

DATE FILED: August 6, 2018 10:48 AM
FILING ID: 966E70733A4B8
CASE NUMBER: 2018CV32901

DISTRICT COURT, CITY AND COUNTY OF
DENVER, COLORADO

1437 Bannock Street, Room 256
Denver, CO 80202

Plaintiffs:

POUDRE SCHOOL DISTRICT R-1;
ARAPAHOE COUNTY SCHOOL DISTRICT NO. 1;
SHERIDAN SCHOOL DISTRICT NO. 2;
EL PASO COUNTY SCHOOL DISTRICT NO. 12;
MONTE VISTA SCHOOL DISTRICT NO. C-8;
JEFFERSON COUNTY SCHOOL DISTRICT NO. R-1;
COLORADO ASSOCIATION OF SCHOOL BOARDS, a
Colorado nonprofit corporation;
COLORADO ASSOCIATION OF SCHOOL
EXECUTIVES, a Colorado nonprofit corporation;
CATHY KIPP, an individual; and
JASON GLASS, an individual.

v.

Defendants:

STATE OF COLORADO;
COLORADO STATE BOARD OF EDUCATION;
KATY ANTHES, in her official capacity as Colorado
Commissioner of Education; and
JOHN HICKENLOOPER, in his official capacity as
Governor of the State of Colorado

▲ COURT USE ONLY ▲

Attorneys for Plaintiffs:

Edward T. Ramey, No. 6748
Tierney Lawrence LLC
225 East 16th Avenue, Suite 350
Denver, Colorado 80203

Case Number:

Division/Courtroom:

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, through their counsel, state as follows by way of Complaint for Declaratory and Injunctive Relief:

INTRODUCTION

This action seeks a judicial declaration voiding a discrete section of legislation newly enacted by the Colorado General Assembly for violation of the single subject and clear title requirements of Article V, Section 21, of the Colorado Constitution, together with the separate mandates of Article V, Sections 17, 20, 22a, and 22b of the Colorado Constitution. Pursuant to constitutional mandate, the legislative section at issue “shall be void.” This action also seeks limited and related injunctive relief.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this case pursuant to Colo. Const. art. VI, §9(1). This action is brought pursuant to the Colorado Uniform Declaratory Judgments Law, C.R.S. §13-51-101, *et seq.*, and C.R.C.P. 57 and 65.

2. Venue is proper in this Court pursuant to C.R.C.P. 98(b)(2). Each of the Defendant public bodies and officers against whom these claims are asserted is located principally in the City and County of Denver.

PARTIES

Plaintiffs

A. School District Plaintiffs

3. The “School District Plaintiffs” include Poudre School District R-1, Arapahoe County School District No. 1, Sheridan School District No. 2, El Paso County School District No. 12, Monte Vista School District No. C-8, and Jefferson County School District No. R-1. Each of the School District Plaintiffs is a body corporate and subdivision of the State of Colorado, with the power to sue and be sued, and, through its respective board of education, exercising independent powers and responsibilities exclusively delegated to school districts pursuant to Colo. Const. art. IX, §15, and C.R.S. §22-32-101, *et seq.*

4. Each of the School District Plaintiffs has suffered an injury in fact through the enactment of legislation, directly impacting its operations and finances, in a manner and by a process expressly prohibited by the Colorado Constitution and in derogation of these Plaintiffs’ constitutionally protected interests as stakeholders in the fairness, integrity, and transparency of the legislative processes employed by the Colorado General Assembly.

B. Organizational Plaintiffs

5. The Colorado Association of School Boards (“CASB”) is a Colorado nonprofit corporation whose members consist of local boards of education throughout Colorado and whose mission is to promote the interests and welfare of Colorado’s 178 school districts. CASB represents and advocates for more than 1,000 school board members and superintendents statewide, and regularly represents the interests of its members and other education stakeholders in the context of public policy considerations before the Colorado General Assembly.

