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| <p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO<br/>1437 Bannock Street<br/>Denver, Colorado 80202</p>  | <p style="color: red;"><b>FILED Document</b><br/><b>CO Denver County District Court 2nd JD</b><br/><b>Filing Date: May 17 2010 3:41PM MDT</b><br/><b>Filing ID: 31153164</b><br/><b>Review Clerk: Shelly Westman</b></p> <p style="text-align: center;"><input type="checkbox"/> <b>COURT USE ONLY</b> <input type="checkbox"/></p> |
| <p>PLAINTIFFS: <b>Anthony Lobato</b>, as an individual and as parent and natural guardian of <b>Taylor Lobato</b> and <b>Alexa Lobato</b>; <i>et al.</i></p> <p>vs.</p> <p>DEFENDANTS: <b>The State of Colorado</b>; <i>et al.</i></p>   | <p>Case Number: 05 CV 4794</p> <p>Div: 9</p>  |
| <p><b>Attorneys for Defendants:</b><br/>JOHN W. SUTHERS, Attorney General</p> <p>MONICA MÁRQUEZ, 28950<br/>Deputy Attorney General<br/>E-mail: monica.marquez@state.co.us</p> <p>ANTONY B. DYL, 15968*<br/>Senior Assistant Attorney General<br/>E-mail: tony.dyl@state.co.us</p> <p>CAREY TAYLOR MARKEL, 32987*<br/>Senior Assistant Attorney General<br/>E-mail: carey.markel@state.co.us</p> <p>ANN H. CISNEROS, 32547*<br/>Assistant Attorney General<br/>E-mail: ann.cisneros@state.co.us</p> <p>ERICA WESTON, 35581*<br/>Assistant Attorney General<br/>E-mail: erica.weston@state.co.us</p> <p>NICHOLAS P. HEINKE, 38738*<br/>Assistant Attorney General<br/>E-mail: nicholas.heinke@state.co.us</p> <p>Office of the Colorado Attorney General<br/>1525 Sherman Street, 7th Floor<br/>Denver, CO 80203<br/>Telephone: (303) 866-2383<br/>Fax: (303) 866-5671<br/>* Counsel of Record</p> | <p style="text-align: center;"><b>ANSWER TO COMPLAINT IN INTERVENTION</b></p>   |

Defendants, by and through their counsel, hereby answer the Complaint in Intervention. As to Plaintiff-Intervenors' introductory paragraph, to the extent that an answer is required, Defendants admit that Plaintiff-Intervenors are challenging the constitutionality of the public school finance system in Colorado and are seeking declaratory and injunctive relief, but deny that Plaintiff-Intervenors are entitled to such relief. Defendants deny the remaining allegations of the introductory paragraph.

## **I. BACKGROUND**

1. Defendants admit the allegations of Paragraph 1 of the Complaint in Intervention, but deny the accuracy of Plaintiff-Intervenors' claims.

2. Defendants admit that the Colorado Supreme Court remanded the case by decision dated October 19, 2009. The remaining allegations of Paragraph 2 of the Complaint in Intervention contain an incomplete and inaccurate summary of the Supreme Court's decision, which is the best evidence of its contents, and therefore Defendants deny the remaining allegations of Paragraph 2.

3. Defendants admit the allegations of Paragraph 3 of the Complaint in Intervention, but deny the accuracy of Plaintiff-Intervenors' claims and that Plaintiff-Intervenors are entitled to the relief requested.

## **II. JURISDICTION AND VENUE**

4. Defendants admit the allegations of Paragraph 4 of the Complaint in Intervention.

5. Defendants admit the allegations of Paragraph 5 of the Complaint in Intervention.

## **III. PARTIES**

6. Defendants lack information sufficient to admit or deny the allegations of Paragraph 6 of the Complaint in Intervention, and therefore deny them.

7. Defendants lack information sufficient to admit or deny the allegations of Paragraph 7 of the Complaint in Intervention, and therefore deny them.

