

DISTRICT COURT

CITY AND COUNTY OF DENVER, COLORADO

Denver City & County Building
1437 Bannock Street, Room 256
Denver, CO 80202
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Plaintiffs:

JAMES LARUE, SUZANNE T. LARUE, INTERFAITH ALLIANCE OF COLORADO, RABBI JOEL R. SCHWARTZMAN, REV. MALCOLM HIMSCHOOT, KEVIN LEUNG, CHRISTIAN MOREAU, MARITZA CARRERA, and SUSAN MCMAHON,

v.

Defendants:

COLORADO BOARD OF EDUCATION, COLORADO DEPARTMENT OF EDUCATION, DOUGLAS COUNTY BOARD OF EDUCATION, and DOUGLAS COUNTY SCHOOL DISTRICT.

Case Number:

Div: Ctrm:

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COMPLAINT

1. Plaintiffs challenge the legality and constitutionality of the Douglas County School District's Choice Scholarship Pilot Program ("the Program"), and seek declaratory and injunctive relief.

2. The Program, enacted by the Douglas County Board of Education on March 15, 2011, takes public funds provided by the State of Colorado—which are required by law to be spent on public schools—and uses them to pay for tuition at private schools. The vast majority of these private schools are religious, are controlled by churches or other religious institutions, and discriminate in both employment and admissions on the basis of religion. Many of them require students to receive religious instruction and attend religious worship services.

3. In diverting millions of dollars in public funds intended solely for public education to instead finance overtly religious and private education, the Douglas County School District also cedes control over this education to the private-school aid recipients, resulting in a taxpayer-funded education that deviates substantially from the legal standards and requirements governing the public education provided by the District itself. The private schools participating in the Program are not controlled or directed by any local board of education or elected directors, and the education they provide differs in material respects from the District's—including, among others, teacher certification, background, educational goals, curriculum, and approved textbooks.

4. The Colorado Department of Education and the Colorado Board of Education are aware of and have agreed to the use of public funds to finance the Program as alleged herein, and have actively assisted the District in developing the Program. Each has agreed that students attending private schools under the Program, including students attending private religious schools, will "count" as public school students for the purpose of receiving taxpayer funds, and each has agreed to distribute such funds to the District despite the fact that students participating in the Program will not be attending a public school.

5. In short, the Program provides taxpayer funds to private and religious schools that will use this money to provide an education—including religious education and services—with little or no governmental oversight. In devising and funding this Program, Defendants violate Art. IX §§ 2, 7, 8, and 15; Art. II § 4; and Art. V § 34 of the Colorado Constitution. They also violate the Public School Finance Act of 1994; C.R.S. § 22-54-101 *et seq.*; and C.R.S. §§ 22-32-101 and 22-32-122.

JURISDICTION AND VENUE

6. The Court has jurisdiction over this action based on Article VI, Section 9 of the Colorado Constitution. Venue in this Court is proper under Colorado Rule of Civil Procedure 98. Many of the acts complained of herein have occurred and, unless enjoined by this Court, will continue to occur in this judicial district.

PARTIES

Plaintiffs

7. Plaintiff James LaRue resides in Douglas County and has been a Douglas County homeowner for 18 years. His son is a student in the public schools of the Douglas County School District. Mr. LaRue has been a public library director for the last 21 years. He pays property taxes to Douglas County that support the Douglas County School District, as well as income and sales tax to the State of Colorado Department of Revenue. Mr. LaRue objects to his taxpayer dollars being used to fund private schools, including private religious schools.

8. Plaintiff Suzanne T. LaRue resides in Douglas County and has been a Douglas County homeowner for 18 years. Her son is a student in the public schools of the Douglas County School District. She pays property taxes to Douglas County that support the Douglas County School District, as well as income and sales tax to the State of Colorado Department of Revenue. Ms. LaRue objects to her taxpayer dollars being used to fund private schools, including private religious schools.

9. Plaintiff Interfaith Alliance of Colorado (“Interfaith Alliance”) is a Colorado nonprofit corporation. With approximately 850 clergy and lay members from 19 faith traditions, Interfaith Alliance is dedicated to promoting the positive role of faith in civic life, challenging intolerance and extremism, safeguarding religious liberty, and strengthening public education. Interfaith Alliance and its members are Colorado taxpayers, and many of its members are residents and taxpayers of Douglas County. Interfaith Alliance objects to its taxpayer dollars being used to fund private schools, including private religious schools. Interfaith Alliance brings this action on its own behalf and on behalf of its members.

10. Plaintiff Rabbi Joel R. Schwartzman is a resident of Douglas County and homeowner in Lone Tree, Colorado, in Douglas County. He has lived in Douglas County since 1999. He currently serves as Rabbi of the B’nai Chaim Congregation in Morrison, Colorado. Rabbi Schwartzman pays property taxes to Douglas County that support the Douglas County School District, and income and sales tax to the Colorado Department of Revenue. He objects to his taxpayer dollars being used to fund private schools, including private religious schools.

11. Plaintiff Rev. Malcolm Himschoot is the Pastor of the Parker United Church of Christ in Parker, Colorado, in Douglas County. Rev. Himschoot is a member of the Interfaith Alliance. Rev. Himschoot pays property taxes to Douglas County that support the Douglas County School District, and income and sales tax to the Colorado Department of Revenue. He objects to his taxpayer dollars being used to fund private schools, including private religious schools.

12. Plaintiff Kevin Leung is a resident of Douglas County and a homeowner in Castle Rock, Colorado, in Douglas County. Mr. Leung has three daughters who are enrolled as students in the public schools of the Douglas County School District. He has lived in Douglas County for 20 years. He owns and operates two commercial properties in Douglas County. Mr. Leung pays property taxes to Douglas County that support the Douglas County School District, and income

and sales tax to the Colorado Department of Revenue. He objects to his taxpayer dollars being used to fund private schools, including private religious schools.

