

DISTRICT COURT, DENVER, COLORADO
1437 Bannock St.
Denver, CO 80202

DATE FILED: November 12, 2014
CASE NUMBER: 2014CV32543

Plaintiffs:

LINDI DWYER, et al.

v.

Defendants:

THE STATE OF COLORADO, ROBERT HAMOND,
and JOHN HICKENLOOPER

COURT USE ONLY

Case Number(s): 14CV32543

Courtroom: 376

**COURT'S ORDER RE: DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' COMPLAINT**

This matter is before the Court pursuant to Defendants' Motion to Dismiss Plaintiffs' Complaint filed August 12, 2014. The Court having reviewed the Motion, the file, and being fully advised Finds and Orders as follows:

I. Background

Plaintiffs are: (1) Lindi and Paul Dwyer, Terri Siewiyumptewa, Tracey and Monty Weeks, Terri and Jeffrey Piland (collectively "Parents"); (2) Boulder Valley School District, Colorado Springs School District No. 11, Mancos School District, Holyoke School District, and Plateau Valley School District 50, (collectively "School Districts"); (3) Colorado Rural Schools Caucus, East Central Board of Cooperative Educational Services (collectively "School District Organizations"); and, (4) Colorado PTA ("PTA").

In 2000, voters approved Amendment 23, which is now Colo. Const. art. IX, § 17 ("Amendment 23"). The Amendment requires annual increases of the statewide base per pupil funding proportional to the rate of inflation. Colo. Const. art. IX, § 17. In 2010, the legislature enacted a new provision ("Subsection (g)") to the Public School Finance Act, C.R.S. § 22-54-104(5)(g). Subsection(g) requires school funding to be reduced by a "negative factor" under certain State budgetary circumstances. *Id.* The school funding amount has been reduced, pursuant to Subsection (g), every fiscal year since 2010-11. Plaintiffs assert that the Subsection violates the Colorado Constitution, since Subsection (g) reduces the amount of school funding below that which is required by Amendment 23.

Plaintiffs seek: (1) a declaration that Subsection (g) violates Amendment 23, and, therefore, is unconstitutional; and, (2) an injunction preventing Defendants from implementing Subsection (g) again.

Defendants move to dismiss the case for lack of subject matter jurisdiction, C.R.C.P. 12(b)(1), and failure to state a claim, C.R.C.P. 12(b)(5), asserting that: (1) the issue is not justiciable; (2) Plaintiffs lack standing; and, (3) injunctive relief will not remedy the alleged problem.

Plaintiffs oppose the motion.

II. Standard

a. Failure to state a claim, C.R.C.P. 12(b)(5)

Under C.R.C.P. 12(b)(5), the court must analyze the merits of the plaintiff's claims and test the legal sufficiency of the complaint to establish whether plaintiff has averred a claim or claims upon which relief may be granted. *Hemmann Mgmt. Servs. v. Mediacell, Inc.*, 176 P.3d 856, 858 (Colo. App. 2007). In conducting this analysis, the court must accept as true all of the allegations of material fact in the complaint and must view the averments in the light most favorable to the plaintiff. *Ashton Props., Ltd. v. Overton*, 107 P.3d 1014, 1018 (Colo. App. 2004). A complaint may not be dismissed unless it "appears beyond a doubt" that the plaintiff cannot prove a set of facts in support of his claim that would entitle the plaintiff to relief. *Colo. Ins. Guar. Ass'n v. Menor*, 166 P.3d 205, 212 (Colo. App. 2007); *see also Benergy Corp. v. Zab, Inc.*, 94 P.3d 1232, 1236 (Colo. App. 2004) ("A trial court may not dismiss a complaint for failure to state a claim unless it appears that the plaintiff can prove no set of facts in support of the claim."). Motions to dismiss under C.R.C.P. 12(b)(5) are disfavored, and should only be granted when it appears "beyond doubt that the plaintiffs could prove no set of facts that would entitle them to relief." *Yadon v. Lowry*, 126 P.3d 332, 336 (Colo. App. 2005).

b. Subject matter jurisdiction, C.R.C.P. 12(b)(1)

When a plaintiff lacks standing, the court lacks subject matter jurisdiction. *Friends of the Black Forest Reg'l Park, Inc.*, 80 P.3d 871 at 877. In contrast to a C.R.C.P. 12(b)(5) motion to dismiss, under to C.R.C.P. 12(b)(1), courts do not accord a presumption of truthfulness to the facts asserted by the non-moving party. *Medina v. State*, 35 P.3d 443, 452 (Colo. 2001). Plaintiffs have the burden of proving jurisdiction. *City of Aspen v. Kinder Morgan, Inc.*, 143 P.3d 1076, 1078 (Colo. App. 2006). "Under C.R.C.P. 12(b)(1), a trial court determines subject matter jurisdiction by examining the substance of the claim based on the facts alleged and the relief requested." *Id.* Courts may consider evidence outside of the pleadings to resolve a jurisdictional challenge. *Id.* Plaintiffs have standing if they have an injury in fact to a legally protected interest. *Wimberly v. Ettenberg*, 194 Colo. 163, 570 P.2d 535 (1977).

