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1 DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO
 2 Case No. 2005CV4794, Division 9

3 REPORTER'S TRANSCRIPT: Trial - Day 2
 4 August 2, 2011

5 ANTHONY LOBATO, et al.,
 6 Plaintiffs,
 7 and
 8 ARMANDINA ORTEGA, et al.,
 9 Plaintiff-Intervenors,
 10 v.
 11 THE STATE OF COLORADO, et al.,
 12 Defendants.

13 The trial in the above-entitled matter,
 14 having commenced on Monday, August 1, 2011, was
 15 reconvened on Tuesday, August 2, 2011, at 1437 Bannock
 16 Street, Courtroom 424, Denver, Colorado 80202, before
 17 the Honorable Sheila A. Rappaport, Judge of the
 18 District Court.

19 This transcript is a complete transcription
 20 of the proceedings that were had in the above-entitled
 21 matter on the aforesaid date.

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1 MORNING SESSION, TUESDAY, AUGUST 2, 2011
 2 WHEREUPON, the court reconvened at
 3 8:31 a.m., and the following proceedings were had:
 4 * * * * *
 5 THE COURT: Calling up Case 05CV4794. The
 6 parties are present, and I think we're ready to resume
 7 testimony.
 8 MR. HALPERN: Thank you, Your Honor.
 9 Dr. Hefty.
 10 THE COURT: I'm going to go ahead and
 11 swear you in, again, sir. It's a new day.
 12 JOHN CHARLES HEFTY,
 13 having been first duly sworn to state the whole truth,
 14 testified as follows:
 15 THE COURT: Thank you, sir. Please be
 16 seated. And then again, once you're seated, for the
 17 record just state your name. Thank you.
 18 THE WITNESS: John Charles Hefty,
 19 H-e-f-t-y.
 20 THE COURT: Thank you, sir.
 21 DIRECT EXAMINATION (continued)
 22 BY MR. HALPERN:
 23 **Q. Dr. Hefty, one little series of follow-up**
 24 **questions. Once we know what a school district's total**
 25 **program is through the application of the statutory**

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1 **formula and so forth --**
 2 A. Yes.
 3 **Q. -- where does the money come from to fund**
 4 **that total program?**
 5 A. Well, it comes from the local district and
 6 from the State. And -- and simply the process is that
 7 the local district will apply the required mill levy
 8 that -- that is essentially set by the State. And --
 9 and apply the appropriate share of specific ownership
 10 tax. That amount is subtracted from the total program
 11 fund, and the State provides the rest.
 12 **Q. Thank you. Dr. Hefty, I want to ask you**
 13 **a -- if you could please describe what is**
 14 **standards-based education. What are the essential**
 15 **elements of standards-based education?**
 16 A. Well, on -- on the screen, you see a
 17 figure that talks about the components of
 18 standards-based education. And it starts with the
 19 standards. And standards --
 20 **Q. Well, before you begin, where did this**
 21 **document come from?**
 22 A. Yes. Starting in about 2005, I'm
 23 thinking, many discussions were occurring among CASE
 24 members, that would include with principal groups, with
 25 superintendent groups and others, about standards-based

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1 education. What is it and how do we go about
 2 implementing it. And to help those discussions, we
 3 began developing, with the help of CASE members, a
 4 framework. And you see what actually -- if the -- if
 5 the whole thing had been reproduced for the screen,
 6 down in the lower right-hand corner would have been the
 7 Colorado Association of School Executives logo, and it
 8 would have said Version 13.
 9 And that meant that during these
 10 discussions, as people talked about the components of
 11 standards-based education and -- and in a way made more
 12 and more sense out of it, it kept changing and pieces
 13 kept getting added to it.
 14 **Q. Under the column "Components of Standards-**
 15 **Based Education," what are the primary components of**
 16 **standards-based education?**
 17 A. And -- and you see them listed there. As
 18 I look at this, I have to add one more important point
 19 about the development. Up at the top, it says
 20 "standards-based education." The actual figure from
 21 which this was derived says "standards-based education
 22 system." And "system" may be the most important word
 23 in that title, because the goal is, in fact, to develop
 24 a system, a state system of standards-based education,
 25 as well as the local system.

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1 The components are -- are listed in the
 2 left-hand column, and the first one is standards. And
 3 standards we usually think of as -- as being two types
 4 of standards. Content standards is what we think about
 5 most often. Content standards describe what we want
 6 students to know and be able to do.
 7 But we often have performance standards
 8 along with the content standards. And the performance
 9 standards -- and sometimes different terms are used.
 10 But performance standards indicate the level of
 11 performance that is necessary to achieve proficiency or
 12 achieve any of the other levels in the accountability
 13 system and the assessment system.
 14 **Q. Are content standards part of the Colorado**
 15 **standards-based education system?**
 16 A. Yes, they -- they definitely are. In
 17 fact, I believe one could say that's where it started,
 18 back in the early '90s. It started with the standards.
 19 And the earliest focus was basically on the standards
 20 with -- with not a -- the focus wasn't as well
 21 developed across the other components.
 22 **Q. And what was the -- where did the impetus**
 23 **for the development of content standards in public**
 24 **education come from?**
 25 A. Well, there -- there -- there was some

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1 talk, certainly, among educators about standards in
 2 education before the early '90s. But in the early
 3 '90s, that ramped up a great deal. Governor Roy Romer
 4 really was in many ways a precipitating entity
 5 concerning the development of standards-based
 6 education. He actually went around the state, had a
 7 series of town hall meetings, and talked about
 8 standards-based, talked about standards in those
 9 meetings, and encouraged the development of standards.
 10 Also in the early '90s, and I think we
 11 have a timeline we'll look at, but there was a
 12 re-authorization of ESEA
 13 **Q. What's ESEA?**
 14 A. The -- the no -- the No Child Left Behind
 15 before it was called No Child Left Behind. The federal
 16 Title I and other title law. Elementary and Secondary
 17 Education Act is what ESEA stands for.
 18 **Q. What areas and grades and so forth do**
 19 **state standards apply to?**
 20 A. Well, the standards are actually now
 21 applying to 12 or 13 areas. Most often when we talk
 22 about standards, we talk about reading, writing, math,
 23 and then probably science. But we have, I believe, as
 24 many as 12, certainly including social science, also
 25 including health and physical education, including

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1 drama and art and -- and a number of other areas that
 2 ultimately totaled -- it's either 12 or 13 in which the
 3 state develops standards at this point.
 4 **Q. Are they broken down by grade level?**
 5 A. They are.
 6 **Q. Which -- how many grades have standards at**
 7 **this point?**
 8 A. Well, I think we're at the point where
 9 they all, first through 12th, have standards. I would
 10 have to review that to be precise.
 11 **Q. What's the next component?**
 12 A. Curriculum. And to actually have the
 13 standards learned, we need to have a curriculum
 14 developed. And we can think about curriculum in
 15 multiple ways. One common way of thinking about it is
 16 that it is the content that we're going to ask students
 17 to learn.
 18 We often think about having a written
 19 curriculum, which might be thought of as curriculum
 20 guides. We think about having a materials curriculum,
 21 what are the materials we're going to use to help
 22 students learn the curriculum. And we think about a
 23 taught curriculum. And we often -- we obviously want
 24 alignment among the written -- the materials and the
 25 taught curriculum. That sometimes is -- is a chore to

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1 achieve -- achieve that -- that alignment.
 2 It is important and part of the important
 3 discussion that this figure guided. If we think about
 4 standards, that begins as a state-level activity. And
 5 then school districts are required to develop their own
 6 standards that meet or exceed the state standards. But
 7 it's clearly initiated at the State.
 8 And obviously districts play a role in
 9 that, and schools and classrooms are where those
 10 standards get implemented. If we think about
 11 curriculum, that is activity that is required in
 12 Colorado to occur at the local district, in terms of
 13 where the action occurs and the responsibility is
 14 assigned.
 15 **Q. What's the relationship between standards**
 16 **and curriculum?**
 17 A. Well, the goal is to have complete
 18 alignment. We have problems, we have issues. And
 19 learning suffers if we don't have learning, and
 20 performance on assessment suffers if we don't have the
 21 curriculum aligned with the standards.
 22 When I used the word "system" and said it
 23 was missing from -- from this display, a system, when
 24 we think of a system, we think of aligning the
 25 components of the system. We think of the

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1 interdependence of the components of the system. Part
 2 of the discussion among CASE members that was driven by
 3 this diagram was how we go about achieving the
 4 assignment, achieving the coherence, achieving the
 5 interdependence to create a system, actually a seamless
 6 system that goes beyond P-12 and would ultimately be
 7 seamless with P-20, as CAP4K dictated to us.
 8 **Q. And what is the next component?**
 9 A. Teaching and learning. And it -- I think
 10 it -- on the original chart, I think it showed that the
 11 teaching and learning component is bolded or in all
 12 caps. Well, how did that come about? Well, those
 13 discussions with CASE members ended up saying yes, we
 14 were creating a system. Yes, we want the alignment.
 15 Yes, it is interdependent. But we really believe the
 16 teaching and learning is the most important part of it.
 17 And then the discussion would go in
 18 directions that would say well, can we actually achieve
 19 the assessment results, achieve the standards with just
 20 great teaching and learning. And the answer is no. We
 21 actually can't -- can't do that.
 22 There is something called the teaching and
 23 learning cycle developed at the state level shared with
 24 most districts that really captures teaching and
 25 learning under a standards-based education system.

