

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	FILED Document CO Denver County District Court 2nd JD Filing Date: Jul 14 2011 1:46PM MDT Filing ID: 38696220 Review Clerk: Rafaelita M Almazan ▲ COURT USE ONLY ▲
Plaintiffs: ANTHONY LOBATO, et al., and Plaintiff-Intervenors: ARMANDINA ORTEGA, et al. v. Defendants: THE STATE OF COLORADO, et al.	Case No.: 05CV4794 Courtroom: 424
COURT ORDER	

THIS MATTER is before the Court pursuant to Defendants’ Motion for Determination of Questions of Law pursuant to C.R.C.P. 56(h). The Court has reviewed the Motion, Responses, Reply, 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.

Pursuant to C.R.C.P. 56(h), Defendants now move the Court to determine thirteen (13) questions of law. Defendants argue that resolution of these issues will set the legal standards by which the case will be judged and enable an efficient trial for both the Court and the parties.

QUESTIONS PRESENTED

Defendants request the following determinations of law:

1. Plaintiffs and Plaintiff-Intervenors must prove their allegations beyond a reasonable doubt.
2. Plaintiffs and Plaintiff-Intervenors must establish the General Assembly’s education funding decisions are not rationally related to the constitutional mandate of a through and uniform system of free public schools and protection of local control over instruction.
3. The Education Clause guarantees individuals aged six to twenty-one years an opportunity to receive a free public education.

4. The Education Clause does not guarantee any qualitative educational outcome.
5. The Education Clause must be harmonized with all other constitutional provisions, including TABOR.
6. Any appropriations required by the Education Clause are constrained by TABOR's revenue restrictions.
7. The rational basis standard requires that significant deference be afforded to the General Assembly's fiscal and policy judgments.
8. Elementary and secondary education is not the only required or important state service.
9. It is rational for the General Assembly to control the public debt.
10. It is rational for the General Assembly to further local control over instruction.
11. It is rational for the General Assembly to balance appropriations among public services.
12. TABOR authorizes the General Assembly to impose unfunded educational mandates on local school districts.
13. This Court may neither coerce nor restrain the General Assembly through injunctive relief.

STANDARD OF REVIEW

“At any time after the last required pleading, with or without supporting affidavits, a party may move for determination of a question of law. If there is no genuine issue of any material fact necessary for the determination of the question of law, the court may enter an order deciding the question.” C.R.C.P. 56(h). “The purpose of Rule 56(h) is, ‘to allow the court to address issues of law which are not dispositive of a claim (thus warranting summary judgment) but which nonetheless will have a significant impact upon the manner in which the litigation proceeds.’ Resolving such issues ‘will enhance the ability of the parties to prepare for and realistically evaluate their cases . . . and allow the parties and the court to eliminate significant uncertainties on the basis of briefs and argument, and to do so at a time when the determination is thought to be desirable by the parties.’” *Matter of Bd. of Cnty. Comm'rs of Cnty. of Arapahoe*, 891 P.2d 952, 963 n.14 (Colo. 1995) (quoting 5 Robert Hardaway & Sheila Hyatt, *Colorado Civil Rules Annotated* § 56.9 (1985)).

ANALYSIS

The Court gives due deference to the *Lobato* opinion issued by the Supreme Court. *See Lobato v. State*, 218 P.3d 358 (Colo. 2009). Throughout their pleadings, the Plaintiffs and Plaintiff-Intervenors consistently maintain that the Education Clause provides that “Colorado’s children are entitled to [receive] a thorough and uniform education” or a variation therefore. This is a misstatement of the mandate set forth in the Education Clause. In its *Lobato* decision, the Supreme Court repeatedly states that the mandate requires “the general assembly provide a thorough and uniform system of [free] public education [or schools]” or another variation therefore. *See id.* The Education Clause itself states, “[t]he general assembly shall . . . provide

... a thorough and uniform system of free public schools... .” Colo. Const. art. IX, § 2. The Court finds the distinction significant.

1. Whether Plaintiffs and Plaintiff-Intervenors must prove their allegations beyond a reasonable doubt.

The Defendants request a legal determination that the Plaintiffs and Plaintiff-Intervenors must prove their allegations beyond a reasonable doubt. The “beyond a reasonable doubt” standard is founded on a presumption of constitutionality accorded to statutes based on “the deference the court affords the legislature in its law making functions.” *Mesa Cnty. v. State*, 203 P.3d 519, 527 (Colo. 2009). That presumption is “rooted in the doctrine of separation of powers” and reflects the “foundational premise that . . . co-equal branches observe and effectuate constitutional provisions in exercising their power.” *City of Greenwood Village v. In re Centennial*, 3 P.3d 427, 440 (Colo. 2000).