13. Plaintiff Christian Moreau is a resident of Douglas County and a homeowner in Highlands Ranch, Colorado, in Douglas County. His daughter is a student in the public schools of Douglas County School District. He pays to Douglas County that support the Douglas County School District, and pays income and sales tax to the Colorado Department of Revenue. Mr. Moreau objects to his taxpayer dollars being used to fund private schools, including private religious schools.

14. Plaintiff Maritza Carrera is a resident of Douglas County and a homeowner in Highlands Ranch, Colorado, in Douglas County. Her daughter is a student in the public schools of Douglas County School District. She pays property taxes to Douglas County that support the Douglas County School District, and pays income and sales tax to the Colorado Department of Revenue. Ms. Carrera objects to her taxpayer dollars being used to fund private schools, including private religious schools.

15. Plaintiff Susan McMahon is a resident of Douglas County and a homeowner in Parker, Colorado, in Douglas County. She has lived in Douglas County more than 10 years. She has three sons who are enrolled as students in the public schools of the Douglas County School District. She was formerly a member of the school accountability committee at her children's elementary school. She pays property tax to Douglas County that support the Douglas County School District, and pays income and sales tax to the Colorado Department of Revenue. Ms. McMahon objects to her taxpayer dollars being used to fund private schools, including private religious schools.

Defendants

16. Defendant Colorado Board of Education is constitutionally charged with exercising general supervision over Colorado public schools and education programs maintained and operated by all state governmental agencies. Colo. Const. Art. IX § 1; C.R.S. § 22-2-106(1)(a). As part of that duty, the Board directly authorizes the State Treasurer to distribute State funds to local school districts. C.R.S. § 22-54-115(2). Moreover, the Board has final responsibility for ensuring an accurate count of enrolled students by the local school district. C.R.S. § 22-2-107(m). On information and belief, the State Board, through its authorized representatives, is aware of and intends to sanction the unlawful use of public funds to support the Program.

17. Defendant Colorado Department of Education is a state administrative agency responsible for budgeting State money for distribution to local school districts. C.R.S. § 22-2-112(c). The Department also has the duty to recover funds erroneously distributed to local school districts. 1 Colo. Code Regs. § 301-39:2254-R-8.04. On information and belief, the State Department, through its authorized representatives, is aware of and intends to authorize the unlawful use of public funds to support the Program.

18. Defendant Douglas County Board of Education is a seven-member elected body that governs and administers the public schools in the Douglas County School District. The

Board, acting through its authorized representatives, has initiated and undertaken the unlawful actions alleged herein and intends to continue that course of conduct unless restrained by Order of this Court.

19. Defendant Douglas County School District is a school district organized under Art. IX, §§ 2 and 15 of the Colorado Constitution and Title 22, Art. 32, C.R.S. The Program will be implemented by the School District.

FACTUAL ALLEGATIONS

The Program

20. On March 15, 2011, the Douglas County Board of Education voted to adopt the Program. In the 2011-12 school year, the Program will use public funds to send up to 500 students currently enrolled in Douglas County public schools to approved “Private School Partners,” the vast majority of which are controlled by a religious or sectarian organization and include religious study and worship as a part of their required curricula.

21. The Program establishes a “Scholarship Office” within the Douglas County Board that is responsible for administering the Program. Among other things, the Scholarship Office is responsible for ensuring that the student-participants are counted as Douglas County public school students for the purpose of obtaining public funds from the State.

Student Participation

22. The Program is described as a “pilot” for the 2011-12 school year, and the number of students that can receive public funds to attend private schools under the Program is set at 500. If more than 500 students currently enrolled in Douglas county public schools apply to the Program, the Douglas County Board will conduct a lottery to determine the recipients. On information and belief, unless restrained by Order of this Court, Defendants will implement the Program and expand it to divert additional public funds to private education in succeeding years.

23. To be eligible to participate in the Program, a student must reside in Douglas County and must have attended a Douglas County public school for the prior school year. He or she must also complete an application and agree to take the statewide assessment tests administered by the District to all public school students. There are no income limitations or requirements.

24. A student selected to receive public funds under the Program must also apply for and be granted admission to a Private School Partner. The Program “encourages” student applicants to research, before they apply to a participating Private School Partner, the school’s “admission criteria, dress codes and expectations of participation in school programs, be they religious or nonreligious.” Douglas County School District Policies Regarding Choice Scholarship Program, at 4 (Mar. 15, 2011), *available at* http://www.dcsdk12.org/portal/page/portal/DCSD/Board_of_Education/Board_of_Education_Superintendent_Policies/J-Students/Board_File_JCB_Choice_Scholarship_FINAL.pdf.

25. If a student is selected to participate in the Program and is accepted at a Private School Partner, Douglas County School District will pay the private school 75% of the “Per Pupil Revenue” that it receives from the State of Colorado (\$4,575 for 2011-12), or the private school’s actual tuition fee, whichever is less. The District will pay the private school by check in four equal installments throughout the school year. The checks are made out to the parent of the participating student, but mailed directly to the private school. Parents must endorse the check for the sole use of the private school.

Private School Partners

26. The Program includes many private schools that are not located within Douglas County. In fact, the Douglas County Board of Education actively reached out to and invited schools located within a 25-mile radius to participate, and there is no requirement that a private school be geographically within or proximate to Douglas County.

