

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202</p>	<p><input type="checkbox"/> <b>COURT USE ONLY</b> <input type="checkbox"/></p>
<p>PLAINTIFFS: <b>Anthony Lobato, et al.</b></p> <p>and</p> <p>PLAINTIFFS-INTERVENORS: <b>Armandina Ortega, et al.</b></p> <p>vs.</p> <p>DEFENDANTS: <b>The State of Colorado; et al.</b></p>	
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<p><b>DEFENDANTS' FOURTH SUPPLEMENTAL EXPERT WITNESS DISCLOSURES</b></p>	

Pursuant to the Case Management Order, Defendants, by and through their counsel, hereby make their Fourth Supplemental expert witness disclosures pursuant to Colo. R. Civ. P. 26(a)(2).

Defendants reserve their right to supplement these disclosures as discovery progresses, particularly to disclose additional Rule 26(a)(2)(B)(II) witnesses who may provide both factual and expert opinions. Defendants additionally reserve their right to elicit expert testimony from any fact or expert witness disclosed or proffered at trial by Plaintiffs or Plaintiff-Intervenors.

Finally, Defendants reserve their right to disclose additional experts to rebut matters contained in the expert reports or summaries of opinions of Plaintiffs or Plaintiff-Intervenors' expert witnesses, including without limitation expert witnesses on cost studies, school funding, the economics of education, and Colorado constitutional law. As disclosures of all of Plaintiffs and Plaintiff-Intervenors' expert witness reports or summaries is not yet complete, it is impossible at this time to determine whether, and to what extent, certain rebuttal witnesses will be necessary.

Subject to and without waiving the above reservations, Defendants disclose the following expert witness pursuant to Colo. R. Civ. P. 26(a)(2)(B)(I):

2. Vody Herrmann  
Former Assistant Commissioner for Public School Finance  
Colorado Department of Education  
201 East Colfax Ave.  
Denver, CO 80203

The subject matter of Ms. Herrmann's testimony is expected to include, without limitation, Colorado's public school finance system and related matters. Ms. Herrmann may also offer fact testimony based on her extensive experience in Colorado's public education system.

Ms. Herrmann is expected to testify that the 1994 Public School Finance Act is well designed structurally. The act incorporates a base funding amount and various factors that provide additional funding for areas such as cost of living and adjustments for very small school districts through the size factor. The Act also incorporates an adjustment for at-risk students, using free lunch data as a fair proxy. That data is already collected and easy to identify. Other data representing at-risk status, such as whether a child is in a single-parent home or is exposed to abuse, are too difficult to collect and manage, and there may be concerns with self-reporting the data. Others have suggested formulas which incorporate categorical funding into factors. However, doing that may remove the protection that categoricals receive under Amendment 23, i.e., the requirement that categoricals be increased each year. Any new structural proposal that Ms. Herrmann has seen has "winners and losers," that is, the pot is shifted from one area to another.

Ms. Herrmann is also expected to testify that Amendment 23 applies inflation to the base per pupil amount, which means the factors adjust based on the inflation-adjusted base per pupil amount. In other words, inflation is applied to both the base per pupil amount and the factors. Ms. Herrmann is also expected to testify that, until recently, K-12 funding had always increased over prior year funding. This was not true for other state General Funded programs, many of which saw large cuts in years K-12 saw increases.

Ms. Herrmann is also expected to testify that, given the dollars Colorado allocates to K-12 education, the state does well with what it has. Multiple decisions have been made over the years, for example, adding preschool and adding the 5th year of high school, to expand educational programs. School districts advocated for keeping those programs even with reductions in funding. Further, as we have started to better identify areas of weaknesses in the school districts, those districts have come up with ways to improve test scores despite funding constraints. For example, Mapleton and McClave were recently reported to have increased their test scores. These are districts with challenging student populations that have become focused and have made different educational choices – without more State dollars – and have seen benefits. There are other districts, such as Littleton, that, because of their focus and outstanding staff, are achieving great results with the funding that they have. Without a new focus and different educational choices, additional money may not make a difference.

Ms. Herrmann is also expected to testify that some districts expend available funds more efficiently/effectively than others. With minor exceptions, it is the school districts, not the state, that control how they spend their budgets. Some districts choose to spend their money to maintain their culture and way of doing business in their schools. Rather than looking to new and different programs, or outside consultants to improve performance, districts continue spending dollars the same way they have in the past. Districts often do not share information or look to districts doing well to see why they are doing well (e.g., curriculum, instructional schedule). More standardization would make these issues easier to address, but because of local control, the state cannot tell the districts what to do. Further, when there are issues of mismanagement of dollars within a district, the district must spend time and effort addressing those issues rather than focusing on educational achievement.

Ms. Herrmann is also expected to testify that the constitutional restrictions on raising revenue have a significant impact on school funding. The voters spoke by passing and standing by TABOR. It is important to note that voters have worked, within TABOR, to successfully lift the TABOR revenue limits in all but 4 of the 178 school districts. Because of the choices that the voters of Colorado have made, the state is left with limited revenue to distribute. Ms. Herrmann is also expected to testify that there was an intent to achieve a 50/50 state/local split in school funding. However, the combination of TABOR and Gallagher has resulted in significantly more funding coming from the state than the local districts, even though the state did not receive increases in state revenue at the same rate that local districts saw a decline in property tax revenue and the student population was increasing and the K-12 program was expanding (i.e., preschool and 5th year for high school). Therefore, it continued to take more and more of the state's budget to support K-12 education, putting other state agency programs at

risk. Gallagher has also impacted assessed property values such that many small districts cannot raise much through a mill levy override because Gallagher has driven property values down.

Ms. Herrmann is also expected to testify that she and her staff provided “whatever it takes” to assist school districts. They would help create budgets and data files. Ms. Herrmann would send her staff out, if necessary, to help school districts straighten out records and work on budgets. She and her staff provided professional development training and other resources to districts. She and her staff provided timely, substantive assistance to school districts. Ms. Herrmann is expected to testify that they were able to provide an exceptional level of service and technical assistance on school funding issues.

Ms. Herrmann is qualified to offer these opinions by her knowledge, skill, experience, training, and education. Ms. Herrmann’s resume is attached hereto. In addition to relying on her knowledge, skill, experience, and training with the Colorado Department of Education, the Morgan County School District Re-3, and the South Platte Valley Board of Cooperative Educational Services to form the above opinions, Ms. Herrmann also reviewed publicly available information on Colorado’s school finance system, including data on the Colorado Department of Education’s Office of Public School Finance website ([http://www.cde.state.co.us/index\\_finance.htm](http://www.cde.state.co.us/index_finance.htm)), various school district audits, and the websites of school districts themselves. Ms. Herrmann has not authored any publications within the last ten years or testified as an expert at trial or by deposition in the last four years. Ms. Herrmann is being compensated at the rate of \$58 per hour.

DATED: May 16, 2011

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*Original signature of Nicholas P. Heinke is  
on file at the Office of the Colorado Attorney  
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**CERTIFICATE OF SERVICE**

This is to certify that I have duly served the within **DEFENDANTS' FOURTH SUPPLEMENTAL EXPERT DISCLOSURES** upon all parties herein via electronic mail, Lexis/Nexis File & Serve, and/or U.S. Mail this 16th day of May, 2011:

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