

SUPREME COURT, STATE OF COLORADO
2 East 14th Avenue, Denver, CO 80203

Court of Appeals Case No.: 06CA733

District Court, City and County of Denver, CO
Trial Court Judge: Hon. Michael A. Martinez
Trial Court Case No.: 05 CV 4794

PETITIONERS: ANTHONY LOBATO, as an individual and as parent and natural guardian of TAYLOR LOBATO and ALEXA LOBATO; *et al.*,

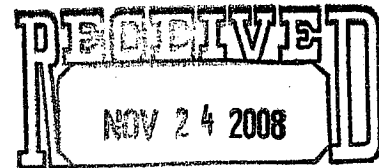
RESPONDENTS: THE STATE OF COLORADO; *et al.*

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**BRIEF OF COLORADO EDUCATION ASSOCIATION AS
AMICUS CURIAE IN SUPPORT OF PETITIONERS**

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Other Authorities

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The Colorado Education Association (“CEA”), through its undersigned counsel, respectfully submits this brief as *amicus curiae* in support of the position of Plaintiffs-Appellants, urging reversal of the decision of the Colorado Court of Appeals in *Lobato, v. State of Colorado*, ___ P.3d ___, 2008 WL 194019, Colorado Court of Appeals, Case No. 06CA733, January 24, 2008.

**STATEMENT OF INTEREST OF *AMICUS CURIAE*
COLORADO EDUCATION ASSOCIATION**

The Colorado Education Association (“CEA”) is a voluntary membership organization of more than 38,000 Kindergarten through Grade 12 teachers and education support professionals, higher education faculty and support professionals, retired educators, and students preparing to become teachers. More than 30,000 CEA members are actively employed by Colorado’s 178 public school districts. The CEA operates through a network of affiliated local education associations located in school districts throughout the State of Colorado.

The CEA’s K-12 membership includes classroom teachers, teachers on special assignment, paraprofessionals, bus drivers, counselors, food service workers, school nurses, school psychologists, social workers, maintenance workers

and custodians and employees in similar positions. The CEA's elected leaders and staff work closely with public education advocates throughout the State to promote methods for increasing the funding of public education and to defeat schemes that would diminish the flow of State funds to public school districts.

As a representative of school district employees across the State of Colorado, the CEA has a strong interest in insuring that the State fulfills its constitutional duty to fund public schools, so that CEA members across the state have the time, resources, skills and funds needed to help all children succeed regardless of their learning needs and their location within the state. This interest has been heightened in recent years as more and more mandates have been placed on school districts, their employees and their students by the Colorado General Assembly and by Congress. During this same time, the State has failed to provide the requisite funding needed to implement the new mandates and has, thereby, failed in its obligation to insure a thorough and uniform system of public education for Colorado's students, as required by Article IX, Section 2 of the State constitution. The CEA therefore urges this Court to reverse the decision of the Colorado Court of Appeals decision in *Lobato, et al. v. State of Colorado, et al.*, ___ P.3d ___, 2008 WL 194019 (Colo. App. 2008).

SUMMARY OF ARGUMENT

The funding of Colorado's public schools is of paramount importance to the future of the State, as evidenced by the commitment of the framers of the Colorado Constitution to provide for "the maintenance of a thorough and uniform system of free public schools throughout the state." Colorado Const. Art. IX, Sec. 2. Given the recent unfunded mandates imposed by Congress and the Colorado General Assembly, as well as the insufficiency of educational funding in Colorado during the last seventeen or more years, it is clear that the current funding of public education in Colorado is far from adequate. The CEA agrees with the Petitioners that claims brought pursuant to the Education Clause are justiciable, and hereby incorporates the arguments of the Petitioners in the Opening Brief as support for the arguments raised in this brief. Finally, there are sound research methodologies which are readily available to the judiciary to determine whether or not the Colorado legislature has provided sufficient funding of the public schools to meet the constitutional guarantee of a thorough and uniform education.