27. Eligible private schools must apply to the Program and disclose information related to enrollment, employment, financial stability, and other matters. In addition, the Program’s “Partner Participation Agreement” requires the private schools, as “conditions of continuing eligibility,” to provide information on a regular basis to the District, including but not limited to information relating to student achievement and growth results, financial stability, employment policies, contracts, personnel, enrollment policies, and information about religious services.

28. As part of the application, private schools must agree to satisfy only certain limited requirements, such as meeting the “minimum number of teacher-pupil instruction hours to comply with the School Finance Act.” Private schools must also agree to allow Douglas County to administer statewide or district assessment testing.

29. In order to receive public funds via the Program, however, a private school need not make any modifications to its admissions or hiring criteria, even if they involve religious or other discrimination. On the contrary, the Program specifically authorizes participating religious schools to “make enrollment decisions based upon religious beliefs.” Douglas County School District Policies Regarding Choice Scholarship Program, at 7 (Mar. 15, 2011), *available at* http://www.dcsdk12.org/portal/page/portal/DCSD/Board_of_Education/Board_of_Education_Superintendent_Policies/J-Students/Board_File_JCB_Choice_Scholarship_FINAL.pdf.

Religious Private School Partners

30. The schools that have applied and been approved to participate in the Program are predominantly owned and controlled by private religious institutions and incorporate religion as a significant aspect of their instruction. Specifically, as of the filing of this Complaint, all but five of the 19 private schools that have been approved to participate in the Program are religious or sectarian schools. Of the five non-religious schools, one is for gifted students only and another is for special needs students. The remaining three schools run through eighth grade only.

31. One of the primary missions of the religious private schools that have been approved as Private School Partners, and of the religious entities that own, operate, sponsor, or

control them, is to provide students with a religious upbringing and to inculcate in them the particular religious beliefs and values of the school or sponsoring religious organization.

32. The Program will enable the participating religious or sectarian private schools to provide such religious training and instruction to students who otherwise would not have received such religious education at taxpayer expense.

33. Consistent with the religious missions of the approved religious or sectarian Private School Partners, their curricula are thoroughly infused with religious doctrine. The curricula typically include required courses in religion or theology that tend to indoctrinate and proselytize; the faculty and students tend to be of one religious persuasion; attendance is typically required at religious worship services; the governing entities of the schools reflect and are often limited to persons of the particular religion; and, in some cases, the schools are funded primarily from sources advocating the particular religion.

34. The following paragraphs provide illustrative examples of approved religious or sectarian Private School Partners that are, in whole or substantial part, controlled by churches or other sectarian organizations:

35. **The Evangelical Christian Academy** is part of the Village Seven Presbyterian Church. The secondary school is located at the church, and the elementary school is located at Grace Presbyterian Church. Evangelical Christian requires each parent and secondary student to sign a declaration of faith including “a written born-again believer’s testimony”; at least one parent must be a professing Christian and “give expression of that profession through active membership in a local church”; and teacher applicants must answer questions on Christian theology ranging from “Scripture” to “Infant Baptism” to “Gifts of the Spirit (healing, tongues, etc.)” Evangelical Christian Academy, *Admissions*, <http://www.ecaeagles.org/admissions> (last visited June 20, 2011); Evangelical Christian Academy, *ECA Elementary Application*, <http://www.ecaeagles.org/admissions/application-forms> (last visited June 20, 2011); Evangelical Christian Academy, *Employment Opportunities*, <http://www.ecaeagles.org/information/employment-opportunities> (last visited June 20, 2011). Similarly, teacher applicants must “express a credible confession of faith and acknowledge[] the Lord Jesus Christ as their personal Lord and Savior.” See Evangelical Christian Academy’s Application to Douglas County School District.

36. **Cherry Hills Christian Elementary School** is part of Cherry Hills Community Church. Student applications must include a signed “Family Commitment Statement” wherein the applicant must vow “to pray for CHC students, faculty, and administration” and to acknowledge that “continuing enrollment at CHC is dependent upon the student’s spiritual growth and academic progress.” See CHC’s Application of Private School to Participate as a Private School Partner in [the Program] (on file with counsel). Although students and parents are not required to attend Cherry Hills Community Church, preference is given to church member families during enrollment. See Cherry Hills Christian School, *Frequently Asked Questions (and Answers)*, <http://www.cherryhillschristian.org/about/faq.php> (last visited June 20, 2011). The curriculum includes Bible study in every year, and the school’s mission statement is to “honor[] Christ by teaching, encouraging, training and grounding students in God’s truth within a dynamic, academic environment.” See Cherry Hills Christian School, *Elementary*

School Program, <http://www.cherryhillchristian.org/schools/elementary.php> (last visited June 20, 2011). Moreover, prayer is infused into classes. The school's Application to the Douglas County School District to participate in the Program states that "[c]lasses can be found praying at various times throughout the school day, both formally and informally." Cherry Hills Christian School's Application to Douglas County School District.

37. **Our Lady of Lourdes Catholic School** is part of Our Lady of Lourdes Catholic School and Church. The school and the church are an indivisible entity, the mailing address for which is "Lady of Lourdes Catholic Church and School." See Lady of Lourdes Catholic School, *Our Lady of Lourdes Catholic Parish*, <http://www.ourladyoflourdesparish.org/church/index.htm> (last visited June 20, 2011). Religion classes are held daily in each classroom, the goal of which is to "impart the teaching of Jesus within the atmosphere of the Catholic culture." See Our Lady of Lourdes School, *Curriculum*, <http://ololdenver.org/curriculum.htm> (last visited June 14, 2011). Non-Catholic students or students who are not parishioners at a parish within the archdiocese are charged higher tuition. Our Lady of Lourdes Catholic School's Application to Douglas County School District.

