

DISTRICT COURT, COUNTY OF DENVER,  
COLORADO

Court Address: 1437 Bannock Street  
Denver, Colorado 80202

**Plaintiffs:**

TAXPAYERS FOR PUBLIC EDUCATION, a  
Colorado Non-Profit Corporation;  
CINDRA S. BARNARD, an individual; and  
MASON S. BARNARD, a minor child.

v.

**Defendants:**

DOUGLAS COUNTY SCHOOL DISTRICT RE-1;  
DOUGLAS COUNTY SCHOOL DISTRICT RE-1  
BOARD OF EDUCATION;  
COLORADO DEPARTMENT OF EDUCATION; and  
COLORADO STATE BOARD OF EDUCATION.

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Case Number:

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**VERIFIED COMPLAINT**

Plaintiffs Taxpayers for Public Education and Cindra S. Barnard, individually and on behalf of Mason S. Barnard, a minor child, for their Complaint against the Defendants Douglas County School District RE-1 (“Douglas County School District”), the Board of Education of the Douglas County School District (“Douglas County School Board”), the Colorado Department of Education, and the Colorado State Board of Education, state as follows:

1. This is a complaint for declaratory and injunctive relief, in which Plaintiffs challenge the constitutionality and legality of the Douglas County School District’s Pilot Choice Scholarship Program (“Voucher Program”). Enacted on March 15, 2011, the Voucher Program will pay for certain Douglas County School District students to attend private schools—most of which are religious—at the taxpayers’ expense. The Voucher Program violates Article IX, Sections 3, 5, 7, 9, 10, and 15 of the Colorado Constitution; Article V, Section 34 of the Colorado Constitution; and the Public School Finance Act of 1994, C.R.S. § 22-54-101 et seq. (“Public School Finance Act”).

2. Plaintiffs seek a preliminary and permanent injunction prohibiting Defendants, and all persons and entities acting under their direction or in concert with them, from taking any further actions to implement the Voucher Program, including but not limited to, enjoining the Douglas County School District and its School Board from obtaining, and the Colorado Department of Education from distributing, funds from the Public School Finance Act and the “public school fund” established under Article IX, Section 3 of the Colorado Constitution, to the Douglas County School District for “scholarship students;” and enjoining the Douglas County School District and its School Board from authorizing the issuance of checks payable to the parents/guardians of the “scholarship students” for purposes of full or partial payment of private school tuition.

**PARTIES**

3. Plaintiff Taxpayers for Public Education (“TFPE”) is a Colorado nonprofit corporation whose purpose is to support and advocate for public education in Colorado. TFPE’s members are parents of children in Douglas County’s public schools, as well as other Colorado citizens concerned about improving education in Douglas County and in the state of Colorado. TFPE brings this action on its own behalf and on behalf of its members.

4. Plaintiff Cindra S. Barnard (“Ms. Barnard”) is a Colorado citizen and taxpayer. Ms. Barnard is a resident of Douglas County, Colorado, and she pays property taxes levied on behalf of the Douglas County School District. Ms. Barnard is the parent of a minor child, Mason S. Barnard, who is enrolled as a Senior at the Highlands Ranch High School in the Douglas County Public Schools. Ms. Barnard brings this action on her own behalf and on behalf of her minor child, Mason S. Barnard.

5. As Colorado taxpayers, Plaintiffs will suffer injury from the Voucher Program because it expends taxpayer funds in violation of the Colorado Constitution and Colorado statutory law. As residents and taxpayers within Douglas County and the Douglas County School District, Ms. Barnard, as well as her minor child, will suffer injury because of the loss of control over the education they are required to fund.

6. Defendant Douglas County School District is a school district organized under Article IX, Sections 2 and 15 of the Colorado Constitution and Title 22, Article 32, C.R.S. The Voucher Program will be implemented in the Douglas County School District.

7. Defendant Douglas County School District Board of Education is a board of education organized under Article IX, Section 15 of the Colorado Constitution. The Douglas County School Board approved the Voucher Program.

8. Defendant Colorado Department of Education is organized under Article IX, Section 1 of the Colorado Constitution and Title 22, Article 2, C.R.S. The Colorado Department of Education will distribute State funds to the Douglas County School District, which monies will be used to fund the Voucher Program.

9. Defendant Colorado State Board of Education is organized under Article IX, Section 1 of the Colorado Constitution and Title 22, Article 2, C.R.S. The Colorado State Board of Education has authorized the distribution of State funds to the Douglas County School District, which monies will be used to fund the Voucher Program.

### **JURISDICTION AND VENUE**

10. This Court has jurisdiction over this action under Article VI, Section 9 of the Colorado Constitution.

11. Venue is proper in this County under C.R.C.P. 98.

### **FACTUAL ALLEGATIONS**

#### **A. Funding of Public Education in Colorado**

12. K-12 public schools in Colorado are funded through a dual taxation system that combines local and State revenue.

13. The local share is funded primarily from local property taxes and specific ownership taxes. C.R.S. § 22-54-106.

14. The State share is funded from personal income, corporate, sales, and use taxes, as well as monies from the public school fund established by Article IX, Section 3 of the Colorado Constitution.