8. Defendants lack information sufficient to admit or deny the allegations of Paragraph 8 of the Complaint in Intervention, and therefore deny them.

9. Defendants lack information sufficient to admit or deny the allegations of Paragraph 9 of the Complaint in Intervention, and therefore deny them.

10. Defendants lack information sufficient to admit or deny the allegations of Paragraph 10 of the Complaint in Intervention, and therefore deny them.

11. Defendants lack information sufficient to admit or deny the allegations of Paragraph 11 of the Complaint in Intervention, and therefore deny them.

12. Defendants lack information sufficient to admit or deny the allegations of Paragraph 12 of the Complaint in Intervention, and therefore deny them.

13. Defendants lack information sufficient to admit or deny the allegations of Paragraph 13 of the Complaint in Intervention, and therefore deny them.

14. Defendants admit that the State of Colorado is responsible for enacting laws related to the Colorado school finance system. However, Defendants deny that the State of Colorado exercises complete discretionary control of the school finance system. Several provisions of the Colorado Constitution, including article X, section 20, also impact the school finance system.

15. Paragraph 15 of the Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 15 misstates and mischaracterizes Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

16. Defendants admit the allegations of Paragraph 16 of the Complaint in Intervention.

17. Defendants admit the allegations of Paragraph 17 of the Complaint in Intervention.

#### **IV. FACTS**

##### **A. Thorough and Uniform System**

18. Paragraph 18 of the Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 18 misstates and mischaracterizes the Colorado Constitution, which is the best evidence of its contents, and therefore Defendants deny those allegations.

19. Paragraph 19 of the Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants admit that the quoted language is found in the Colorado Constitution and deny the remaining allegations.

20. Paragraph 20 of the Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 20 contains an incomplete and inaccurate summary of the Colorado Constitution, which is the best evidence of its contents, and therefore Defendants deny those allegations.

21. Defendants admit that Plaintiff-Intervenors are asserting some of the same claims as the Lobato Plaintiffs. Defendants deny the accuracy of those claims and the remaining allegations of Paragraph 21 of the Complaint in Intervention.

22. Defendants admit that Plaintiff-Intervenors are asserting some of the same claims as the Lobato Plaintiffs. Defendants deny the accuracy of those claims and the remaining allegations of Paragraph 22 of the Complaint in Intervention.

23. Paragraph 23 of the Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 23 contains an incomplete and inaccurate summary of the Colorado Constitution, which is the best evidence of its contents, and therefore Defendants deny those allegations.

## **B. Basic School Finance Structure**

24. Paragraph 24 of the Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 24 contains an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

25. Paragraph 25 of the Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 25 contains an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

26. Paragraph 26 of the Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 26 contains an incomplete and

inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

27. Paragraph 27 of the Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 27 contains an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

28. Paragraph 28 of the Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 28 contains an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

29. Paragraph 29 of the Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 29 to the extent that they are an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents.

30. Paragraph 30 of the Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations to Paragraph 30 to the extent that they are an incomplete and inaccurate summary of the Colorado Constitution, which is the best evidence of its contents.

31. Defendants admit that the Gallagher Amendment was adopted in 1982. The remaining allegations of Paragraph 31 of the Complaint in Intervention purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the remaining allegations of Paragraph 31 to the extent that they are an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents.

32. Paragraph 32 of the Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 32 to the extent that they are an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents.

33. Paragraph 33 of the Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is

required, Defendants deny the allegations of Paragraph 33 to the extent that they are an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents.

34. Defendants admit that the two constitutional amendments are discussed by the Lobato Plaintiffs in their complaint, but state that the referenced allegations have been superseded by the Amended Complaint. Defendants fully incorporate by reference their answers to the Lobato Plaintiffs' Amended Complaint's allegations regarding the constitutional amendments.

