

STATE OF SOUTH DAKOTA )  
: SS.  
COUNTY OF HUGHES )

IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT

Civ. No. 06-244

SOUTH DAKOTA COALITION OF )  
SCHOOLS; MARK DAVIS and BONNIE )  
DAVIS, as individuals and as )  
parents and natural guardians )  
of CHARLIE DAVIS, CARL DAVIS, )  
JOEY DAVIS, and SELENA DAVIS; )  
KAY EBEN, as an individual )  
and as parent and natural )  
guardian of GRACE EBEN and )  
KENDRA EBEN; DAN GRANT and )  
JANE GRANT, as individuals )  
and as parents and natural )  
guardians of DYLAN BAMBAS and )  
ALEXIS BAMBAS; DEBRA BUCHHOLZ )  
and CALVIN BUCHHOLZ, as )  
individuals and as parents )  
and natural guardians of )  
HANNAH BUCHHOLZ and JARED )  
BUCHHOLZ; JULIA ORROCK, as an )  
individual and as parent and )  
natural guardian of LUCIUS )  
ORROCK and DOMINIC ORROCK; )  
JULIE SCHENKEL, as an )  
individual and as parent and )  
natural guardian of NATHAN )  
SCHENKEL and NOAH SCHENKEL; )  
ANITA BACH and TODD BACH, as )  
individuals and as parents )  
and natural guardians of )  
TAYLOR BACH, TYRA BACH, and )  
SETH BACH; MIKE HINTZ and )  
JULIE HINTZ, as individuals )  
and as parents and natural )  
guardians of KAITLIN HINTZ )  
and HANNAH HINTZ; BRAD NELSON )  
and RITA NELSON, as )  
individuals and as parents )  
and natural guardians of )  
CHANTEL NELSON and SHAINA )  
MARESH; SHANE McINTOSH and )  
TAMARA McINTOSH, as )  
individuals and as parents )  
and natural guardians of )  
LANDRY McINTOSH and BENNETT )  
McINTOSH; JIM AKRE and KAY )  
AKRE, as individuals and as )  
parents and natural guardians )  
of TAYLOR AKRE; DAWN BIALAS )  
and KURT BIALAS, as )  
individuals and as parents )

DEFENDANTS' ANSWER

and natural guardians of )  
MORGAN BIALAS, CONNOR BIALAS, )  
and KEELAN BIALAS; RON )  
SCHOENFELDER and RENE )  
SCHOENFELDER, as individuals )  
and as parents and natural )  
guardians of TAYLOR )  
SCHOENFELDER, SADIE )  
SCHOENFELDER, and MOLLY )  
SCHOENFELDER, )

Plaintiffs, )

v. )

THE STATE OF SOUTH DAKOTA; )  
SOUTH DAKOTA DEPARTMENT OF )  
EDUCATION; SOUTH DAKOTA BOARD )  
OF EDUCATION; Honorable )  
MICHAEL ROUNDS, in his )  
official capacity as the )  
Governor of the State of )  
South Dakota; RICK MELMER, in )  
his official capacity as the )  
Secretary of Education of the )  
State of South Dakota; )  
VERNON L. LARSON, in his )  
official capacity as the )  
Treasurer of the State of )  
South Dakota, )

The State of South Dakota; South Dakota Department of Education; South Dakota Board of Education; Honorable Michael Rounds, in his official capacity as the Governor of the State of South Dakota; Rick Melmer, in his official capacity as the Secretary of Education of the State of South Dakota; and Vernon L. Larson, in his official capacity as the Treasurer of the State of South Dakota, named as Defendants in the above-entitled action and hereinafter referred to as "State", hereby answer the Complaint as follows:

1. The Complaint does not set forth averments which are simple, concise, and direct as required by SDCL 15-6-8(e)(1), does not set forth a short and plain statement of the claim showing the pleader is entitled to relief as required by SDCL 15-6-8(a)(1), and is replete with averments containing legal conclusions and surplusage not properly part of a Complaint.