15. State aid provides the difference between a district's total program funding and the district's local share.

16. The Public School Finance Act, the legislative means by which Colorado public schools are funded, explicitly and exclusively sets aside education funding for "*public* education" and "*public* schools." C.R.S. §§ 22-54-101, -102, -104(1)(a), §§ 22-55-101(1), -106(1)(b), § 22-1-101. The goal of the Act is to meet the mandate of Article IX, Section 2 of the Colorado Constitution by providing "for a thorough and uniform system of *public* schools throughout the state." C.R.S. § 22-54-102(1).

17. The Public School Finance Act contains a formula that calculates a per pupil funding amount for each school district based on a statewide base funding amount adjusted by "factors" intended to address certain characteristics of each school district.

18. A district's funding under the Public School Finance Act is determined by multiplying the district's per pupil funding amount by the district's funded pupil count, and adjusting by specific statutory factors.

19. Thus, a school district's funding under the Act depends on its pupil enrollment, which is generally defined as the number of pupils enrolled in the school district on October 1 of the applicable budget year. For instance, the number of pupils enrolled on October 1, 2010 determines funding for the budget year beginning July 1, 2010. Because the fiscal year begins before the count date, funding under the Act is distributed based on estimated pupil counts. After October 1, once all enrolled pupils have been counted, funding under the Act is adjusted to reflect the actual count. See 1 CCR § 301-391:2254-R-3.01.

20. The pupil count is expressed in full-time equivalent (FTE) pupils to reflect the amount of time a student spends in an instructional setting, either a half day or a full day. For instance, preschool students are usually counted half time, and kindergarten students are counted as 0.58 of a pupil.

21. Each school district's total program funding under the Act is composed of the "local share," which is principally the proceeds of school district property taxes levied on the real property within the district's boundaries and the "state share," which is State funding and provides the difference between a district's total program funding and its local share.

22. The Colorado Department of Education distributes money to school districts in twelve approximately equal monthly payments. In the first half of the fiscal year, the payments are based upon pupil count and assessed value estimates, because the Colorado Department of Education does not know the exact pupil counts and district property tax assessed values during that time period.

23. The Colorado Department of Education will make its first distribution of funds for the 2011-2012 school year to school districts, including the Douglas County School District, in July 2011.

#### **B. Funding of the Douglas County School District**

24. Douglas County is one of the highest income counties in the United States.

25. For the 2010-2011 school year, Douglas County's local share accounted for 39% of the per pupil funding for the District, and State sources accounted for the remaining 61%.

26. The Douglas County School District estimates that the per pupil revenue from the State for its District for the 2011-2012 school year will be approximately \$6,100.00.

#### **C. The Voucher Program**

27. In December 2010, members of the Douglas County School District's Choice Task force presented plans for the Voucher Program to the Colorado State Board of Education.

28. On March 15, 2011, the Douglas County School Board passed a resolution approving the Choice Scholarship Pilot Program ("Voucher Program") for the 2011-2012 school year.

29. Under the Voucher Program, the Douglas County School District will offer up to 500 "scholarships" to students to use as full or partial payment of tuition at certain designated private schools.

30. To be eligible for a "scholarship," students must be Douglas County School District residents who currently attend and are enrolled in a Douglas County School District School and have been in the District for no less than one year. Non-resident, open-enrolled Douglas County School District students are not eligible to participate.

31. "Scholarship" applications were accepted through May 12, 2011, and recipients of the "scholarships" have been selected and notified. As of the date of this Complaint, the total number of students enrolled in the Voucher Program is 495.

32. The Douglas County School District recently reopened the “scholarship” application process for the Voucher Program until June 21, 2011, and the Voucher Program is likely to expand to a total of 500 participating students.

33. Each quarter of the 2011-2012 school year, the Douglas County School District will issue a check to the order of the parent or guardian of each “scholarship student” and will send that check directly to the private school of that parent’s/guardian’s choosing. The District requires the parent or guardian of the “scholarship student” to restrictively endorse the check for the sole use of paying tuition at the private school.

34. Parents and guardians of scholarship students are able to choose from a list of certain private schools in the Voucher Program. Specifically, the Douglas County School District accepted applications from thirty-four private schools for participation in the Voucher Program. The District approved and contracted with nineteen of those private schools to participate in the Voucher Program. The District refers to these private schools as “partner schools.”

35. There is no requirement that private partner schools participating in the Voucher Program are located within the boundaries of the Douglas County School District, and many private partner schools are located outside of the District’s boundaries.

