DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202-5385	
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 **Intervenors:** FLORENCE AND DERRICK DOYLE, on their own behalf and as next friends of their children, Alexandra and Donovan; DIANA AND MARK OAKLEY, on their own behalf and as next friends of their child, Nathaniel; JEANETTE STROHM-ANDERSON AND MARK ANDERSON, on their own behalf and as next friends of their child, Max; and GERALDINE AND TIMOTHY LYNOTT, on their own behalf and as next friends of their child, Timothy Jr.	**▲ COURT USE ONLY ▲** **Case Number: 2011CV4424** **Div./Ctrm.: 259** Consolidated with: Case Number: 2011CV4427
CONSOLIDATED WITH: **Plaintiffs:** TAXPAYERS FOR PUBLIC EDUCATION, a Colorado Non-Profit Corporation; CINDRA S. BARNARD, an individual; and MASON S. BARNARD, a minor child v.	

Defendants: DOUGLAS COUNTY SCHOOL DISTRICT RE-1; DOUGLAS COUNTY SCHOOL DISTRICT RE-1 BOARD OF EDUCATION; COLORADO DEPARTMENT OF EDUCATION; and COLORADO STATE BOARD OF EDUCATION	
Attorneys for 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: Matthew J. Douglas, #26017 Timothy R. Macdonald, #29180 Michelle K. Albert, #40665 Arnold & Porter LLP 370 Seventeenth Street, Suite 4500 Denver, CO 80202-1370 Phone Number: 303.863.1000 Fax: 303.832.0428 Email: Matthew.Douglas@aporter.com Timothy.Macdonald@aporter.com Michelle.Albert@aporter.com Paul Alexander, CA Bar #49997 Arnold & Porter LLP Suite 110, 1801 Page Mill Road Palo Alto, CA 94304-1216 Phone Number: 415.356.3000 Fax: 415.356.3099 Email: Paul.Alexander@aporter.com George Langendorf, CA Bar #255563 Arnold & Porter LLP 22nd Floor, One Embarcadero Center San Francisco, CA 94111-3711 Phone Number: 415.356.3000 Fax: 415.356.3099 Email: George.Langendorf@aporter.com	

Mark Silverstein, #26979
Rebecca T. Wallace, #39606
American Civil Liberties Union Foundation
of Colorado
400 Corona Street
Denver, CO 80218
Phone Number: 303.777.5482
Fax: 303.777.1773
Email: msilver2@att.net
rtwallace@aclu-co.org

Daniel Mach, DC Bar #461652
Heather L. Weaver, DC Bar #495582
ACLU Foundation Program on Freedom
of Religion and Belief
915 15th Street, NW, Suite 600
Washington, DC 20005
Phone Number: 202.675.2330
Fax: 202.546.0738
Email: dmach@aclu.org
hweaver@aclu.org

Ayesha N. Khan, DC Bar #426836
Gregory M. Lipper, DC Bar #494882
Americans United for Separation of Church and State
1301 K Street, NW
Suite 850, East Tower
Washington, DC 20005
Phone Number: 202.466.3234
Fax: 202.898.0955
Email: khan@au.org
lipper@au.org

REPLY IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION

ARGUMENT

Defendants and Intervenors (collectively, "Defendants")' responses fail to grapple with the actual language of the Colorado constitutional provisions that have prevented school districts from funneling state or local tax dollars to religious elementary and high schools since the State's founding in 1876. Despite the fact that no Colorado court has ever been asked to uphold a voucher program like the one at issue here, Defendants suggest that this is an easy case and that federal cases interpreting the federal Constitution are "binding" and render the provisions of the Colorado Constitution meaningless. Defendants insist, without authority, that enforcement of the Colorado Constitution would violate the Free Exercise Clause based on the supposed motives of those who supported similar amendments in other states—an argument no court has accepted, some courts have rejected, and that is historically inaccurate. They are wrong.