6. CASB has suffered an injury in fact through the enactment of legislation directly impacting the operations and finances of its members’ local school districts – as well as its own mission directed to promotion and protection of the interests and welfare of those local school districts – in a manner and by a process expressly prohibited by the Colorado Constitution and in derogation of its and its members’ constitutionally protected interests as stakeholders in the fairness, integrity, and transparency of Colorado’s legislative process. CASB’s members have standing to sue in their own right, the interests CASB seeks to protect are directly germane to its purpose and mission, and neither the claims asserted nor the relief requested require the participation of its individual members in this action.

7. The Colorado Association of School Executives (“CASE”) is a Colorado nonprofit corporation whose members are primarily individual superintendents, principals, administrators, principal and administrator licensure program enrollees, and others engaged in a supporting relationship to public education leadership, as well as individuals from higher education, education groups, education policy groups, and related organizations who have professional level responsibilities in support of education leaders. The mission of CASE is to represent and empower public education leaders responsible for the implementation of education policy and to promote the best interests of public education in Colorado.

8. CASE has suffered an injury in fact through the enactment of legislation – directly impacting the public policy interests of its members and its own mission to represent education leaders and promote the best interests of public education in Colorado – in a manner and by a process expressly prohibited by the Colorado Constitution and in derogation of their constitutionally protected interests in participating in a fair and transparent legislative process. CASE’s members have standing to sue in their own right, the interests CASE seeks to protect are directly germane to its purpose and mission, and neither the claims asserted nor the relief requested require the participation of its individual members in this action.

C. Individual Plaintiffs

9. Cathy Kipp is an individual resident of, and property owner within, Poudre School District R-1, located in Larimer County, Colorado. As such, Ms. Kipp is also a taxpayer responsible for the payment of local property taxes assessed against her real property and

collected to fund the programs and operations of Poudre School District R-1, to include facility construction and maintenance and student transportation. Ms. Kipp has suffered an injury in fact through the enactment of legislation in a manner and through a process expressly prohibited by the Colorado Constitution, and with the effect that the quality of the educational programs and facilities in her district may now be jeopardized, and the cost of maintenance of such programs and facilities increased on a per capita basis, by a reduction in total program funding resulting from a decline in district funded pupil count through the newly authorized unilateral transportation of resident students to schools outside Poudre School District R-1.

10. Jason Glass is an individual resident of, and property owner within, Jefferson County School District No. R-1, located in Jefferson County, Colorado. As such, Mr. Glass is also a taxpayer responsible for the payment of local property taxes assessed against his real property and collected to fund the programs and operations of Jefferson County School District No. R-1, to include facility construction and maintenance and student transportation. Mr. Glass is also a parent of minor children attending public schools within Jefferson County School District No. R-1. Mr. Glass has suffered an injury in fact through the enactment of legislation in a manner and through a process expressly prohibited by the Colorado Constitution, and with the effect that his local tax dollars may now be utilized to transport students with residences in other school districts to and from public schools within Jefferson County School District No. R-1 at taxpayer expense.

Defendants

11. The State of Colorado is a body politic.

12. The Colorado State Board of Education (“State Board”) is the public body vested with the powers and duties of general supervision of the public schools of the State of Colorado pursuant to Colo. Const. art. IX, §1(1), and C.R.S. §22-2-106.

13. Katy Anthes, in her official capacity as Colorado Commissioner of Education (“Commissioner”) pursuant to Colo. Const. art. IX, §1(2), is the chief state school officer and executive officer of the Colorado Department of Education pursuant to C.R.S. §22-2-110 and is empowered to issue instructions to school district officers and employees concerning the government of the public schools under their control, as well as to perform all other duties which may be required by law, pursuant to C.R.S. §22-2-113.

14. John Hickenlooper, in his official capacity as Governor of the State of Colorado, is vested with the supreme executive power of the State and the responsibility to take care that the laws be faithfully executed pursuant to Colo. Const. art. IV, §2.

