

**SUPREME COURT, STATE OF COLORADO**  
**2 East 14<sup>th</sup> Avenue, Denver, CO 80203**

**Name of Lower Court:**  
**Court of Appeals, State of Colorado**

**Court of Appeals Case Number: 06CA733**

**District Court, City and County of Denver, CO**  
**Trial Court Judge: Hon. Michael A. Martinez**  
**Trial Court Case Number: 05 CV 4794**

**WORD COUNT 4476**

**PETITIONERS: Anthony Lobato**, as an individual and as parent and natural guardian of **Taylor Lobato** and **Alexa Lobato**; **Denise Lobato**, as an individual and as parent and natural guardian of **Taylor Lobato** and **Alexa Lobato**; **Jaime Hurtado** and **Coralee Hurtado**, as individuals and as parents and natural guardians of **Maria Hurtado** and **Evan Hurtado**; **Janet L. Kuntz**, as an individual and as parent and natural guardian of **Daniel Kuntz** and **Stacey Kuntz**; **Pantaleón Villagomez** and **Maria Villagomez**, as individuals and as parents and natural guardians of **Chris Villagomez**, **Monique Villagomez** and **Angel Villagomez**; **Linda Warsh**, as an individual and as parents and natural guardian of **Adam Warsh**, **Karen Warsh** and **Ashley Warsh**; **Elaine Gerdin**, as an individual and as parent and natural guardian of **N.T.**, **J.G.** and **N.G.**; **Dawn Hartung**, as an individual and as parent and natural guardian of **Q.H.**; **Paul Lastrella**, as an individual and as parent and natural guardian of **B.L.**; **Woodrow Longmire**, as an individual and as parent and natural guardian of **Tianna Longmire**; **Steve Seibert** and **Dana Seibert**, as individuals and as parents and natural guardians of **Rebecca Seibert** and **Andrew Seibert**; **Olivia Wright**, as an individual and as parent and natural guardian of **A.E.** and **M.E.**; **Herbert Conboy** and **Victoria Conboy**, as individuals and as parents and natural guardians of **Tabitha Conboy** and **Timothy Conboy**; **Terry Hart**, as an individual and as parent and natural guardian of **Katherine Hart**; **Larry Howe-Kerr** and **Kathy Howe-Kerr**, as individuals and as parents and natural guardians of **Lauren Howe-Kerr** and **Luke Howe-Kerr**; **John T. Lane**, as an individual; **Jennifer Pate**, as an individual and as parent and natural guardian of **Ethan Pate** and **Evelyn Pate**; **Robert L. Podio** and **Blanche J. Podio**, as individuals and as parents and

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natural guardians of **Robert Podio** and **Samantha Podio**; **Tami Quandt**, as an individual and as parent and natural guardian of **Brianna Quandt**, **Cody Quandt** and **Levi Quandt**; **Brenda Christian**, as an individual and as parent and natural guardian of **Ryan Christian**; **Toni L. McPeek**, as an individual and as parent and natural guardian of **M.J. McPeek**, **Cassie McPeek** and **Michael McPeek**; **Christine Tiemann**, as an individual and as parent and natural guardian of **Emily Tiemann** and **Zachary Tiemann**; **Paula VanBeek**, as an individual and as parent and natural guardian of **Kara VanBeek** and **Antonius VanBeek**; **Larry Haller** and **Pennie Haller**, as individuals and as parents and natural guardians of **Kelly Haller** and **Brandy Haller**; **Tim Hunt** and **Sabrina Hunt**, as individuals and as parents and natural guardians of **Shannon Moore-Hiner**, **Eris Moore**, **Darean Hunt** and **Jeffrey Hunt**; **Mike McCaleb** and **Julie McCaleb**, as individuals and as parents and natural guardians **Rebekka McCaleb**, **Layne McCaleb** and **Lynde McCaleb**; **Todd Thompson** and **Judy Thompson**, as individuals and as parents and natural guardians of **Garson Thompson** and **Tarek Thompson**; **Doug Vondy** and **Denise Vondy**, as individuals and as parents and natural guardians of **Kyle Leaf** and **Hannah Vondy**; **Brad Weisensee** and **Traci Weisensee**, as individuals and as parents and natural guardians of **Joseph Weisensee**, **Anna Weisensee**, **Amy Weisensee** and **Elijah Weisensee**; **Stephen Topping**, as an individual and as parent and natural guardian of **Michael Topping**; **Donna Wilson**, as an individual and as parent and natural guardian of **Ari Wilson**, **Sarah Patterson**, **Madelyn Patterson** and **Taren Wilson-Patterson**; **David Maes**, as an individual and as parent and natural guardian of **Cherie Maes**; **Debbie Gould**, as an individual and as parent and natural guardian of **Hannah Gould**, **Ben Gould** and **Daniel Gould**; **Lillian Leroux**, as an individual and natural guardian of **Ari Leroux**, **Lillian Leroux**, **Ashley Leroux**, **Alexandria Leroux** and **Amber Leroux**; **Theresa Wrangham**, as an individual and natural guardian of **Rachel Wrangham** and **Deanna Wrangham**