III. Conclusions

a. Justiciability

The judicial branch has a duty to review legislation and to determine whether it is constitutional. *Lobato v. State*, 218 P.3d 358, 363 (Colo. 2009). Courts may consider whether the current school funding system is Constitutional. *Id.* at 368. This narrow determination satisfies the judiciary's obligation to evaluate the constitutionality of the public school financing system without unduly infringing on the legislature's policymaking authority. *Id.* at 374. Courts may elect to settle a controversy when: (1) such controversy is capable of repetition, yet evading review; or, (2) the matter involves a question of great public importance or an allegedly recurring constitutional violation. *Campbell v. Meyer*, 883 P.2d 617, 619 (Colo. App. 1994).

Whether Subsection(g) violates Amendment 23 is a question of whether the current school funding system is constitutional. Even though Subsection(g) might not be applied annually, the statute requires that it be implemented whenever the State experiences certain problems balancing the budget. Thus, it is capable of repetition. Additionally, funding of the State educational system and apportioning tax dollars are matters of great public importance. For these reasons, the matter is justiciable.

b. Standing

A plaintiff has standing to sue if she has suffered an injury-in-fact to a legally protected interest. *Ainscough v. Owens*, 90 P.3d 851, 856 (Colo. 2004). In Colorado, this test has been relatively easy to satisfy. *Id.* The alleged injury may be tangible or intangible. *Id.* A deprivation of a legally created right may be an injury-in-fact. *Id.* "In Colorado state courts, unlike in the federal courts, a plaintiff need not show that his or her injury is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Boulder Valley Sch. Dist. RE-2 v. Colorado State Bd. of Educ.*, 217 P.3d 918, 923 (Colo. App. 2009). Legally protected rights are those arising from constitutions, statutes, and case law. *Ainscough*, 90 P.3d at 856.

i. Parent/Taxpayers

Taxpayers have broad standing. *Ainscough v. Owens*, 90 P.3d 851, 856 (Colo. 2004). A Plaintiff/Taxpayer has standing when she alleges that a governmental action that harms her is unconstitutional. *Id.* Taxpayers have standing even if the only alleged harm is that a governmental unit is not conforming to the state constitution. *Boulder Valley Sch. Dist. RE-2 v. Colorado State Bd. of Educ.*, 217 P.3d 918, 924 (Colo. App. 2009). "When a plaintiff-taxpayer alleges that a government action violates a specific constitutional provision, such an averment satisfies the two-step standing analysis." *Id.*

Parents allege that they and their children are harmed by the reduced funding apportioned to schools, pursuant to Subsection (g). As taxpayers, Parents have a legally protected interest in determining whether the government's implementation of Subsection(g) violates Amendment 23. Thus, they have standing.

ii. School Districts

Political subdivisions may be precluded from challenging a state statute which directs the performance of its duties. *Boulder Valley Sch. Dist. RE-2 v.*, 217 P.3d 918 at 923. School districts may have standing if the challenged statute does not affirmatively direct them in the performance

of their duties. *Id.* School districts may sue to enforce rights protected by the state constitution. *Id.* at 924.

Subsection (g) does not affirmatively direct the performance of the school districts, thus they are not barred from suit as political subdivisions. Amendment 23 guarantees a base level of funding per student for the school districts and Subsection (g) reduces that amount. Thus, the School Districts have alleged a harm to a legally protected interest.

iii. Organizations

Organizations have standing if they are: (1) seeking judicial relief for injuries to their own rights; or, (2) seeking to vindicate their members' rights. *Conestoga Pines Homeowners' Ass'n, Inc. v. Black*, 689 P.2d 1176, 1177 (Colo. App. 1984). The Parent/Taxpayers and the School Districts have standing. They are members of the PTA and School District Organizations, respectively. Accordingly, those organizations have standing in their representative capacity.

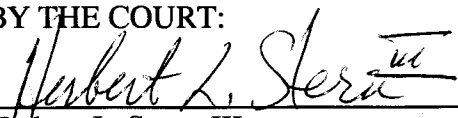
c. Failure to state a claim

Amendment 23 prescribes minimum increases for state funding of education. *Lobato v. State*, 218 P.3d at 376. Plaintiffs assert, that when implemented, Subsection (g) reduces the amount of funding for school districts below the level required by Amendment 23. Plaintiffs have alleged sufficient facts.

Defendants' Motion to Dismiss Plaintiffs' Complaint is DENIED

DATED this 12th day of November 2014

BY THE COURT:



Herbert L. Stern, III
District Court Judge

CC: Counsel of Record by e-filing