2. Because of these pleading deficiencies, the State denies every thing, matter, and allegation of the Complaint, except as specifically admitted below.

3. The State admits that the South Dakota Constitution provides that it shall be the duty of the Legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education. S.D. Const. Art. VIII, § 1.

4. The State admits that the South Dakota Constitution provides that the Legislature shall make such provision by general taxation and by authorizing the school corporations to levy such additional taxes as with the income from the permanent school fund shall secure a thorough and efficient system of common schools throughout the State. S.D. Const. Art. VIII, § 15.

5. The State denies that the children of South Dakota are receiving an inadequate education.

6. The Complaint contains numerous averments with Plaintiffs' summary statements of provisions of statutes and constitutional provisions, to-wit: Paragraphs 29-34, 44-47, 50-51, 56, 59-64, 66, 68-69, 73-92, 94, 96-97, 99-100, 103-104, 107-108, 111-112, 163-165, 209, 226. To the extent that these paragraphs contain exact and accurate quotations from the cited statutes or constitutional provisions, the State admits that these paragraphs contain such quotations. The State denies the remainder of each and every paragraph referenced above and denies that any of the cited statutes or constitutional provisions support Plaintiffs' claims for relief.

7. The State admits that Paragraph 1 contains a quotation from Brown v. Board of Education of Topeka and denies the remainder of that paragraph.

8. The State is without sufficient knowledge or information to form a belief as to the truth or falsity of Paragraphs 2-3, 14-28, 41-42, 58, 65, 71-72, 115-140, 142-143, 145-161, 167-184, and 266 of the Complaint, and as such, the State neither admits nor denies such allegations, but demands strict proof thereof.

9. The State admits Paragraphs 37-40 and 55 of the Complaint.

10. The State admits that Plaintiffs have attached a document entitled Estimating the Cost of an Adequate Education in South Dakota as Exhibit A to the Complaint but deny that Exhibit A is either accurate or relevant to any issue in this lawsuit or supportive of Plaintiffs' claims for relief.

11. The State admits that Defendant Michael Rounds is the Governor of the State; that Rick Melmer is the Secretary of the Department of Education; and that Vernon L. Larson is the Treasurer of the State.

12. The State denies that Plaintiffs are entitled to the relief requested in their Complaint.

#### AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.

2. All claims and requested remedies are barred by the doctrine of separation of powers and are non-justiciable political questions.

3. Plaintiff South Dakota Coalition of Schools is not a real party in interest and lacks standing to institute or maintain this action.

4. The Children/Parent/Taxpayer Plaintiffs are not real parties in interest regarding actions taken in school districts other than those in which the Children attend or the

Parent/Taxpayer fiscally support and lack standing to bring this action regarding actions taken in those districts.

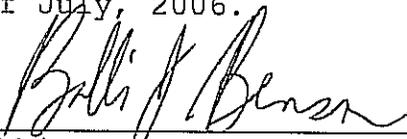
5. All claims and requested remedies are barred by the doctrines of res judicata and collateral estoppel.

6. The education system challenged by the Complaint is constitutional.

7. All claims and requested remedies are barred by the doctrines of waiver and estoppel.

WHEREFORE, Defendants request that this Court deny all relief requested in the Complaint, grant Defendants their costs, and grant such other and further relief as it deems necessary and proper.

Dated this 28<sup>th</sup> day of July, 2006.

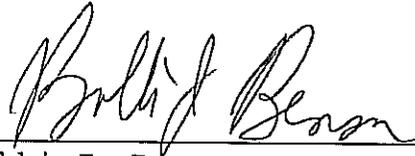


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Defendants' Answer in the matter of South Dakota Coalition of Schools et al. v. State of South Dakota et al., Hughes Co. Civil No. 06-244, was served by United States mail, first class, postage prepaid, upon Scott A. Abdallah, Attorney at Law, P.O. Box 1107, Sioux Falls, South Dakota 57101, this 28<sup>th</sup> day of July, 2006.



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Bobbi J. Benson  
Assistant Attorney General

pld.bjb Defendants' Answer (jmm)