and

**Alamosa School District No. RE-11J; Centennial School District No. R-1; Center Consolidated School District No. 26 JT, of the Counties of Saguache and Rio Grande and Alamosa; Creede Consolidated School District No. 1 in the County of Mineral and State of Colorado; Del Norte**

**Consolidated School District No. C-7; Moffat School District No. 2, in the County of Saguache and State of Colorado; Monte Vista School District No. C-8; Mountain Valley School District No. RE 1; North Conejos School District No. RE1J; Sanford School District No. 6, in the County of Conejos and State of Colorado; Sangre de Cristo School District No. RE-22J; Sargent School District No. RE-33J; Sierra Grande School District No. R-30; and South Conejos School District No. RE10.**

**v.**

**RESPONDENTS: The State of Colorado; the Colorado State Board of Education; William J. Moloney, in his official capacity as Commissioner of Education of the State of Colorado; and Bill Owens, in his official capacity as Governor of the State of Colorado.**

**Attorneys for *Amici Curiae* Colorado Association of School Boards and Colorado Association of School Executives:**

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Case Number:  
08SC185

**BRIEF AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS**

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*Amici Curiae* Colorado Association of School Boards (“CASB”) and Colorado Association of School Executives (“CASE”), through their undersigned counsel, respectfully submit their Brief of *Amici Curiae* In Support of Plaintiffs-Appellants (School Districts and Students), conditionally tendered with their Motion for Leave to Participate as *Amici Curiae*.

**I. Issues Presented for Review**

By order dated September 15, 2008, this Court announced the issues as:

Whether the court of appeals erred in holding that claims regarding educational quality and adequacy of school funding brought pursuant to article IX, section 2 of the Colorado Constitution (the Education Clause) present nonjusticiable political questions.

Whether the court of appeals erred in holding that the school districts do not have standing to bring suit under article IX, section 15, of the Colorado Constitution (the Local Control Clause)<sup>1</sup> challenging the constitutionality of the Colorado system of public school finance.

**II. Statement of the Case**

CASB and CASE adopt the Statement of the Case as set forth in the Petitioners’ Opening Brief.

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<sup>1</sup> Colorado Constitution, article IX, section 15 provides, “The general assembly shall, by law, provide for organization of school districts of convenient size, in each of which shall be established a board of education, to consist of three or more directors to be elected by the qualified electors of the district. *Said directors shall have control of instruction in the public schools of their respective districts.*” The last sentence, emphasized here, constitutes the Local Control Clause.

### III. Statement of Facts

CASB and CASE adopt the Statement of Facts as set forth in the Petitioners' Opening Brief. Briefly, from 1994 to 2001, no Colorado school district was able to raise and expend general operating funds at a level sufficient to provide an education that could meet the standards and mandates of the state's education reform legislation.<sup>2</sup> During one-school year alone, CSFP estimated that Colorado school districts were under-funded by at least \$500 million. R. 8, ¶ 22. In total, CSFP estimates a staggering \$3.4 billion aggregate shortfall in school funding against inflation from 1994-05 to 2004-05. R. 8, ¶ 21.