38. **Southeast Christian School** is part of Southeast Christian Church. In fact, the school and the church are an indivisible entity described on the web site as "Southeast Christian School and Church." See Southeast Christian Church and School, *About Us*, <http://www.sechristian.org/AboutUs/ContactUs.aspx> (last visited June 20, 2011). By way of example:

- a. The school describes itself as "unashamedly creationist" and school materials state that "while we don't exist to criticize the public school, we do want to provide a place where the values of the Bible are given authority. Before there were public schools, Christian schools were started to teach children to read the Bible, the most important book in the world!" See Southeast Christian School, *Frequently Asked Questions*, <http://www.sechristianschool.org/Enrollment/FrequentlyAskedQuestions/tabid/72/Default.aspx> (last visited June 14, 2011).
- b. The materials also evince a desire to indoctrinate young children: "While a child is young and impressionable, the importance of setting a 'moral compass' is imperative. In the Bible, it is the parents, especially fathers, who are commanded to raise their children, teaching them the ways of the Lord. Ask anyone who has poured concrete what is the most important step for making it strong and long lasting. They will tell you that the 'curing process' is the most important. After the concrete cures, it can withstand abuse. So too our children need to be raised up in the knowledge of Christ to withstand the attacks of the world. In the end, the Lord won't ask you what you did to keep the public schools afloat, He will ask you what you did for your family!" See *id.*

39. **Shepherd of the Hills Lutheran School** is part of Shepherd of the Hills Lutheran Church. School materials state that at Shepherd of the Hills, "students hear about Jesus Christ, their Savior, in personal ways throughout the school day and throughout the curriculum - *EVERY*

DAY.” See Shepherd of the Hills Christian School, *Top SEVEN Reasons Families Choose Shepherd of the Hills Christian School*, <http://www.school.shepherdhills-church.org> (last visited June 14, 2011) (emphasis in original).

40. **Front Range Christian School** is controlled by Front Range Christian Ministries. For example, the school is located in the Pierce Street Village complex in Littleton Colorado, which is owned by Front Range Christian Ministries. Admission to the school is “open to Christian students who ... attend church regularly.” Front Range Christian School, *K-6 Application Checklist*, <http://www.fracs.org/sites/www.fracs.org/files/k-6-checklist.pdf> (last visited June 20, 2011). Moreover, to be accepted to the school, “at least one parent or guardian of a prospective student [must] profess a personal relationship with Christ.” Front Range Christian School’s Application to Douglas County School District. In addition, school materials state that “our standard of truth is in Scripture, which we believe to be the inspired and infallible Word of God. If teaching materials or information are in conflict with that standard, the Bible will always take precedence.” See Front Range Christian School, *Statement of Faith*, <http://www.fracs.org/about-us/statement-faith> (last visited June 20, 2011). In other words, academic studies and religious teaching are intrinsically connected: “all academic disciplines are taught and integrated within a Christian worldview.” Front Range “hires individuals who are called to serving Christ through Christian education.” Front Range Christian School, *FAQs*, <http://www.fracs.org/admissions/frequently-asked-questions> (last visited June 20, 2011).

41. **Lutheran High School** is owned and operated by the Colorado Lutheran High School Association, the membership of which consists of 35 Lutheran churches in Denver and the surrounding area. Lutheran High School materials state that “high school students should be educated with Christ, or risk being educated against Him” and that “high school plays a pivotal role in the development of the brain.” See Lutheran High School, *Prospective Students*, <http://www.lhsparker.org/caseforchristianedu.html> (last visited June 20, 2011). The School materials explain that “High School will have an effect on how the brain is hard-wired. The decision on whether or not to attend a Christian high school is really the choice between developing with Jesus Christ and developing without Him.” *Id.* Lutheran High School’s Application to the Program submitted to the Douglas County School District states that students are required to participate in religious services and that parents are not permitted to exclude their student from religious services. Lutheran High School’s Application to Douglas County School District.

42. **Valor Christian High School** requires that parents agree to be “open to biblical teaching” and to support the school’s mission “to prepare tomorrow’s leaders to transform the world for Christ.” Valor Christian High School’s Application for the Program submitted to the Douglas County School District states that the “Bible is the foundation for all our programs. We will not compromise our Christian values as found in the Bible and reflected in the life and teachings of Jesus Christ.” Valor Christian High School’s Application to Douglas County School District. The Valor Christian website contains a further description of the religious nature of the education provided by this school. The Valor Culture Document, by way of example, appears at: http://www.valorchristian.com/devnet/data/databases/valor_67/widgets/repository_pdfs/00/00/00/55/pdf/original.pdf. Moreover, Kurt Unruh, the President and CEO of Valor Christian, described the education provided by Valor Christian as follows: “We are clearly a faith-based

focused school. The actions of God and the Christian faith is interwoven into everything we do.” Carlos Illescas, *Douglas County Voucher Plan Draws Private Schools In*, Denver Post, (April 20, 2011), available at http://www.denverpost.com/news/ci_17886428 (last visited June 3, 2011).

43. As described above, many of these private religious schools are owned, operated, sponsored, or controlled by churches, sects, denominations, and other religious entities. Many also function as religious ministries of the churches or other religious organizations that own, operate, sponsor, or control them. Many also charge tuition that does not fully cover their actual “cost per pupil,” and the difference is made up by subsidies from the religious entities that own, operate, sponsor, or control them.

44. On information and belief, the amount of public funds that the Program will pay to subsidize tuition at participating private schools—\$4,575—is comparable to the cost of annual tuition at the religious or sectarian Private School Partners, but not nearly enough to cover the cost of tuition at the participating non-religious schools.