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1 And think of it this way. Think of four
 2 components. Think of them in a circle that keeps going
 3 around on itself.
 4 **Q. Is that --**
 5 A. That's not it.
 6 **Q. Okay.**
 7 A. Think of step one in this -- the teaching
 8 standards-based teaching and learning as being clear
 9 descriptions of what we want students to know and be
 10 able to do. Think of step two as developing the
 11 teaching, the lesson that will cause students to master
 12 what we want them to know and be able to do. Think of
 13 step three as addressing how will we know if students
 14 have, in fact, mastered what we want them to know and
 15 be able to do. Think of step four as the question,
 16 what are we going to do with students who do not show
 17 that they have mastered what we want them to know and
 18 be able to do.
 19 If that's a circle that keeps going back
 20 on itself, that would imply that for some students, we
 21 are re-teaching and -- and the re-teaching almost for
 22 sure would involve not teaching it exactly the same
 23 way. But because they didn't learn what intervention,
 24 what change in the opportunity to learn needs to be
 25 made to help eventually all students learn the

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1 standard, what -- what do we want them to know and be
 2 able to do.
 3 That kind of captures, when we use that
 4 phrase "teaching and learning," that's what we're
 5 thinking about. Obviously, that's occurring in the
 6 classroom. The horizontal axis, organizational levels
 7 of responsibility and assistance implies that schools
 8 clearly have a role in providing support, in creating
 9 situations where teachers can learn from one another,
 10 learn together about lessons that worked inside that
 11 teaching and learning circle.
 12 Districts, the same thing, have a clear
 13 role in support. And the state is -- is finding more
 14 ways to provide support in this situation. That --
 15 that actually leads us to the chart you were trying to
 16 put up there. That one. And --
 17 **Q. What's the -- what is this chart?**
 18 A. This shows major variables that impact
 19 student performance. Here's the reason for the
 20 existence of -- of this chart. Sometimes people who
 21 are trying to reform education have an answer that
 22 focuses only on teachers and teaching. Sometimes
 23 people have an answer that focuses only on the
 24 curriculum. Sometimes, but not as often, they have an
 25 answer that focuses only on students or only on the

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1 setting.
 2 The chart shows that if student
 3 performance is going to improve, attention in
 4 standards-based education needs to be paid to all four
 5 of those variables. Think -- think about it in this
 6 way. If we focus on the students -- and think about it
 7 in a classroom. If we really think about the students,
 8 we're going to think about the needs that they bring
 9 with them into the classroom.
 10 Some of those needs might be called
 11 situational needs. That come from the situation
 12 they're in outside of school. Some of those needs
 13 might be called developmental needs. That just have to
 14 do with where they are in their child, adolescent,
 15 human development. Not all are one in the same place.
 16 Some might be called 21st century needs. You could
 17 think of those as including the need to master all of
 18 our standards, including the 21st century aspect of
 19 standards.
 20 This, by the way, helps us understand from
 21 a common-sense point of view the impact of class size.
 22 If you think about the students that come through the
 23 door of the classroom and they really are much the same
 24 in terms of their needs, and they really are much the
 25 same in terms of their prior knowledge, and they're

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1 much the same in terms of attitudes and beliefs, and
 2 even the homes they come from are much the same. Very
 3 difficult to find a classroom like that today.
 4 More likely, the students coming through
 5 the door have very, very different sets of needs.
 6 Their situational needs just -- just visualize what any
 7 classroom you know about or could visualize in any
 8 school district in Colorado might look like, and you
 9 see students that come through the door that come out
 10 of very different situations outside of school. Very
 11 different homes. In fact, across those needs, you
 12 could lay a set of needs that would include cognitive
 13 needs. That's what they need to learn.
 14 That would include linguistic or language
 15 needs. Language development is an important part all
 16 the way through the school. Are those cognitive and
 17 language needs the same for all students coming through
 18 the door? No. Social needs, again, great variety.
 19 Emotional needs, again, great variety. Those kind of
 20 lay across the top of the situational 21st century and
 21 the developmental needs.
 22 The point I'm trying to make is that
 23 coming through the door will be students who are vastly
 24 different. Common sense says if I have to get every
 25 one of those students to proficiency, if I have a

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1 smaller number of them, I have a much better
 2 opportunity of getting them to proficiency when I
 3 actually have to individualize and personalize their
 4 education based on the needs that they have coming
 5 through the door.
 6 If I have 15 of them in the third grade
 7 who are very diverse in terms of what they bring with
 8 them through the door, common sense says it's much
 9 easier to get them -- maybe I shouldn't say much
 10 easier. It's easier to get them to proficiency than if
 11 I have 30 of them with very diverse needs.
 12 **Q. And it is correct that the diversity of**
 13 **student needs -- or the fact that students have diverse**
 14 **needs doesn't affect the goal or requirement to bring**
 15 **them all to the same level of proficiency?**
 16 A. That is correct. The -- the goal, the
 17 requirement, is all students proficient. The goal, the
 18 expectation, the requirement, is all students
 19 proficient.
 20 **Q. Which are the next of these four**
 21 **components?**
 22 A. Well, I think I would focus on -- on the
 23 teachers and teaching. And if -- if we look at the job
 24 of teachers and teaching and look at it during
 25 the -- the recent history of standards-based education

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1 starting in the '90s, we see an enormous change in what
 2 we expect from the system and what we expect from
 3 teachers.
 4 And here's what it looks like. We have
 5 had a system where time has been constant and results
 6 have been variable.
 7 **Q. When we --**
 8 A. Time --
 9 **Q. When was this system in place that you're**
 10 **talking about?**
 11 A. For as long as I can remember. And it
 12 still is what is in place most often. We're -- we're
 13 moving in standards-based education, or need to move to
 14 a system where results are constant. That is,
 15 proficiency for all. And time is a variable.
 16 I mean, there's a common-sense notion. If
 17 we think about how students learn, whether we think
 18 about our classmates as we were in school or think
 19 about our own kids or think about any group that we
 20 know, they don't all learn at the same rate. They
 21 don't all have the same prior knowledge that we bring
 22 to the classroom setting.
 23 So it follows that some are going to need
 24 more time than others. That's -- that's a part of the
 25 change. The other part for the teacher, historically,

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1 thinking back throughout the 20th century, teaching was
 2 largely thought of as an endeavor where my job as a
 3 teacher is to teach the content and to present the best
 4 lesson I can present. And students either learn it or
 5 they don't learn it. And, in fact, grading systems
 6 reflect that. Grading systems that are based on the
 7 normal curve that result in some kind of a distribution
 8 of grades reflected that kind of thinking. I'm a
 9 teacher. I teacher beautiful and great lessons, I
 10 really know my content. Students either learn it or
 11 don't learn it.
 12 The change for the role of the teacher is
 13 to one of saying now it is your responsibility to
 14 assure that all students are proficient, that all
 15 students know the content. That's a huge -- it
 16 represents a change from a system that really was
 17 designed for the purpose of sorting and selecting
 18 to -- when I use those terms, what I'm thinking about
 19 is the -- the system that produces students with very
 20 different levels of proficiency. And somewhat
 21 connected with that level of proficiency, they follow
 22 different paths, college-bound paths, technical
 23 training, or no training.
 24 And there's -- there's great discussion,
 25 not accepted by everybody at this point, but it's an

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1 underlying belief of standards-based education that we
 2 need to move away from that selecting and sorting
 3 system into one where everyone is proficient, where
 4 everyone at the end of the 12th grade is ready --
 5 proficient and ready for postsecondary education and/or
 6 workforce is the huge change that exists for what --
 7 how teachers have to think about their -- their role.
 8 **Q. And is that change embedded in statute?**
 9 A. Yes. Because CAP4K says that all students
 10 will be postsecondary and workforce ready, and it then
 11 has the elements that design the system. The
 12 standards, the assessments, a system with readiness
 13 throughout. That -- an indication of this, one week
 14 ago we had the Colorado Association of Executives, the
 15 CASE Conference. The commissioner was there. In three
 16 different settings, he said all students will be
 17 postsecondary and workforce ready. The deputy
 18 commissioner, Diana Sirko, was there. She emphasized
 19 two facts: One, we have ICAPs that all students are
 20 required to develop, Individual Career and Academic
 21 Plans, that show their path through high school and
 22 show their path to the postsecondary and workforce
 23 ready goal, path meaning courses they will take, when
 24 they will begin the postsecondary experience.
 25 Obviously, teachers and professionals in

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1 the schools are involved in helping develop those
 2 plans. Parents are also involved in helping developing
 3 those plans. She emphasized the importance of
 4 developing those plans and emphasized the fact that the
 5 CAP4K legislation is a readiness bill, a readiness bill
 6 throughout that begins with a focus on school readiness
 7 and then readiness at each grade level that ultimately
 8 culminates in being ready for postsecondary -- by being
 9 proficient, being ready for postsecondary and
 10 workforce.
 11 **Q. When was CAP4K adopted?**
 12 A. 2008. Either '8 or '9. I'll have those
 13 answers when we get the timeline up.
 14 **Q. Okay. Is there more to discuss on this**
 15 **chart?**
 16 A. Well, briefly. The data where
 17 people -- sometimes people look at this chart and they
 18 say -- and sometimes say well, there are only four
 19 variables. I know there are other variables. Well,
 20 the answer is those other variables enter the classroom
 21 through these four variables. Such as people will
 22 often say I don't see parents up there. I think
 23 parents are a huge variable impacting the child's
 24 education. Yes. But most often when I enter a
 25 classroom, I don't see parents in the classroom. But

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1 what do I see? I see the student. And the student
 2 brings the impact, the influence of the parents into
 3 the -- into the classroom.
 4 The setting variable, by the way, also
 5 captures a lot of that. Setting can be thought of as
 6 the classroom setting, the school setting, and the
 7 district or community setting, kind of a nested piece
 8 that has significant impact on what enters that
 9 classroom. And without be laboring it, there are
 10 elements of working conditions and the like that fit
 11 there.
 12 **Q. Is it correct to state that all of these**
 13 **components that you're talking about drive resource**
 14 **needs?**
 15 A. Yes. If -- if we're back on the
 16 components, on the previous chart, after teaching and
 17 learning, we see assessment.
 18 **Q. Okay. Let's --**
 19 A. And quickly --
 20 **Q. What is assessment?**
 21 A. Well, we -- sometimes we use a synonym of
 22 testing, but -- but -- and the thing that comes to mind
 23 for most people is CSAP, the Colorado Student
 24 Assessment Program. It actually is much more than
 25 that. The assessment that is needed has activity at

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1 each of those levels, because CSAP is a summit of
 2 assessment focusing on ultimately what students have
 3 learned. Some people call it an autopsy, comes after
 4 the fact. But prior to that are formative assessments
 5 and classroom-based assessments that occur on a regular
 6 basis. And resources are required to develop --
 7 extensive resources and training are required to
 8 develop those.
 9 **Q. Within the context of standards-based**
 10 **education system, what's the function of assessment?**
 11 A. Assessment is to tell us whether or not
 12 the standards have, in fact, been met. It goes back to
 13 that teaching and learning cycle. The step that says
 14 how will we know if students have learned.
 15 **Q. And how are students judged on assessment?**
 16 **Proficient or --**
 17 A. Yeah -- on the state assessment?
 18 **Q. Yeah, state assessment.**
 19 A. Yes, proficient, advanced, partially
 20 proficient, unsatisfactory.
 21 **Q. What is accountability and where does it**
 22 **fit in this system?**
 23 A. The accountability system uses the
 24 assessment results to determine the classification
 25 of -- of schools and districts.