Further, as would be demonstrated at trial, the negative impacts of Colorado's system of public school finance have only worsened since the initiation of this lawsuit. Since that time, CSFP reports that Colorado's per pupil spending has continued to lose ground against the national average dropping from \$551 below the nation average to \$1034 below. So too has Colorado lost ground in per pupil spending compared to neighboring states: Kansas was spending \$844 more per pupil and now is spending \$923 more; Montana was spending \$759 more per

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<sup>2</sup> Data from the Colorado School Finance Project ("CSFP"). CSFP is a nonprofit organization that collects and distributes research-based information and data on topics related to school finance. The CSFP was established in 1995, following the passage of the 1994 Public School Finance Act. It is funded by Colorado school districts, CASB, CASE, CEA and the Colorado BOCES Association. *See* <http://www.cosfp.org>.

pupil and now is spending \$1012 more; Nebraska was spending \$1627 more per pupil and now is spending \$1991 more; and Wyoming was spending \$2321 more per pupil and now is spending \$3187 more. Overall, Colorado ranks 47th in the amount spent on elementary and secondary education per \$1000 of personal income.

At the same time Colorado's public school finance system's spending has been decreasing relative to national averages, the diversity and demands of Colorado's school population have been increasing. Since 2001-2002, Colorado's student population identified as "at-risk" has increased by 52%, students identified with disabilities in need of special education have increased by 6%, and students identified as English language learners have increased by 95%. Augenblick, Palaich & Associates, *Colorado K-12 Education: An Overview*, Colorado School Finance Project (2008)<sup>3</sup>. Since these increasing special student populations require federally and state mandated programs that are not sufficiently funded by the base per pupil spending, school districts must use scarce local funds to try to fill the gaps. In 2003-2004, the English language learner and special education programs

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<sup>3</sup> <http://www.cosfp.org/StateProfileData/2008/ProfileCOK12EdFundingOverview2008.pdf>.

alone incurred approximately \$480 in unreimbursed costs per student.<sup>4</sup> Thus, as programmatic and student demands increase and the state system of public school finance falls further behind, local school districts must spend more local funds on state programs and mandates.

Additionally, as would be fully articulated and proven at trial, Colorado's complex system of public school finance and constitutional limitations on tax revenues and spending has constrained local school districts' ability to raise sufficient supplemental funds. As a result, the percentage of contributions to schools' operating income has continued to shift towards the state. In 1985, locally-raised tax revenues accounted for 47% of schools' operating income. *Owens v. Colo. Congress of Parents, Teachers and Students*, 92 P.3d 933, 940-941, FN6 (citing *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005, 1010 (Colo. 1982)). By 2004, the state provided approximately 60% of schools' operating income and locally raised funds accounted for approximately 40%. *Id.*

#### **IV. Summary of Argument**

CASB and CASE direct this Brief only to the issue of whether school districts have standing to challenge legislation that interferes with school boards'

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<sup>4</sup> See CSFP, *Impact of Unreimbursed Costs on Base Funding 2003-04*, <http://www.cosfp.org/COSFHIST.htm>.

constitutional authority.<sup>5</sup> The courts below failed to recognize that Colorado school districts are not mere political subdivisions of the state; rather, Colorado school districts arise from the Colorado Constitution. The Constitution divides between the state and local school boards the responsibility and authority for Colorado's education system, allocating general supervisory authority to the state and control of instruction to school boards. When the State disrupts this constitutional balance, as it has with the public school finance system, this Court has specifically recognized the role of judicial review. Accordingly, this suit is nothing less than school districts acting upon their constitutional authority and obligations as this Court's precedent specifically permits.

## **V. Argument**

To assert standing, plaintiffs generally must satisfy a two-prong test: 1) the plaintiffs have sustained an actual injury; and 2) the injury is to a legally protected or cognizable interest. *Mesa Verde Co. v. Montezuma County Bd. of Equalization*, 831 P.2d 482, 484 (Colo. 1992). As standing is a threshold question of law, this Court's review is *de novo*. *Ainscough v. Owens*, 90 P.3d 851, 856 (Colo. 2004).