The language of the Colorado Constitution and the decisions of the Colorado Supreme Court demonstrate that this Voucher Program cannot survive. Defendants cannot divert public funds intended for public schools and sign them over to religious schools that openly seek to indoctrinate and teach particular religious tenets to students, require mandatory attendance at religious services, compel students and teachers to swear religious oaths, and discriminate on religious, disability, and other grounds.

Defendants then misapply the governing legal standards, and focus narrowly on the interests of certain students who wish to participate in the Program. They overlook the harm to Colorado taxpayers and to Douglas County students, teachers, and administrators whose public schools will be stripped of critical funds. And they downplay a remarkable concession from the State that illustrates a profound risk to Douglas County students: the Department of Education

reserves the right to stop funding the Program sometime in 2012 and to clawback the money that the District intends to pay to these private, and often religious, schools.

Colorado has been well-served for more than 130 years by its detailed constitutional provisions preventing public aid for religious schools, preventing compelled support of particular denominations, and preventing religious doctrines from being taught in public schools. Plaintiffs have demonstrated a reasonable likelihood of success on their claims and satisfied the remaining standards for a preliminary injunction. Defendants' arguments to the contrary are unavailing.[1]

I. Plaintiffs Are Likely To Prevail On Their No-Aid And Compelled Support Claims.

In this case, the issues are whether the Colorado Constitution and statutes prohibit the Voucher Program. Defendants, however, argue this case as if it were brought under federal law and as if federal law controlled the outcome. A proper focus on Colorado law, as interpreted by Colorado courts, confirms that the Voucher Program is unlawful.

A. Colorado Law Governs This Case, And Prohibits Government Funding Of Religious Education And Religious Indoctrination.

Defendants incorrectly stake their argument on decisions of federal courts interpreting the federal Constitution. Indeed, the District claims that the U.S. Supreme Court decision in *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002)—which held that a Cleveland school-voucher program complied with the *federal* Establishment Clause—is"binding" on the question of *Colorado* law and "dictat[es] the result in this litigation." But *Zelman* is not binding on the question of

[1] This reply addresses Defendants' arguments related to the religion clauses of the Colorado Constitution (Art. IX, §§ 7 & 8, Art. II, § 4, and Art. V, § 34), and incorporates by reference Plaintiff Taxpayers for Public Education's reply in support of a preliminary injunction.

Colorado law and does not dictate the result in this case. The Colorado Constitution controls this case, and the Colorado Supreme Court is the highest authority when it comes to interpreting Colorado law.

As Defendants tacitly acknowledge, the religion clauses of the Colorado Constitution at issue in this case are "considerably more specific" than the federal Establishment Clause. *See, e.g.*, *Am. United for Separation of Church and State v. Colorado*, 648 P.2d 1072, 1081-82 (Colo. 1982) (stating that Art. II, § 4 is "considerably more specific" than the Establishment Clause); *Vollmar v. Stanley*, 255 P. 610, (Colo. 1927) (stating that "each clause of [Art. IX, §§ 7 and 8] must be construed separately, and that we are controlled by its meaning"), *overruled on other grounds*, *Conrad v. Denver*, 656 P.2d 662 (Colo. 1982). Defendants, however, suggest that Colorado's different constitutional provisions addressing religion all mean the same thing as one another and mean nothing more than the federal Establishment Clause. Dist. Resp. at 21 (stating that Art. V, § 34 is "entirely redundant of the restrictions of Art. II § 4 and Art. IX § 7"). To accept this view would mean that Colorado's constitutional framers drafted, debated, and ratified these "redundant" constitutional provisions for no reason. Defendants offer no support for this proposition. Moreover, settled interpretive principles dictate that laws must be interpreted so as to give meaning and harmonious effect to all of their provisions. The Arizona Supreme Court rejected a similar argument in its voucher case. *See Cain v. Horne*, 202 P.3d 1178, 1182 (Ariz. 2009) (rejecting argument that the state's no-aid clause is "no broader than the federal Establishment Clause," because doing so would "render the [no-aid] clause a nullity").

