DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	
Plaintiffs: ANTHONY LOBATO, et al., and **Plaintiff-Intervenors:** ARMANDINA ORTEGA, et al. v. **Defendants:** THE STATE OF COLORADO, et al.	▲ **COURT USE ONLY** ▲ Case No.: 05CV4794 Courtroom: 424
COURT ORDER	

THIS MATTER is before the Court pursuant to Plaintiffs' Motion to Strike Defendants' Second, Third, and Fourth Affirmative Defenses and Request for Oral Hearing and Plaintiff-Intervenors' Motion to Strike Defendants' Second, Third, Fourth and Fifth Affirmative Defenses. The Court has reviewed the Motions, Response, Replies, case file and applicable statutory and case law. In consideration thereof, the Court makes the following findings and orders:

BACKGROUND

This action is brought by the Plaintiffs and Plaintiff-Intervenors – parents, students and public school districts in the State of Colorado – for declaratory and injunctive relief against the State of Colorado, the Colorado State Board of Education, the Commissioner of Education and the Governor. At the most basic level, the Plaintiffs and Plaintiff-Intervenors claim that the Colorado system of public school finance violates the mandates of Article IX, sections 2 and 15 of the Colorado Constitution.

Plaintiffs move the Court to strike the Defendants' Second, Third and Fourth Affirmative Defenses to the Complaint. Plaintiff-Intervenors move the Court to strike the Defendants' Second, Third, Fourth and Fifth Affirmative Defenses to the Complaint in Intervention.

LEGAL STANDARD

Under C.R.C.P. 12(f), a court may strike a responsive pleading when it "fails to state a legal defense." A motion to strike for failure to state a legal defense is analogous to a C.R.C.P. 12(b)(5) motion and governed by the same standards. *Wagner v. Grange Ins. Ass'n*, 166 P.3d 304, 308-09 (Colo. App. 2007) (citations omitted). A motion to strike should be granted when the defendant's "factual allegations cannot support a defense as a matter of law." *Id.* (quoting *BRW, Inc. v. Dufficy & Sons, Inc.*, 99 P.3d 66, 71 (Colo. 2004)).

The standard for a C.R.C.P. 12(c) motion for judgment on the pleadings is "essentially consistent with that employed in resolving a motion to dismiss for failure to state a claim." *Conn. Gen. Life*

Ins. Co. v. A.A.A. Waterproofing, Inc., 911 P.2d 684, 687 (Colo. App. 1995). A motion for judgment on the pleadings should be granted when, construing the allegations against the movant, "the pleadings themselves show that the matter can be determined on the pleadings." *Id.* (citing *Strout Realty, Inc. v. Snead,* 530 P.2d 969 (Colo. App. 1975)).

SECOND AFFIRMATIVE DEFENSE TO COMPLAINT

Defendants' second affirmative defense to the Complaint is that the

> Plaintiffs' Complaint fails to join necessary and indispensable parties. Plaintiffs raise claims on behalf of all Colorado school districts and all Colorado school children, but have not sought to bring this case as a class action or otherwise sought to join all Colorado school districts or all Colorado school children. Plaintiffs further seek an order requiring the establishment and funding of a new system of public school finance, but have not named the General Assembly as a defendant in this action.

C.R.C.P. 19(a) requires joinder of a person subject to service of process if:

> (1) In his absence complete relief cannot be accorded among those already parties, or
> (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may:
>
> > (A) As a practical matter impair or impede his ability to protect that interest or
> > (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

Not every person who has an interest in issues raised in a particular civil action must be joined as a party to that action. *Brody v. Bock*, 897 P.2d 769, 778 (Colo. 1995). An absentee party need not be joined if "the interests of the parties before the court may be finally adjudicated without adversely affecting the rights of an absent person." *Id.* (absent parties not necessary where plaintiff can obtain complete recovery from named defendant); *see also Bd. of Cnty. Comm'rs v. Roberts*, 159 P.3d 800, 807 (Colo. App. 2006) ("Mere interest in the subject matter of litigation, even if the interest is substantial, is insufficient to make a party indispensable.").

A plaintiff challenging a legislative enactment need not join all persons affected by the challenged enactment. *Harmelink v. City of Arvada*, 580 P.2d 841, 842 (Colo. App. 1978) ("it is not necessary for one objecting to the ordinance to join as plaintiffs all other objectors"). A plaintiff is also not required to join absentees where the absentees share "only the common interest of all persons" subject to the challenged law or rule. *See Talbott Farms, Inc. v. Bd. of Cnty. Comm'rs*, 602 P.2d 886, 888 (Colo. App. 1979).