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<sup>5</sup> School boards are the entity in which the Colorado Constitution vests control of instruction. Colo. Const. article IX, § 15. Pursuant to this constitutional authority, local school boards govern school districts. *Id.*; see also Colo. Rev. Stat. § 22-31-105. Under Colorado law, school districts are the corporate entity capable of suing and being sued. Colo. Rev. Stat. § 22-32-101. Thus, any reference in this Brief to "local school boards" necessarily includes school districts.

Here, Petitioner School Districts satisfy both prongs, but begin this analysis with the second prong on which both decisions below turned.

**A. SCHOOL DISTRICTS HAVE A CONSTITUTIONALLY PROTECTED INTEREST IN LOCAL CONTROL.**

In its short three-page opinion, the Denver District Court allocated only one paragraph to conclude that the School Districts lack standing in this suit. The Colorado Court of Appeals echoed the District Court's finding. Relying on the same case, the Court of Appeals erroneously concluded that the School Districts' participation was barred by the general principle disallowing political subdivisions from challenging statutes directing their performance. *Lobato v. State*, No. 06CA0733, 2008 WL 194019, \*4 (Colo. Ct. App. Jan. 24, 2008); Dt. Ct. Order p. 3. The lower courts erred by failing to recognize that Colorado school districts have constitutionally protected interests at issue in this lawsuit and those interests are sufficient to confer standing on the School Districts.

**1. School districts are not mere political subdivisions doing the bidding of the state.**

School districts are not mere political subdivisions of the state subject to the bar preventing political subdivisions from challenging the validity of state statutes

directing<sup>6</sup> their performance. *See Mesa Verde Co.*, 831 P.2d at 484 (summarizing general bar against political subdivisions' standing). Political subdivisions of the state are those that exist only "for the convenient administration of the state government, created to carry out the will of the state." *Denver Urban Renewal Auth. v. Byrne*, 618 P.2d 1374, 1380 (Colo. 1980)("DURA")<sup>7</sup>(citing *Board of County Commissioners v. Love*, 470 P.2d 861 (Colo. 1970)). In fact, the Colorado Constitution, not the state government, created Colorado's school districts and local boards of education. Colo. Const. article IX, § 15. Accordingly, Colorado school boards exist as independent holders of power devised by the Constitution's framers and specifically divest the state of complete authority over education. *See* Sections A.2 and A.3, *infra*.

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<sup>6</sup> The School Districts also contend that their challenge to the public school finance system, including the Public School Finance Act, categorical funding programs, and capital construction funding (*see* Complaint, ¶¶ 120-175), is not a challenge to a statute "directing" their performance. This is not simply a suit through which the School Districts attempt to evade ministerial duties assigned by the finance system. Rather, the School Districts assert that the State has failed to fulfill its own constitutional duties in enacting the legislation and, in so doing, has impermissibly infringed on the School Districts' constitutional local control authority.

<sup>7</sup> Though *DURA* concluded that the school district lacked standing, it did so because the parties offered no statutory or constitutional provision conferring authority. Assumedly, the parties also offered no authority to challenge the characterization of the school district as a political subdivision. *DURA* cites only to *Denver Ass'n for Retarded Children, Inc., v. School Dist. No. 1*, 188 Colo. 310, 316, 535 P.2d 200, 204 (Colo. 1975)("DARC") for the proposition that school districts are political subdivisions. As discussed immediately below and in Footnote 8, *DURA* too relies on inapposite authority.

Tracing back to the originating authority for the oft-cited characterization of school districts as “merely the instruments of the state government, chosen for the purpose of effectuating its policy in relation to schools” leads to a cluster of cases from the 1800s to the mid-1900s.<sup>8</sup> *Hazlet v. Gaunt*, 250 P.2d 188 (Colo. 1952); *Newt Olson Lumber Co. v. School District*, 263 P. 723, 724 (Colo. 1928); *School District Number 98 of Adams County v. Pomponi*, 247 P. 1056 (Colo. 1926); *Florman v. School District*, 40 P. 469, 470 (Colo. Ct. App. 1895). Not one of these cases addressed the Colorado Constitution’s grant of authority to school boards to control instruction.