With the focus properly on the actual provisions of the Colorado Constitution, the infirmities of the Voucher Program become apparent. The Colorado Supreme Court's analysis in

Americans United highlights that taxpayer dollars cannot be used to fund religious indoctrination or religious education and shows that this Voucher Program violates the no-aid and compelled support provisions of the Colorado Constitution. In *Americans United*, the college grant program was upheld based on the Court's application of several criteria that evaluated whether public funds would be used to support the secular educational functions of the school. The conditions of that grant program, emphasized the Court, "significantly reduce[d] any risk of fallout assistance to the participating institution," *id.* at 1082, or of taxpayer funds "seep[ing] over into the nonsecular functions of an institution"—such that any aid or support of religion would be "remote and incidental." *Id.* at 1083-84.

In contast, here, the Voucher Program provides taxpayer dollars to religious schools with no restrictions on how the money may be spent once the schools receive it. Additionally, many of the religious schools participating in the Voucher Program have no "secular" functions at all because their educational curriculum and religious teachings are fully intertwined. Pl. Mot. for Preliminary Injunction ("Mot.") at 6-9. Thus, any aid to those schools will directly aid and support religious indoctrination and instruction.

Defendants overlook these important distinctions. For instance, Intervenors rely on language in *Americans United* that the grant program in that case "advances no religious cause and exacts no form of support for religious institutions." I.J. Resp. at 15. But Intervenors omit the Court's explanation in the following paragraph, which demonstrates the important differences between that case and this one. Invalidating the college grant program at issue in *Americans United* would have "result[ed] in shutting out a large group of needy students from public benefits *solely because of their election to pursue a secular education at a church-related*

institution of higher learning, *the religious character of which bears no significant relationship to its educational function*." *Id.* at 1082 (emphasis added). Unlike the program at issue in *Americans United*, it is virtually certain that religion will intrude into the education provided by religious partner schools.

Defendants also overlook the distinction between a college program (at issue in *Americans United*) and a program aimed at elementary-school and high-school students (at issue here). Intervenors dismiss this as a "distinction without a difference," Intervenors' ("I.J.") Resp. at 20, but the Colorado Supreme Court disagreed: "Because as a general rule religious indoctrination is not a substantial purpose of sectarian colleges and universities, *there is less risk of religion intruding into the secular educational function of the institution than there is at the level of parochial elementary and secondary education*." 648 P.2d at 1084 (emphasis added). *See also Tilton v. Richardson*, 403 U.S. 672, 686 (1971) ("The 'affirmative if not dominant policy' of the instruction in pre-college church schools is 'to assure future adherents to a particular faith by having control of their total education at an early age' . . . . college students are less impressionable and less susceptible to religious indoctrination.").

Against these principles announced by the Colorado Supreme Court, Defendants rely again on federal court decisions interpreting federal law. Defendants assert that *Americans United* was "overruled" by the U.S. Court of Appeals for the Tenth Circuit in *Colorado Christian University v. Weaver*, 534 F.3d 1245 (10th Cir. 2008). *See* Dist. Resp. at 24, n. 29. Far from opining on the meaning of Colorado's constitution, the Tenth Circuit in *Weaver* held that the college grant program's *statutory* restrictions on "pervasively sectarian" colleges violated the *federal* Establishment Clause because they discriminated against some religions and

implementation of the statutory distinctions required excessive entanglement. *See id.* at 1256-66. Thus, although *Weaver* imposed limits on the ability of the Colorado legislature to draw distinctions between and among various religious groups and organizations, it did not decide whether a college grant program without such restrictions would violate the Colorado Constitution.