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1 **Q. What's the purpose of accountability in**
 2 **the standards-based education system?**
 3 A. The purpose of accountability is to hold
 4 teachers and principals and school districts, schools
 5 and school districts, accountable for achieving the
 6 standards for reaching proficiency for all students.
 7 And there are multiple elements to the accountability
 8 system.
 9 **Q. What's your next category there?**
 10 A. Next category is help for struggling
 11 students. That goes back to the discussion about time
 12 as a variable. And if it is a standards-based system,
 13 students are not all going to reach proficiency at the
 14 same rate, therefore you have to have help that is help
 15 in terms of providing additional time. You have to
 16 have help that is help in terms of providing
 17 interventions to deal with learning needs.
 18 **Q. When we talk about interventions, that's**
 19 **been used a little bit. What does that mean?**
 20 A. Well, we heard some description of
 21 it -- of it yesterday. The most common way it's
 22 thought of right now is response to intervention, and
 23 that's actually a way of thinking and behaving that
 24 looks at the regular classroom instruction, and then do
 25 you then have a group of students that haven't achieved

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1 proficiency on the standards, and do we have classroom
 2 alterations that we can make, and then if we still have
 3 a group of students that haven't, do we have additional
 4 interventions in terms of learning approaches
 5 that -- that are necessary. Perhaps tutoring or other.
 6 **Q. So maybe it's more complicated than when I**
 7 **was in school, and if you flunked fourth grade, you**
 8 **went back and did it again?**
 9 A. We know that that works not well at all,
 10 repeating grades. If it repeats the same experience
 11 you've already had.
 12 **Q. And capacity building?**
 13 A. To have these components function, it's
 14 necessary for the system to have capacity, particularly
 15 at the district and school level. Capacity, that
 16 includes the professional development activities.
 17 Teachers are -- are having -- are operating on a high
 18 learning curve in terms of having a new set of
 19 standards to have converted into curriculum and then
 20 teach those standards. They need support and
 21 assistance and professional development to do that,
 22 including time.
 23 Capacity in the system also means that the
 24 district has the capacity to take the standards,
 25 develop the curriculum, support the development of the

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1 classroom informative assessments in the district that
 2 allow the system to operate.
 3 **Q. And the last component, adequate**
 4 **resources?**
 5 A. Adequate resources. You can think of that
 6 as having two pieces. We've been implying significant
 7 human talent throughout all of these components, but
 8 ultimately the system -- the system that is specified
 9 and the system that requires these components needs to
 10 be costed out to see if there are adequate resources to
 11 allow the system to operate. Dollar resources in that
 12 case.
 13 **Q. What has been the period of time during**
 14 **which the standard-based education system has been**
 15 **mandated and developed?**
 16 A. The -- and there's a timeline on the
 17 screen. And clearly you could -- pardon?
 18 **Q. Which is totally illegible.**
 19 A. It is. Clearly you could find parts of
 20 standards-based education existing prior to 1993. But
 21 really, in Colorado, things began to ramp up in 1993
 22 and House Bill 1313 was adopted. It mandated
 23 standards-based education. One year later, ESEA,
 24 again, the Elementary and Secondary Education Act,
 25 federal legislation, required states to develop

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1 standards and align assessments.
 2 The first standards were developed at the
 3 state level in 1995. The state board adopted what were
 4 called model content standards. Actually, at that
 5 point the word "model" was an important word, because
 6 districts had the freedom to adopt their own standards.
 7 They had to meet or exceed the state standards.
 8 There was an important element in '97 with
 9 the Colorado Basic Literacy Act. That act essentially
 10 recognized the huge importance of having students be
 11 able to read at grade level by third grade. And
 12 assessments were required, and it was required that
 13 districts would develop plans for students who were not
 14 achieving grade level.
 15 In '98, the first accreditation act was
 16 developed that required CDE to accredit school
 17 districts. That was based mostly on compliance. My
 18 view, and remember as I said yesterday, I'm looking at
 19 this through the eyes of the superintendent. I was in
 20 Eagle County at that time. My view was that that was
 21 basically a very long list of compliance items. And it
 22 wasn't clear that it had -- that all of it had teeth,
 23 quite frankly. So --
 24 **Q. What's the correspondence between**
 25 **accreditation and accountability?**

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1 A. Well, the accountability -- the idea of
 2 accountability and the accountability process at that
 3 point began to include accreditation as the mechanism
 4 that determined whether or not districts were being
 5 accountable, is the way that I would describe it.
 6 By the way, in '98, CSAP was administered
 7 to third grade at that time. I think if I remember
 8 what it seemed like, it wasn't clear that the evolution
 9 would be the same as it turned out. I'm not
 10 remembering right now if we had a sampling process, but
 11 the phrase that was used by people at the district --
 12 or at the state level was this is just like a dipstick.
 13 To just kind of check to see how we're -- how we're
 14 doing. It didn't include the measures that have
 15 evolved.
 16 '99, Senate Bill 186 established the SARs,
 17 called the report card. There was some controversy
 18 about how districts would be rated, originally talking
 19 about grading them A, B, C, D, E, F. Ultimately it
 20 turned out to be excellent, and I don't remember all
 21 the other ones. But ultimately unsatisfactory were the
 22 words applied at the end.
 23 **Q. In terms of that school grading system,**
 24 **what was the -- how did student achievement on --**
 25 A. The CSAP --

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1 **Q. -- on the assessments fit in?**
 2 A. The CSAP status measures were the primary
 3 factor in determining the grades. CSAP results. CSAP
 4 achievement, in other words.
 5 **Q. Was how you determined a school's grades?**
 6 A. By and large, yes.
 7 **Q. And if a school didn't make grade, what**
 8 **happened?**
 9 A. I'm not remembering exactly that
 10 there -- well, there were some consequences, I think,
 11 that involved -- I'm actually not clearly remembering.
 12 But at some point in there consequences developed that
 13 involved conversion to charter school. I don't
 14 remember right now if that was at that point in time.
 15 **Q. Okay. And did the CSAP assessment regime**
 16 **continue to expand?**
 17 A. It did. Actually, in 2000 grade 8 science
 18 was added. And another thing occurred in 2000 that was
 19 significant, and that is that assessment frameworks for
 20 CSAP were published. Prior to that time there was a
 21 fair amount of uncertainty in school districts about
 22 how to help students be ready to be successful on the
 23 CSAP.
 24 With the assessment frameworks, there was
 25 much more information about the concepts inside the

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1 standards that were driving particular assessment
 2 items. At that point, in at least some places, I think
 3 the assessment frameworks were also beginning to drive
 4 curriculum. That doesn't fit the pure aspect of the
 5 chart we had before, but that's what was available, and
 6 assessment frameworks were beginning to drive
 7 curriculum, and in some cases drive teaching and
 8 learning or instruction in classrooms.
 9 **Q. Okay. And can you proceed?**
 10 A. In 2001, NCLB was established, and quite
 11 frankly, that was enough of a change that people in
 12 schools and school districts struggled initially to
 13 understand exactly what it meant and how it would be
 14 implemented.
 15 The State ended up signing on with the
 16 federal government. I think it's called a consolidated
 17 plan, I believe. The plan that the State agreed to
 18 with the -- with the federal government.
 19 **Q. Let's clarify that point. No Child Left**
 20 **Behind is a federal law, right?**
 21 A. That is correct.
 22 **Q. Was it adopted into Colorado --**
 23 A. Yes.
 24 **Q. -- requirements?**
 25 A. Yes. And the State did that by

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1 essentially signing on with their plan, with the
 2 federal government. So --
 3 **Q. So as far as the impact of No Child Left**
 4 **Behind is concerned, did it make any difference that it**
 5 **was a federal law or a state law?**
 6 A. The -- on the practical level, no.
 7 Because who talks to you about No Child Left Behind?
 8 It's people from the Colorado Department of Education.
 9 As we were learning about No Child Left Behind, the
 10 people standing in front of the room were from the
 11 Colorado Department of Education. They may have been
 12 funded by federal funds. We didn't know that
 13 when -- when we're looking at them. And the plan that
 14 has to be implemented is essentially a Colorado state
 15 plan.
 16 States actually had some choices that they
 17 could make in the development of the plan that they
 18 submitted to the federal government. So from the point
 19 of view of people in schools and school districts, yes,
 20 clearly aware that NCLB is a federal law, but the
 21 practical aspect of it, what you have to pay attention
 22 to, how you learn about it, you're responding to and
 23 talking to the State.
 24 **Q. And what are the -- for purposes of**
 25 **standards-based education and this progression that**

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1 **we're talking about, what are the critical components**
 2 **that came into play with No Child Left Behind and the**
 3 **Colorado state plan?**
 4 A. I think there are -- there are -- well, it
 5 furthered the standards-based system, first of all, and
 6 pushed the idea of standards and assessments farther
 7 down the road. But there -- there were -- there are a
 8 couple of aspects. And one, the idea of proficiency,
 9 which in the Colorado plan ended up being defined as
 10 reaching partially proficient. But the idea of
 11 proficiency, students being proficient, school
 12 districts being proficient, and, in fact, all students
 13 being proficient by 2014 was a part of the plan.
 14 And quite frankly, from the point of view
 15 of people on the ground, there were aspects
 16 that -- that seemed unreasonable in the way that the
 17 process ramped up in 2014. There was another important
 18 aspect that I would say initially and in some way still
 19 would say the way it's implemented has been
 20 problematic, and that is the disaggregation of scores.
 21 But it had a very positive effect.
 22 By disaggregation of scores, I mean
 23 subgroups, such as racial minorities, such as students
 24 in poverty, such as special ed students, such as
 25 English language learners, such as students below

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1 proficiency were all identified as subgroups that had
 2 to have their scores disaggregated.
 3 **Q. You mean disaggregated from the mass of**
 4 **all students?**
 5 A. That is correct. That there would be a
 6 score for your ELL students in a district, for example.
 7 **Q. Now, is there a difference in the**
 8 **proficiency goal for the disaggregated groups than for**
 9 **the --**
 10 A. No. It is the same. And I -- I think the
 11 point of view of people in schools would be that there
 12 were some issues with the way that was implemented.
 13 However, I think almost everyone has come to believe
 14 that it is quite a good thing to disaggregate the
 15 scores. It shines the light on the achievement gap in
 16 a way that had been obscured prior to the
 17 disaggregation of scores.
 18 **Q. Using the term "achievement gap," gap**
 19 **between what and what?**
 20 A. The gap between the groups I mentioned,
 21 the disaggregated groups and the -- and the state
 22 average or the entire student -- student group. I
 23 mean, it was -- it became so clear that in practically
 24 all districts, there were serious problems with the
 25 achievement gap. Even in high-achieving districts,

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1 when the disaggregation occurred, it became clear that
 2 students of poverty were scoring substantially lower
 3 than English language learners and so on were scoring
 4 substantially lower.
 5 So the light was on the disaggregated
 6 groups. I think, and I believe most educators think,
 7 that's quite a good thing that happened as a result of
 8 No Child Left Behind.
 9 **Q. So what's the third important component**
 10 **from that era?**
 11 A. And -- and I -- the AYP. I don't
 12 know -- I don't think --
 13 **Q. What's AYP stand for?**
 14 A. Adequate yearly progress. And districts
 15 ended up, as a result of NCLB, with huge numbers of AYP
 16 targets. Large districts with more than small
 17 districts, because the number of students in some of
 18 the disaggregated groups in small districts was not
 19 sufficient to allow it to be identified as a group.
 20 **Q. What is the concept of adequate yearly**
 21 **progress?**
 22 A. Adequate yearly progress means that
 23 students are making -- students and schools and -- and
 24 subgroups in schools are making progress toward being
 25 proficient and reaching the -- the proficiency targets

