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IN THE THIRD JUDICIAL DISTRICT COURT – SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

PATTI BATEMAN, DAVID COX,
TIMOTHY OSBORN, CHRISTEL SWASEY,
GARY THOMPSON, STEVE
WHITEHOUSE,

Plaintiffs,

v.

UTAH STATE BOARD OF EDUCATION,

Defendant.

**PETITION FOR DECLARATORY
JUDGMENT**

Case No.:

Judge:

COMES NOW Plaintiffs Patti Bateman, David Cox, Timothy Osborn, Christel Swasey, Gary Thompson, and Steve Whitehouse ("Plaintiffs"), through counsel, and hereby submit the following Petition for Declaratory Judgment as follows:

PARTIES

1. Plaintiff Patti Bateman is a retired teacher. She was teaching in a Utah elementary school in 2010. She is a resident of Utah.
2. Plaintiff David Cox is an elementary school teacher. He was teaching in a Utah elementary school in 2010. He is a resident of Utah.

3. Plaintiff Timothy Osborn is a former member of the Alpine School Board. He was a member of the Alpine School Board in 2010. He is a resident of Utah.

4. Plaintiff Christel Swasey is a parent of school aged children and a licensed educator. She is a resident of Utah.

5. Plaintiff Gary Thompson is a parent of school aged children. He is a resident of Utah.

6. Plaintiff Steve Whitehouse is a board member of the Maeser Prep Charter School. He was a board member in 2010. He is a resident of Utah.

7. The Utah State Board of Education (the “Board”) is a governmental entity created by Article 10, Section 3 of the Utah State Constitution.

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to Utah Code Ann. § 78A-5-102 and Utah Code Ann. § 78B-6-401.

9. Venue is proper in Salt Lake County under Utah Code § 78B-3-307(1)(b).

ALLEGATIONS

10. On August 6, 2010, the Board established new minimum standards for curriculum to be taught in Utah’s public schools. These new minimum standards were developed by a group called the Common Core State Standards Initiative, a national group formed by the National Governors Association and the Council of Chief State School Officers. The minimum standards are referred to as the Common Core.

11. The minimum standards contained in Common Core are only for the subject areas of English Language Arts (“ELA”) and Math. Common Core is a written statement defining and listing the minimum standards for curriculum and instruction requirements in Utah’s public schools. Common Core will be fully effective in the 2014-2015 school year.

12. Beginning this school year, all ELA and Math teachers are required to teach curriculum and prepare students for aligned assessments in a way that satisfies Common Core. A trial test aligned with Common Core was administered last year in preparation for the actual test. This school year students are required to show mastery of Common Core through the new test; the test will be administered to all students.

13. Common Core was never published as a proposed rule by the Board.

14. Common Core is not found in the Utah Administrative Code but a written version of it can be found on the website of the Utah State Office of Education (“USOE”). The Board does not consider Common Core a rule under the definition as provided by law; therefore, the Board did not follow administrative rulemaking procedures in establishing and implementing Common Core and the aligned assessments.

15. The Utah State Legislature has directed the Board to establish rules and standards related to curriculum and instruction requirements. The Utah State Legislature has also directed the Board to consult with local school boards, school superintendents, teachers, employers, and parents in establishing minimum standards related to curriculum and instruction requirements.

16. Upon information and belief, the Board did not consult with local school boards, school superintendents, teachers, employers, and parents in the establishment and implementation of Common Core.

17. Plaintiffs objected to the establishment and implementation of Common Core but were never given notice, as required by administrative rulemaking procedures, of the Board’s intent to establish and implement Common Core. Plaintiffs never had an opportunity to express their opposition to Common Core prior to its establishment and implementation because there was never a prescribed time period for public comment.

FIRST CAUSE OF ACTION

(Declaratory Judgment that Common Core is a Rule, Utah Code § 63G-3-102(16)(a))

18. Plaintiffs hereby incorporate all preceding paragraphs in this Petition in this cause of action.

19. A justiciable controversy exists between Plaintiffs and the Board, specifically that Common Core is not recognized by the Board as a rule.

20. The interests of the parties are adverse as the Board refuses to recognize Common Core as a rule and Plaintiffs believe it is a rule.

21. Plaintiffs have a legally protected interest in the controversy, that is, they have been affected by or are interested in Common Core.

22. The issues between the parties involved are ripe for judicial determination because Common Core is currently enforced in Utah's public schools as an administrative rule.

SECOND CAUSE OF ACTION

(Declaratory Judgment that Common Core is Subject to the Rulemaking Process, Utah Code § 63G-3-101 *et seq.*)

23. Plaintiffs hereby incorporate all preceding paragraphs in this Petition in this cause of action.

24. A justiciable controversy exists between Plaintiffs and the Board, specifically the making of standards for curriculum and instruction is subject to the administrative rulemaking process.

25. The interests of the parties are adverse as the Board failed to follow the administrative rulemaking process for Common Core, thereby removing Plaintiffs' ability to participate in the rulemaking process.

26. Plaintiffs have a legally protected interest in the controversy, that is, they have been affected by or are interested in Common Core.

27. The issues between the parties involved are ripe for judicial determination because there is a dispute as to whether Common Core is subject to the rulemaking process.

THIRD CAUSE OF ACTION

(Declaratory Judgment that Common Core is Unenforceable in Utah Schools, Utah Code Ann. § 63G-3-202)

28. Plaintiffs hereby incorporate all preceding paragraphs in this Petition in this cause of action.

29. A justiciable controversy exists between Plaintiffs and the Board, specifically if Common Core is enforceable in Utah’s public schools.

30. The interests of the parties are adverse as the Board seeks to enforce Common Core in Utah’s public schools.

31. Plaintiffs have a legally protected interest in the controversy, that is, they have been affected by or are interested in Common Core.

32. The issues between the parties involved are ripe for judicial determination because the Board is enforcing Common Core in Utah’s public schools.

FOURTH CAUSE OF ACTION

(Declaratory Judgment that the Board did not Consult with the Parties Required by Utah Code Ann. § 53A-1-402.6)

33. Plaintiffs hereby incorporate all preceding paragraphs in this Petition in this cause of action.

34. A justiciable controversy exists between Plaintiffs and the Board, specifically if the Board consulted with local school boards, school superintendents, teachers, employers, and parents in establishment and implementation of Common Core.

35. The interests of the parties are adverse as the Board failed to consult with local school boards, school superintendents, teachers, employers, and parents as required by law.

36. Plaintiffs have a legally protected interest in the controversy, that is, they were entitled to be consulted by the Board.

37. The issues between the parties involved are ripe for judicial determination because the Board denied Plaintiffs their right to be consulted in the establishment and implementation of Common Core.

PRAYER FOR RELIEF

1. For declaratory judgment that Common Core is a rule.
2. For declaratory judgment that Common Core is subject to the administrative rulemaking process.
3. For declaratory judgment that Common Core and its associated assessments are unenforceable in Utah's public schools.
4. For declaratory judgment that the Board failed to consult with local school boards, school superintendents, teachers, employers, and parents as required by law, and that the Board shall consult with them on the establishment and implementation of any standards concerning curriculum and instruction requirements.
5. For an order enjoining the Board from further implementing Common Core in Utah's public schools, from requiring Utah's public schools to further adopt or abide by Common Core, and from enforcing Common Core in Utah's public schools.

DATED this 31st day of July, 2014.

SALCIDO LAW FIRM PLLC

/s/ Spencer Salcido
Attorneys for Plaintiff