The Tenth Circuit's subsequent discussion about the scope of Art. IX, § 7 of the Colorado Constitution, is dicta—and unpersuasive dicta at that, because it overlooks key aspects of the analysis in *Americans United*, particularly that there was little risk of religion intruding into the secular educational program, and of public funds being used to aid religion—and in any event is not binding on the Colorado state courts responsible for definitively interpreting Colorado's Constitution. The Tenth Circuit did not purport to interpret, let alone "overrule" the Colorado Supreme Court's interpretation of the Colorado Constitution. That task is reserved for the Colorado courts, which have not expressed doubts about *Americans United* in the nearly 30 years since it was decided.

B. Defendants Cannot Salvage the Program By Appealing to "Choice" or by Creating a Charter School.

Defendants invoke (1) parental choice, and (2) a phantom charter school in an attempt to save the Program. These arguments contradict one another, and neither withstands scrutiny.

The "Choice" Argument. This case is not, as Defendants repeatedly suggest, about "the right of parents to have their children taught where, when, how, what and by whom they may judge best." *Vollmar v. Stanley*, 255 P. 610 (Colo. 1927). *See, e.g.*, I.J. Resp. at 2, State Resp. at 16. The right of parents to control their children's education, however, does not mean that state

taxpayers must finance the parents' choices, especially when the state Constitution expressly forbids using public funds for religious education. In any event, the Program offers little actual "choice" to would-be participants: For high school students not eligible for one of the special-needs or gifted partner schools, the only way to enroll in the Program is to also gain admission to a private religious school; once enrolled in a private religious school, students will be required to attend religious services, without any meaningful ability to opt out. *See* Mot. at 5-8.

Even if the choice were meaningful, the attempt to sanitize the money by writing the check to the parent is a legal fiction and does not break the chain between taxpayer funds and the coffers of religious institutions. *See State ex rel. Rogers v. Swanson*, 219 N.W.2d 726, 730 (Neb. 1974) (finding a Nebraska voucher program unconstitutional, and explaining that "the Legislature cannot circumvent an express provision of the Constitution by doing indirectly what it may not do directly. Here the grant is not directly to a private school but rather to a student, but it must be used for tuition at a private school."). *See also Bush v. Holmes*, 886 So.2d 340, 352 (Fla. App. 2004) ("*Bush I*"), *aff'd on other grounds, Bush v. Holmes*, 919 So.2d 392, 412-13 (Fla. 2006) (*"Bush II*") (finding that the state aid was to the schools even though the voucher program "gives parents and guardians a choice as to which school to apply a tuition voucher," given that the parents must "restrictively endorse the voucher to the school").

The "Charter School." Defendants' invocation of private-party choice is directly at odds with their other explanation for the program: that the Program is "a public program of Douglas County" because participants actually attend a public charter school, which merely contracts out for services from private-school partners. *See, e.g.* Dist. Resp. at 20. Even if the Court were to indulge in the fiction that the Program students will be attending a public school, this only

multiplies the legal problems. A charter school is by definition "public, nonsectarian, nonreligious," and is "subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, . . . creed, . . . sexual orientation, . . . religion, . . . or need for special education services." C.R.S. § 22-30.5-104 (1), (3). As discussed in Plaintiffs' Motion, the religious private school partners violate several of these requirements.

Nor can Defendant circumvent Colorado's constitutional limitations by soliciting or retaining third parties to engage in otherwise impermissible activities. A school district can obtain state funding to contract for services only if they "meet[] the same requirements and standards as would be necessary if performed by a school district." C.R.S. § 22-32-122. Contractors must meet the same statutory and regulatory requirements that govern the public school district, and they must also the fulfill requirements of the state and federal Constitutions.

