

Resolution 2017-21

A resolution of the Board of Education of Colorado Springs School District 11 to enter as a plaintiff in the case of *Kerr et al. v. Hickenlooper*, case no. 1:11-cv-01350-RM-NYW, U.S. District Court for Colorado

Whereas by Article IX of the original Colorado Constitution, the state of Colorado undertook to provide its children with a universal system of free public education, and specifically, Section 2 of Article IX provided that “[t]he 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;”

Whereas in the several sections of the Colorado Revised Statutes known collectively as the “School Finance Act,” currently C.R.S. §22-54-101 *et seq.*, as amended and reenacted by the general assembly from time to time over recent years, the state of Colorado has prescribed the responsibility for fulfilling the obligations of Section 2 of Article IX as one shared by the state, acting through its fiscal processes, and local district school boards, acting through their authority to raise and expend funds in support of their local public schools, all intended to offset vast disparities in local school districts’ ability to raise money from local property tax;

Whereas Article IV, Section 4 of the United States Constitution, and the Colorado Statehood Enabling Act of 1875, each require Colorado to establish and maintain a republican form of government, requiring the core functions of government, especially its fiscal powers, to be exercised by the officers of the representative branches of government, including the various school district boards of education, and not by means of plebiscite or direct democracy;

Whereas the limitations on the exercise of the Board’s fiscal powers imposed by the so-called Taxpayer Bill of Rights (“TABOR”), Article X, §20 of the Constitution of Colorado, directly contravene the powers and responsibilities of the Board and have undermined the school district’s republican form of government;

Whereas prior to TABOR, local district school boards had authority, within statutory limits, to set the property tax mill levies, which are the principal local source of revenue to fund the public schools, and TABOR has caused local school districts to incur costs, delays, and other injuries to their ability to provide for the education of their children occasioned by TABOR’s requirements for elections to approve any increases in the property tax mill levies and to retain revenues generated by existing mill levies that exceed the spending limits imposed by TABOR;

Whereas due to the requirements of TABOR, the Board and the school district have been forced to incur costs and expenses necessary to present to the voters of the school district for their decision, matters affecting the exercise of the Board’s fiscal powers of taxation and appropriation that would otherwise have been within the powers and responsibilities of the Board on several occasions over the last twenty years, including the following:

- i. 2000 Mill Levy Override Election – to supplement district programs – passed
- ii. 2008 Mill Levy Override Election – failed
- iii. 2016 Mill Levy Override Election – failed
- iv. 2001 District 11 De-TABOR Election – failed
 - Restricts district’s entrepreneurial effort
 - Limits district revenues and expenditures

Whereas this board finds that, in order to preserve its core fiscal powers and to restore the republican form of government, it is necessary and appropriate to join in the challenge to the constitutionality of TABOR, and to its lawfulness under the Statehood Enabling Act, being pursued in federal court in the case of *Kerr et al. v. Hickenlooper*, case no. 1:11-cv-01350-RM-NYW, U.S. District Court for Colorado, and being informed and assured that representation of plaintiffs in the case has been undertaken and will continue to be handled by attorneys for the plaintiffs on a *pro bono* basis, without charge, and at no cost to the plaintiffs; now therefore, be it

Resolved, that:

1. in accordance with its powers and responsibilities under the United States Constitution and the constitution and laws of Colorado, the Colorado Springs School District 11 Board of Education, shall enter the case of *Kerr et al. v. Hickenlooper*, case no. 1:11-cv-01350-RM-NYW, U. S. District Court for Colorado as a plaintiff; and further,
2. no expenses for attorneys' fees or costs shall be incurred by Colorado Springs School District 11 or its Board of Education in connection with its involvement as a plaintiff in the said case.

Adopted this 30th day of November, 2016.

absent
Dr. Nicholas M. Gledich, Superintendent

(SEAL)



Doris Hensley
Doris Hensley, Secretary to the
Board of Education

Luan Long
Luan Long, President

Jim Mason
Jim Mason, Vice President

Theresa Null, Secretary
Nora S. Brown

Nora Brown, Treasurer
Mary Coleman
Mary Coleman, Director

Shawn Gullixson
Shawn Gullixson, Director

Elaine Naleski
Elaine Naleski, Director