### **C. At-Risk Students**

35. Defendants deny the allegations of Paragraph 35 of the Complaint in Intervention.

36. Defendants deny the allegations of Paragraph 36 of the Complaint in Intervention.

37. Paragraph 37 of the Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 37 contains an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny the allegations of Paragraph 37.

38. Defendants admit that different legislation and programs may apply different definitions to the term "at-risk" as identified in Paragraph 38 of the Complaint in Intervention. Defendants deny the remaining allegations of Paragraph 38.

39. Defendants deny the allegations of Paragraph 39 of the Complaint in Intervention.

40. The first two sentences of Paragraph 40 of the Complaint in Intervention purport to state legal conclusions to which no response is required. To the extent that a response is required, Defendants state that the first two sentences of Paragraph 40 contain an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations. Defendants deny the remaining allegations of Paragraph 40.

41. Paragraph 41 of the Complaint in Intervention misstates and mischaracterizes the 2006 Augenblick study, which is the best evidence of its contents, and therefore Defendants deny those allegations.

42. Defendants deny the allegations of the first and third sentences of Paragraph 42 of the Complaint in Intervention. The second sentence of Paragraph 42 purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that the second sentence contains an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

43. Defendants deny the allegations of Paragraph 43 of the Complaint in Intervention.

44. Defendants deny the allegations of Paragraph 44 of the Complaint in Intervention.

45. Defendants deny the allegations of Paragraph 45 of the Complaint in Intervention.

**D. English Language Learner Students**

46. Defendants deny the allegations of the first sentence of Paragraph 46 of the Complaint in Intervention. Defendants admit the remaining allegations of Paragraph 46.

47. Defendants deny the allegations of Paragraph 47 of the Complaint in Intervention.

48. Defendants deny the allegations of Paragraph 48 of the Complaint in Intervention.

49. Paragraph 49 of the Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 49 to the extent that they are an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents.

50. Defendants admit the allegations of Paragraph 50 of the Complaint in Intervention.

51. Paragraph 51 of the Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 51 contains an incomplete and inaccurate summary of ELPA, which is the best evidence of its contents, and therefore Defendants deny those allegations.

52. Paragraph 52 of the Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 52 contains an incomplete and inaccurate summary of ELPA, which is the best evidence of its contents, and therefore Defendants deny those allegations.

53. Defendants deny the allegations of Paragraph 53 of the Complaint in Intervention.

54. Paragraph 54 of the Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 54 contains an incomplete and inaccurate summary of ELPA, which is the best evidence of its contents, and therefore Defendants deny those allegations.

55. Defendants deny the allegations of Paragraph 55 of the Complaint in Intervention.

56. Defendants admit that \$7.2 million in state funding was projected for ELL program in for the 2007-2008 budget year and that \$8 million was estimated for gifted and talented categorical funding for the same year. Defendants deny the remaining allegations of Paragraph 56 of the Complaint in Intervention.

57. Paragraph 57 of the Complaint in Intervention misstates and mischaracterizes the 2006 Augenblick study, which is the best evidence of its contents, and therefore, Defendants deny the allegations of Paragraph 57.

58. Defendants deny the allegations of Paragraph 58 of the Complaint in Intervention.

59. Paragraph 59 of the Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 59 contains an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

60. Defendants deny the allegations of the first and last sentences of Paragraph 60 of the Complaint in Intervention. The remaining allegations of Paragraph 60 purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the remaining allegations to the extent that they are an incomplete and inaccurate summary of the No Child Left Behind Act, which is the best evidence of its contents.

61. Defendants deny the allegations of Paragraph 61 of the Complaint in Intervention.

62. Defendants deny the allegations of Paragraph 62 of the Complaint in Intervention.

**E. Preschool for ELL and At-Risk Students**

63. Defendants admit that preschool programs may be helpful. Defendants deny the remaining allegations of Paragraph 63 of the Complaint in Intervention.

