, future earnings, and life-long economic interests" of their children when the measure of those benefits is the amount of money given to school districts. *See Lobato*, 304 P.3d at 1140. Also any such injury could not have been caused by the negative factor, *see, e.g.*, *Syfrett*, 209 P.3d at 1169, because it is school districts that actually spend state funds and educate students, *see Booth*, 984 P.2d at 648; *Lujan*, 649 P.2d at 1022–23, 1025.

CONCLUSION

Amendment 23 expressly requires the public school finance formula's statewide base per pupil funding amount to at least keep pace annually with the rate of inflation. By its plain terms, Amendment 23 does not extend to overall state education funding as Plaintiffs claim. Their attempt to impeach Amendment 23's plain language fails as matter of law, and their Complaint must be dismissed for failure to state a claim.

Alternatively, Plaintiffs' Complaint does not on its face establish subject matter jurisdiction. The negative factor has been a year-by-year addition to the finance formula—not a permanent component. Plaintiffs have not alleged how declaring this fiscal year's use of the negative factor unconstitutional would afford them present, effective relief, leaving their claim moot, unripe, and nonjusticiable. In

addition, Plaintiffs have not established any concrete, particularized injury caused by the negative factor to any legally protected interest. They therefore lack standing as a matter of law.

WHEREFORE, Defendants respectfully request that this Court dismiss Plaintiffs' Complaint in its entirety with prejudice.

Dated this 12th day of August, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of August, 2014, the foregoing **MOTION TO DISMISS PLAINTIFFS' COMPLAINT** was filed via ICCES and served thereby as follows:

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