36. Upon information and belief, private schools approved as partner schools in the Douglas County School District’s Choice Scholarship Program include:

- Beacon Country Day School is a private school located at 6100 E. Belleview, Greenwood Village, Colorado 80111;
- Cherry Hills Christian is a private school located at 3900 Grace Boulevard, Highlands Ranch, Colorado 80126;
- Denver Christian Schools-Highlands Ranch Campus is a private school located at 1733 E. Dad Clark Drive, Highlands Ranch, Colorado 80126;
- Denver Christian Schools-Van Dellen Campus is a private school located at 4200 E. Warren Ave., Denver, Colorado 80222;
- Denver Christian Schools-High School Campus is a private school located at 2135 S. Pearl Street, Denver, Colorado 80210;
- Evangelical Christian Academy is a private school located at 4190 Nonchalant Circle South, Colorado Springs, Colorado 80917;

- Front Range Christian School is a private school located at 6657 W. Ottawa Ave., A-17, Littleton, Colorado, 80128;
- Hillel Academy of Denver is a private school located at 450 Hudson, Denver, Colorado 80246;
- Humanex is a private school located at 2700 S. Zuni Street, Englewood, Colorado 80110;
- Lutheran High School is a private school located at 11249 Newlin Gulch Blvd., Parker, Colorado 80134;
- Mackintosh Academy is a private school located at 7018 S. Prince Street, Littleton, Colorado 80120;
- Our Lady of Lourdes Catholic School is a private school located at 2256 S. Logan Street, Denver, Colorado 80210;
- Regis Jesuit High School is a private school located at 6300 S. Lewiston Way, Aurora, Colorado 80016;
- Shepherd of the Hills Lutheran is a private school located at 7691 S. University Blvd., Centennial, Colorado 80122;
- Southeast Christian School is a private school located at 9650 Jordan Road, Parker, Colorado 80134;
- The Rock Academy is a private school located at 4881 Cherokee Drive, Castle Rock, Colorado 80109;
- Trinity Lutheran is a private school located at 4740 North Highway 83, Franktown, Colorado 80116;
- Valor Christian High School is a private school located at 3775 Grace Blvd., Highlands Ranch, Colorado 80126;
- Woodlands Academy is a private school located at 1057 Park Street, Castle Rock, Colorado 80109.

37. Upon information and belief, private schools that have applied to participate in the Douglas County School District's Choice Scholarship Program, but have not yet been approved include:

- Accelerated Schools is a private school located at 2160 South Cook Street, Denver, Colorado 80210;
- Ambleside School is a private school located at 345 E. Wildcat Reserve Pkwy, Highlands Ranch, Colorado 80126;
- Aspen Academy is a private school located at 5859 S. University Blvd., Greenwood Village, Colorado 80121;
- Ave Maria Catholic School is a private school located at 9056 East Parker Road, Parker, Colorado 80138;
- Castlewood Christian is a private school located at 7086 East Park Drive, Franktown, Colorado 80116;
- CedarWood Christian Academy is a private school located at 11430 East 19th Ave., Aurora, Colorado 80010;
- Christ Our Redeemer Lutheran School is a private school located at 17700 E. Iliff Ave., Aurora, Colorado 80013;
- Colorado International School is a private school located at 4100 E. Iliff Avenue., Denver, Colorado 80222;
- Denver Street School-Denver is a private school located at PO Box 140069, Denver, Colorado 80214;
- Denver Street School-Lakewood is a private school located at 1380 Ammons, Lakewood, Colorado 80214;
- Denver Street School-Aurora is a private school located at 1585 Kingston, Aurora, Colorado 80010;
- Fountain Valley School of Colorado is a private school located at 6155 Fountain Valley School Rd., Colorado Springs, Colorado 80911;
- Mullen High School is a private school located at 3601 S. Lowell Blvd, Denver, Colorado 80236;
- St. Peter Catholic School is a private school located at 124 First Street, Monument, Colorado 80132;



- St. Pius X Catholic School is a private school located at 13680 E. 14th Place, Aurora, Colorado 80011;
- St. Therese School is a private school located at 1200 Kenton St., Aurora, Colorado 80010.

38. The private partner schools are subject to certain “Conditions of Eligibility” to participate in the Voucher Program that are enforced by separate contracts between the Douglas County School District and each of the private partner schools.

39. The “Conditions of Eligibility” do not restrict the admission criteria used by the private partner schools. Private partner schools are free to apply any of their own admission criteria, such as criteria that exclude students based on their academic performance, disciplinary record, and similar considerations.

40. The Voucher Program does not limit participation in the Voucher Program to private schools that are nonsectarian. Nor does it exclude from participation schools that are “pervasively sectarian,” as that term is used in C.R.S. § 23-3.5-105 and in Americans United for Separation of Church and State v. State of Colorado, 648 P.2d 1072 (Colo. 1982).

41. The majority of the private partner schools participating in the Voucher Program are sectarian or religious, as those terms are used in Article II, Section 4; Article V, Section 34; and Article IX, Section 7, of the Colorado Constitution.

42. The Voucher Program permits religious private partner schools to make employment and enrollment decisions based upon religious beliefs, so long as such decisions are not otherwise prohibited by law.