ARGUMENT

- I. THE STATE LEGISLATURE IS NOT FUNDING THE PUBLIC SCHOOLS AT A LEVEL SUFFICIENT TO ALLOW SCHOOL DISTRICTS, SCHOOLS, AND STUDENTS TO MEET THE STRINGENT EDUCATIONAL STANDARDS IMPOSED BY THE GENERAL ASSEMBLY AND CONGRESS.

The educational reform movement that began in Colorado in the 1990s with state legislation, and culminating with the federal No Child Left Behind Act in 2001 (“NCLB”), 20 U.S.C. §6301, *et seq.*, resulted in a dramatic increase in the expectations placed on public schools and school district employees to improve the educational lives of all school children in the state, regardless of their location within the state. State-wide testing of students became the norm, as mandated by the Colorado Educational Accountability Act of 1971, C.R.S. § 22-7-101, *et seq.* (as amended, 1997). For the first time in the state’s history, low performing schools were required to develop improvement plans and could be converted to charter schools if they continued to be rated as “unsatisfactory” pursuant to legislated standards based on state-wide testing. C.R.S. §22-7-609. By 1998, school districts were being required to prepare and enter into comprehensive accreditation contracts with the Colorado Department of Education (CDE), as a condition precedent to obtaining state accreditation. Districts could be placed on

probation or lose their accreditation for failure to comply with CDE rules. C.R.S. § 22-11-101, *et seq.* In 2001, Congress passed the No Child Left Behind Act, which imposed a complex set of rules for school districts, including a requirement that teachers of core subject areas and many paraprofessionals demonstrate that they were “highly qualified” under NCLB and to do so by the end of the 2005-06 school year. 20 U.S.C. § 6301, *et seq.*

While school districts, individual schools and their employees were scrambling to meet these and other complicated requirements, changes in the student population created a new layer of difficulty. Between 1992 and 2007, the numbers of Colorado students with special educational needs rose significantly. According to recent data compiled by the Colorado School Finance Project,¹ the number of special education students increased during this period by 8.8 %, from 76,374 to 83,121. Additionally, the number of students eligible for free lunch rose by 77% from 123,514 to 218,571, and the number of English-language learners

¹ The Colorado School Finance Project is a non-profit organization that compiles research-based information data on topics related to school finance. It is funded by Colorado school district, CASB, CASE and CEA. See <http://www/cosfp.org>.

increased more than 508%, from 11,764 such students in 1992-93 to 71,582.² Further, the rates at which these statistics are increasing is accelerating quickly. These students are not uniformly distributed throughout Colorado's 178 school districts. But Colorado's school finance laws do not adjust the school finance formula to address the needs of special education students and English language learners. For teachers, counselors, social workers, school psychologists, paraprofessionals and others charged with addressing the needs of these special populations, the development of new skills through training and additional education has become an absolute necessity.

While all of these legislative and demographic developments have changed the face of public education in Colorado, it is undisputed the funding of public schools has fallen even further behind. Although spending in Colorado has increased from \$4,939 per student in the 1992-93 school year to \$8,521 per student during the 2006-07 school year, the increase in spending during this time period year period amounted to only 14%, or \$1,073 per student when adjusted for

² Colorado School Finance Project, *Enrollment in K-12 Public Education* (Fall, 2008), available at <http://www.cosfp.org/StateProfileData/2008/ProfileTable1Enrollment.2008.pdf>. This study was completed by the Colorado School Finance Project and Augenblick, Palaich and Associates using data provided by the Colorado Department of Education after the CDE's 2008 release.

inflation. Furthermore, the state's per pupil spending was, in the 2006-07 school year, \$1,036 below the national average and the gap is increasing every year.³ As a result, Colorado ranked 47th among the states in the amount spent on K-12 education for the 2006-2007 school year,⁴ Moreover, these statistics show that the passage of Amendment 23 in 2000 has not made any significant change in Colorado's spending for public education – nor was it intended to do anything more than to create a floor below which funding could not fall. *See Colo. Const. Art. IX, Sec. 17.* In addition, the passage of SB-199 in 2007, which was an attempt by the Colorado legislature to address school funding inequities through mill levy stabilization, and allow most school districts to “recapture” revenue without further approval of the voters, was declared unconstitutional by the District Court for the City and County of Denver and a decision on appeal is currently pending from this Court. *Mesa County Board of County Comm'rs v. Colorado Department of Education*, Colorado Supreme Court, Case No. 08SA216.