<u>Complete Relief</u>

The Plaintiffs seek a declaratory judgment that Colorado's current system of public school finance violates the Colorado Constitution and an injunction compelling Defendants to implement a system of public school financing that is in compliance with the mandates of the Colorado Constitution. The Court can decide these issues and grant complete relief in the

absence of the remaining school districts and school children as long as at least one party has standing to bring the claims.

Ability of Absentee Parties to Protect their Interest

Colorado courts have long held that it is unnecessary to join all parties that stand to benefit from a lawsuit if the existing plaintiffs were to prevail, especially if the absentees have no particularized interest in the case beyond that of the general public. *See Harmelink*, 580 P.2d at 842; *Talbott Farms*, 602 P.2d at 888.

Here, the absentee school children and the absentee school districts share Plaintiffs' interest in obtaining a system of public schools that complies with the Constitution. Indeed, all of Colorado shares that interest. However, because the absentee parties have no particularized interest in the outcome of this action beyond that of all individuals and entities involved with Colorado's public school system, their absence will not impede or impair their ability to protect such interests. *See Talbott Farms*, 602 P.2d at 889.

Multiple or Inconsistent Obligations

There is no substantial risk that Defendants could be subject to multiple or inconsistent obligations due to the absence of the remaining school districts and school children. As a general matter, absentee parties could never impose obligations upon Defendants that are inconsistent with the obligations sought to be imposed here because each and every absentee party is guaranteed the same constitutional right: a thorough and uniform system of public schools. Defendants have a singular obligation to follow the law with respect to Colorado's system of public schools and that obligation does not turn on who is a party to this action.

In short, the law is clear that, in the context of a challenge to a statutory scheme, the absence of parties generally affected by the challenged legislative enactment will not prevent complete relief, impede or impair the absentee parties' ability to protect their general interests, or subject the named parties to inconsistent obligations. Accordingly, absentee school districts and absentee school children are not necessary parties under C.R.C.P. 19(a) and 57(j). The second affirmative defense to the Complaint is stricken.

THIRD AFFIRMATIVE DEFENSE TO COMPLAINT

Defendants' third affirmative defense to the Complaint is that the

> Plaintiffs lack standing to the extent they assert claims on behalf of "the children of the State of Colorado" or any other person or entity not named as a Plaintiff. Plaintiffs also have not alleged any injury in fact to a legally protected interest that would establish standing to seek declaratory judgment and injunctive relief on their own behalf as taxpayers, their children's behalf as recipients of public education, or for unnamed groups of parents or students of which they are not a part.

As to the first part of this affirmative defense, Plaintiffs affirmed in their Motion that they make no allegations that they are asserting claims on behalf of all children in the State. The Second

Amended Complaint provides a detailed list of the particular Plaintiffs involved in this case. Defendants' third affirmative defense fails to state a legal defense because no claim is brought on behalf of absentee parties.

The second part of this affirmative defense is directed at the Plaintiff parents' standing. Binding precedent and law of the case hold that the Plaintiff parents have standing. *See Lobato v. State*, 218 P.3d 358, 367 (Colo. 2009). No further inquiry with respect to the parents' standing is warranted. The third affirmative defense to the Complaint is stricken.

FOURTH AFFIRMATIVE DEFENSE TO COMPLAINT

Defendants' fourth affirmative defense to the Complaint is that

> The School District Plaintiffs, who are political subdivisions of the State, lack standing to bring a constitutional or other challenge to the provisions of the Public School Finance Act.

Defendants' fourth affirmative defense has already been decided by the Colorado Supreme Court. The Supreme Court found it unnecessary to address the standing of parties bringing the same claims as parties with standing and held that school districts "may continue as plaintiffs in this case." *Lobato*, 218 P.3d at 368. The "continued participation of the school districts in this case is similar to the role of permissive intervenors and does not require standing independent of plaintiffs with standing." *Id*. (citation omitted). Since the school district Plaintiffs raise claims identical to those of the Plaintiff parents, who have standing, there is no need to independently evaluate the Plaintiff school districts' standing. *See id.* at 367-68. Thus, Defendants' fourth affirmative defense to the Complaint is stricken.

SECOND AFFIRMATIVE DEFENSE TO COMPLAINT IN INTERVENTION

Defendants' second affirmative defense to the Complaint in Intervention is that the

> Plaintiff-Intervenors' Amended Complaint in Intervention fails to join necessary and indispensable parties. Plaintiff-Intervenors raise claims on behalf of all Colorado school districts and all Colorado school children, but have not sought to bring this case as a class action or otherwise sought to join all Colorado school districts or all Colorado school children. Further, to the extent that Plaintiff-Intervenors, like Plaintiffs, seek an order requiring the establishment and funding of a new system of public school finance, Plaintiff-Intervenors have not named the General Assembly as a defendant in this action.

