

<p>DISTRICT COURT, DENVER COUNTY, COLORADO Denver City and County Building 1437 Bannock St. Denver, Colorado 80202</p>	
<p>Plaintiffs: ANTHONY LOBATO, et al., and Plaintiff-Intervenors: ARMANDINA ORTEGA, et al. v. Defendants: THE STATE OF COLORADO, et al.</p>	
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PLAINTIFFS' FIRST SUPPLEMENTAL EXPERT DISCLOSURE

Pursuant to the Case Management Order and Rule 26(a)(2), Plaintiffs Anthony Lobato, *et al.*, ("Plaintiffs"), make the following disclosures. Plaintiffs reserve the right to supplement such disclosures as discovery progresses, and Plaintiffs will make their Rule 26(a)(2) disclosures pursuant to the timeline set forth in the Case Management Order.

I. Pursuant to Rule 26, Plaintiffs disclose the following individuals as Rule 26(a)(2)(B)(II) experts and/or fact witnesses who may provide expert opinion.

8. Cary Kennedy
300 Jersey Street
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Ms. Kennedy is the former Colorado State Treasurer 2006-2010. Ms. Kennedy's testimony is expected to include, without limitation: Amendment 23, Referendum C, the mill levy freeze, Amendment 59, TABOR, Gallagher, and the constitutional and statutory structure as it relates to school finance. Ms. Kennedy has been a leader in education finance in Colorado for over a decade. She was the author and co-proponent of Amendment 23 (2000), staffed House Speaker Andrew Romanoff on the development of Referendum C (2005), developed the School Finance Act mill levy stabilization legislation (2007), helped lead the Amendment 59 campaign (2008), and financed the Building Excellent Schools Today program while serving as Colorado State Treasurer (2006-2010).

Ms. Kennedy provides the following statement of her qualifications and opinions:

Colorado has failed for nearly three decades to provide sufficient resources for its statewide system of public schools. Ironically, Colorado is one of the wealthiest states in the country, yet ranks among the lowest in funding for public education. Throughout good economic times and bad economic times, Colorado fails to meet its basic constitutional requirement to finance a thorough and uniform system of free public education.

Colorado's modern school finance story begins in the early 1980s. At the time, Colorado's schools were well funded compared to other states. A tax revolt at the ballot in 1982 led to the adoption of the Gallagher Amendment, which immediately reduced residential property tax rates and imbedded a formula in the state constitution that would further reduce residential property tax rates as residential property values grew faster than non-residential property values. At the time, property taxes comprised over sixty percent of funding for public schools.

Ten years later voters adopted the TABOR Amendment (1992), which further reduced local property tax rates for schools whenever property tax revenue growth in a district exceeded TABOR's revenue limits. Since that time – and over the next fifteen years – both components of the property tax formula for schools ratcheted downward. The Gallagher Amendment required ongoing reductions in the residential assessment rate (the portion of the value of residential property subject to taxation), and the TABOR Amendment (additionally) required ongoing reductions in the school finance mill levy rate in most districts across the state.

The combined reductions in the residential assessment rate (a decline of over 60%) and local school finance mill levy rates (a statewide decline of approximately 50%) took away over \$2 billion annually (estimate) in property tax revenues for Colorado's public schools. This

decline occurred slowly, over time, and the Colorado General Assembly believed it had no authority to stop it. From 1989 to 2000, per-pupil funding in Colorado eroded nearly 10% in real (inflation adjusted) dollars.

Over the years I have been involved in several efforts to stabilize and restore funding for Colorado's public education system in the wake of these two Amendments.

First, in 2000, I helped lead a statewide citizens initiative, Amendment 23, that guaranteed per-pupil funding would keep pace with inflation (Denver-Boulder CPI), and restored the losses of the previous decade. Amendment 23 established a formula to restore funding by adding 1% over the rate of inflation each year for ten years (2002 – 2011) to per-pupil funding and required per-pupil funding to keep pace with inflation thereafter.

Amendment 23 was never designed, nor was it sold to voters as providing adequate funding to support a thorough and uniform system of public schools. Amendment 23 was specifically designed to restore the 10% loss in real per-pupil funding from the previous decade, and to prevent future cuts that would continue to occur under the Gallagher and TABOR Amendments.

Amendment 23 was structured to be paid for with state TABOR "surplus" revenue – state tax revenue that exceeded TABOR's revenue limit (inflation+population). Amendment 23 included voter approval to retain a portion of the TABOR surplus (.33% of federal taxable income) and directed it to education.

Even with Amendment 23 in place, local funding for K-12 education continued to erode (in real per-pupil dollars and as a percent of the total) as the residential assessment rate continued to decline under the Gallagher Amendment and local school finance mill levies continued to decline under the TABOR Amendment. While the state was now required by Amendment 23 to grow per-pupil funding, something needed to be done to stabilize the local share of school funding.

In 2003 I proposed modifying the School Finance Act to allow local school districts that had "De-Bruced" to hold their School Finance mill levies constant. This required a change to the School Finance Act, which was adopted by the General Assembly in 2007 and upheld by the Colorado Supreme Court in 2009 (Mesa School District).

The result of all of these efforts has been to improve the stability of the revenue base for education. Nothing, however, has been done to address the nearly two-decade erosion of funding for schools, the loss of the local tax structure that historically supported K-12 education, the inequities in the tax structure that have resulted from TABOR, or the inequitable distribution of education resources.

Further, the modest gains accomplished under Amendment 23 have been largely lost through recent budget cuts. For these reasons, and the obvious impacts it has had in classrooms across the state, Colorado fails to meet the basic educational needs of its students.

While serving as Colorado State Treasurer, I also helped develop the Building Excellent Schools Today program and provide the financing for nearly 100 school construction projects statewide totaling \$500 million. While BEST is an important step that is helping some districts fund critical upgrades and repairs to their infrastructure, it is not – nor can it be - a sufficient replacement for an adequate tax structure to support Colorado’s school capital needs.

Dated: March 31, 2011

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The original, executed document is on file at the offices of Davis Graham & Stubbs LLP.

CERTIFICATE OF SERVICE

The undersigned certifies that on the 31st day of March, 2011, a true and correct copy of the foregoing **PLAINTIFFS' FIRST SUPPLEMENTAL EXPERT DISCLOSURE** was served, via LexisNexis® File & Serve, addressed to the following:

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