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1 along the way that would eventually lead all to being
 2 proficient at 2014.
 3 **Q. So 2014, it's a hundred percent?**
 4 A. Yes.
 5 **Q. And how does it break down before that?**
 6 A. I'm not sure I can describe it in detail.
 7 But there are marks along the way that you have to hit
 8 to show that you are making adequate yearly progress.
 9 And because in a school district, you end up with
 10 literally, in sum, well over a hundred subgroups, how
 11 could that possibly be.
 12 Think of a very large school district.
 13 Think of each grade level, think of the content areas,
 14 then think of each subgroup within each of those grade
 15 levels. And so the groups mount up in a hurry. What
 16 does that mean? It is extremely difficult for any
 17 large school district to show adequate yearly progress
 18 in each and every one of those subgroups.
 19 **Q. To your knowledge, do any large school**
 20 **districts attain that?**
 21 A. I think there have been. But -- at some
 22 point in the past. But -- but it would be clearly the
 23 exception. I would have to make a guess right now.
 24 **Q. Moving ahead in the timeline.**
 25 A. The -- you see the CSAP and reading and

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1 writing in 2002, and mathematics is now existing in
 2 grades 3 through 9. 2003, we have English language
 3 learner standards, and now have the first English
 4 language assessment available. 2007, 13 -- 13
 5 comprehensive mandate of standards-based education.
 6 2008 is Senate Bill 212, CAP4K. And we've talked a lot
 7 about that. But that, from my point of view, is the
 8 most all-encompassing piece of legislation that
 9 specifies the education that must exist in Colorado.
 10 I've mentioned the readiness aspect, culminating in
 11 postsecondary and workforce readiness as well as school
 12 readiness.
 13 It also mandated definitions of school
 14 readiness, definitions of postsecondary and workforce
 15 readiness, indicated that standards would be developed
 16 that would align with those definitions and would
 17 result in those definitions being realized, all
 18 students postsecondary and workforce ready.
 19 It specified that the standards would be
 20 redone, the assessments would be redone, and that the
 21 Colorado Growth Model would be developed and
 22 implemented.
 23 **Q. Okay. Does -- what is the concept of the**
 24 **Colorado -- of the growth model?**
 25 A. The -- we've been talking in NCLB about

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1 student achievement, which is essentially a CSAP score,
 2 a point in time score. The Colorado Growth Model shows
 3 growth in student performance over time. Essentially
 4 think of taking a history of scores, two or three years
 5 of scores, and actually plotting a point from there
 6 forward of scores that are necessary to be achieved to
 7 reach proficiency in three years or by grade 10,
 8 whichever comes first.

9 And the growth model actually shows a
 10 normal curve around that point. But you learn what
 11 students need to score to be on the path to achieve
 12 proficiency in three years.

13 **Q. And the Colorado Growth Model is a**
 14 **student-by-student model; is that correct?**

15 A. Yes. But you also can see for schools and
 16 districts, there -- the growth that occurs.

17 **Q. And does the growth model include with it**
 18 **a concept of annual growth for all students?**

19 A. Yes.

20 **Q. Okay. And how is that different from what**
 21 **came before?**

22 A. Well, the -- in fact, superintendents and
 23 others pushed hard for the growth model. The point
 24 being, if you have just a status or an achievement
 25 score, a school or a student or a district with a very

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1 low achievement score doesn't receive credit for what
 2 might be substantial growth that school or student or
 3 district is making. But if you have a growth score,
 4 the growth from year to year begins to show up in the
 5 growth curve and the growth -- growth score.

6 That's -- that's important as well. And
 7 within that is -- is a measure of adequate yearly
 8 growth. What is that? That is the growth that is
 9 necessary to be on that path that would allow you to
 10 achieve proficiency in three years or by grade 10.

11 **Q. What about the -- how did the model affect**
 12 **students who were already proficient?**

13 A. Well, again, every student gets a growth
 14 curve, and students who are not proficient are in the
 15 mode of catching up. Students who are proficient are
 16 in the mode of keeping up. So theoretically -- not
 17 theoretically, really, you could have a school or a
 18 student with a very high achievement score, but if you
 19 look at the growth score over time, the curve could
 20 have a -- the line could have a downward slope. That's
 21 a matter of concern. You may have a high score,
 22 schools with high scores. But if the slope is
 23 downward, there's a matter to pay attention to. Even
 24 if you're still proficient.

25 **Q. What's the status of the implementation of**

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1 **CAP4K at this point?**

2 A. Standards with the common core being
 3 adopted, you could say that standards -- we have the
 4 standards part. I would suggest there's substantial
 5 work still to be done with standards, understanding
 6 them. Substantial work to be done with the curriculum
 7 related to the standards.

8 By the way, there's a huge change from the
 9 original standards we developed in the early '90s to
 10 the standards now. Standards today, while they may
 11 focus on content in math or science or any of the
 12 content areas, also include the incorporation of the
 13 21st century skills, things like critical thinking,
 14 adaptability, collaboration. Use of technology and so
 15 forth is incorporated into all of the standards. Much
 16 more complex. So there's much work to be done there.

17 The assessment. We are in anticipation of
 18 a new assessment system. And we are in transition from
 19 the current CSAP this coming year, and the year after
 20 we'll have a transition CSAP and then have a
 21 replacement. I'm not sure I can say CSAP. We aren't
 22 sure if that'll be the name of it. But a replacement
 23 assessment that will occur at that point.

24 That's only the tip of the iceberg for the
 25 implementation. If you think about that assessment, it

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1 is a state assessment. The assessment process is going
 2 to be successful. You have to map backward from that
 3 state assessment to formative assessments that are
 4 probably developed district-wide. Maybe in some cases
 5 at the school level to classroom assessments that
 6 require training and support for teachers to develop.
 7 So there is a huge task remaining as part of CAP4K
 8 under the area of assessment.

9 **Q. You mentioned common core. Common core**
 10 **standards. What are those?**

11 A. Common core standards are standards
 12 developed at the national level that states have signed
 13 on to voluntarily. Not all have, but the vast majority
 14 have signed on to adopt those standards.

15 **Q. And Colorado has adopted those?**

16 A. Colorado has.

17 **Q. Could you move on to 2009?**

18 A. 2009, 163, that is the Educational
 19 Accountability Act, that created alignment. One of
 20 the -- one of the issues that was -- has been of huge
 21 concern related to standards-based education, going
 22 back into the early 2000, is that we had three
 23 accountability systems operating. We had NCLB, we had
 24 the state accreditation system, and we had the school
 25 report card system.

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1 It was not uncommon for a single school or
 2 a single district to have very different results. A
 3 result that might have a word attached to it that says
 4 this is a great school on one, on another one have a
 5 word attached to it that says this is a failing school.
 6 That's very confusing for people. And so there's been
 7 a push to align the accountability systems. Senate
 8 Bill 163 has accomplished much of that.

9 There still is perhaps work to be done at
 10 the state level to align the NCLB piece, but it is
 11 proceeding in that direction. It created a system
 12 that -- that uses the assessment results, actually uses
 13 them in three, maybe four ways. One component is the
 14 status measure, the achievement score, the CSAP score
 15 for this year. A second component is the growth score.
 16 A third component is the gap score that we've referred
 17 to, the gap between the subgroups. And then the fourth
 18 component focuses on postsecondary and workforce
 19 readiness and includes ACT performance, graduation
 20 rate, and dropout rate.

21 All of those components result in schools
 22 and school districts receiving an accreditation rating
 23 and being required to develop a plan that matches the
 24 rating.

25 **Q. Again, what are the accreditation ratings?**

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1 A. Accredited with distinction,
 2 accredited -- accredited is the second one. Accredited
 3 with improvement plan. Accredited with priority
 4 improvement. And accredited with turnaround.

5 **Q. Did you say turnaround?**

6 A. I said turnaround, yes.

7 **Q. And what's the implication for a school
 8 district or a school based on its accreditation rating?**

9 A. Schools and school districts that are in
 10 the improvement -- priority improvement or the
 11 turnaround have five years to show progress to move out
 12 of that category. Or there will be a variety of
 13 actions that have to do with reorganizing the school
 14 district, reconstituting it in some fashion within a
 15 five-year period.

16 **Q. Post-2009?**

17 A. Yes. Not on this chart, but for a
 18 complete picture, probably should be, is in 2010,
 19 Senate Bill 191, which requires that teacher --
 20 requires the development of a new teacher evaluation
 21 system. A significant piece related to what we're
 22 talking about is that it requires that 50 percent of a
 23 teacher's evaluation or a principal's evaluation be
 24 based upon student achievement in the school. It takes
 25 what we've been talking about and puts it into the

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1 teacher evaluation process.

2 **Q. Dr. Hefty, in a summary fashion, can you
 3 describe the impact on public education over the --
 4 over the progressive implementation of standards-based
 5 education during this approximately 15- to 20-year
 6 period?**

7 A. I -- I believe the impact has been very
 8 significant. And it has resulted in a change in the
 9 purpose of the education system. A purpose from that
 10 sorting and selecting purpose that used to exist in
 11 schools. Whether we talked about it in that way or
 12 not, that is the way it operated. To a purpose that
 13 says that all will be proficient, all will be
 14 postsecondary and workforce ready.

15 That significant change has changed
 16 dramatically the job of the teacher. And this is a
 17 shorthand way to describe it and leaves out many
 18 pieces. But has changed the job from one of teaching
 19 the students who walk through the door with the idea
 20 that some of them, many of them, hopefully, will end up
 21 being proficient, mastering what the teacher is
 22 teaching, but some will not, to the job of the teacher
 23 being one where the teacher and the system, with
 24 support, hopefully, has to get all students to the
 25 proficiency.

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1 **Q. How does that change in the job of the
 2 teacher impact the change in the job of the school
 3 district -- school and school district administration?**

4 A. Well, the principal and school district
 5 administration has a much more significant requirement
 6 to develop -- support and develop the instructional
 7 program, the standards-based program, the curriculum.
 8 The teaching and learning that occurs in classrooms.

9 That is the focus. There are many tasks
 10 that administrators have to do that at some times that
 11 sometimes distract from that focus. But that is the
 12 job that has to be job one, the performance of all
 13 students getting them to be proficient.

14 **Q. And has this transformation affected the
 15 need for financial resources for school districts?**

16 A. Very significantly.

17 **Q. How so?**

18 A. Looking at a couple of different aspects.
 19 If time is a variable, that almost for sure means we
 20 need more time, more time for more students. We think
 21 of that sometimes as being extended school days. We
 22 think of it as being extended school years.