The second affirmative defense to the Complaint in Intervention is stricken under the same analysis as the second affirmative defense to the Complaint.

THIRD AFFIRMATIVE DEFENSE TO COMPLAINT IN INTERVENTION

Defendants' third affirmative defense to the Complaint in Intervention is that the

> Plaintiff-Intervenors lack standing to the extent they assert claims on behalf of "each school district," "all students," all "at-risk and ELL students," or any other person or entity not named as a Plaintiff-Intervenor. Plaintiff-Intervenors also have not alleged any injury in fact to a legally protected interest that would establish standing to seek declaratory judgment and injunctive relief of their own behalf as taxpayers, their children's behalf as recipients of public education, or for unnamed groups of parents or students of which they are not a part. Finally, to the extent that only some Plaintiff-Intervenor students are low-income or English Language Learner students, Plaintiff-Intervenors lack standing to raise claims on behalf of groups of which they are not a part.

The third affirmative defense to the Complaint in Intervention is stricken under the same analysis as the third affirmative defense to the Complaint.

FOURTH AFFIRMATIVE DEFENSE TO COMPLAINT IN INTERVENTION

Defendants' fourth affirmative defense to the Complaint in Intervention is that the

> Plaintiff-Intervenors' claims seek an unconstitutional remedy to the extent that they request the Court to declare that portions of the Colorado Constitution, namely TABOR and the Gallagher Amendment, must yield to other portions of the Constitution, namely the Education and Local Control Clauses.

The issue before this court is "whether the public school finance system is funded and allocated in a manner rationally related to the constitutional mandate that the General Assembly provide a 'thorough and uniform' public school system." *Lobato*, 218 P.3d at 374. The Plaintiffs and Plaintiff-Intervenors' desired remedy is a declaration that the public school finance system is unconstitutional and an order providing "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." *Id.* at 375. In its July 14, 2010 Order, the Court found Defendants failed to demonstrate that TABOR or the Gallagher Amendment conflict with the Education Clause, and, accordingly, it need not harmonize the Education Clause with non-conflicting constitutional provisions, such as TABOR and the Gallagher Amendment. As the provisions are not conflicting and the desired relief is a determination that the public school finance system is unconstitutional, the desired relief would not declare that portions of the Colorado Constitution, namely TABOR and the Gallagher Amendment, must yield to other portions of the Constitution, namely the Education and Local Control Clauses. The fourth affirmative defense to the Complaint in Intervention is stricken.

FIFTH AFFIRMATIVE DEFENSE TO COMPLAINT IN INTERVENTION

Defendants' fifth affirmative defense to the Complaint in Intervention is that the

> Plaintiff-Intervenors' claims and requested relief violate the separation of powers to the extent that they request the Court to compel affirmative actions such as to legislate or fund a particular system of public school finance and to oversee that process.

The Supreme Court has acknowledged that the separation of powers doctrine requires the three branches of government "not interfere with or encroach on the authority or within the province of the other." *Lobato*, 218 P.3d at 372 (citation omitted). Notwithstanding, the Supreme Court stated, "[a] ruling that the plaintiffs' claims are nonjusticiable would give the legislative branch unchecked power, potentially allowing it to ignore its constitutional responsibility to fashion and to fund a 'thorough and uniform' system of public education." *Id.*

The Supreme Court assigned this Court the task to

> … evaluate whether the current state's public school financing system is funded and allocated in a manner rationally related to the constitutional mandate that the General Assembly provide a "thorough and uniform" public school system. This rational basis review satisfies the judiciary's obligation to evaluate the constitutionality of the public school system without unduly infringing on the legislature's policymaking authority. The court's task is not to determine "whether a better financing system could be devised," *Lujan*, 649 P.2d at 1025, but rather to determine whether the system passes constitutional muster.

Id. at 374. "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." *Id*. at 375.

Accordingly, the Supreme Court has found the requested relief does not violate the separation of powers doctrine and has given instruction as to the constitutional remedy, should this Court find in favor of the Plaintiffs and Plaintiff-Intervenors. The fifth affirmative defense to the Complaint in Intervention is stricken.

CONCLUSION

The Court strikes the Defendants' Second, Third and Fourth Affirmative Defenses to the Complaint and Second, Third, Fourth and Fifth Affirmative Defenses to the Complaint in Intervention.

Plaintiffs' Motion to Strike Defendants' Second, Third, and Fourth Affirmative Defenses and Plaintiff-Intervenors' Motion to Strike Defendants' Second, Third, Fourth and Fifth Affirmative Defenses are GRANTED.

SO ORDERED this 21st day of July, 2011.

BY THE COURT

Sheila A. Rappaport

Sheila A. Rappaport
District Court Judge