Instead, the cases cited in support of the erroneous conclusions dealt with school districts’ ownership of property and corporate status for liability purposes. In *Hazlet*, the Court decided only that local taxpayers did not possess a property interest in the school district’s assets that required due process before the General Assembly reorganized Colorado school districts. 250 P.2d at 188. Both *Newt Olson*

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<sup>8</sup> The Court of Appeals decision cites to *Bagby v. Sch. Dist. No. 1, Denver*, 528 P.2d 1299, 1302 (Colo. 1974) and *Clear Creek School District v. Holmes*, 628 P.2d 154, 155 (Colo. Ct. App. 1981) which in turn cites to *Bagby* and *Denver Ass’n for Retarded Children, Inc., v. School Dist. No. 1*, 188 Colo. 310, 316, 535 P.2d 200, 204 (1975)(“DARC”). *DARC* (the only case cited by the Denver District Court) cites *Hazlet v. Gaunt*, 250 P.2d 188 (Colo. 1952), *Newt Olson Lumber Co. v. School District*, 263 P. 723, 724 (Colo. 1928), and *Florman v. School District*, 40 P. 469, 470 (Colo. Ct. App. 1895). *Bagby* cites *Newt Olson Lumber Co.* and *School District Number 98 of Adams County v. Pomponi*, 247 P. 1056 (Colo. 1926).

*Lumber Co.* and *Florman* addressed construction disputes. *Florman* held that neither school districts nor school boards “own” property that can be leveraged in a mechanics lien.<sup>9</sup> *Newt Olson Lumber Co.* held only that school districts, like the state, are insulated from tort liability. Finally, *School District No. 98 of Adams County* merely included school districts in the class of municipal or quasi-municipal bodies whose contracts may be voided if against public policy.

In these early cases, the courts had no reason to consider the unique provisions of Colorado’s Constitution that distribute authority and responsibility for education between the state and local school boards. Rather, in these cases, the courts correctly stated the law governing a property dispute between private citizens and school districts. These cases do not address the constitutional grant of an independent and distinct authority to school boards through the Local Control Clause.<sup>10</sup>

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<sup>9</sup> This holding is necessitated by the Colorado Constitution’s recognition that the general assembly is authorized to organize (and reorganize) school districts. Colo. Const. article IX, § 15. If school districts held property, then the ability to reorganize school districts would be so encumbered as to be meaningless. The *amici* submit that such extreme limitation on a constitutional right is precisely the result achieved by the lower courts with respect to the Local Control Clause.

<sup>10</sup> Even if the Court declines to recognize school districts as more than simple political subdivisions, it is time to put to rest the notion that this line of cases accurately defines the relationship between the state and school districts with respect to constitutional authority for education.

The general rule against political subdivisions' having standing to sue the state is premised on an equating of the state and subdivisions' interests. *Romer v. Fountain Sanitation Dist.*, 898 P.2d 37, 40 (Colo. 1995)(“Absent constitutional or statutory provisions establishing a contrary set of circumstances, the interests of a political subdivision of a state must be deemed commensurate with the interests of the state for purposes of standing.”). As will be addressed in detail *infra*, the school districts and state possess distinct constitutional interests and authority regarding education. Given this constitutional construct, the interests of Colorado school districts cannot be presumed to be commensurate with those of the state and school districts cannot fairly be considered simple subordinate political subdivisions. Accordingly, particularly when a school board's authority under the Local Control Clause is implicated as discussed *infra*, the general principle that political subdivisions have no standing or interest separate from the state does not apply.

2. **The Colorado Constitution's Local Control Clause confers a legally protected interest upon school districts.**

Assuming *arguendo* the general political subdivision bar on standing encompasses school districts, the School Districts are constitutionally authorized to bring this suit. To be excepted from the general principle against political subdivision standing and satisfy the standing test's second prong, political

subdivisions must demonstrate that the Colorado Constitution or statute expressly or impliedly establishes a legally protected interest. *Romer*, 898 P.2d at 40 (internal citations omitted); *Mesa Verde Co.*, 831 P.2d at 484. The Colorado Constitution clearly vests school boards, and accordingly school districts, with such a legally protected interest via the Local Control Clause.