45. Many families eligible to participate in the Program will be unable to afford the supplemental tuition necessary to attend the non-religious schools. For these families, the “choice” presented by the Program will not be between public and private schools, but between public schools and religious schools.

The Lack of Restrictions on Religious and Other Discrimination, Religious Education, and Mandatory Participation in Religious Services

46. The Program places no restrictions on how Private School Partners may expend the public funds that are paid to them under the Program. Thus, participating religious or sectarian private schools are free to use these funds for sectarian purposes, including, for example, religious instruction, worship services, clergy salaries, the purchase of Bibles and other religious literature, and construction of chapels and other facilities used for worship and prayer. As Robert Bignell, Superintendent of Cherry Hills Christian School, explained in a letter dated April 15, 2011, to Dr. Cutter regarding an interview that had occurred between Mr. Bignell and Dr. Cutter regarding the Program, “My summary of our two-hour interview is that the district wants *no control* over Cherry Hills Christian or any other partner school.” (emphasis added). A true and correct copy of the letter is attached hereto as Exhibit 1.

47. There are few if any checks on the religious nature of the religious or sectarian Private School Partners. Indeed, as noted above, the Program specifically permits the schools to discriminate on the basis of religion in both admission and in employment. Further, the District itself recognizes the pervasiveness of religious or sectarian principles in all aspects of the curriculum taught by the sectarian Private School Partners: “We recognize that many schools embed religious studies in all areas of the curriculum.” In fact, the schools are expressly permitted to carry out their religious goals. See Potential Partner Schools FAQ, Douglas County School Board, http://www.dcsdk12.org/portal/page/portal/DCSD/District_Information/School_Choice/Private_School_Information/Potential_Partner_School_FAQ (last visited June 20, 2011).

48. The Program also permits the Private School Partners to engage in other types of discrimination. For example, Denver Christian Schools' Application for the Program sets forth the school's "AIDS policy," which permits a team appointed by the school superintendent to recommend whether to admit, deny, or withdraw an HIV-positive student. The Program Application of Front Range Christian School states that homosexuality is "a cause for termination." Furthermore, the Program as a whole discriminates against students with disabilities. The Douglas County form Application for partner schools expressly states that the "[d]istrict-provided services to parentally placed students with disabilities are limited."

49. Moreover, while the Program purports to afford participating students the right to "receive a waiver from any required religious services at the Private School Partner," the waiver is virtually meaningless: As set forth in a "Frequently Asked Questions" document, it "does not include instruction" and, though "[s]tudents may opt-out of participation" in a worship service, they may nevertheless "be required to respectfully attend, if that is the school's policy." *See id.*

50. On information and belief, District officials decided to weaken the waiver provision in this matter in an effort to encourage private religious institutions to participate in the Program. Shortly before the Board voted on the Program, District Assistant Superintendent Christian Cutter drafted an email to a group of private religious schools in which he explained that he had received "mixed responses" to a waiver policy that would "require private schools who receive Douglas County students with scholarships to allow those students to *remove themselves* from faith-based classes and/or activities" (emphasis added). On information and belief, Mr. Cutter sent the email to a group of private religious schools and polled the group as to whether the provision was a "deal-breaker?" A true and correct copy of the email drafted by Mr. Cutter is attached hereto as Exhibit 2.

51. Subsequently, District officials offered further assurances to private school officials regarding the waiver provision. For example, in an email exchange between Mr. Cutter and Ken Palmreuter of Trinity Lutheran, Mr. Cutter assured Mr. Palmreuter that, so long as students are permitted to remain silent during worship services, the waiver provision would not prohibit Partner schools from compelling students to attend the services. A true and correct copy of the email exchange is attached hereto as Exhibit 3.

52. In this email exchange, Mr. Cutter further explained that even this limited waiver might not apply to all Partners and religious services, writing: "Most of this can be worked out between us one-on-one. Because services vary between faiths and institutions, the waiver will include unique specifics for each individual school. It's not a 'one waiver fits all.' you and I can work together to make sure it is comprehensive after your application is submitted." *Id.* Thus, the waiver provision is subject to change based on the opinion of Mr. Cutter and the policies of individual schools.

53. The District's involvement in determining what constitutes "religious services" that must be subject to the "opt out" requirement impermissibly entangles the State and the school district with religion, and in any event, providing a waiver of participation or attendance at religious services would not cure the religious coercion that would result from pressuring students to conform to a religious or sectarian school's program. This coercion is directly attributable to the Defendants, who have developed, authorized, and funded the Program.

The Program Will Be Financed With Public Funds

54. Defendants intend to pay for the Program using public funds provided by Colorado under the Public School Finance Act. C.R.S. § 22-54-101 *et seq.* This directly contradicts the Act’s stated purpose: to provide “for a thorough and uniform system of *public* schools throughout the state.” C.R.S. § 22-54-102(1) (emphasis added).

55. Under the Act, the first step in Colorado public school funding is the determination of the “total program” amount for each school district (the “Total Program”). The amount “represents the financial base of support for public education in that district.” C.R.S. § 22-54-104(1)(a). A district’s Total Program is made available to the district by the State “to fund the costs of providing *public* education.” *Id.* (emphasis added).

56. The basic calculation used to determine each school district’s Total Program is the multiplication of the district’s “funded pupil count,” or number of full-time-equivalent students, by the district’s “per-pupil funding.” *See* C.R.S. § 22-54-104(2).

57. “Funded pupil counts” are self-administered by school districts each year. Pursuant to Colorado regulations, “[a] district’s pupil membership shall include only pupils enrolled in the district and in attendance in the district.” 1 CCR § 301-39: 2254-R-5.00.