Declaring a statute unconstitutional is “one of the gravest duties impressed upon the courts” and “one which the courts do not feel authorized to perform, unless the conflict between the law and the constitution is clear and unmistakable.” *Id.* For these reasons, a plaintiff “ordinarily must prove the statute’s unconstitutionality ‘beyond a reasonable doubt.’” *Id.* (emphasis added). Ultimately, the “type of constitutional challenge, the nature of the challenged statute, and the standing of the parties determine how we approach judicial review in a particular case... .” *Id.*

This distinction is pertinent here because the Plaintiffs and Plaintiff-Intervenors do not request a statute declared unconstitutional and the Supreme Court has enunciated a standard of review specifically tailored to the constitutional issues posed by this case. The Court adopted the rational basis standard after consideration of the judicial responsibility to “‘determine what the law is,’ without usurping the legislature’s authority over education policy.” *Lobato*, 218 P.3d at 374 (quoting *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1025 (Colo. 1982)). The Court concluded, without mention of the “beyond a reasonable doubt standard,” that “[t]his 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.” *Id.* Accordingly, Defendants’ 1st request is denied.

2. Whether Plaintiffs and Plaintiff-Intervenors must establish the General Assembly’s education funding decisions are not rationally related to the constitutional mandate of a through and uniform system of free public schools and protection of local control over instruction.

The Defendants request a legal determination that Plaintiffs and Plaintiff-Intervenors must establish the General Assembly’s education funding decisions are not rationally related to the constitutional mandate of a through and uniform system of free public schools and protection of local control over instruction. Defendants’ request reiterates the Supreme Court’s holding in *Lobato* and is not disputed by the Plaintiffs or Plaintiff-Intervenors. Accordingly, Defendants’ 2nd request is granted.

3. Whether the Education Clause guarantees individuals aged six to twenty-one years an opportunity to receive a free public education.

The Defendants request a legal determination that the Education Clause guarantees individuals aged six to twenty-one years an opportunity to receive a free public education. Although the Education Clause guarantees individuals aged six to twenty-one years an opportunity to receive a free public education, this guarantee neither stands alone nor obviates the State's obligation to provide a thorough and uniform system of free public schools. The Education Clause requires more than an opportunity for a free education, and its precise requirement is heavily disputed and a core legal issue in this case. Accordingly, Defendants' 3rd request is denied.

4. Whether the Education Clause guarantees any qualitative educational outcome.

The Defendants request a legal determination that the Education Clause does not guarantee any qualitative educational outcome. The Defendants administer a comprehensive educational accountability system anchored by a standards-based education system that (1) sets student academic performance standards; (2) provides objective student achievement results with respect to those standards; (3) compares student performance levels against state and federal achievement goals; and (4) holds the State, the school districts, and the schools accountable for the accomplishment of those goals.

The General Assembly has expressly linked its duties under the Education Clause with student performance:

The state therefore has an obligation to ensure that every student has a chance to attend a school that will provide an opportunity for a quality education. If a school is not providing a thorough and adequate education, as determined by the annual performance review conducted by the [Colorado Department of Education] . . . the state has an obligation to the students enrolled in that school to make changes to ensure that they have an opportunity to receive a quality education comparable to students in other public schools of the state.

C.R.S. § 22-30.5-301(1). Under the standards-based education system adopted by the General Assembly and implemented by the Defendants, educational opportunity is defined *in part* by statutorily mandated academic content standards and measured by student achievement or qualitative outcomes. It is but one factor to consider in determining whether the Defendants have met their constitutional duty. Accordingly, Defendants' 4th request is denied.

5. Whether the Education Clause must be harmonized with all other constitutional provisions, including TABOR.

The Defendants request a legal determination that the Education Clause must be harmonized with all other constitutional provisions, including TABOR. Under the factors set forth in *Bickel*, the Court need not ever reach the issue of harmonizing constitutional provisions. *See Bickel v. Boulder*, 885 P.2d 215 (Colo. 1994). First, Defendants have not met their burden to demonstrate that there are conflicting constitutional provisions. Second, TABOR was not intended to restrict growth of government required by, for example, population growth. Third, the Court does not interpret TABOR to cripple basic government services, such as the constitutional requirement that the general assembly shall provide a thorough and uniform system of free public schools.

