DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Court Address: 1437 Bannock Street Denver, Colorado 80202 **Plaintiff:** ANTHONY LOBATO, as an individual and as parent and natural guardian of TAYLOR LOBATO, et al. v. **Defendants:** STATE OF COLORADO; et al.	▲ **COURT USE ONLY** ▲ Case Number: 05 CV 4794 Ctrm: 9

ORDER

THIS MATTER is before the Court on the motion of Defendant's to dismiss for lack of subject matter jurisdiction and failure to state a claim, filed August 24, 2005. The Court has considered the motion, brief in opposition to the motion, the reply, the court file and all relevant authorities, and being sufficiently advised, concludes as follows.

The Defendants seek to dismiss the complaint and all claims therein on the following grounds: 1) the first claim for relief should be dismissed for failure to state a claim because the current statutory scheme satisfies the requirements of Amendment 23 and is therefore constitutional; 2) the second claim should be dismissed because it presents a non-justiciable political question and the Colorado Constitution commits the determination of educational adequacy to the legislative branch; 3) the third claim for relief under Colo. Const. Art. X, § 3 must be dismissed, because the school districts, and not the state are the authorities in question and are therefore not subject to the uniformity requirements; 4) the fourth claim for relief should be dismissed for lack of standing because Plaintiffs are political subdivisions and cannot challenge statutes that direct the performance of their duties.

STANDARD OF REVIEW

The well-established standard of review is a deferential one. In addressing a Motion to Dismiss under C.R.C.P. 12(b)(5), the court must view the allegations in the complaint in the light most favorable to plaintiffs, *Dunlap v. Colorado Springs Cablevision, Inc.*, 829 P.2d 1286 (Colo. 1992), and accept all averments of material fact contained in the complaint as true. *Rosenthal v. Dean Witter Reynolds, Inc.*, 908 P.2d 1095, (Colo. 1995) (quoting *Shapiro & Meinhold v. Zartman*, 823 P.2d 120, 122-23 (Colo. 1992)). The court cannot grant a motion to dismiss for failure to state a claim unless "it appears beyond doubt that the plaintiff[s] can prove no set of facts in support of [their] claim(s) which would entitle [them] to relief." *Dunlap*, 829 P.2d at 1291.

FINDINGS AND ORDER

The following facts, as relevant here, are undisputed:

1) Article IX, § 2 ("the Education Clause") reads, in relevant part, "the general assembly shall. . . 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".

2) Adopted in 2000, Amendment 23 specifically sets the minimum level of state funding for public education.

3) Article III prohibits the judiciary from exercising those powers constitutionally conferred upon the legislature.

4) The Public School Finance Act of 1994 authorizes school district property tax mill levies in individual school districts.

5) Colorado school districts and their governing boards are political subdivisions of the State.

6) Political subdivisions cannot challenge the constitutionality of a statute that directs their performance or otherwise defines their responsibilities.

Applying the stringent standard of review to the case here, the Court finds that the Plaintiffs' complaint fails to prove any set of facts in support of their claim that would entitle them to relief. Plaintiffs argue that the State of Colorado is failing to provide "a thorough and uniform system of free public schools" as mandated in the Education Clause due to insufficient funding. While the Education Clause does not include any specific funding requirements in its mandate for a "thorough and uniform standard", Amendment 23 clearly mandates a minimum level of state education funding. This funding floor was voted on by the people of Colorado as a means of addressing the precise financing problems Plaintiffs allege. Though Plaintiffs argue that Amendment 23 does not define the amount of funding required to meet the qualitative standards set forth in the Education Clause, this court finds the levels dictated by Amendment 23 to be consistent with the goals of the Education Clause. Whether the floor created by Amendment 23 is adequate is an issue to be decided by the voters and the legislature; and Plaintiffs' claim alleging that current funding levels are unconstitutional must be dismissed for failure to state a claim upon which relief can be granted.

The Colorado Constitution clearly commits power of appropriations and the determination of educational adequacy to the legislature, subject only to constitutional limitations. Despite Plaintiffs' assertion that the Colorado Supreme Court has exercised jurisdiction over Education Clause claims, these cases presented constitutional questions of equality, not quality or adequacy of educational funding. In fact, no Colorado court has defined "adequate" or "thorough" because the substance of these terms is a legislative

determination. In *Lujan*, the Colorado Supreme Court refused to make policy decisions regarding adequacy of educational expenditures, stating: "Judicial intrusion to weigh such considerations and achieve such goals must be avoided." *Id.* at 1018. The current financing scheme is in accord with the minimum mandates of Amendment 23, does not pose a constitutional question, and is therefore non-justiciable. The Defendants reliance on *Colorado General Assembly v. Lamm*, 700 P.2d 508, 520 (Colo. 1985) is well founded. In *Lamm*, the Court held that, "the General Assembly's absolute power over appropriations includes not only determinations of which projects to support with funding, but also the level of funding for each project."

Plaintiffs' third claim for relief attempts to restructure the historical framework of Colorado public education by arguing that school tax levies are in fact state taxes subject to the uniformity requirement of Article I, §3(1)(a). In *Lujan v. Colorado State Board of Education*, 649 P.2d 1005 (Colo. 1982), the court relied heavily on the Colorado philosophy of local control, holding that the apparent objective of the Colorado system of financing public education is local control. *Id*. at 1022. The *Lujan* court rejected a constitutional challenge to the state's system of public school financing, explaining, "taxation of local property has not only been the primary means of funding local education, but also of ensuring that the local citizenry direct the business of providing public school education in their school district." *Id.* at 1021. Meeting the uniformity requirements of Article I, § 3(1)(a) at the local level would not only take power away from local authorities, it would impair the ability of local districts to efficiently manage local schools. Defendants' motion to dismiss for failure to state a claim is warranted.

Lastly, Defendants assert that Plaintiff school districts, as political subdivisions of the State, lack standing to challenge the constitutionality of the Public School Finance Act of 1994. The Finance Act is a statute that directs the school districts performance and responsibilities and the Plaintiffs are political subdivisions of the state. Given these facts, Defendants argue that the rule limiting standing from *Denver Ass'n for Retarded Children, Inc. v. School Dist. No. 1 in City and County of Denver*, 188 Colo. 310, 535 P.2d 200 (Colo. 1975) applies. This court agrees. Accordingly, Plaintiff school districts lack standing to prosecute the within claims.

Therefore the Defendants' motion to dismiss Plaintiffs' complaint is granted on all claims.

DATED THIS 2nd DAY OF March 2006.

BY THE COURT:

Michael A. Martinez
District Court Judge