³ Colorado School Finance Project, *Per Student Current Spending and Revenues for K-12 Public Education* (Fall, 2008), available at <http://cosfp.org/StateProfileData/2008/ProfileTable4CurrentSpending.2008.pdf>.

⁴ Colorado School Finance Project, *How Colorado Ranks in K-12 Spending?* (Fall, 2008), available at <http://cosfp.org> (citing data published Education Week, *Quality Counts* (January 6, 2005)).

During this period of time, Colorado teacher salaries lagged far behind the national average. In the 1992-93 school year, the average Colorado teacher salary was \$33,578, which at that time was approximately \$1,500 below the national average. In the 2006-07 school year, the average Colorado teacher was paid \$45,831 – \$4,985 below the national average. When adjusted for inflation, the average teacher salary actually *decreased* 12.2% between 1992 and 2007. This means that Colorado teachers earn substantially less than the national average salary for teachers *every year*, and the gap is widening.⁵ This significant decline in real dollars earned has occurred while the demands on school employee time and skills have increased dramatically as legislative mandates have been imposed.

The success of Colorado's schools has also been negatively impacted because so many of its trained professionals are leaving the profession. In 1993, the average years of experience held by Colorado teachers was 13. By 2007, the average years of experience held by Colorado teachers had significantly declined to 8.97 years.⁶ It is well recognized that teachers are crucial to the success of

⁵ Colorado School Finance Project, *Average Salary in K-12 Public Education* (Fall, 2008), available at <http://www.cosfp.org/StateProfileData/2008/ProfileTable3AvgSalary.2008.pdf>.

⁶ Colorado School Finance Project, *Colorado K-12 Education: An overview* (Fall, 2008), available at

students, yet many of them are leaving their schools and the profession every year. This is particularly true of teachers in poorer, lower performing schools. More than 157,000 teachers leave the profession every year, often due to poor working conditions stemming from, among other things, a lack of system-wide improvement efforts.⁷

Another factor affecting classroom teachers and paraprofessionals is class size. Numerous studies have shown that insuring smaller class size can result in a significant improvement in student achievement, in decreasing drop-out rates, and in improving the success rates of minority students.⁸ This does not bode well for public school teachers and students in Colorado, as thirty-eight states have student to teacher ratios less than or equal to Colorado.⁹ The research clearly indicates that

<http://www.cosfp.org/StateProfileData/2008/ProfileCOK12EdFundingOverview2008.pdf>.

⁷ Alliance for Excellent Education, *What Keeps Good Teachers in the Classroom? Understanding and Reducing Teacher Turnover* (Issue Brief, February, 2008), pp. 1-5.

⁸ Smith, Phil, Molnar, Alex & Zahorik, John, *Class Size Reduction: A Fresh Look at the Data*, EDUCATIONAL LEADERSHIP 72 (September, 2003), available at <http://www.asu.edu/eps1?EPRU/doiuments/EPRU-0309-29-RW.pdf>.

⁹ Colorado School Finance Project, *Ed Week: Quality Counts 2008 – Colorado's Perspective (Data 2005-2006)*(Fall, 2008), available at <http://www.cosfp.org/HomesFiles/Onepagers/QualityCounts2008.pdf>.

Colorado teachers and paraprofessionals not only teach more students on fewer resources and for less money, but also are now teaching a more difficult student population than in decades past.

When all of the information regarding Colorado's public schools is considered, the conclusion is obvious: The State is not funding schools at a level sufficient to allow districts, schools and students to meet the stringent standards imposed by the General Assembly and Congress and to attract teachers and other employees to the schools and to keep them there. Indeed, state legislatures across the nation have been slow to apply research findings and to revise school funding formulas and accountability systems in order to adequately provide for the basic needs of widely varying schools and school districts.¹⁰ It is, therefore, patently clear that the constitutional promise to maintain a "thorough and uniform system of free public schools throughout the state" is not being met.