43. The Voucher Program does not place any restrictions on how private partner schools may expend the public funds that are paid to them under the Voucher Program. Accordingly, the private partner schools are free to use these funds in whole or in part for sectarian purposes, such as religious instruction, worship services, salaries or stipends of clergy or members of religious orders, purchase of Bibles and other religious literature, and construction of chapels and other facilities used for worship and prayer.

44. Once enrolled in a private partner school under the Voucher Program, a student is eligible to continue to receive a private school education paid for with public funds for the duration of the Voucher Program.

45. Although the “scholarship students” will not be enrolled in, attending, or educated in a Douglas County public school, the Douglas County School District intends to include them in its funded pupil count reported to the Colorado Department of Education for the 2011-2012 funding year.

46. The Douglas County School District intends to receive the full funding under the Public School Finance Act from the Colorado Department of Education for each “scholarship student” enrolled in private school in the 2011-2012 school year, an amount the District estimates will be \$6,100 per pupil. In other words, the District will receive a total of approximately \$3,050,000 in public education funds for pupils enrolled in private schools.

47. The Douglas County School District claims that it will use the per pupil revenue from the State to fund the Voucher Program. For the 2011-2012 school year, the District will provide a “scholarship” to each “scholarship student” in an amount equal to 75% of the per pupil revenue received from the State for that student, or the actual cost of the student’s private school tuition, whichever is less. The parent or guardian will be responsible for any additional fees assessed by the private partner school.

48. In the upcoming fiscal year, the Voucher Program will divert more than \$3,000,000 from the State education fund, during a year when the size of that fund is being drastically reduced; that is three million dollars which could otherwise be given to other public school districts across Colorado.

49. In order to make it appear as if the “scholarship students” are enrolled at public schools for the purpose of receiving per pupil revenue from the State, the Douglas County School District has proposed the creation of a supposed public school for the “scholarship students” to “enroll” in. Specifically, the District publicly announced plans to create a “voucher charter” – a charter school in which the voucher students would purportedly be “enrolled” for the purposes of funding and testing. In a recent interview, the Douglas County School District’s in-house attorney, stated that a “voucher charter” is one option that the District is considering as a “funding mechanism” for obtaining State money to fund the Voucher Program.

50. Upon information and belief, the District will enroll students participating in the Voucher Program in a charter school called the Choice Scholarship School. Students enrolled in the Choice Scholarship School will not attend or be instructed in the Douglas County public schools, as they will receive instruction at a private school participating in the Voucher Program. The Choice Scholarship School would exist only for purposes of funding and testing.

51. Plaintiffs will be irreparably injured if the Colorado Department of Education distributes per pupil State funds under the Public School Finance Act to “scholarship students” in Douglas County for these students to attend private schools. Specifically, Plaintiffs will be irreparably injured because public funds will be distributed to private and sectarian schools in violation of the Colorado Constitution and the Public School Finance Act. Once public funds are transferred to private, predominantly religious schools, in violation of the Colorado Constitution and statutes, the harm occurs. Plaintiffs have no adequate remedy at law to prevent the violation of their constitutional and statutory rights caused by the Voucher Program.

52. The Voucher Program will also cause irreparable injury to Plaintiffs by abdicating local control over the curricula of program participants. Upon information and belief, the

Douglas County School District wants no control over the curricula of private schools participating in the Voucher Program.

53. Upon information and belief, private schools participating in the Voucher Program are not required to use the Douglas County School District's assigned textbooks, and many use non-approved textbooks and materials, including "The Adventure Bible-NIV," the "NIV Student Bible," and others.

54. Upon information and belief, the Douglas County School District requires that teachers at District schools hold current CDE Teachers Licenses with appropriate endorsements and experience for the courses that they teach. Upon information and belief, teachers at private schools participating in the Voucher Program are not subject to these same standards and criteria, and are instead subject to standards that differ significantly from the District's standards.

55. Thus, the Voucher Program constitutes a substantial violation of Plaintiffs' rights under Article IX, Section 15 of the Colorado Constitution, as it funds private schools whose curricula, textbooks, management, admissions policies, and teacher qualifications are wholly outside the control of the Douglas County School District.

#### **FIRST CAUSE OF ACTION**

#### **(Declaratory Judgment – Article IX, Section 2 of the Colorado Constitution and violation of the Public School Finance Act, C.R.S. § 22-54-101 et seq.)**

56. The allegations of the above paragraphs are realleged and incorporated by this reference.

57. Article IX, Section 2 of the Colorado Constitution, which is entitled "Establishment and Maintenance of Public Schools," requires the general assembly to "provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state."

58. Pursuant to the authority and directives of Article IX, Section 2 of the Colorado Constitution, the Colorado General Assembly enacted the "Public School Finance Act of 1994," C.R.S. § 22-54-101, et seq. The Public School Finance Act was enacted "in furtherance of the general assembly's duty under section 2 of Article IX of the state constitution to provide for a thorough and uniform system of public schools throughout the state."