By hiring such organizations to perform religious services, the public school aids religious institutions (or schools controlled by such institutions) in contravention of Art. IX, § 7.[2] And even if the fictitious "charter school" could solve the Program's problems under the compelled-support clause and the no-aid clause, it dooms the Program under Article IX, § 8, which prohibits the government from conditioning public benefits on a religious test or from teaching particular religious tenets in a public school. Defendants' sole response to Plaintiffs'

[2] *See also Am.United for Separation of Church and State v. Prison Fellowship Ministries, Inc.*, 509 F.3d 406, 424-25 (8th Cir. 2007) (state's contract with evangelical organization to provide pre-release rehabilitation services to prisoner violated the Establishment Clause (citing *Agostini v. Felton*, 521 U.S. 203, 234-35 (1997)); *Community House, Inc. v. City of Boise*, 490 F.3d 1041, 1059-60 (9th Cir. 2007) (granting preliminary injunction against city's contract with religious organization to operate homeless shelter where group required "attendance at religious meetings as a condition of receiving services").

Article IX, § 8 claim is that the provision is "inapplicable" because the partner schools "are not 'public' and no student is 'required to attend.'" Dist. Resp. at 21. But if the District wishes to enroll Program participants in a public "charter school," then it must protect the religious liberty of the students that attend this public school.[3]

C. The Federal Constitution Does Not Require Colorado To Fund Religious Education and Religious Indoctrination.

Contrary to the arguments of Defendants, neither the federal Free Exercise Clause nor the Equal Protection Clause *requires* that the state aid religious schools, even as part of a broader program. In *Locke v. Davey*, the U.S. Supreme Court rejected a Free Exercise challenge to a college scholarship program enacted by the state of Washington that did not permit students to obtain a scholarship to pursue a degree in theology and held that the Free Exercise Clause did not require the state to fund theology students. 540 U.S. 712, 725 (2004).

Defendants also suggest that enforcement of the Colorado Constitution would violate the Free Exercise Clause because the no-aid provision is a so-called "Blaine Amendment" motivated by religious bigotry. Defendants essentially ask this Court to repeal Art. IX, § 7 because of what they claim was the personal motivation of certain of the drafters of that provision 135 years ago. This Court should decline that invitation. Plaintiffs are not aware of—and Defendants do not cite—any court decision that has invalidated a state no-aid provision on this ground. On the

[3] Art. II, § 4 of the Colorado Constitution is at least as restrictive as the federal First Amendment, which has been interpreted to preclude prayer in public schools. *See, e.g., Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 317 (2000) (holding student-led prayer opening public-school football game unconstitutional); *Engel v. Vitale,* 370 U.S. 421, 436 (1962) (holding public school's practice of daily prayer recitation unconstitutional).

other hand, the Florida Court of Appeals has rejected a similar Free Exercise argument in a different voucher case: *Bush I*, 886 So.2d at 351 n. 9. Likewise, in invalidating the Arizona voucher program, the Arizona Supreme Court observed that "none of the parties has produced any authority suggesting we may disregard constitutional provisions merely because we suspect they may have been tainted by questionable motives." *Cain*, 183 P.3d at 1278 n.2.

Even if the history of Colorado's no-aid provision were relevant to the contemporary interpretation of that provision's text, Defendants' and Intervenors' do not accurately describe the historical events. They fail to note that Colorado's no-aid provision is nearly identical to a provision of the Illinois Constitution (Art. VIII, § 3), which was debated and enacted years before Grant's speech and before Blaine's proposed amendment. *Education in Colorado: 1861-1885*, Colorado State Teacher's Association, 37-38 (1885). Moreover, two days before the ratification election, Catholics conducted a pro-constitution rally in Denver. *See* Ex. 1.

II. The Voucher Program Violates Article V, Section 34.

Plaintiffs are also likely to succeed in showing that the Voucher Program violates the plain language of Art. V, § 34, which prohibits appropriations "for charitable, industrial, educational or benevolent purposes" to private persons or institutions "not under the absolute control of the state," and appropriations, regardless of control, to "denominational or sectarian institution[s]." Defendants' attempts to avoid this plain language are unavailing.