The Colorado Constitution deliberately divides responsibility for education between the state and school boards. The state possesses the general supervisory authority for public schools. Colo. Const. article IX, § 1. School boards “have *control of instruction* in the public schools of their respective districts.” Colo. Const. article IX, § 15 (“Local Control Clause”). The framers of the Constitution crafted the Local Control Clause expressly to decentralize authority over public education and “to place control ‘as near the people as possible’ by creating a representative government in miniature [through school districts and their boards] to govern instruction.” *Owens*, 92 P.3d at 938-939. Thus, the Local Control Clause vests school boards with “undeniable constitutional authority.” *Board of Educ. v. Booth*, 984 P.2d 639, 645-646 (Colo. 1999); *see also Owens*, 92 P.3d at 940 (affirming the “constitutional status of the local control requirement”).

School districts are entitled to judicial review of legislative actions that attempt to balance the constitutional authority of the state and local school boards.

*Booth*, 984 P.2d at 646. In *Booth*, this Court was first called upon to determine the relationship between the state’s general supervision authority and local school boards’ control of instruction authority. In so doing, this Court specifically recognized that the “contours of constitutional rights are typically determined by balancing competing interests.” *Id.* Such balance, this Court found, “...first must be struck by the legislature and, if challenged, reviewed by the courts.” *Id.*

As evidenced in the quoted language above, this Court sanctioned school districts’ standing to challenge serious encroachment into school boards’ local control authority.<sup>11</sup> Moreover, this Court kept the door to such challenges open, declining to “attempt a definitive constitutional demarcation. Instead, taking the general principles identified above, we must review each case on the facts.” *Booth*, 984 P.2d at 649-650. Such review is all the School Districts seek here and, like in *Booth*, the Local Control Clause creates the legally protected interest to warrant it.

3. **Colorado’s public school finance system implicates the Local Control Clause.**

Having established that Colorado school districts have standing to defend their constitutionally granted authority, the question becomes whether the school

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<sup>11</sup> Had a legitimate concern existed regarding the propriety of the school districts’ participation in *Booth*, this Court (or the state) could have raised the issue of standing at any time in the proceedings. See, e.g., *Peaker v. Southern Colorado Water Conservancy Disict*, 483 P.2d 232 (Colo. 1971).

districts' standing extends to the issues in this case. Here, Petitioner School Districts allege that the public school finance system is fundamentally inadequate and falls so woefully short that it impermissibly interferes with school boards' authority under the Local Control Clause.

The Court of Appeals oversimplified and overstated this Court's decisions to find that the Local Control Clause applies only when locally raised funds are directly targeted. *Lobato v. State*, No. 06CA0733, 2008 WL 194019, \*4 (Colo. Ct. App. Jan. 24, 2008). Clearly, the Local Control Clause prohibits the state's efforts to specifically encumber local funds. *Owens, infra*; *School Dist. No. 16 in Adams County v. Union High School*, 152 P. 1149, 1149 (Colo. 1915); *Belier v. Wilson*, 147 P. 355 (Colo. 1915). It is also clear that the state has the authority to apportion state education funds. *See Craig v. Hazzard*, 299 P. 1064 (Colo. 1931). However, these two rules do not support the Court of Appeals' erroneous conclusion that the Local Control Clause only extends to locally raised tax revenues.

Practically, if the Local Control Clause attached only to local funds, then school boards could be divested entirely of their constitutional authority to control instruction by a simple legislative decision to fund education entirely from state sources. Under the Court of Appeals' theory, therefore, local school boards would have precipitously slipped from 95% control of instruction in 1931 to only 40%

control of instruction today. *See Owens*, 92 P.3d at 943 (comparing state and local funding contributions in 1912 when *Belier* was decided to current contributions).