58. Local school districts perform this pupil count each October 1 and report the numbers to the State Board and the Department by November 10. 1 CCR § 301-391:2254-R-3.01. Using these pupil counts, the Department of Education creates a budget that delineates funds for each local school district. C.R.S. § 22-2-112(c). The Board of Education approves that budget, and instructs the State Treasurer to distribute the allocated amount to each school district on a monthly basis. *Id.* at § 22-54-115(2), (3).

59. “Per-pupil funding” is determined pursuant to a formula set forth in the Act, whereby the base amount for each district is adjusted to account for factors including the size of the school district, cost of living, personnel costs, and other factors.

60. Once a school district’s Total Program is determined, it is funded first by local revenues comprised of local property taxes and specific ownership taxes (the “Local Share”). The Colorado Department of Education estimates that across all school districts in Colorado, local property taxes and specific ownership taxes provide about 34.75% and 2.77% of Total Program funding, (collectively, the “Local Share”) respectively.

61. If a district’s Local Share is insufficient to fully fund the Total Program, the balance is paid by the State (the “State Share”). *See* C.R.S. § 22-54-106. The State Share is funded primarily from state personal income tax, corporate income tax, sales tax, and use tax. *See* Colorado Department of Education, Public School Finance Unit, *Understanding Colorado School Finance and Categorical Program Funding* (July 2010), available at http://www.cde.state.co.us/index_finance.htm. The Colorado Department of Education estimates that across all school districts in Colorado, the State Share accounts for 62.48% of Total Program funding.

62. The State distributes money to school districts in 12 approximately equal monthly payments beginning on July 1. Because the “funded pupil count” is not determined until October 1 and reported until November 10, however, initial payments are estimated and later revised to reflect actual per-pupil counts.

63. In order to obtain and distribute these public funds, the Douglas County Board of Education will provide (or has provided) the Colorado Department of Education with a “funded pupil count” that includes the 500 students who will not attend public schools but rather will attend private schools under the Program. In fact, one of the major tasks of the “Scholarship Office” established to administer the Program is to “gather all information and report to the Colorado Department of Education . . . so that Choice Scholarship students will be included in the District’s pupil count and receive per-pupil revenue from the state for the Choice Scholarship students.” See *Choice Scholarship Program (Pilot)*, Douglas County School Board, at 3 (March 15, 2011), http://www.dcsdk12.org/portal/page/portal/DCSD/Board_of_Education/Board_of_Education_Superintendent_Policies/J-Students/Board_File_JCB_Choice_Scholarship_FINAL.pdf.

64. Douglas County School District and the Douglas County Board of Education believe they can include 500 students destined for private schools in the “funded pupil count” for public school students because the Colorado Board of Education and Colorado Department of Education have assured them that they can do so. At a public forum prior to the announcement of the Program, Douglas County Assistant Superintendent Cutter stated that the Colorado Board of Education suggested the structure of the Program.

65. In addition, prior to the adoption of the Program, Douglas County School District officials met repeatedly with officials from the Colorado State Department of Education to obtain their assurances that the State would fund the Program. The minutes of the February 10, 2011, meeting of the Fiscal Oversight Committee of the Douglas County School District state that “DCSD Staff will meet with CDE again to confirm that CDE will fund the scholarship students.” See *Fiscal Oversight Committee Meeting Minutes (Feb. 10, 2011)*, attached as Exhibit 4.

66. Accordingly, the Program is premised on an improper agreement between the Douglas County School District and the Colorado State Department of Education, that Douglas County will receive the full amount of “per pupil revenue” for students participating in the program. Douglas County School District estimates that per-pupil revenue in 2011 is \$6,100; thus, it plans to receive \$3,050,000 for students participating in the Program, even though those students will not attend Douglas County public schools.

67. The Defendants will use these public funds to subsidize students’ tuition at private, primarily religious schools. Specifically, for each student-participant, Douglas County School District will send 75% of Per-Pupil-Revenue, estimated to be \$4,575 for 2011-12 (75% of \$6,100), to the Private School Partners. The payments will be disbursed quarterly via checks made out to the student’s parent/guardian but sent directly to the private school. Each parent/guardian is required under the Program to “restrictively endorse the check for the sole use of the Private School Partner.” *Choice Scholarship Program Executive Summary*, Douglas County School Board, at 4 (March 15, 2011), attached as Exhibit 5. The remaining 25% of the

per-pupil funds will be retained by the Douglas County School District, apparently in part to cover administrative costs of the Program.

The Program Funds a Non-Uniform System of Private Education

68. In compliance with the mandate of the Colorado Constitution, the Legislature has, among other things, enacted laws providing for the education of children of Colorado citizens including, but not limited to, the Public School Finance Act of 1994. C.R.S. § 22-54-101 *et seq.*

69. On information and belief, public funds used by the Program are paid to private schools that do not follow the same standards as public schools: They do not meet the same criteria, same teacher certification, or other significant educational goals as public schools.

70. For instance, on information and belief, the approved Private School Partners are not required to utilize Douglas County School District's prescribed textbooks and, in fact, use other, non-approved textbooks and materials, including "The Adventure Bible-NIV," the "NIV Student Bible," and others. On information and belief, though the District sets forth a process by which additional textbooks are made available for use in the Douglas County public schools, Private School Partners are not subject to this process and do not, in fact, comply with this process.

71. On information and belief, pursuant to the requirements of Colorado law, the District requires that teachers at District schools hold current CDE Teachers Licenses with appropriate endorsements for the courses that they teach and possess experience teaching in accordance with the standards set forth by the District's teaching models. On information and belief, teachers at approved Private School Partners are not subject to these same standards and criteria but rather are subject to standards, teaching models, and experience levels that differ in significant ways from the District's standards.