64. Paragraph 64 of the Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent an answer is required, Defendants state that Paragraph 64 relies on an inaccurate and incomplete definition of “at-risk” and misstates Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

65. Paragraph 65 of the Complaint in Intervention purports to state a legal conclusion to which to answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 65 to the extent that they misstate and mischaracterize the CPP, which is the best evidence of its contents.

66. Defendants deny the allegations of Paragraph 66 of the Complaint in Intervention.

67. The first sentence of Paragraph 67 of the Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that a response is required, Defendants deny the first sentence of Paragraph 67 to the extent that it is inconsistent with Colorado law, which is the best evidence of its contents. Defendants deny the remaining allegations of Paragraph 67.

68. Defendants deny the allegations of Paragraph 68 of the Complaint in Intervention.

**F. Facilities**

69. Paragraph 69 of the Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 69 to the extent that they are inconsistent with Colorado law, which is the best evidence of its contents.

70. Defendants admit that certain districts may need to acquire, build or repair facilities. Defendants deny the remaining allegations of Paragraph 70 of the Complaint in Intervention.

71. Defendants deny the allegations of the first two sentences of Paragraph 71 of the Complaint in Intervention. The remaining allegations of Paragraph 71 purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that the remaining allegations contain an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

72. Defendants admit that certain communities have failed to carry forward bond elections and deny the remaining allegations of Paragraph 72 of the Complaint in Intervention.

73. Defendants admit that certain school districts have sought bond elections but deny the remaining allegations of the first sentence of Paragraph 73 of the Complaint in Intervention. Defendants lack information sufficient to admit or deny the remaining allegations of Paragraph 73 and therefore deny them.

74. Defendants lack knowledge sufficient to admit or deny the allegations of Paragraph 74 of the Complaint in Intervention and therefore deny them.

#### **G. Rising Curriculum Standards, Testing and Accountability**

75. Defendants deny the allegations of Paragraph 75 of the Complaint in Intervention, which are based on a repealed statutory provision.

76. Paragraph 76 of the Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 76 is an incomplete and inaccurate summary of applicable law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

77. Defendants admit the allegations of Paragraph 77 of the Complaint in Intervention.

78. Defendants admit that the named assessments are used by CDE and deny the remaining allegations of Paragraph 78 of the Complaint in Intervention.

79. Defendants admit the allegations of the second sentence of Paragraph 79 of the Complaint in Intervention and deny the remaining allegations.

80. Defendants admit the allegations of Paragraph 80 of the Complaint in Intervention.

81. Defendants admit the allegations of Paragraph 81 of the Complaint in Intervention.

82. Defendants admit the allegations of the first two sentences of Paragraph 82 of the Complaint in Intervention. Defendants lack knowledge sufficient to admit or deny the remaining allegations of Paragraph 82 and therefore deny them.

83. Defendants deny the allegations of Paragraph 83 of the Complaint in Intervention.

84. Paragraph 84 of the Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 84 contains an incomplete and inaccurate summary of Colorado law and regulations, which are the best evidence of their contents, and therefore deny those allegations.

85. Paragraph 85 of the Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 85 contains an incomplete and inaccurate summary of the No Child Left Behind Act, which is the best evidence of its contents, and therefore Defendants deny those allegations.

86. Defendants admit the allegations of the first sentence of Paragraph 86 of the Complaint in Intervention and deny the remaining allegations of Paragraph 86.

87. Defendants deny the allegations of Paragraph 87 of the Complaint in Intervention.

#### **H. Performance of ELL and Low Income Students**

88. Defendants deny the allegations of Paragraph 88 of the Complaint in Intervention, which are based on a repealed statutory provision.

89. Defendants deny the allegations of Paragraph 89 of the Complaint in Intervention.

90. Defendants lack knowledge of the year that is the purported subject of the allegations of Paragraph 90 of the Complaint in Intervention and therefore lack knowledge sufficient to admit or deny the allegations of Paragraph 90 and therefore deny them.

91. Defendants lack knowledge of the year that is the purported subject of the allegations of Paragraph 91 of the Complaint in Intervention and therefore lack knowledge sufficient to admit or deny the allegations of Paragraph 91 and therefore deny them.