23 For students from more harsh environments,
 24 there is huge loss of learning that occurs across a
 25 summer. Actually occurs during vacations during the

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1 year. That is a place where more time is needed.
 2 Extended school years, extended school days. More time
 3 for teacher learning and professional development.
 4 That is time of two kinds. Time in terms of additional
 5 days and time within the school day, meaning having
 6 sufficient staffing in a school to allow teachers to be
 7 scheduled where the third grade teachers or the seventh
 8 grade English teachers or some group of teachers
 9 teaching similar lessons can meet and deal with the
 10 data, the assessment results from their students and
 11 the lessons they're teaching and make adjustments and
 12 learn from one another. It's embedding the
 13 professional learning in the school day.
 14 Class size has -- has an impact, just
 15 practically speaking, in the chart we looked at, and
 16 that's particularly pronounced in grades K through 3.
 17 And then additional learning opportunities.
 18 Learning -- the idea of opportunity to learn has
 19 changed significantly as this system has changed.
 20 Opportunity to learn used to mean opening the door and
 21 allowing students to come in to have the experience.
 22 Opportunity to learn now means opening the door and
 23 providing whatever is necessary for the student to get
 24 to proficiency.
 25 That is additional opportunities in terms

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1 of interventions, additional opportunities in terms of
 2 time, opportunities that address the particular set of
 3 needs that students bring through the door.
 4 **Q. During this same period of time, how has**
 5 **the Public School Finance Act responded to these -- to**
 6 **this transformation within the education system?**
 7 A. To the best of my knowledge, it has not.
 8 My -- I have watched the finance act increase by
 9 percentage amounts each year. Prior to Amendment 23,
 10 those percentage amounts, as I recall, were often less
 11 than the cost-of-living increase. Post-23, by -- by
 12 law, they've been cost of living plus 1 percent for ten
 13 years. The last two years, that has been adjusted, so
 14 in reality it hasn't been met.
 15 And then there -- there have been
 16 adjustments on the factors. I would call them minor
 17 adjustments that do not provide the resources to
 18 deliver a standards-based education. And as long as
 19 the base is not adequate and those factors play off the
 20 base or use the base in their calculation, they're
 21 going to end up not -- not being adequate.
 22 So I have not seen in my experience the
 23 relationship between the development, modification of
 24 the finance act that matches the development of the
 25 standards-based system.

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1 **Q. Okay. From the point of view of a**
 2 **professional educator, how -- what would you see as**
 3 **a -- an appropriate way for those two systems to -- to**
 4 **communicate?**
 5 A. Well, implied by what we've been talking
 6 about is that the standards-based education is
 7 specified. It's specified in CAP4K, it's specified in
 8 the fact that we have standards.
 9 Then the second step would be what is
 10 necessary, what are the resources. Nothing about
 11 dollar resources at this moment, but thinking about the
 12 resources in terms of people, in terms of setting, in
 13 terms of materials, what are the resources necessary to
 14 deliver those specifications.
 15 And then what's the cost of those
 16 resources, including the human resources. That's --
 17 that's possible to do. There could be arguments about
 18 the results, but it is possible to do, has been done in
 19 other places. And approaches have occurred here
 20 that -- that I believe will be presented. So it is
 21 possible to do. I think from my point of view, I -- I
 22 view both the work on the standards-based system and
 23 the work on the finance as being iterative processes.
 24 There was a period of time in the '90s and
 25 into the 2000s where we acted like we -- in Colorado,

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1 we acted like we had the answer. Well, we have our
 2 standards, we've done that well. We have our
 3 standards-based system. That was a poor approach.
 4 Work is always needed on the development of the
 5 standards-based system. It needs to be revisited on an
 6 ongoing basis, all of those components that we talked
 7 about.
 8 As that's occurring, it just makes sense
 9 on the finance side, on an ongoing basis, to look at
 10 the specified education, look at the resources needed
 11 to deliver human and material and others time and
 12 setting to deliver the standards-based education and
 13 then to cost them out.
 14 **Q. Is there enough money in the education**
 15 **system today to meet the goals of the standards-based**
 16 **education system?**
 17 A. No.
 18 **Q. And what's the basis for your -- how do**
 19 **you come to that conclusion?**
 20 A. Well, if -- we have made -- and I -- I've
 21 been trying to talk about it, substantial progress on
 22 the standards-based system and what the components are
 23 and what's necessary. But we do not have the money to
 24 deliver on it. We don't have the money for those
 25 things that I've mentioned that we need. And

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1 reallocating the money doesn't -- there -- there simply
 2 isn't a way, particularly in these times, to reallocate
 3 the money to produce the time, to produce the extended
 4 school year, to produce all of the opportunities we've
 5 talked about that would deliver on the standards-based
 6 education that will get all students to a proficient
 7 level.
 8 **Q. Finally, Dr. Hefty, under -- in today's**
 9 **reality, how does the future look? In terms of school**
 10 **funding and standard-based education.**
 11 A. Well, I think there -- there are great
 12 opportunities to do work that hasn't been done.
 13 Opportunities to continue the standards-based work
 14 specifying the system and to have an opportunity to
 15 rework a finance system, a legislative activity, of
 16 reworking a finance system that would deliver on the
 17 legislated specified standards-based education.
 18 The opportunity is there. The
 19 current -- simply carrying forward the current system
 20 doesn't -- there's no indication that that will realize
 21 that opportunity.
 22 MR. HALPERN: Thank you, Dr. Hefty.
 23 THE COURT: Go ahead. You want to take
 24 the morning break?
 25 MR. HINOIOSA: We have no questions

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1 THE COURT: All right. Why don't we take
 2 the break then. Let's say about five after 10:00?
 3 How's that? Thank you.
 4 (Recess taken, 9:43 a.m. to 10:04 a.m.)
 5 THE COURT: All right. We're ready for
 6 cross-examination.
 7 MR. FERRO: Thank you, Your Honor.
 8 CROSS-EXAMINATION
 9 BY MR. FERRO:
 10 **Q. Good morning, Dr. Hefty.**
 11 A. Good morning.
 12 **Q. You were superintendent of Eagle County**
 13 **Schools; is that right?**
 14 A. Yes.
 15 **Q. You started there in 1994?**
 16 A. Yes.
 17 **Q. And as superintendent, you learned that**
 18 **the curriculum there needed to be updated; is that**
 19 **right?**
 20 A. Yes.
 21 **Q. You learned that teachers were frustrated**
 22 **with the existing curriculum?**
 23 A. Yes.
 24 **Q. They were frustrated with the curriculum**
 25 **materials; is that right?**

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1 A. Yes.
 2 **Q. And while you were superintendent, the**
 3 **district upgraded the curriculum in multiple areas,**
 4 **right?**
 5 A. Yes.
 6 **Q. The district redid the English language**
 7 **arts curriculum?**
 8 A. Yes.
 9 **Q. The district redid the math curriculum?**
 10 A. Yes.
 11 **Q. The district redid the science curriculum**
 12 **as well, correct?**
 13 A. Yes.
 14 **Q. And all that occurred in one year's time?**
 15 A. Yes.
 16 **Q. Which was your very first year as**
 17 **superintendent?**
 18 A. First or second.
 19 **Q. And you consider that to be a major**
 20 **accomplishment?**
 21 A. Yes.
 22 **Q. You put that on your resume; is that**
 23 **right?**
 24 A. It says something about Eagle County and
 25 up-doing -- redoing the curriculum in general terms, I

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1 think.
 2 **Q. You wrote a column entitled "Leadership is**
 3 **Key to Improvement of Public Education;" is that right?**
 4 A. Yes.
 5 **Q. And you do believe that leadership is key**
 6 **to the improvement of public education?**
 7 A. Yes.
 8 **Q. Public education is a people business; is**
 9 **that right?**
 10 A. Yes.
 11 **Q. And in a people business, people work**
 12 **together?**
 13 A. Yes.
 14 **Q. And in a people business, people apply**
 15 **knowledge and skills?**
 16 A. Yes.
 17 **Q. And if there is improvement in public**
 18 **education, it will be because of what people do in**
 19 **working together?**
 20 A. Yes.
 21 **Q. And because of what people do in the**
 22 **application of their knowledge and skills; is that**
 23 **right?**
 24 A. Yes.
 25 **Q. And that doesn't happen accidentally?**

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1 A. No.
 2 **Q. It happens because leadership pushes it?**
 3 A. That's a part of it, yes.
 4 **Q. It happens because leadership frames**
 5 **it; is that right?**
 6 A. Yes.
 7 **Q. It happens because leadership supports it?**
 8 A. Yes.
 9 **Q. It happens because leadership motivates it**
 10 **to happen, correct?**
 11 A. Yes.
 12 **Q. And earlier this morning you testified**
 13 **about the Colorado Growth Model. Do you recall?**
 14 A. Yes.
 15 **Q. CASE supported the Colorado Growth Model,**
 16 **correct?**
 17 A. Yes.
 18 **Q. You supported the Colorado Growth**
 19 **Model; is that right?**
 20 A. Yes.
 21 **Q. And because without the growth model, you**
 22 **would only look at a point in time; is that right?**
 23 A. Yes.
 24 **Q. That point in time is the day the CSAP**
 25 **exam happened to be given, correct?**

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1 A. Yes.
 2 **Q. And looking at a point in time does not**
 3 **show the whole picture, does it?**
 4 A. Yes.
 5 **Q. A student could have a low CSAP score, but**
 6 **could be growing over time; would you agree?**
 7 A. Yes.
 8 **Q. A school could have low CSAP scores, but**
 9 **its students could be growing over time?**
 10 A. Yes.
 11 **Q. Adding the growth score provides a clearer**
 12 **picture of how a student is doing; is that right?**
 13 A. Yes.
 14 **Q. And adding the growth score provides a**
 15 **clear picture of how a school is doing; is that right?**
 16 A. Yes.
 17 **Q. You were aware the Augenblick firm has**
 18 **prepared a cost study for that case?**
 19 A. Yes. Augenblick. Say that again.
 20 **Q. Augenblick firm.**
 21 A. Yes.
 22 **Q. Also known as Augenblick, Palaich and**
 23 **Associates.**
 24 A. That is correct.
 25 **Q. You're familiar with that study, correct?**

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1 A. I am generally familiar.
 2 **Q. Are you familiar with the process that AP**
 3 **used?**
 4 A. Yes.
 5 **Q. And you have seen a professional -- excuse**
 6 **me. You're familiar with Augenblick's use of**
 7 **professional judgment panels?**
 8 A. Yes.
 9 **Q. You've seen a professional judgment panel**
 10 **in action?**
 11 A. Not on this study.
 12 **Q. But you have seen one --**
 13 A. Yes.
 14 **Q. -- in action before?**
 15 A. Yes.
 16 **Q. You believe that methodology is one that**
 17 **can learn from itself; is that right?**
 18 A. Yes.
 19 **Q. And that's because we haven't learned**
 20 **everything we need to learn about what it takes to**
 21 **arrive at 100 percent proficiency?**
 22 A. We have not.
 23 **Q. You don't believe a cost study provides a**
 24 **final answer, do you?**
 25 A. No.