GENERAL ALLEGATIONS

15. Article V, Section 21 of the Colorado Constitution provides:

Bill to contain but one subject – expressed in title. No bill, except general appropriations bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

16. House Bill 18-1306 was introduced in the Colorado House of Representatives on March 20, 2018, under the title “Concerning Ensuring Educational Stability for Students in Out-of-Home Placement.” Upon amendment in the House to include an appropriation, the title was amended to “Concerning Ensuring Educational Stability for Students in Out-of-Home Placement, and, In Connection Therewith, Making an Appropriation.”

17. As described in the General Assembly’s summary, House Bill 18-1306 “aligns state law with federal ‘Every Student Succeeds Act’ (ESSA) provisions relating to students in foster care, referred to in state statutes as ‘students in out-of-home placement’. ESSA permits students in out-of-home placement at any time during the school year to remain in their school of origin, as defined in the bill, rather than move to a different school upon placement outside of the home or changes in placement, unless the county department of human or social services (county department) determines that it is not in the child’s best interest to remain in his or her school of origin.”

18. House Bill 18-1306 passed the out of the Colorado House of Representatives and was introduced in the Colorado Senate on April 30, 2018.

19. While under consideration by the Senate Committee on State, Veterans, and Military Affairs, House Bill 18-1306 was amended on May 3, 2018, to add a new Section 7. As amended, House Bill 18-1306 passed the Senate and was repassed by the House of Representatives on May 4, 2018.

20. The final version of House Bill 18-1306 – as passed by the General Assembly and sent to the Governor for signature – is attached hereto as Exhibit 1.

21. The new Section 7 added by amendment to House Bill 18-1306 on May 3, 2018, is identical to Section 2 of another bill – Senate Bill 18-228 – titled “Concerning Improving School Choice in Traditional Schools of a School District.” Senate Bill 18-228 had been “postponed indefinitely” (*i.e.*, killed), in a House committee the preceding day (May 2, 2018). A copy of Senate Bill 18-228 is attached hereto as Exhibit 2.

22. The effect of the last-minute grafting of Senate Bill 18-228's Section 2 into House Bill 18-1306 as a new Section 7 was to strike two general and longstanding (since 1964) statutory conditions upon the ability of a local school district to transport to its schools (or reimburse for expenses of such transport for) nonresident students residing in other school districts. The subject statute – C.R.S. §22-32-113 (“Transportation of pupils – when”) – previously (a) limited such transport to adjacent districts and required the consent of the district of the student’s residence, and (b) conditioned any reimbursement upon the consent of the district of the student’s residence.

23. Implicating policy considerations on subjects far broader and more controversial than those theretofore within the limited scope of House Bill 18-1306, the addition of Section 7 to that bill nevertheless occurred without debate or discussion in committee, with no notice to education policy stakeholders, and in the final week of the 2018 legislative session. Further, there was no amendment to the title of House Bill 18-1306 to reflect the new subject matter addressed by the new Section 7.

24. House Bill 18-1306 was sent to the Governor on May 16, 2018. The Governor’s power to veto legislation does not extend to “items” or portions of a single bill except in the context of a general appropriations bill. Colo. Const. art. IV, §§11, 12.

25. Upon receipt of House Bill 18-1306, the Governor signed the bill into law – but accompanied this act with a letter addressed to the Colorado House of Representatives. In his letter, the Governor endorsed the primary purpose of the legislation to offer “a path to keep foster children in their school-of-origin, regardless of their [out-of-home] placement.” The Governor continued:

However, extraneous language was joined onto this bill by the Senate Committee on State, Veterans, and Military Affairs. This language added as Section 7 of the bill has no apparent nexus to foster children, and mirrors a different bill postponed indefinitely by the other chamber the immediate prior day. But, equally alarming, the language was added in the final days of session, with no knowledge by education stakeholders, with no explanation by the amendment’s proponent, and with no discussion or debate by the Committee. We make no judgment today on whether this language is sound policy. However, we have serious concerns about the process in which this amendment was bolted onto such an important bill.