First, the Program uses state appropriations. Defendants state that Art. V, § 34 "does not extend to municipalities," *see* I.J. Resp. at 25 (citing *Lyman v. Town of Bow Mar*, 533 P.2d 1129, 1136 (Colo. 1975) (citing *In re House*, 46 P. 117, 118) (Colo. 1896)), even while (contradictorily) asserting that the only "appropriation" here is "by the General Assembly to the

Department of Education." State Resp. at 25.

As Defendant's latter argument makes clear, the Program is funded by state appropriations. Indeed, Defendants do not dispute that they intend to funnel state money to the participating private schools. S*ee*, *e.g.*, State Resp. at 1 n.1, Dist. Resp. at 6. And the District concedes as much when it argues that the Program requires prior-year attendance at a Douglas County school in order to "ensure[] that the Program does not have an adverse fiscal effect on the *statewide* education budget . . . ." Dist. Resp., at 6 (emphasis added). Thus, the Voucher Program is unlike a tax levied by a municipality on its residents (as in *Lyman*), and this litigation is not a challenge to the general appropriation to the Department of Education.

Second, in arguing that the "public purpose" saves the Voucher Program from constitutional scrutiny, I.J. Resp., at 25; Dist. Resp. at 16; State Resp. at 26, Defendants again fail to reconcile the differences between this Program and the college-aid program upheld *Americans United*. Unlike the college scholarship program at issue in *Americans United*, the Voucher Program provides funds to elementary and secondary schools whose primary mission is to indoctrinate and proselytize, at which religious tenets pervade all aspects of the curriculum, and at which religious services are mandatory even for Voucher Program participants, which is essentially a private, religious purpose. *See also Opinion of the Justices*, 616 A.2d 478, 480 (N.H. 1992) (explaining that "contributions by parents to the support of parochial schools also support sectarian education which is not a public purpose"). Far from promoting a public purpose, the Program undermines a constitutionally-enshrined public purpose—the provision of a free, public education to all students.

III. Plaintiffs Meet The Other Requirements For A Preliminary Injunction.

A. Without Immediate Relief, Defendants Will Divert Millions of Dollars from Douglas County Public Schools.

A preliminary injunction is necessary to prevent Defendants from diverting millions of taxpayer dollars—required, by law, to finance public schools—to private, religious schools in violation of the Colorado Constitution. The diversion of public-school funds will harm Plaintiffs, taxpayers, and Douglas County public-school students. Neither Defendants nor Intervenors dispute that violations of constitutional rights constitute irreparable harm. Only an immediate injunction can prevent irreparable harm and preserve the status quo, in which taxpayer dollars support the public schools, including those in Douglas County.

As to the balance of equities, Defendants' response briefs demonstrate that a temporary injunction at this point in time will be far less harmful and disruptive than if the Program is allowed to continue. The State Defendants have expressly stated that they have not and will not decide whether students enrolled in the Voucher Program "could be counted for school finances purposes" until "Douglas County is audited by the Department in 2012." Ex. U to State Resp. (Aff. of R. Hammond at 2). The State reserves the right, in 2012, to clawback the millions of dollars that the District intends to spend between now and then. *See* State Resp. at 28 (explaining that the money paid to the private schools "can certainly be recovered by the State Defendants should the courts ultimately decide that the Pilot Program was invalid.").

Thus, if the Court does not enjoin the Program now, it could be abruptly terminated when the State conducts its audit sometime in 2012, when students are already enrolled and immersed in the private schools. Students in the Program would need to be reintegrated into

public schools, or parents would be forced to pay the remaining private tuition on their own. Public school enrollment and curricula would be disrupted. And the District could face the obligation to return millions of education dollars to the State. All of this would be a massive disruption to the District in the middle of the school year.