Instead, it is the Constitution itself, not funding levels, that define the division of power between the state and school boards. *Owens*, 92 P.3d at 943. In *Owens*, this Court specifically rejected the argument that with greater state funding comes greater control over educational policy stating, “the constitutional division of power between the state and local boards is not measured by funding.” *Id.* The division of power was secured by the Constitution’s framers who deliberately established a republican form of government, vesting control of instruction in the representative body of local school boards. *Id.* at 935-936.

The purpose of the Local Control Clause is to ensure that local communities participate in the decision-making process and local school boards can tailor local educational programs to local needs. *See, e.g., Owens*, 92 P.3d at 941. Through the Local Control Clause, school boards are provided “the opportunity for experimentation, innovation, and a healthy competition for educational excellence.” *Lujan*, 649 P.2d at 1023. Thus, school boards must have “substantial discretion” to determine the needs of their community and devise and implement a program responsive to those needs. *Booth*, 984 P.2d at 648.

Exercising discretion necessarily means that local school boards make decisions about how money should be spent. *Lujan*, 649 P.2d at 1023. It is axiomatic that this constitutional authority must be meaningful. In other words, there must be money over which local school boards may exercise discretion. If no or grossly insufficient dollars are given to school districts (and then only with an aggressive state agenda for education requiring all of those dollars and more), then the constitutional guarantee of local control is but a hollow promise. Bluntly, if the Local Control Clause requires discretion to allocate funds to local priorities and needs as this Court has said repeatedly, then it also requires that sufficient dollars are allocated to school districts.

School districts recognize that the state has a constitutional role in defining “thorough and uniform” and directing from a statewide perspective education in Colorado.<sup>12</sup> However, the state cannot enact and implement legislation that usurps school boards’ decision-making authority or ability to implement, guide and manage educational programs within those districts. *Booth*, 984 P.2d at 649. If the

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<sup>12</sup> The general supervisory authority authorizes the state’s “direction, inspection, and critical evaluation of ‘the whole’ in the sense of contributing a statewide perspective to decisions affecting public schools.” *Booth*, 984 P.2d at 647. More specifically, the state can identify deficits and “provide ideas, recommendations, and aspirations” for the improvement of education in Colorado. *Booth*, 984 P.2d at 647-648. Finally, the state can establish general criteria or limitations to guide improvements necessary to fulfill State’s obligation to create a “thorough and uniform” system of education. *Booth*, 984 P.2d at 649.

state passes legislation that effectively eviscerates school boards' discretion over spending and renders them unable to fulfill their constitutional duties, then the state has violated the Local Control Clause. Petitioners contend that the public school finance system represents just such legislation. Thus, the School Districts' constitutionally protected interest, the Local Control Clause, satisfies this requirement of the standing test.

**B. SCHOOL DISTRICTS HAVE SUFFERED AN INJURY-IN-FACT.**

Petitioner School Districts, like all Colorado school districts, have suffered (and will continue to suffer) injury as a result of Colorado's system of public school finance. The School Districts are injured by a school finance system that prevents them from receiving adequate funding, allocates funding irrationally, and denies them the ability to obtain adequate funding. Not only does the inadequate system of public school finance directly and substantially affect the School Districts' revenues, but it also impinges on the School Districts' constitutional authority.

A direct and substantial affect on a school district's revenue constitutes an injury-in-fact. *DURA*, 618 P.2d at 1380. In *DURA*, this Court determined that the school district arguably would suffer an injury-in-fact if a challenged agreement

took effect due to the agreement's implications upon school district revenues.<sup>13</sup> Here, the State's complex system of public school finance establishes the amount of permitted school funding, specifies the sources of funding (state and local), and sets the mix of state and local funding for each school district. As a result of subsequent constitutional amendments, most notably Colorado's Taxpayers Bill of Rights, Colo. Const. art. X, § 20, local school districts are prohibited from subsidizing to the level necessary to compensate for the insufficient funding scheme set by the State.

As will be shown at trial, none of the School Districts were able to raise and expend general operating funds at a level sufficient to meet the standards of the education reform legislation. If permitted at trial, the School Districts will show that the public school finance system has increased dramatically the shortfall in funding and dropped Colorado further in the rankings of state per pupil spending while this case has been passed through the lower courts. This direct and substantial affect on the School Districts' revenues constitutes an injury in fact.