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1 **Q. You also testified about the No Child Left**
 2 **Behind Act; is that right?**
 3 A. Yes.
 4 **Q. And is it your understanding that**
 5 **districts can opt out of the No Child Left Behind Act?**
 6 A. Well, I think if they can, it would be
 7 under special circumstances. I do not believe you can
 8 be receiving federal funds and opt out of No Child Left
 9 Behind.
 10 **Q. Districts can choose not to accept federal**
 11 **funds; would you agree?**
 12 A. Yes.
 13 **Q. And therefore they could choose to not**
 14 **participate in the No Child Left Behind program; is**
 15 **that correct?**
 16 A. Impractical, but yes.
 17 **Q. And are you aware of any district in the**
 18 **state of Colorado that has chosen (sic) to opt out of**
 19 **No Child Left Behind, at least in part?**
 20 A. I believe in the past -- I'm uncertain
 21 about this, but -- and my memory isn't completely
 22 clear, but I believe there has been a district.
 23 **Q. Is it your understanding that the state**
 24 **does not require districts to accept federal funds?**
 25 A. I believe that is the case. However, it

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1 isn't quite that clear, because the current
 2 accountability accreditation system has folded No Child
 3 Left Behind into it.
 4 **Q. Now, yesterday you recall I was asking you**
 5 **about your use of the word "rational"?**
 6 A. Yes.
 7 **Q. And that was a word that you used in your**
 8 **summary of testimony in this case; is that right?**
 9 A. Today? I used it today?
 10 **Q. No. I'm sorry. You used it in the**
 11 **summary of testimony you prepared for this case.**
 12 A. The written summary, originally?
 13 **Q. Correct.**
 14 A. I probably did.
 15 **Q. And when you drafted that summary, you did**
 16 **not use the word "rational" with any legal meaning?**
 17 A. Rational as used there would mean like
 18 reasonable, like realistic, or the opposite of
 19 irrational or the opposite of unrealistic. Or the
 20 opposite of unreasonable.
 21 **Q. So, again, you did not use the word**
 22 **"rational" in your summary with any legal meaning; is**
 23 **that right?**
 24 A. Well, apparently not. I'm not -- I'm not
 25 completely clear what you're saying when you say that.

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1 I am not a lawyer, as you established yesterday. So I
 2 would say it would not be with legal meaning.
 3 **Q. And when you drafted that summary, you**
 4 **were not aware that the word "rational" had any kind of**
 5 **legal meaning; is that fair?**
 6 MR. HALPERN: I'll object to the
 7 assumption in the question that it has a specific legal
 8 meaning different from a dictionary meaning.
 9 THE COURT: Overruled.
 10 A. My -- my thinking about rational is
 11 what -- essentially what I just said, it -- synonyms
 12 are realistic, are reasonable. Antonyms would be the
 13 opposite of each of those.
 14 I -- I -- you thought my answer yesterday
 15 was different from my deposition. Well, I sat in court
 16 yesterday morning, while the defendants were talking
 17 extensively about it. So that clouded my -- my memory
 18 somewhat.
 19 **Q. (BY MR. FERRO) And would it refresh your**
 20 **memory to see a transcript of your deposition?**
 21 A. No. You -- I think you shared that
 22 yesterday. I -- I remember what I said then. But time
 23 has passed, and I have learned since the deposition and
 24 I learned yesterday by listening -- listening to all of
 25 you. So when you asked do you know anything about a

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1 legal meaning of the word "rational," it seems strange
 2 for me, after listening yesterday morning, to say no.
 3 **Q. And go back, then, to when you drafted**
 4 **your summary in this case and you used the word**
 5 **"rational."**
 6 A. Uh-huh.
 7 **Q. Did you -- you did not know at that time**
 8 **that "rational" had any legal meaning, correct?**
 9 A. What -- what I had in mind when talking
 10 about that was -- and I think I used it concerning the
 11 relationship between standards-based education and
 12 funding. And what I remember having in mind is that I
 13 see no reasonable -- I see no realistic, I see no
 14 thoughtful, observable relationship between the funding
 15 system and standards-based education and the resources
 16 necessary for standards-based education.
 17 **Q. And we'll get to that in a moment,**
 18 **Dr. Hefty. I do need an answer to my question, though.**
 19 **When you drafted your summary, you did not know that**
 20 **the word "rational" had any legal meaning; is that**
 21 **right?**
 22 A. Well, I didn't have it in mind at that
 23 point, at least. It's not the way I -- I believe I was
 24 thinking at that point.
 25 **Q. And at least when you drafted your**

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1 **summary, you defined rational as the opposite of**
 2 **irrational; is that correct?**
 3 A. That's in my summary?
 4 **Q. When you wrote your summary, sir.**
 5 A. I guess so. I mean, I probably wasn't
 6 thinking exactly that way.
 7 **Q. Today do you define rational as the**
 8 **opposite of irrational?**
 9 A. I -- I think so.
 10 **Q. And to you, a rational analysis is one**
 11 **that can be tracked?**
 12 A. That -- that would be part of it, yes. A
 13 thought process that can be observed.
 14 **Q. You would be able to see the thinking**
 15 **behind a rational approach; is that right?**
 16 A. Yes.
 17 **Q. A rational approach has a methodology?**
 18 A. What is the meaning of methodology?
 19 **Q. A rational approach has a theory that**
 20 **drove it; is that correct?**
 21 A. I'm not sure I would agree with that. I'd
 22 have to think about that. I don't believe I was
 23 thinking about that when I would have used the word.
 24 MR. FERRO: May I approach, Your Honor?
 25 THE COURT: Yes.

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1 **Q. (BY MR. FERRO) Dr. Hefty, I'm going to**
 2 **hand you that transcript from your deposition that we**
 3 **looked at yesterday.**
 4 A. Uh-huh.
 5 **Q. If you would turn to page 123, please.**
 6 A. Yes.
 7 **Q. And you can see the context of your answer**
 8 **beginning on page 122; do you agree?**
 9 A. Yes.
 10 **Q. And if you would look at line -- actually**
 11 **on line 22 on page 122. You see the sentence beginning**
 12 **"And I guess"?**
 13 A. Yes.
 14 **Q. Would you read that, please.**
 15 A. Yes.
 16 **Q. Continuing on to the end of your answer on**
 17 **the next page.**
 18 A. "And I guess I would further say a
 19 rational analysis" --
 20 MR. HINOJOSA: Objection, Your Honor.
 21 This is improper impeachment.
 22 THE COURT: Well, I haven't --
 23 MR. HINOJOSA: It doesn't refresh the
 24 memory of the --
 25 THE COURT: I'm not sure what the

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1 deposition says, so I'm going to allow it. Overruled.
 2 A. "And I guess I would further say a
 3 rational analysis would -- you would be able to track
 4 it. You would be able to see it. You would be able to
 5 see the thinking behind the rational approach. There
 6 was a methodology. There was an idea. There was a
 7 theory that drove it. It is -- it -- that drove it
 8 is -- is kind of where I would go with it."
 9 **Q. (BY MR. FERRO) Do you stand by that**
 10 **testimony today?**
 11 A. Well, I -- I think I would. It feels like
 12 you've created a different setting and circumstances
 13 here, but that's what I said at the time.
 14 **Q. Dr. Hefty, you have taught school finance**
 15 **at the University of Denver, correct?**
 16 A. Yes.
 17 **Q. And you are aware of the 1994 School**
 18 **Finance Act?**
 19 A. Yes.
 20 **Q. You have some knowledge about the 1994**
 21 **act?**
 22 A. Yes.
 23 **Q. You were also aware of the 1988 School**
 24 **Finance Act; is that right?**
 25 A. Not as clearly as '94, but, yes, aware of

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1 it.
 2 **Q. And you have some knowledge about the 1988**
 3 **act?**
 4 A. Yes. Yes. Some.
 5 **Q. And you looked through -- you look at the**
 6 **finance act through superintendent's eyes; is that**
 7 **correct?**
 8 A. Yes.
 9 **Q. You've never served in the Colorado State**
 10 **Senate?**
 11 A. That is correct.
 12 **Q. And you've never served in the Colorado**
 13 **House?**
 14 A. That is correct.
 15 **Q. And therefore, you don't look at the act**
 16 **through a legislator's eyes; is that right?**
 17 A. No.
 18 **Q. Are you aware the general assembly has**
 19 **issued reports on public school finance?**
 20 A. Yes.
 21 **Q. And you're aware of the general assembly's**
 22 **1990 commission on school finance?**
 23 A. Only -- I may have been, and it seems to
 24 me I was reminded about that in the opening statement.
 25 But I'm uncertain. Because I -- I saw the pieces flash

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1 on the screen and . . .
 2 **Q. You're aware that commission issued a**
 3 **report in 1990?**
 4 A. Well, I think I saw that in the opening
 5 statement.
 6 **Q. And have you not read that report?**
 7 A. I haven't read it in the last -- in the
 8 recent past.
 9 **Q. You cannot testify as to the findings of**
 10 **that report; is that right?**
 11 A. I cannot.
 12 **Q. And you cannot testify as to any**
 13 **recommendations in that report?**
 14 A. I cannot.
 15 **Q. Did you rely on that report in forming**
 16 **your opinions in this case?**
 17 A. I did not.
 18 **Q. You're aware of that general assembly's**
 19 **1993 interim committee on school finance?**
 20 A. Because of the opening statement
 21 yesterday, I am. And perhaps was before. I don't have
 22 a clear memory of that.
 23 **Q. You're aware that committee issued a**
 24 **report in 1993?**
 25 A. I think I saw that yesterday.