59. The Public School Finance Act establishes a finance formula that applies to "all school districts" in the State. C.R.S. § 22-54-102(1). The Act directs that the statutory formula "be used to calculate for each district an amount that represents the financial base of support for public education in that district" and that the monies so calculated "shall be available to the district to fund the costs of providing public education." C.R.S. § 22-54-104(1)(b).

60. A “public school” is defined as “a school that derives its support, in whole or in part, from moneys raised by a general state, county, or district tax.” C.R.S. § 22-1-1-1(1). Conversely, a “private school” is defined as a school that “does not receive state funding through the ‘Public School Finance Act of 1994,’ article 54 of this title, and that is supported in whole or in part by tuition payments or private donations.” C.R.S. § 22-30.5-103(6.5).

61. Article IX, Section 2 of the Colorado Constitution and the Public School Finance Act establish a clear legislative intent and explicit directive that funds distributed to free school districts under the Public School Finance Act must be used only for public education at public schools.

62. In fact, the State has statutorily mandated the circumstances under which a district may pay for educational services for pupils in the district to attend non-public schools. Under CRS § 22-32-110, a district may pay for educational services for pupils in the district to “attend nonpublic schools,” but such schooling can be paid for only “out of federal grants made available specifically for this purpose.” CRS § 22-32-110(1)(cc).

63. The Douglas County School District intends to use funds distributed by the Colorado Department of Education under the Public School Finance Act to pay private school tuition at private schools pursuant to the Voucher Program, in direct contravention of Article IX, Section 2 of the Colorado Constitution and the Public School Finance Act.

64. Under the Public School Financing Act, a school district is entitled to per pupil funding from the State for each pupil “enrolled” in the district’s public school system on October 1. CRS §§ 22-54-103(7)(e) and (10)(a)(1). The Act expresses the pupil count in full-time equivalent (FTE) pupils to reflect the amount of time a student spends in an instructional setting, either a half day or a full day.

65. Upon information and belief, the Douglas County School District intends to create a “voucher charter school” called the Choice Scholarship School. Students will be enrolled in the Choice Scholarship School for purposes of funding, but not instruction.

66. Even though the “scholarship students” will not spend any amount of time in an instructional setting in a Douglas County public school, the Douglas County School District intends to obtain the full per pupil funding from the State for each “scholarship student.”

67. The creation of a “voucher charter school” is a pretense solely for purposes of obtaining funding from the State.

68. Because the “scholarship students” will not be enrolled in, in attendance at, or instructed in a Douglas County public school, the Douglas County School District is not entitled to any funding under the Public School Finance Act for these students.

69. There is a present and existing controversy between Plaintiffs and Defendants as to whether the Douglas County School District can obtain State funds distributed under the Public School Finance Act for “scholarship” students in the Voucher Program who will not be instructed in the Douglas County public schools; whether the Douglas County School District can use funds distributed under the Public School Finance Act to pay private school tuition at private schools; and whether the Colorado Department of Education can distribute funds under the Public School Finance Act to the Douglas County School District to be paid for such purpose.

70. All necessary parties under C.R.C.P. Rule 57(j) are before the court.

71. Pursuant to the Colorado Declaratory Judgments Act, C.R.S. § 13-51-101 et seq. and C.R.C.P. 57, Plaintiffs are entitled to a declaration that the Douglas County School District is not entitled to per pupil funding from the State under the Public School Finance Act for “scholarship students” who will not be instructed in Douglas County public schools, and to a declaration that the Voucher Program violates Article IX, Section 2 of the Colorado Constitution and the Public School Finance Act because the Douglas County School District will impermissibly use State monies distributed by the Colorado Department of Education to pay for private school tuition at private schools.

72. Plaintiffs are entitled to injunctive relief prohibiting the Douglas County School District from implementing the Voucher Program by including “scholarship” students in its funded pupil count and prohibiting the Colorado Department of Education from providing funds to the Douglas County School District for such students.

## **SECOND CAUSE OF ACTION**

### **(Declaratory Judgment - Article IX, Section 15 of the Colorado Constitution)**

73. The allegations of the above paragraphs are realleged and incorporated by this reference.

74. Article IX, Section 15 of the Colorado Constitution provides that local school boards “shall have control of instruction in the public schools of their respective districts.”

75. The Voucher Program violates Article IX, Section 15 because the Douglas County School Board is abdicating its control over instruction of the “scholarship students.”

76. The local control provision contained in Article IX, Section 15 of the Colorado constitution confers on local School Districts and School Boards “responsibility for the instruction of their students.”

77. Students participating in the Voucher Program are purportedly “enrolled” in the Douglas County public schools, but the Douglas County School Board will not exercise control of instruction of “scholarship students.”

78. To the contrary, private schools will have control over curricula and instruction for “scholarship students.”

79. As a result, the Douglas County School Board has failed to exercise and has abdicated its constitutional “responsibility for instruction” under Article IX, Section 15 of the Colorado Constitution.

80. There is a present and existing controversy between Plaintiffs and Defendants as to whether the Douglas County School Board can abdicate all control over the instruction of “scholarship students.”