72. On information and belief, the District's educational mission differs in substantial and material ways from the missions asserted by many of the approved Private School Partners, including but not limited to the emphasis on certain religious subjects and beliefs at many of the private schools, and other differences in the substantive educational mission.

73. On information and belief, pursuant to the requirements of Colorado law, the Douglas County Board of Education has set forth a series of standards and educational objectives for the public education provided with public funds for Douglas County School District students. On further information and belief, the approved Private School Partners have not adopted these standards, are not required to meet them, and in fact adhere to standards that differ in significant ways from the publicly stated standards of Douglas County School District.

74. The diversion of public funds away from Colorado public schools to support private schools that follow different standards, educational goals, and programs from those in Colorado public schools directly interferes with the establishment and maintenance of a thorough and uniform system of free public schools and diverts funds lawfully required to serve that purpose to a significantly different and private purpose.

INJURY AND IRREPARABLE HARM

75. The violations and threatened violations of the Colorado Constitution and statutes alleged herein cannot be remedied by any award of monetary damages, and constitute irreparable harm requiring injunctive relief under this Court's equitable powers. Plaintiffs will suffer irreparable harm due to the loss of their constitutional rights and statutory rights as alleged herein, which will irrevocably occur as a result of the implementation of the Program. Once public funds are transferred to private, predominantly religious schools in violation of the Colorado Constitution and statutes, the harm will have occurred. Plaintiffs have no adequate remedy at law to prevent the violation of their constitutional and statutory rights caused by the Program.

FIRST CAUSE OF ACTION

(Violation of Article IX, Section 7 of the Colorado Constitution)

76. Plaintiffs incorporate herein all of the previous allegations set forth above.
77. The Program violates Article IX, Section 7 of the Colorado Constitution, which provides:

Section 7. Aid to private schools, churches, sectarian purpose, forbidden. Neither the general assembly, nor any county, city, town, township, school district or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian society, or for any sectarian purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church or sectarian denomination whatsoever; nor shall any grant or donation of land, money or other personal property, ever be made by the state, or any such public corporation to any church, or for any sectarian purpose.

78. The Program constitutes an appropriation, use, and payment of public funds and monies to aid churches and sectarian societies and to support schools, academies, and institutions that are controlled by church or sectarian organizations.

79. The use of public funds, as alleged above, constitutes a substantial violation of Plaintiffs' rights under Article IX, Section 7.

SECOND CAUSE OF ACTION

(Violation of Article IX, Section 8 of the Colorado Constitution)

80. Plaintiffs incorporate herein all of the previous allegations set forth above.

81. The Program violates Article IX, Section 8 of Colorado Constitution, which provides:

Section 8. Religious test and race discrimination forbidden sectarian tenets. No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as a teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatsoever. No sectarian tenets or doctrines shall ever be taught in the public school, nor shall any distinction or classification of pupils be made on account of race or color, nor shall any pupil be assigned or transported to any public educational institution for the purpose of achieving racial balance.

82. The Program provides public funds that are raised and exist to support public education to instead support private schools that institute religious tests and qualifications as conditions of admission to and employment, require students and staff to attend religious services, and teach sectarian tenets and doctrines, in violation of Article IX, Section 8.

83. The Program, as alleged above, constitutes a substantial violation of Plaintiffs' rights under Article IX, Section 8.

THIRD CAUSE OF ACTION

(Violation of Article II, Section 4 of the Colorado Constitution)

84. Plaintiffs incorporate herein all of the previous allegations set forth above.

85. The Program violates Article II, Section 4 of Colorado Constitution, which provides:

Section 4. Religious Freedom. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed; and no person shall be denied any civil or political right, privilege or capacity, on account of his opinions concerning religion; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness or justify practices inconsistent with the good order, peace or safety of the state. No person shall be required to attend or support any ministry or place of worship, religious sect or denomination against his consent. Nor shall any preference be given by law to any religious denomination or mode of worship.

86. By using public funds to pay for students to attend private, religious schools, the Program requires Plaintiffs and other Colorado taxpayers, through their tax payments, to support

the religious ministries of the sectarian private schools and the religious sects and denominations that own, operate, sponsor, or control them, in violation of Article II, Section 4 of the Colorado Constitution.

87. The Program also causes public funds to be used in a manner that requires students to attend religious services, to support religious sects or denominations and organizations that give preference to religious denominations and/or modes of worship, and to infringe upon rights on account of opinions concerning religion. There is nothing to ensure that the funds paid to these religious schools under the Program will not be used to support their religious missions. To the contrary, the Program affirmatively states that private religious schools need not alter their employment or enrollment policies in order to participate in the Program, including discrimination on the basis of religion. And, most of the Private School Partners that have been approved thus far to participate in the Program require that students attend religious worship, and discriminate on the basis of religion for purposes of employment and admission.

88. The Program also gives preference to those religious sects and denominations that operate or are associated with participating private schools by designating the schools as “Partners” of the government and conferring on them public funds, special access to public school students and their families, and other special benefits.

89. The Program, as alleged above, constitutes a substantial violation of Plaintiffs’ rights under Article II, Section 4. By conditioning a governmental benefit on parents’ acceptance of religious indoctrination that they would not otherwise have chosen for their children, the Program violates the free exercise and establishment provisions of Article II, Section 4.

FOURTH CAUSE OF ACTION

(Violation of Article IX, Section 2 of Colorado Constitution)

90. Plaintiffs incorporate herein all of the previous allegations set forth above.

91. The Program violates Article IX, Section 2 of the Colorado Constitution, which provides:

Section 2. Establishment and maintenance of public schools.