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1 **Q. And have you read that report?**
 2 A. I have not.
 3 **Q. You cannot testify today as to the**
 4 **findings of that report; is that right?**
 5 A. I cannot.
 6 **Q. You cannot testify as to any**
 7 **recommendations in that report?**
 8 A. I cannot.
 9 **Q. And did you rely on that report in coming**
 10 **to your conclusions in this case?**
 11 A. No.
 12 **Q. You're aware there's a cost-of-living**
 13 **factor in the 1994 School Finance Act; is that right?**
 14 A. Yes.
 15 **Q. And you know the general assembly has**
 16 **issued studies on the cost-of-living factor?**
 17 A. Yes.
 18 **Q. You know these cost-of-living studies have**
 19 **been issued every two years since 1993; is that**
 20 **correct?**
 21 A. Yes.
 22 **Q. And that would mean that the general**
 23 **assembly has issued seven studies on the cost-of-living**
 24 **factor?**
 25 A. I can't swear to that. I do remember that

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1 almost never, maybe never, has the cost-of-living study
 2 been implemented. Fully implemented. When they have
 3 been conducted.
 4 **Q. You're aware of the general assembly's**
 5 **1996 committee on capital construction finance?**
 6 A. I think I saw that yesterday in the
 7 opening presentation.
 8 **Q. And you know that committee issued a**
 9 **report in 1996?**
 10 A. I -- if I know, it's because of what I saw
 11 yesterday.
 12 **Q. Have you read that report?**
 13 A. I have not.
 14 **Q. Can you testify as to the findings of that**
 15 **report?**
 16 A. I cannot.
 17 **Q. So you cannot testify as to any**
 18 **recommendations in that report?**
 19 A. No.
 20 **Q. And you did not rely on that report in**
 21 **forming your opinions in this case?**
 22 A. I did not.
 23 **Q. Are you aware that in 2000 the general**
 24 **assembly issued a report on at-risk funding in the**
 25 **School Finance Act?**

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1 A. Yes.
 2 **Q. And have you read that report?**
 3 A. I -- if I have, it's been very many years
 4 ago.
 5 **Q. And are your opinions -- opinions in this**
 6 **case based on that report?**
 7 A. Not in -- not in any way that I could tie
 8 together.
 9 **Q. You are aware there was an interim**
 10 **committee on school finance in 2005; is that right?**
 11 A. Yes.
 12 **Q. And you know this interim committee issued**
 13 **a report?**
 14 A. Yes.
 15 **Q. You're also aware there was a 2009 interim**
 16 **committee to study school finance?**
 17 A. Yes.
 18 **Q. And you know this committee also issued a**
 19 **report?**
 20 A. Yes.
 21 **Q. Do you recall talking about the Agate**
 22 **School District yesterday, Dr. Hefty?**
 23 A. Yes.
 24 **Q. And are you aware of the current -- the**
 25 **last year's school year, the Agate School District**

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1 **employed eight teachers?**
 2 A. I'm not.
 3 **Q. Were you aware as of last year's school**
 4 **year, the Agate School District enrolled 30 students?**
 5 MR. HINOJOSA: Objection. It's arguing
 6 facts not in evidence, and there's no foundation.
 7 THE COURT: Overruled. If he knows, he
 8 can answer.
 9 A. I knew -- I know the enrollment was
 10 very -- very small. I do not know the precise
 11 enrollment.
 12 **Q. (BY MR. FERO) And did you know last year**
 13 **Agate's funded pupil count was actually 45.3?**
 14 A. I did not know that.
 15 **Q. And did you know that was because the**
 16 **district is experiencing declining enrollment?**
 17 MR. HINOJOSA: Objection, Your Honor.
 18 Once again -- I guess I'll have a continuing objection,
 19 because he's arguing facts that are not in evidence,
 20 the way that he's asking the question.
 21 THE COURT: I believe that school system
 22 was referred to yesterday. So I think he's --
 23 counsel's entitled to inquire into it. So overruled.
 24 But I'll note your continuing objection.
 25 MR. HINOJOSA: All right. Thank you.

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1 A. Could you ask the question again?

2 **Q. (BY MR. FERRO) Yes. And do you know that**

3 **Agate School District is experiencing declining**

4 **enrollment?**

5 A. Yes.

6 **Q. And you understand that the School Finance**

7 **Act can allow districts that are experiencing declining**

8 **enrollment to receive funding for students that are not**

9 **actually enrolled in the district?**

10 A. There is an averaging provision that I

11 mentioned yesterday, that declining enrollment

12 districts can use one, two, three, four, or five

13 enrollment figures, including the current one, for

14 their funded pupil count.

15 **Q. And so are you aware that the Agate School**

16 **District is receiving funding for students that are not**

17 **actually in existence at that school district?**

18 A. That -- that is not the way that I would

19 describe it, because the finance act requires a

20 calculation. The finance act -- if you use that

21 argument, then you have to go to other school districts

22 and say look at the FTE calculation number, and they

23 have more students than the calculation number. So the

24 argument doesn't work to claim they're receiving

25 funding for students they don't have. It is the way

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1 the finance act works, the way the calculation works.

2 **Q. And are you aware that as of last year,**

3 **the Agate School District received \$15,837 per pupil in**

4 **total program funding?**

5 A. I was not.

6 **Q. You were the executive director of**

7 **CASE; is that right?**

8 A. Yes.

9 **Q. And a purpose of CASE is to advocate for**

10 **the leadership of public education?**

11 A. Yes.

12 **Q. That leadership includes superintendents?**

13 A. Yes.

14 **Q. And chief financial officers?**

15 A. Yes.

16 **Q. And chief operating officers?**

17 A. Yes.

18 **Q. And chief technology officers?**

19 A. Yes.

20 **Q. That leadership also includes special ed**

21 **directors?**

22 A. Yes.

23 **Q. And curriculum directors; is that correct?**

24 A. Yes.

25 **Q. CASE recently held its annual convention**

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1 **last month; is that right?**

2 A. Yes.

3 **Q. And that convention was held in**

4 **Breckenridge; is that correct?**

5 A. Yes.

6 **Q. You have testified before the general**

7 **assembly, have you not?**

8 A. Before committees, yes.

9 **Q. When you were executive director, CASE**

10 **supported this lawsuit; is that right?**

11 A. Yes.

12 **Q. CASE has seen this case as a game**

13 **changer; is that correct?**

14 A. Yes.

15 **Q. CASE believes that this case is an**

16 **opportunity the education community cannot afford to**

17 **miss?**

18 A. Yes.

19 **Q. CASE sent a letter to school districts**

20 **asking for money for this case?**

21 A. Yes.

22 **Q. CASE asked for \$500,000; is that right?**

23 A. I don't remember that specifically. But

24 it's possible.

25 **Q. You helped write that letter, did you not?**

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1 A. I did not.

2 **Q. You did not?**

3 A. No. I signed it.

4 **Q. You signed that letter?**

5 A. Yes.

6 **Q. And you signed it when you were executive**

7 **director, correct?**

8 A. Yes.

9 **Q. When you were executive director, CASE**

10 **wanted the plaintiffs to win this case; is that right?**

11 A. Yes.

12 **Q. And you want the plaintiffs to win this**

13 **case, don't you?**

14 A. Yes.

15 MR. FERRO: No further questions.

16 THE COURT: Thank you. Redirect.

17 REDIRECT EXAMINATION

18 BY MR. HALPERN:

19 **Q. Dr. Hefty, concerning the costing out**

20 **study that was referred to during cross-examination,**

21 **what does a costing out study like that help to show?**

22 A. It -- it helps to show what it costs to

23 deliver a standards-based education. It starts with

24 the education being specified, and the specifications

25 come from what is in law.

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1 **Q. And then there was some discussion about**
 2 **the option -- or the -- that some school districts**
 3 **could opt out of No Child Left Behind. And why is that**
 4 **an impractical option for most school districts, as you**
 5 **said?**
 6 A. Well, funding is a serious matter, a
 7 serious issue in every school district right now, and
 8 that obviously could be a long discussion. But I think
 9 it's well accepted, given, among other things, the
 10 economy, and then some of us would argue the state of
 11 school finance. Funding is a serious problem. So to
 12 give up federal funding, just a chunk of the budget
 13 that could be in very many cases five, six, seven,
 14 eight, nine, or more percent of the budget, is
 15 unreasonable.
 16 **Q. And what kind of schools and school**
 17 **districts receive funding through No Child Left Behind?**
 18 A. Well, all school districts would receive
 19 some. But school districts with more
 20 difficult-to-educate populations would receive more
 21 generally.
 22 **Q. So No Child Left Behind, Title I funding,**
 23 **is there to help school districts to educate the**
 24 **most -- you know, with the most -- with the most**
 25 **serious educational challenges?**

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1 A. Yes. Yes. And then there's also special
 2 ed federal funding and -- and federal funding in other
 3 categories. So for most districts it just is not
 4 practical. Reasonable.
 5 **Q. Presumably, that's funding that could have**
 6 **been provided by the State; is that right?**
 7 A. That the federal funding could have
 8 been --
 9 **Q. Well, what the federal funding goes to**
 10 **could be provided by the -- through the Public School**
 11 **Finance Act?**
 12 MR. FERRO: Objection. Speculation.
 13 THE COURT: Overruled. If he knows.
 14 A. It could be. But that doesn't seem
 15 feasible either, given the current situation.
 16 **Q. (BY MR. HALPERN) As to legislative**
 17 **reports, let's say that occurred prior to 1994, what**
 18 **possible relevance could they have to the cost of**
 19 **funding standard-based education?**
 20 A. Well, legislative reports before or --
 21 **Q. Prior --**
 22 A. Prior to.
 23 **Q. -- 1994.**
 24 A. Perhaps some of the thinking that occurred
 25 then could have entered into what was occurring in

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1 1994.
 2 **Q. But at that time, standards-based**
 3 **education didn't even exist?**
 4 A. It -- it did not. Standards-based
 5 education as specified did not exist prior to '93, '94,
 6 that time period.
 7 **Q. Is the \$15,000 per-pupil revenue provided**
 8 **to Agate a pretty good reflection of the -- of the**
 9 **economies of scale that take place within small**
 10 **districts?**
 11 A. Yes.
 12 **Q. I mean, assuming that number was correct?**
 13 A. The highest per-pupil amounts are in the
 14 smallest school districts, and that is a reflection of
 15 being able to have sufficient resources in the very
 16 smallest districts, to even provide the most basic
 17 education.
 18 MR. HALPERN: Thank you, Dr. Hefty.
 19 Nothing further.
 20 THE COURT: Thank you. Recross.
 21 MR. FERRO: Very briefly, Your Honor.
 22 RE-CROSS-EXAMINATION
 23 BY MR. FERRO:
 24 **Q. Dr. Hefty, just a moment ago Mr. Halpern**
 25 **asked you if school funds could be provided through the**

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1 **School Finance Act. Do you recall that?**
 2 A. Yes.
 3 MR. HALPERN: Objection. That misstates
 4 the question.
 5 THE COURT: I think he said by the state.
 6 Is that the term you used?
 7 MR. HALPERN: I'm sorry?
 8 THE COURT: Didn't you say by the state,
 9 it could be provided by the state?
 10 MR. HALPERN: The question I asked is not
 11 can state provide federal funding, it's can the state
 12 provide funding in addition to what it currently
 13 provides.
 14 THE COURT: All right. Thank you.
 15 **Q. (BY MR. FERRO) Do you recall that**
 16 **testimony, Dr. Hefty?**
 17 MR. HALPERN: Objection.
 18 THE COURT: If you could ask that question
 19 again, please.
 20 **Q. (BY MR. FERRO) Do you recall that**
 21 **testimony?**
 22 MR. HALPERN: Objection. The question is
 23 objected to. He keeps asking it again.
 24 THE COURT: Well, he -- go ahead and ask
 25 the question. We'll see.