81. All necessary parties under C.R.C.P. Rule 57(j) are before the court.

82. Pursuant to the Colorado Declaratory Judgments Act, C.R.S. § 13-51-101 et seq., and C.R.C.P. 57, Plaintiffs are entitled to a declaration that under the Voucher Program the Douglas County School Board has failed to fulfill its constitutional responsibility to exercise control of instruction of “scholarship students” enrolled in the Douglas County School District.

### **THIRD CAUSE OF ACTION**

#### **(Declaratory Judgment – Article IX, Section 3 of the Colorado Constitution)**

83. The allegations of the above paragraphs are realleged and incorporated by this reference.

84. In 1875, the United States Congress passed the Colorado Enabling Act authorizing the admission of Colorado as a state. Section 7 of the Enabling Act granted the State title to two sections in every township within its boundaries “for the support of common schools.” This property is referred to as the “state school lands.”

85. Section 14 of the Enabling Act further specified that the state school lands:

[S]hall be disposed of only at public sale and at a price not less than two dollars and fifty cents per acre, the proceeds to constitute a permanent school fund, the interest of which to be expended in the support of common schools.

86. These provisions of the Enabling Act create a federal trust (the “school lands trust”) for the sole and exclusive benefit of the Colorado state public schools.

87. Article IX, Sections 3, 5, 9 and 10 of the Colorado Constitution established a “public school fund,” also referred to as the “permanent school fund,” consisting of the proceeds of lands granted to the state by the “general government for educational purposes” and a state board of land commissioners (the state land board) to serve as trustee for, *inter alia*, the state school lands.

88. Article IX, Section 3, as originally adopted, directs that:

The public school fund of the state shall . . . forever remain inviolate and intact and the interest and other income thereon, only, shall be expended in the maintenance of the schools of the state, and shall be distributed amongst the several counties and school districts of the state, in such a manner as may be prescribed by law. No part of this fund, principal, interest, or other income shall ever be transferred to any other fund, or used or appropriated, except as provided in this article IX.

89. Article IX, Section 3 was amended in 1996 by ballot initiative (“Amendment 16”) to add, *inter alia*, the following language:

Distributions of interest and other income for the benefit of public schools; provided for in this article IX shall be in addition to and not a substitute for other moneys appropriated by the general assembly for such purposes.

90. State statutes create a “public school fund” in the State Treasurer’s office which, among other things, consists of the proceeds of the public school lands. Colo. Const. Art. IX, §17(2)(a); C.R.S. §22-41-101(2).

91. Income held in the public school fund is transferred “periodically” to the “state public school fund” together with, *inter alia*, moneys appropriated by the general assembly from the general fund to meet the state’s share of the total program funding of all school districts under the Public School Finance Act. C.R.S. §22-54-114(1).

92. Upon information and belief, the Douglas County School District will be receiving funds from the public school fund as part of their per pupil funding from the State under the Public School Finance Act. Under Article IX, Section 3 of the Colorado Constitution, these funds must be used only for “maintenance of the schools of the state.”

93. Upon information and belief, the Douglas County School Board and School District intend to use money derived from the public school fund to pay tuition at private schools under the Voucher Program, in violation of Article IX, Section 3 of the Colorado Constitution.

94. There is a present and existing controversy between Plaintiffs and Defendants as to whether the Douglas County School Board and School District can use money from the public school fund to pay for private school tuition under the Voucher Program.

95. All necessary parties under C.R.C.P. Rule 57(j) are before the court.

96. Pursuant to the Colorado Declaratory Judgments Act, C.R.S. § 13-51-101 et seq., and C.R.C.P. 57, Plaintiffs are entitled to a declaration that the Douglas County School District and its School Board have violated and will violate Article IX, Section 3 of the Colorado

Constitution by using money from the public school fund to pay for private school tuition under the Voucher Program.

**FOURTH CAUSE OF ACTION**  
**(Common law Ultra Vires)**

97. The allegations of the above paragraphs are realleged and incorporated by this reference.

98. C.R.S. § 22-32-103 enumerates the limited powers of local school boards and school districts in Colorado. Under this statutory provision, local school boards and school districts possess only those powers delegated by law.

99. There are no statutory or Constitutional delegations of power to the Douglas County School Board and School District to institute the Voucher Program.

100. In fact, Article IX, Section 15 of the Colorado Constitution states that the directors of the local school boards “shall have control of instruction in the public schools of their respective districts.” Under Article IX, Section 15, the Douglas County School Board cannot abdicate control over instruction to private schools.

101. Under Article IX, Section 7 of the Colorado Constitution, the Douglas County School District and its School Board cannot pay any public funds in aid or to sustain any school controlled by a church or sectarian denomination.

102. Likewise, under the Public School Finance Act of 1994, C.R.S. 22-54-101, et. seq., the Douglas County School District and its School Board cannot use public funds to pay tuition at private schools, and cannot obtain funding under the Public School Finance Act for students who are not enrolled in, attending, or receiving an education in the Douglas County public schools.