The Governor then proceeded to discuss the “single subject” requirement of Colo. Const. art. V, §21, as well as the separate mandates in Colo. Const. art. V, §§17, 20, 22a, and 22b. The Governor concluded:

We sign HB18-1306 into law today because its benefit to Colorado foster children cannot be overstated – its enactment is crucial. But our support ends where Section 7 begins. Should potential Single-Subject Law violations be raised to the Judicial Branch, we expect a court of law will look unfavorably on the language treading beyond HB 18-1306’s title, and rule such extraneous language void.”

A copy of the Governor’s letter, dated June 1, 2018, is attached hereto as Exhibit 3.

**FIRST CLAIM
(Declaratory Relief)**

26. Paragraphs 1 through 25, above, are incorporated herein by reference.

27. House Bill 18-1306, as passed, incorporates two distinct and separate subjects. First, as noted in paragraph 17, above, it aligns Colorado law with federal law by allowing children in foster care (“out of home placement”) to remain in their “school of origin” (generally where enrolled at the time of placement into foster care) rather than being required – irrespective of their best interests – to transfer their enrollment to a different school determined by the locale of their foster placement. This subject is expressed in the bill’s title. Second, by the grafting on of Section 7, it newly allows school districts – for any reason – to provide or pay for transportation into their schools for students residing in other adjacent and nonadjacent school districts, and without the previously required consent of the district of the student’s residence. The second subject, lifted directly from a bill defeated in committee the day before and addressing the far broader and more controversial subject of expanding school choice for all students, is not expressed – at all, let alone clearly – in the title to House Bill 18-1306.

28. Pursuant to Colo. Const. art. V, §21, Section 7 of House Bill 18-1306 “shall be void.”

29. Pursuant to Colo. Const. art. V, §17, “no bill shall be altered or amended on its passage through either house as to change its original purpose.”

30. Pursuant to Colo. Const. art. V, §20, “Every measure referred to a committee of reference of either house shall be considered by the committee upon its merits,” failing which – pursuant to Colo. Const. art. V, §22b – it “shall be null and void.”

31. Plaintiffs are entitled to a declaration from this Court, pursuant to C.R.C.P. 57 and the Colorado Uniform Declaratory Judgments Law, C.R.S. §13-51-101, *et seq.*, declaring Section 7 of House Bill 18-1306 to be void for all purposes and of no legal effect.

**SECOND CLAIM
(Injunctive Relief)**

32. Paragraphs 1 through 31, above, are incorporated herein by reference.

33. Plaintiffs are entitled to a preliminary and permanent injunction pursuant to C.R.C.P. 65(f), requiring the Defendants – or such of them as the Court may determine and direct – (1) to provide immediate notice to the board of directors of each school district in the state that this action has been filed and is pending before this Court, together with the subject of the claims asserted by the Plaintiffs in this action, (2) to issue such instructions to school district officers as they may deem appropriate and sufficient to assure uninterrupted compliance with the pre-amended requirements of C.R.S. §22-32-113 pending final adjudication of this action, and (3) should judgment herein be entered in favor of the Plaintiffs, to provide immediate notice and instructions to the board of directors of each school district in the state of such judgment and the legal effect thereof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the Court to enter Judgment as follows:

A. Declaring Section 7 of House Bill 18-1306 to be void for all purposes and of no legal effect;

B. Requiring the Defendants – or such of them as the Court may determine and direct – to provide notice and instructions to the board of directors of each school district in the state that Section 7 of House Bill 18-1306 has been adjudged to be void and of no legal effect; and

C. For such further relief as the Court may deem appropriate.

Dated: August 6, 2018.

s/Edward T. Ramey
Edward T. Ramey, #6748
Tierney Lawrence LLC
225 East 16th Avenue, Suite 350
Denver, CO 80203

ATTORNEYS FOR PLAINTIFFS