¹⁰ Rolle, Anthony, *Strengthening the Link Between Effective School Expenditures and State Funding Mechanisms*, Education and the Public Interest Center & Education Policy Research Unit, available at <http://epicpolicy.org/publication/strengthening-the-link>. This study recommends that policymakers use reliable research findings that link student achievement and school finance policies by, *inter alia*, identifying statistical relationships between financial and human resources (such as the type, quality, and cost of teachers) and student learning outcomes.

II. THERE ARE SOUND AND READILY AVAILABLE RESEARCH METHODOLOGIES TO ESTABLISH WHAT CONSTITUTES A THOROUGH AND UNIFORM PUBLIC EDUCATION FOR THE PURPOSE OF DETERMINING WHETHER THE INSUFFICIENCY OF PUBLIC SCHOOL FUNDING IN COLORADO VIOLATES THE EDUCATION CLAUSE.

The CEA hereby incorporates the arguments raised by the Petitioners in the Opening Brief regarding the justiciability of the Education Clause claims raised in this case. The Education Clause presents a judicially enforceable right to a public education. *See People ex rel. Vollmar v. Stanley*, 81 Colo. 276, 255 P.2d 610, 614 (1927); *Fangman v. Moyers*, 90 Colo. 308, 8 P.2d 762, 764 (1932)(Education Clause should be construed liberally and broadly interpreted to further the purposes of educating children). Furthermore, this Court has exercised jurisdiction over Education Clauses claims. *See Lujan v. Colorado State Board of Education*, 649 P.2d 1005, 1025 (Colo. 1982)(Education Clause held to be constitutional because thorough and uniform educational opportunities are available through state action in each school district, and sole function is to determine whether the state's school financing system was constitutional).

The Colorado Court of Appeals found that the applicable standards of the Education Clause do not provide "any manageable standard" for assessing adequate funding. *Lobato*, slip op. at 9. The CEA hereby incorporates the

arguments asserted by the Petitioners in regard to the legal definitions established by appellate courts in other jurisdictions in regard to whether questions of adequacy are capable of assessment, *see e.g. Pauley v. Kelley*, 162 W.Va. 672, 255 S.E.2d 859 (1979)(and other cases cited by the Petitioners in the Opening Brief). Not only are such standards capable of assessment as a matter of law, there are sound research methodologies which are readily available to the judiciary to assess whether the funding levels established by the states are inadequate.

There are four available general models of research methodology to identify whether a state's funding of public education is adequate. These include the "professional judgment" model, the evidence-based "best practices" model, the "successful schools" model, and the advanced statistical model. All of these models have been judicially utilized to determine adequate funding of public schools.¹¹ The professional judgment approach was one of the first approaches used to link funding and educational adequacy, and used the recommendations of a

¹¹ Smith, Steve, *Education Adequacy Litigation: History, Trends, and Research*, 27 U. ARK. LITTLE ROCK L. REV. 107 (2004). This article cites judicial use of the first three models, and, since the date the study was completed, the statistical model has also been judicially utilized. *See* Imazeki, Jennifer & Reschovsky, Andrew, *Assessing the Use of Econometric Analysis in Estimating the Costs of Meeting State Education Accountability Standards: Lessons from Texas*, 80 PEABODY JOURNAL OF EDUCATION 96 (2005).

panel of education professionals to define the components of an adequate education. See *Campbell County School District v. State*, 907 P.2d 1238 (Wyo. 1995). The best practices approach uses scientifically-based inputs and identifies programs, practices, or reforms which have proven to be effective. *Lake View School District v. Huckabee*, 91 S.W.3d 472 (Ark. 2002).¹² The successful school approach looks at school districts which are meeting specific state standards, and then identifies funding levels for those schools to establish an adequate funding level. *De Rolph v. State*, 677 N.E.2d 733 (Ohio 1997).¹³ Finally, the statistical approach has shown great promise. The statistical approach has been used in a

¹² See also Conley, David & Picus, Lawrence, *Oregon's Quality Education Model: Linking Adequacy and Outcomes*, 17 EDUCATIONAL POLICY 586, 587 (November, 2003)(outcome based adequacy models based on "prototype" schools can be particularly useful to the courts).