103. In contracting with parents and private schools participating in the Voucher Program, the Douglas County School District exceeded its ability to enter into contracts as delineated in C.R.S. § 22-32-122.

104. Accordingly, by adopting the Voucher Program, the Douglas County School District and its School Board have exceeded their authority under Colorado’s Constitution, Colorado law, and the Public School Finance Act.

105. The Douglas County School Board has the power to accredit charter schools within its district pursuant to C.R.S. §§ 22.30.5-104(3), 22-32-109, 22-11-307.



106. Under Colorado law, a charter school is defined as “a public, nonsectarian, nonreligious, non-home-based school which operates within a public school district.” C.R.S. 22-30.5-104(1).

107. In creating and accrediting the Choice Scholarship School, which funnels public monies to sectarian and religious schools, the Douglas County School Board will exceed its authority under C.R.S. §§ 22.30.5-104(3), 22-32-109, 22-11-307.

108. Under Article IX, Section 1 of the Colorado Constitution, the powers of the Colorado State Board of Education are limited to “general supervision of the public schools of the state.”

109. Under C.R.S. § 22-2-106, the Colorado State Board of Education has the power and duty to “exercise general supervision over the public schools of the state and the educational programs maintained and operated by all state governmental agencies for persons who have not completed the twelfth-grade level of instruction.”

110. There are no statutory or Constitutional delegations of power to the Colorado State Board of Education permitting it to fund the Voucher Program.

111. By providing the Douglas County School District with public funds that will be sent to private schools, the Colorado State Board of Education has exceeded its constitutional and statutory authority.

#### **FIFTH CAUSE OF ACTION**

#### **(Declaratory Judgment – Article IX, Section 7 of the Colorado Constitution)**

112. The allegations of the above paragraphs are realleged and incorporated by this reference.

113. Article IX, Section 7 of the Colorado Constitution prohibits the State and its political subdivisions, including school districts, from “pay[ing] from any public fund or moneys whatever, anything in aid of any church of sectarian society, or for any sectarian purpose, or to help support or sustain any school ... controlled by any church or sectarian denomination whatsoever.”

114. The Voucher Program will cause State funds to be used to pay for “scholarship students” to attend schools controlled by churches and sectarian denominations, where they will receive religious training and instruction that reflects the religion of the sponsoring church or organization.

115. The use of public funds will aid, support, and help sustain sectarian private schools and churches and sectarian denominations that sponsor them, in violation of Article IX, Section 7 of the Colorado Constitution.

116. The use of public funds will also support the private schools' and churches' sectarian purposes by making it possible for them to provide religious training and instruction to students whom they otherwise would not have been able to reach with their message, in violation of Article IX, Section 7 of the Colorado Constitution.

117. There is a present and existing controversy between Plaintiffs and Defendants as to whether the Colorado Department of Education can provide public funds to the Douglas County School District to use in the aid of private sectarian schools and whether the Douglas County School District can pay such funds for that purpose.

118. All necessary parties under C.R.C.P. Rule 57(j) are before the court.

119. Pursuant to the Colorado Declaratory Judgments Act, C.R.S. § 13-51-101 et seq., and C.R.C.P. 57, Plaintiffs are entitled to a declaration that the Voucher Program violates Art. IX, Section 7 of the Colorado Constitution because State money cannot be used to pay for private school tuition at private sectarian schools.

**SIXTH CAUSE OF ACTION**  
**(Declaratory Judgment – Article V, Section 34 of the Colorado Constitution)**

120. The allegations of the above paragraphs are realleged and incorporated by this reference.

121. Article V, Section 34 of the Colorado Constitution provides that “[n]o appropriation shall be made for . . . educational . . . purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association.”

122. The Voucher Program violates Article V, Section 34 because it channels public money to private denominational and sectarian schools, with no controls over the use of those funds.

123. There is a present and existing controversy between Plaintiffs and Defendants as to whether public school funds can be used to pay for private school tuition under the Voucher Program under Article V, Section 34.

124. All necessary parties under C.R.C.P. Rule 57(j) are before the court.

125. Pursuant to the Colorado Declaratory Judgments Act, C.R.S. § 13-51-101 et seq. and C.R.C.P. 57, Plaintiffs are entitled to a declaration that the Douglas County School District has violated Article V, Section 34 of the Colorado Constitution by using money from the public school fund to pay for private school tuition under the Voucher Program.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

(A) Declare that the Voucher Program is unconstitutional under Article IX, Sections 2, 3, 7, 9, 10, and 15 of the Colorado Constitution, and Article V, Section 34 of the Colorado Constitution;

(B) Declare that the Voucher Program violates the Public School Finance Act, C.R.S. § 22-54-101 et seq.;

(C) Enter a judgment in Plaintiffs' favor on their ultra vires claim;

(D) Enter a preliminary and permanent injunction enjoining Defendants, and all persons and entities acting under their direction or in concert with them, from taking any further actions to implement the Voucher Program, including but not limited to, enjoining the Douglas County School District and its School Board from obtaining, and the Colorado Department of Education from distributing, funds from the Public School Finance Act and the "public school fund" established under Article IX, Section 3 of the Colorado Constitution to the Douglas County School District for "scholarship students," and enjoining the Douglas County School District from issuing and contracting to issue checks payable to the parents/guardians of the "scholarship students" for purposes of full or partial payment of private school tuition;

(E) Award Plaintiffs their attorneys' fees, expenses, and costs incurred in prosecuting this lawsuit; and

(F) Order such other and further relief as this Court may deem just and appropriate.