In addition to downplaying the harm that will confront Colorado taxpayers generally and public-school parents and students specifically, the Intervenors' brief appears to overstate the risks faced by the the intervenors. For instance, there may be other options available to parents, such as intervenors Diana and Mark Oakley, who conclude that the School District is failing to meet the needs of their child who requires special education. Under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.*, states must provide disabled children with a "free appropriate public education." *Id.* § 1401(a)(18). If a state fails to do so, IDEA "empowers a court to order school authorities to reimburse parents for their expenditures on private special education for a child if the court ultimately determines that such placement, rather than a proposed [individual education plan devised by the public school], is proper under the Act." *Florence County Sch. Dist. Four v. Carter By & Through Carter*, 510 U.S. 7, 12 (1993) (quotations omitted). Unlike IDEA, the Program provides few options to parents who do not want their children in religious schools, and also permits participating schools to discriminate against students with disabilities.

B. The Voucher Program Is Not the "Status Quo."

The status quo to be preserved is the "last peaceable uncontested status existing between the parties before the dispute developed." *O Centro Espirita Beneficiente Uniao do Vegetal v. Ashcroft*, 389 F.3d 973, 975-76 (10th Cir. 2004) (en banc) (per curiam), aff'd 546 U.S. 418

(2006); *see Arapahoe County Pub. Airport Auth. v. Centennial Express Airlines, Inc.*, 956 P.2d 587, 598 (Colo. 1998) (granting a preliminary injunction which restored the status quo prior to the defendant's actions that gave rise to the controversy). The last peaceable status before the dispute was no Voucher Program. No Charter School had been implemented, the list of schools participating in the Program had not been finalized, public funds had not been distributed, and the 2011-12 academic year had not begun (and has not done so to date).

Thus, contrary to the assertions of Defendants, *see* Dist. Resp. at 29; I.J. Resp. at 11, Plaintiffs do not seek a "mandatory" injunction and need not make a higher showing than required by *Rathke v. MacFarlane*, 648 P.2d 648 (Colo. 1982). As in *Rathke*, Plaintiffs seek to preserve the status quo by stopping the Defendants from implementing and funding the Voucher Program. Moreover, a preliminary injunction in this case will not grant all the relief that is available after a final hearing; it will only place the Program on hold until the merits are fully adjudicated. These facts are far different from the mandatory injunction sought in *Allen v. City and County of Denver*, 351 P.3d 390, 390-91 (Colo. 1960), where a preliminary injunction would have required the defendants to affirmatively reconstruct streets, gutters, and culverts, thus granting plaintiffs all the relief they could have obtained on a final hearing.

Nor is the status quo changed by the fact that some of the Intervenors' children have taken summer classes that are not covered by the Program or participated in voluntary summer activities at the private partner schools. Likewise, the status quo was not changed by the distribution of funds to schools in July, after this lawsuit was filed. *See* Ex. 8 to Dist. Resp. at 2.

Finally, there is no basis for Defendants to accuse Plaintiffs of undue delay in filing suit or their suggestions that Plaintiffs "sat on their hands," Dist. Resp. at 30, or "engaged in "dilatory

conduct." I.J. Resp. at 29. After the District adopted the Program, Plaintiffs worked diligently to gather evidence. Plaintiffs served their first Colorado Open Records Act ("CORA") request on April 6, 2011, just a few weeks after the Program was enacted. The District produced some responsive documents on April 22, 2011, but stated that this production was incomplete; the District waited to produce critical documents responsive to the April request (such as the private school applications) until June 10, 2011. And on July 20, 2011, the District filed a Declaratory Judgment Action in Douglas County challenging, among other issues, Plaintiffs' April CORA requests. Even now, the District has produced a fraction of the 54,000 pages of documents it claims are responsive to Plaintiffs' original April 6, 2011 requests. *See* Ex. 2.

Regardless, Plaintiffs filed this case before the program's charter school was created, before funds had been distributed, and before the 2011-12 academic year began. The Complaint gave Defendants notice (on June 21, 2011) that Plaintiffs intended to seek a preliminary injunction. Even now, at the same time that they complain about Plaintiffs' supposed delay, Defendants argue that the funding issue is premature, because the State has made no decisions about funding the Program. *See* State Resp. at 4 n.1, 28. Defendants may not have it both ways.