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<sup>13</sup> Finding no cited authority to a legally protected interest, the *DURA* Court ultimately found the school district lacked standing, but only after making a preliminary determination that the school district articulated an injury-in-fact. 618 P.2d at 1380. Accepting the allegations of the Complaint as true for purposes of considering threshold viability, such a preliminary finding is sufficient to warrant a trial on the merits here.

Additionally, infringement upon a constitutional power constitutes an injury-in-fact. *Colorado General Assembly v. Lamm*, 700 P.2d 508, 516 (Colo. 1985); *Maurer v. Young Life*, 9 P.2d 1317, 1325 (Colo. 1989)(“allegations of harm to a governmental body’s institutional interests through a usurpation of authority by another governmental entity are sufficient to constitute injury in fact . . . .”); *Douglas County Board of County Comm’rs v. Public Utilities Comm’n*, 829 P.2d 1303, 1308-09 (Colo. 1992). In addition to devising an inadequate public school finance system, the State has enacted myriad education reform legislation over the past fifteen years piling programming, testing, reporting, and planning, *inter alia*, requirements on school districts. *See Complaint*, ¶¶84-119. As will be shown at trial, the School Districts’ costs of fulfilling the obligations created by the State far exceed the State’s contributions to education (and the total school funding in Colorado).

Therefore, to survive the state’s exercise of its supervisory authority, local school districts are compelled to apply the insufficient funds to state mandates, leaving no funds for local school districts to allocate to locally determined instructional priorities. Such a result is tantamount to the ill corrected in *Belier* where this Court held that a local school district could not be forced to pay tuition in another district because it did not control instruction in that district. 147 P. 355.

School districts must be more than mere puppets implementing the State's ambitious agenda or the Local Control Clause is meaningless.

The School Districts recognize that this Court previously refused to “seriously entertain the notion that the General Assembly’s constitutional responsibility for public education can be carried out only to the extent that its regulation have no discernible effect on local resources.” *Booth*, 984 P.2d at 645. Unlike *Booth*, this case represents a matter where the State’s actions so seriously impinge on the School Districts’ allocation of resources as to negate entirely school boards’ authority under the Local Control Clause. As the effect of Colorado's system of public school finance and the State’s education reform agenda operate to deny school boards control of instruction and render the School Districts unable to deliver a thorough and uniform system of education, the School Districts have sustained an “injury-in-fact.”

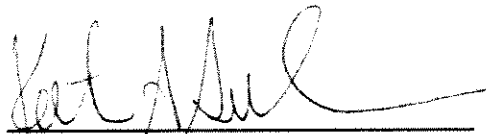
## **VI. Conclusion**

Petitioner School Districts have both an “injury-in-fact” and a “legally protected interest” that establish their standing in this case. The lower courts pieced together inapposite and incomplete analyses rather than engaging in the necessary consideration of the scope of Colorado school boards’ constitutionally defined

authority. This Court's precedent clearly recognizes school districts' ability to challenge legislation that robs school boards of their control of instruction.

WHEREFORE, for these and all the foregoing reasons, CASB and CASE urge this Court to recognize school boards' distinct constitutional status and authority and grant Petitioner School Districts' standing to challenge the constitutionality of the State's actions that violate the Local Control Clause.

Respectfully submitted this 24th day of November, 2008.

A handwritten signature in black ink, appearing to read 'Kathleen A. Sullivan', written over a horizontal line.

Kathleen A. Sullivan  
Atty. Reg. No. 39223  
Colorado Association of School Boards and  
Colorado Association of School Executives

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing **BRIEF AS**  
*AMICI CURIAE* **IN SUPPORT OF PETITIONERS** this 24th day of November,  
2008, upon the following:

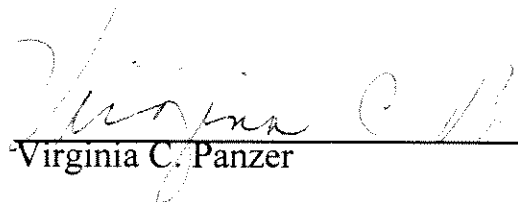
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