Respectfully submitted this 21st day of June, 2011.

*s/ Michael S. McCarthy*

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Colin C. Deihl, #19737

Nadia G. Malik, #35761

Sarah A. Kellner, #38111

Gordon M. Hadfield, #42759

Faegre & Benson LLP

*s/ Alexander Halpern*

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Alexander Halpern LLC

*Attorneys for Plaintiffs*

*This document was e-filed through the LexisNexis CourtLink electronic filing procedures, under C.R.C.P. 121(c), § 1-26. As required by those rules, the original signed copy of this document is on file with Faegre & Benson LLP*

Plaintiffs' Address:

Taxpayers for Public Education  
9425 Wolfe St.  
Littleton, CO 80129

Cindra S. and Mason S. Barnard  
9284 Buttonhill Court  
Highlands Ranch, CO 80130

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**VERIFICATION**

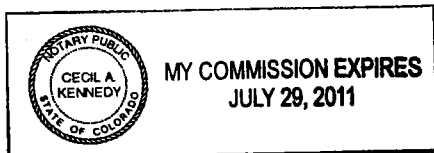
STATE OF COLORADO  
COUNTY OF DENVER

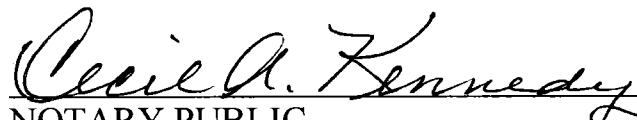
Anne Kleinkopf, of full age, being duly sworn according to law, upon her oath, deposes and says:

- 1) I am a Director of Taxpayers for Public Education, which is a plaintiff in this action.
  
- 2) I have read the foregoing Complaint and all the allegations contained therein. All the allegations in the Complaint are true based on my personal knowledge or other public information, to the best of my belief.

  
\_\_\_\_\_  
Anne Kleinkopf

SWORN TO AND SUBSCRIBED before me on this 20th day of June, 2011.



  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: 7/29/2011

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**Court:** CO Denver County District Court 2nd JD  
**Case Class:** Civil  
**Case Type:** Declaratory Judgment  
**Case Name:** Taxpayers for Public Education, et al. vs. Douglas County School District RE-1, et al.

**Transaction Option:** Originating Event  
**Billing Reference:** 86214-399810

**Documents List**

**3 Document(s)**

**Originating Document, 21 Pages Document ID: 40255768** [PDF Format](#) | [Original Format](#)

**Document Type:** Complaint **Access:** Public **Statutory Fee:** \$224.00 **Linked:**  
**Document title:** Verified Complaint

**Attached Document, 2 Pages Document ID: 40256913** [PDF Format](#) | [Original Format](#)

Related Document ID: 40255768  
**Document Type:** Civil Case Cover Sheet **Access:** Public **Statutory Fee:** \$0.00 **Linked:**  
**Document title:** District Court Civil Case Cover Sheet for Initial Pleading of Complaint

**Attached Document, 2 Pages Document ID: 40256921** [PDF Format](#) | [Original Format](#)

Related Document ID: 40255768  
**Document Type:** Summons Issued **Access:** Public **Statutory Fee:** \$0.00 **Linked:**  
**Document title:** Summons

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**Sending Parties (3)**

Party	Attorney	Firm
Barnard, Cindra S. (pending)	McCarthy, Michael S	Faegre & Benson LLP-Colorado
Barnard, Mason S. (pending)	McCarthy, Michael S	Faegre & Benson LLP-Colorado
Taxpayers for Public Education, a Colorado Non-Profit corporation (pending)	McCarthy, Michael S	Faegre & Benson LLP-Colorado

**Case Parties**

Party	Attorney	Firm
<u>Barnard, Cindra S.</u> (pending)	McCarthy, Michael S	Faegre & Benson LLP-Colorado
<u>Barnard, Mason S.</u> (pending)	McCarthy, Michael S	Faegre & Benson LLP-Colorado
Colorado Department of Education (pending)	Pro Se	Pro Se-
Colorado State Board of Education (pending)	Pro Se	Pro Se-
Douglas County School District RE-1 (pending)	Pro Se	Pro Se-

Douglas County School District RE-1 Board of Education (pending)  
Taxpayers for Public Education, a Colorado Non-Profit corporation  
(pending)

Pro Se  
McCarthy, Michael  
S

Pro Se-  
Faegre & Benson LLP-  
Colorado

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