The general assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state, wherein all residents of the state between the ages of six and twenty-one years may be educated gratuitously. . . .

92. The Program violates Article IX, Section 2 of the Colorado Constitution because, among other things, it diverts public funds which were raised to meet the obligation to provide a thorough and uniform system of public schools throughout the state, to pay for private schools that are not free and that do not provide a uniform system of education to Colorado residents.

93. The Program, as alleged above, constitutes a substantial violation of Plaintiffs' rights under Article IX, Section 2.

FIFTH CAUSE OF ACTION

(Violation of Article V, Section 34 of the Colorado Constitution)

94. Plaintiffs incorporate herein all of the previous allegations set forth above.

95. The Program violates Article V, Section 34, which provides:

Section 34. Appropriations to private institutions forbidden.

No appropriation shall be made for . . . educational . . . purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association.

96. The Program violates Article V, Section 34 because, among other things, it funnels public money, with no controls over the use of those funds, to denominational and sectarian schools that are controlled by religious or sectarian organizations and that make religious education a central component of the education they provide. The Program predominantly serves the interests of the private, largely religious schools that will receive its funds.

97. The Program, as alleged above, constitutes a substantial violation of Plaintiffs' rights under Article V, Section 34.

SIXTH CAUSE OF ACTION

(Violation of Article IX, Section 15 of the Colorado Constitution)

98. Plaintiffs incorporate herein all of the previous allegations set forth above.

99. The Program violates Article IX, Section 15 of Colorado Constitution, which provides:

Section 15. School districts, board of education. 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.

100. The Program transfers control of education provided by public funds away from the directors and into the hands of private individuals not elected as required by Article IX, Section 15. Under the Program, neither the Douglas County Board of Education nor the Douglas

County School District has any control over, among other things, the selection of the persons who manage and control the private schools participating in the Program, the curricula of those schools, or the admissions or enrollment policies of the private schools. Rather, the control and use of public funds intended for instruction under the control of the directors will be placed in the hands of persons who will use those funds for different and, in many cases, religious or sectarian purposes.

101. The Program, as alleged above, constitutes a substantial violation of Plaintiffs' rights under Article IX, Section 15.

SEVENTH CAUSE OF ACTION

(Violation of the Public School Finance Act of 1994, C.R.S. § 22-54-101 *et seq.*)

102. Plaintiffs incorporate herein all of the previous allegations set forth above.

103. Defendants' plan violates Colorado law. The Public School Finance Act, the legislative means through which Colorado public schools are funded, explicitly and exclusively sets aside state education monies for "*public* education" and "*public* schools." C.R.S. §§ 22-54-101, 22-54-102, 22-54-104(1)(a), 22-55-101(1), 22-55-106(1)(b), 22-1-101 (emphasis added).

104. The use of public school monies to pay for individual students' tuition at private schools contradicts the letter and purpose of the Public School Finance Act, the goal of which is to provide "for a thorough and uniform system of *public* schools throughout the state." C.R.S. § 22-54-102 (1).

105. The Program, as alleged above, constitutes a substantial violation of Plaintiffs' rights under Colorado law as set forth above and Plaintiffs herein are directly and substantially harmed by this violation of law.

EIGHTH CAUSE OF ACTION

(Violation of C.R.S. §§ 22-32-101 and 22-32-122)

106. Plaintiffs incorporate herein all of the previous allegations set forth above.

107. The action of the Douglas County School District and Douglas County Board of Education in creating, approving, and implementing the Program violates C.R.S. sections 22-32-101 and 22-32-122. Section 22-32-122 provides in pertinent part:

(1) Any school district has the power to contract with another district or with the governing body of a state college or university, with the tribal corporation of any Indian tribe or nation, with any federal agency or officer or any county, city, or city and county, or with any natural person, body corporate, or association for the performance of any service, including educational service, activity,

or undertaking which any school may be authorized by law to perform or undertake. . . . Any state or federal financial assistance which shall accrue to a contracting school district, if said district were to perform such service, including educational service, activity, or undertaking individually, shall, if the state board finds the service, including educational service, activity, or undertaking is of comparable quality and meets the same requirements and standards as would be necessary if performed by a school district, be apportioned by the state board of education on the basis of the contractual obligations and paid separately to each contracting school district in the manner prescribed by law.

108. The actions of the Douglas County School District exceed its powers and do not comply with its obligation that, among other things, the Private School Partners meet or adhere to the same requirements and standards as would be necessary if the services were performed by the Douglas County School District itself. As alleged above, the requirements, standards, criteria, conditions, missions, and other aspects of the education provided by the Private School Partners pursuant to the Program all differ in material and important ways, and the District has not included a provision in the Program to ensure compliance with the requirements of C.R.S. section 22-32-122. The conduct of the District in implementing the Program therefore exceeds its authority and is thus ultra vires, unlawful, and invalid.

109. The Program, as alleged above, constitutes a substantial violation of Plaintiffs' rights under Colorado law as set forth above and Plaintiffs herein are directly and substantially harmed by this violation of law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- (1) Issue a Declaration and Order determining that the Program violates the Constitution of Colorado as alleged above and the statutory provisions alleged above;
- (2) Issue a Preliminary Injunction and, thereafter, a Permanent Injunction enjoining Defendants, and all persons and entities acting under their direction or in concert with them, from taking any actions to fund, implement or enforce the Program;
- (3) Award Plaintiffs their attorneys' fees, expenses, and costs incurred in prosecuting this lawsuit; and
- (4) Order such other and further relief as this Court may deem appropriate.

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