CONCLUSION

For the foregoing reasons, the Plaintiffs respectfully request that the Court preliminarily enjoin the Voucher Program.

Dated: July 25, 2011

Respectfully submitted,

By s/ Matthew J. Douglas

Matthew J. Douglas (#26017)
Timothy R. Macdonald (#29180)
Michelle K. Albert (#40665)
Arnold & Porter LLP

Paul Alexander (CA Bar #49997)
Arnold & Porter LLP

George Langendorf (CA Bar #255563)
Arnold & Porter LLP

Mark Silverstein (#26979)
Rebecca T. Wallace (#39606)
American Civil Liberties Union Foundation of Colorado

Daniel Mach (DC Bar #461652)
Heather L. Weaver (DC Bar #495582)
ACLU Foundation Program on Freedom of Religion and Belief

Ayesha N. Khan (DC Bar #426836)
Gregory M. Lipper (DC Bar #494882)
Americans United for Separation of Church and State

Attorneys for 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

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July, 2011, a true and correct copy of the foregoing Reply In Support Of Motion For Preliminary Injunction was served via LexisNexis File & Serve on the following:

Antony B. Dyl
tony.dyl@state.co.us
Senior Assistant Attorney General
Nick Stancil
nick.stancil@state.co.us
Assistant Attorney General
Office of the Colorado Attorney General
1525 Sherman Street, 7th Floor
Denver, CO 80203
Attorneys for Defendants Colorado Board of Education and Colorado Department of Education

James M. Lyons
jlyons@rothgerber.com
Eric V. Hall
ehall@rothgerber.com
David M. Hyams
dhyams@rothgerber.com
Reneé A. Carmody
rcarmody@rothgerber.com
Rothgerber Johnson & Lyons LLP
One Tabor Center, Suite 3000
1200 Seventeenth Street
Denver, CO 80202
Attorneys for Defendants Douglas County Board of Education and Douglas County School District

William H. Mellor
wmellor@ij.org
Richard D. Komer
dkomer@ij.org
Institute for Justice
901 N. Glebe Road, Suite 900
Arlington, VA 22203
Attorneys for Intervenors Florence and Derrick Doyle, Diana and Mark Oakley, Jeanette Strohm-Anderson and Mark Anderson; Geraldine and Timothy Lynott

Raymond L. Gifford
Rgifford@wkblaw.com
Wilkinson Barker Knauer, LLP
1430 Wynkoop Street, Suite 201
Denver, CO 80202
Attorneys for Intervenors Florence and Derrick Doyle, Diana and Mark Oakley, Jeanette Strohm-Anderson and Mark Anderson; Geraldine and Timothy Lynott

Michael S. McCarthy
mmccarthy@faegre.com
Colin C. Deihl
cdeihl@faegre.com
Nadia G. Malik
nmalik@faegre.com
Sarah A. Kellner
skellner@faegre.com
Gordon M. Hadfield
ghadfield@faegre.com
Caroline G. Lee
cglee@faegre.com
FAEGRE & BENSON LLP
1700 Lincoln Street, Suite 3200
Denver, CO 80203
Attorneys for Plaintiffs Taxpayers for Public Education, Cindra S. Barnard, and Mason S. Barnard

Michael Bindas
mbindas@ij.org
Institute for Justice
101 Yesler Way, Suite 603
Seattle, WA 98104
Attorneys for Intervenors Florence and Derrick Doyle, Diana and Mark Oakley, Jeanette Strohm-Anderson and Mark Anderson; Geraldine and Timothy Lynott

Alexander Halpern
ahalpern@halpernllc.com
Alexander Halpern, LLC
1426 Pearl Street, #420
Boulder, CO 80302
Attorneys for Plaintiffs Taxpayers for Public Education, Cindra S. Barnard, and Mason S. Barnard

s/ Linda J. Teater

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