92. Defendants lack knowledge of the year that is the purported subject of the allegations of Paragraph 92 of the Complaint in Intervention and therefore lack knowledge sufficient to admit or deny the allegations of Paragraph 92 and therefore deny them.

93. Defendants lack knowledge of the year that is the purported subject of the allegations of Paragraph 93 of the Complaint in Intervention and therefore lack knowledge sufficient to admit or deny the allegations of Paragraph 93 and therefore deny them.

94. Defendants deny the allegations of Paragraph 94 of the Complaint in Intervention.

95. Defendants deny the allegations of Paragraph 95 of the Complaint in Intervention.

96. Defendants admit that the language quoted in the first sentence of Paragraph 96 of the Complaint in Intervention appears in C.R.S. § 22-7-301, but state that the quoted language is an incomplete recitation of that provision, which is the best evidence of its contents. Defendants deny the remaining allegations of Paragraph 96.

97. Paragraph 97 of the Complaint in Intervention contains an incomplete and inaccurate summary of the Colorado Commission for Higher Education report, which is the best evidence of its contents, and therefore Defendants deny those allegations.

## V. CAUSES OF ACTION

### A. Denial of a Thorough and Efficient System Under Article IX, § 2 of the Colorado Constitution

98. Defendants incorporate herein all of the preceding averments.

99. Defendants deny the allegations of Paragraph 99 of the Complaint in Intervention.

100. Defendants deny the allegations of Paragraph 100 of the Complaint in Intervention.

101. Defendants deny the allegations of Paragraph 101 of the Complaint in Intervention.

### B. Denial of Local Control Under Article IX, § 15 of the Colorado Constitution

102. Defendants incorporate herein all of the preceding averments.

103. Defendants deny the allegations of Paragraph 103 of the Complaint in Intervention.

104. Defendants deny the allegations of Paragraph 104 of the Complaint in Intervention.

## VI. PRAYER AND RELIEF

105-110. Defendants deny that Plaintiff-Intervenors are entitled to any of the relief requested.

### GENERAL DENIAL

Defendants deny all allegations of the Complaint in Intervention not expressly admitted in the foregoing paragraphs.

### AFFIRMATIVE DEFENSES

1. Plaintiff-Intervenors' Complaint in Intervention fails to state a claim upon which relief may be granted.

2. Plaintiff-Intervenors' Complaint in Intervention fails to join necessary and indispensable parties.

3. Plaintiff-Intervenors lack standing to the extent they assert claims on behalf of any other person or entity not named as a Plaintiff-Intervenor. Plaintiff-Intervenors lack standing to the extent that they assert claims on behalf of groups of parents or students of which they are not a part.

4. Plaintiff-Intervenors' claims seek an unconstitutional remedy.

5. Plaintiff-Intervenors' claims and requested relief violate the separation of powers.

6. Defendants reserve the right to assert additional affirmative defenses.

WHEREFORE, Defendants request that the Court judgment in their favor and against Plaintiff-Intervenors on the Complaint in Intervention, award Defendants their costs and attorney's fees as provided by law, and enter such other relief to Defendants as the Court deems just and appropriate.

Respectfully submitted this 17th day of May, 2010.

JOHN W. SUTHERS  
Attorney General

*s/ Carey Taylor Markel*

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ATTORNEYS FOR DEFENDANTS

\*Counsel of Record

*Original signature of Carey Taylor Markel is on file at the Office of the Colorado Attorney General*

**CERTIFICATE OF SERVICE**

This is to certify that I have duly served the within **ANSWER TO COMPLAINT IN INTERVENTION** upon all parties herein by electronically filing through LexisNexis courtlink or by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 17th day of May, 2010 addressed as follows:

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s/ Jeannine Moore  
Jeannine Moore

*Original Signature of Jeannine Moore is on file at the Office of the Colorado Attorney General*