¹³ This approach was based on research from the same researchers which compiled the statistics underlying the Colorado School Finance Project analysis of educational funding. Augenblick, John, et al., *Equity and Adequacy in School Funding*, in 7 THE FUTURE OF CHILDREN 63 (1997). This approach, however, has been criticized by other educational researchers as having more statistical variables than other approaches. See Guthrie, James & Rothstein, Richard, *Enabling "Adequacy" to Achieve Reality: Translating Adequacy into State School Finance Distribution Arrangements*, in EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PRESPECTIVES 228 (Ladd, Helen, et al., eds., 1999).

number of state challenges to funding adequacy, and such studies have been completed in a number of states.¹⁴

The statistical approach was used successfully at the trial court level in the Texas adequacy challenge. *See Neeley v. West Orange-Cove Consolidated Independent School District*, 176 S.W.3d 746 (Texas 2005). The Texas challenge was marked by many of the funding adequacy issues identified by the Colorado School Finance Project data, including the state's falling share of educational funding, the failure to equalize state revenues for school districts, the costs of meeting or achieving state accountability standards, and the increased financial pressure to serve higher concentrations of students who are relatively expensive to educate.¹⁵ The researchers noted, in the Texas case, that the research methodologies which utilized complex statistical analysis, including cost functions, are particularly useful to courts, but may be too complex for policymakers. They

¹⁴ Smith, *Education Adequacy Litigation*, *supra* at 118-199, citing Augenblick, John, *Recommendations for a Base Figure and Pupil Weighted Adjustments to the Base Figure for Use in a New School Finance System in Ohio*, (Ohio Dept. of Educ. Eds., 1997).

¹⁵ Imazeki & Reschovsky, *supra* at 101-103.

pointed out that the method was capable of providing policymakers and the courts with a “rigorous accounting of the costs of adequacy.”¹⁶

In general, there is a wealth of educational research which can be drawn upon by the parties, and ultimately by the trial court, in determining whether Colorado’s public schools are adequately funded. Much of this research deals with scientifically-based statistical models and approaches which identify, with specificity, the costs of providing a full opportunity to students to meet accountability standards in a changing educational climate.¹⁷ This research should not be overlooked, particularly when the Colorado legislature has not funded the public schools in a manner adequate to meet the challenges of education in the twenty-first century. The future of Colorado’s professional educators and students is at stake.

¹⁶ Id. at 123-124. See also Imazeki, Jennifer & Reschovsky, Andrew, *Let No Child Be Left Behind: Determining the Cost of Improving Student Performance*, 31 PUBLIC FINANCE REVIEW 263 (May, 2003)(cost functions results can be summarized into a cost index that can then be used in a simple formula to guarantee that every district has sufficient fiscal resources to achieve state imposed performance goals).

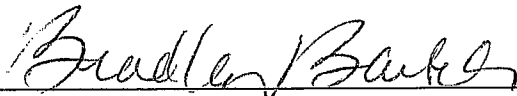
¹⁷ See, e.g. Chambers, Jay, et al., *The New York Adequacy Study: “Determining the Cost of Providing All Children in New York An Adequate Education”*, AMERICAN INSTITUTES FOR RESEARCH (2004); National Academy of Sciences, EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES (Ladd, H., et al., eds., 1999).

CONCLUSION

The funding of public education in Colorado is inadequate to meet the recent mandates established by Congress and the Colorado Legislature, as well as to meet the challenges raised for educators of providing an adequate education to public school students. The Education Clause claims raised by the Petitioners in the District Court are justiciable, and there are sound research methodologies which are readily available to the courts to determine whether, as a matter of law, the threshold level of adequacy has been met. The Colorado Education Association therefore respectfully urges this Court to reverse the Court of Appeals decision in this matter and to remand the case back to the District Court for a trial on the merits.

DATED this 24th day of November, 2008.

Respectfully submitted:



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing BRIEF OF *AMICUS CURIAE* COLORADO EDUCATION ASSOCIATION IN SUPPORT OF PETITIONERS was served, by depositing same in the United States mail, first-class postage prepaid, on the 24th day of November, 2008, upon the following:

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