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. Thus, the Court need not harmonize the Education Clause with non-conflicting constitutional provisions, such as TABOR and the Gallagher Amendment. Accordingly, Defendants’ 5th request is denied.

6. Whether appropriations required by the Education Clause are constrained by TABOR’s revenue restrictions.

The Defendants request a legal determination that appropriations required by the Education Clause are constrained by TABOR’s revenue restrictions. Under the same *Bickel* analysis, the Court need not ever reach the issue of TABOR’s revenue restrictions.

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 Education Clause mandates a quality education; TABOR conditions certain increases in government taxing and spending. Nothing in TABOR forbids any level of increased education spending. Accordingly, Defendants’ 6th request is denied.

7. Whether the rational basis standard requires that significant deference be afforded to the General Assembly’s fiscal and policy judgments.

The Defendants request a legal determination that the rational basis standard requires that significant deference be afforded to the General Assembly’s fiscal and policy judgments. Defendants’ request is self-evident. The issue before the 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.” *Id.* Accordingly, the fact that the rational basis standard requires that significant deference be afforded to the General Assembly’s fiscal and policy judgments is irrelevant to the issue before the Court.

8. Whether elementary and secondary education is the only required or important state service.

The Defendants request a legal determination that elementary and secondary education is the only required or important state service. The fact that elementary and secondary education is not the only required or important state service is self-evidence and irrelevant to the issue before the Court.

9. Whether it is rational for the General Assembly to control the public debt.

The Defendants request a legal determination that it is rational for the General Assembly to control the public debt. The fact that it is rational for the General Assembly to control the public debt is self-evidence and irrelevant to the issue before the Court.

10. Whether it is rational for the General Assembly to further local control over instruction.

The Defendants request a legal determination that it is rational for the General Assembly to further local control over instruction. The fact that it is rational for the General Assembly to further local control over instruction is self-evidence and irrelevant to the issue before the Court.

11. Whether it is rational for the General Assembly to balance appropriations among public services.

The Defendants request a legal determination that it is rational for the General Assembly to balance appropriations among public services. The fact that it is rational for the General Assembly to balance appropriations among public services is self-evidence and irrelevant to the issue before the Court.

12. Whether TABOR authorizes the General Assembly to impose unfunded educational mandates on local school districts.

The Defendants request a legal determination that TABOR authorizes the General Assembly to impose unfunded educational mandates on local school districts. In the name of the Education Clause, the General Assembly has established a comprehensive system of educational goals, methods, and measures, all of which it requires school districts to implement successfully. A system intended to finance a constitutional mandate cannot be rationally related to that purpose if it is created and funded without reference to the costs of providing the mandated services. That TABOR permits unfunded mandates has no bearing on the determination of whether the system of finance is rationally related to the Education Clause. Accordingly, the fact that TABOR authorizes the General Assembly to impose unfunded educational mandates on local school districts is irrelevant to the issue before the Court.

13. Whether this Court may coerce or restrain the General Assembly through injunctive relief.

The Defendants request a legal determination that this Court may neither coerce nor restrain the General Assembly through injunctive relief. Plaintiffs and Plaintiff-Intervenors seek injunctive relief only against the named Defendants, not the General Assembly. The General Assembly is not a party defendant.

If the public school finance system is found to be unconstitutional, the General Assembly will effectively be required to respond because it does not have the constitutional option not to fund public education. The Supreme Court held that if this Court finds the school finance system unconstitutional, it would be the task of the General Assembly to bring it into compliance. Therefore, the remedy should permit the General Assembly an “appropriate period of time” to enact a constitutional system. *Id.* at 372.

The Plaintiffs and Plaintiff-Intervenors may obtain declaratory relief in the absence of the General Assembly, and Defendants may exercise their discretion to enact a new school finance system in a constitutionally compliant manner. Accordingly, Defendants' 13th request is denied.

CONCLUSION

The Court grants Defendants' 2nd request and denies the remaining requests.

SO ORDERED this 14th day of July, 2011.

BY THE COURT

Sheila A. Rappaport

Sheila A. Rappaport
District Court Judge