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1 **Q. (BY MR. FERRO) Do you recall just**
 2 **testifying that that did not seem feasible, given the**
 3 **current situation?**
 4 A. Out of context, yes.
 5 **Q. What is --**
 6 A. I mean, I think -- I think this is
 7 actually helping me, because I think I was confused
 8 when the question was originally asked. I think now,
 9 as I think back, the question had to do with the
 10 possibility of the state providing additional funding.
 11 It isn't clear to me. It wasn't clear to me at the
 12 time, I perhaps wasn't listening carefully, whether or
 13 not it could be a substitute for federal funding. But
 14 the state certainly could provide funding that would
 15 address the purposes, similar purposes, to federal
 16 funding.
 17 **Q. And what did you understand Mr. Halpern's**
 18 **question to ask?**
 19 A. You know, at this point I'm fairly
 20 confused about what -- what was originally asked.
 21 **Q. And I'm going to reread the question**
 22 **from . . . Do you recall that Mr. Halpern asked you**
 23 **what the federal funding goes to could be provided by**
 24 **the -- through the Public School Finance Act?**
 25 A. I don't remember that in exactly that way.

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1 But perhaps it was.
 2 **Q. Do you recall that you answered, "It could**
 3 **be, but that doesn't seem feasible either, given the**
 4 **current situation"?**
 5 A. Well, at the time I answered that way, I
 6 was envisioning substituting state funding for federal
 7 funding. In other words, not having the federal
 8 funding, and filling in behind, so to speak, with state
 9 funding. That doesn't seem feasible. But I probably
 10 didn't really understand the question at the time.
 11 **Q. Well, what did you mean by the "current**
 12 **situation"?**
 13 A. The current economy.
 14 **Q. The current state economy?**
 15 A. The current national, state, world
 16 economy.
 17 **Q. And more specifically, what -- what did**
 18 **you mean by that?**
 19 A. That we're in a time with -- with economic
 20 constraints, economic -- the economy isn't good. There
 21 isn't -- there are not huge amounts of money available
 22 in any part of the economy, it seems to me.
 23 MR. FERRO: Thank you.
 24 THE COURT: Thank you. Thank you, sir.
 25 You may step down. Thank you. Next witness for the

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1 plaintiff?
 2 MS. GEBHARDT: Good morning, Your Honor.
 3 The plaintiffs would call Scott Murphy.
 4 THE COURT: Thank you. Would you come
 5 forward, sir, to the witness stand. If you'd raise
 6 your right hand.
 7 SCOTT D. MURPHY,
 8 having been first duly sworn to state the whole truth,
 9 testified as follows:
 10 THE COURT: Thank you. Please be seated,
 11 sir.
 12 THE WITNESS: May I have some water?
 13 THE COURT: Oh, yes, certainly. Be
 14 careful pouring it. Sometimes it comes out fast.
 15 THE WITNESS: Okay. Thank you.
 16 THE COURT: And then, sir, if you would
 17 state your full name and spell your last name for the
 18 record.
 19 THE WITNESS: My name is Scott D. Murphy.
 20 M-u-r-p-h-y.
 21 THE COURT: Thank you, sir.
 22 DIRECT EXAMINATION
 23 BY MS. GEBHARDT:
 24 **Q. Mr. Murphy, can you state your current**
 25 **position, please.**

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1 A. I'm currently the superintendent of
 2 schools of Littleton Public Schools, Arapahoe County
 3 District 6.
 4 **Q. Can you tell us a little about your**
 5 **educational background post-high school?**
 6 A. Yes. I received a bachelor's degree and
 7 graduated magna cum laude from Colorado State
 8 University. The degree was in social work. I received
 9 a master's degree in public administration from the
 10 University of Colorado at Boulder. And I took some
 11 additional postgraduate courses.
 12 **Q. Where?**
 13 A. University of Denver.
 14 **Q. How long have you been in public**
 15 **education, Mr. Murphy?**
 16 A. Oh, approximately 30 years. Perhaps a
 17 year or two more.
 18 **Q. I'm putting on the Elmo Trial Exhibit**
 19 **No. 7800. Do you recognize that document, Mr. Murphy?**
 20 **It's a little dark. Sorry.**
 21 A. It is just a bit dark. But yes, I do.
 22 **Q. And what is it, please.**
 23 A. This is a profile of me, as
 24 superintendent, on our district website page.
 25 **Q. And to the best of your knowledge, is it**

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1 **accurate and as up to date as it could be?**
 2 A. Yes.
 3 MS. GEBHARDT: I think we have a standing
 4 admission in these, but I would move for the admission
 5 of 7800.
 6 THE COURT: Any objection?
 7 MS. MARKEL: No, Your Honor.
 8 THE COURT: 7800 is admitted.
 9 **Q. (BY MS. GEBHARDT) How long have you been**
 10 **in your current position, Mr. Murphy?**
 11 A. I'm beginning my sixth year.
 12 **Q. And what do you do as a superintendent of**
 13 **schools in Littleton? Can you tell us a little about**
 14 **your job responsibilities, please.**
 15 A. I'm responsible for all areas of the
 16 district, the operations, transportation, finance, food
 17 service, warehouse, maintenance. And I'm responsible
 18 over the instructional area of the district,
 19 intergovernmental relations, legislative, a lot of
 20 community outreach in working with our compatriots, if
 21 you will, our organizations that are a important part
 22 of our community and our school district.
 23 **Q. Can you tell us a little about your past**
 24 **education jobs that you've held?**
 25 A. Yes. Prior to being superintendent, I was

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1 assistant superintendent and chief financial officer
 2 for the Littleton Public Schools. I was -- I believe I
 3 had that position since about 1992, '93. In total I
 4 began as the director of business services in 1990,
 5 what people today would probably call chief financial
 6 officer.
 7 Prior to that -- excuse me. Prior to
 8 that, I worked for the Brighton Public Schools in the
 9 Adams County area. And I was in a similar position. I
 10 believe it was called executive director of auxiliary
 11 services. And that was a similar position to prior to
 12 being superintendent that I held in Littleton.
 13 Prior to that, I worked for the Aurora
 14 Public School District, and I was budget director and
 15 also responsible for debt financing for the district at
 16 that time. Prior to that, I worked for the Colorado
 17 Department of Education. I supervised community-based
 18 education. I was also an evaluation analyst and worked
 19 on zero-based budgeting formats submitted to the Joint
 20 Budget Committee of the Colorado State Legislature.
 21 MS. GEBHARDT: Can you hear him okay?
 22 Okay.
 23 **Q. (BY MS. GEBHARDT) Have you worked with**
 24 **other organizations outside -- that are related to the**
 25 **work that you were doing professionally?**

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1 A. Employed or --
 2 **Q. No.**
 3 A. Yes.
 4 **Q. Can you explain those, please.**
 5 A. I worked for -- well, I was involved
 6 professionally with a number of organizations. And I
 7 hope I can get some of these down. I was the president
 8 of the Colorado Association of School Executives. I
 9 did some work for the legislature by chairing a -- an
 10 advisory group or the 2005 school interim -- school
 11 finance interim committee while working with Colorado
 12 Association of School Executives, CASE, if I may go
 13 ahead and say that.
 14 **Q. Yeah.**
 15 A. CASE. I was the chair of the school
 16 finance committee. I was the chair of the legislative
 17 committee. I was the chair of the Denver Area SCHOOL
 18 Superintendents Council, encompassing 23 school
 19 districts. Approximately 70 percent of the population
 20 of the state of Colorado was a part of those. Shall I
 21 go on? Is this . . .
 22 **Q. Have you had any work on any compensation**
 23 **or audit committees?**
 24 A. Yes. I'm on the board of trustees for the
 25 Public Employees Retirement Association, or PERA. I

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1 sit on the Compensation and Budget Committee -- let me
 2 back up. PERA is run basically by about six
 3 committees. Most of the work is done there. And I'm
 4 on three of those committees. One was enhancing state
 5 public relations, but the more financially related one
 6 is the committee on compensation and budget. The other
 7 one is the PERA Audit Committee.
 8 **Q. Have you served on any CDE committees?**
 9 A. Yes. I served on the Financial Policies
 10 and Procedures Committee. Additionally, I served on
 11 the -- and helped begin the Educational Data Advisory
 12 Committee, or what's called EDAC.
 13 **Q. Have you taught any classes?**
 14 A. Yes. I have taught classes for University
 15 of Phoenix, University of Northern Colorado, University
 16 of Denver.
 17 **Q. In what areas, Mr. Murphy?**
 18 A. School finance.
 19 **Q. Have you consulted with other districts on**
 20 **financial-related matters?**
 21 A. Yes.
 22 **Q. Can you explain that, please.**
 23 A. I've been asked on occasion to go out and
 24 help business managers or chief financial officers, in
 25 some cases superintendents who have both roles. I

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1 spend some time at conferences, Colorado -- Colorado
 2 Association of School Boards conference or convention,
 3 special workshops there on finance, on accounting, on
 4 auditing. I also did that for the Colorado Association
 5 of School Executives, and from time to time, as I said,
 6 I assisted people by telephone or I would travel as far
 7 as southwestern Colorado at times to meet with
 8 superintendents or boards.
 9 MS. GEBHARDT: Your Honor, at this time we
 10 would ask that Mr. Murphy be allowed to testify as an
 11 expert in the area of the history of the current School
 12 Finance Act, the current School Finance Act and
 13 education and budget issues in Littleton and other
 14 districts surrounding Littleton.
 15 THE COURT: Voir dire or objection?
 16 MS. MARKEL: Voir dire, if I may, Your
 17 Honor.
 18 THE COURT: Yes.
 19 VOIR DIRE EXAMINATION
 20 BY MS. MARKEL:
 21 **Q. Good morning, Superintendent Murphy. How**
 22 **are you?**
 23 A. Fine. Thank you very much.
 24 **Q. My name is Carey Markel. I'm here on**
 25 **behalf of the State of Colorado, the defendants in the**

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1 **case. I have a few questions on voir dire. Just to**
 2 **clarify, you're not a lawyer, are you?**
 3 A. No.
 4 **Q. And you don't hold a juris doctorate among**
 5 **all the degrees you do hold? You don't hold a J.D., do**
 6 **you?**
 7 A. No.
 8 **Q. You've never practiced law?**
 9 A. No.
 10 **Q. And you're not an expert in legal**
 11 **analysis, are you?**
 12 MS. GEBHARDT: I don't believe that was
 13 one of the areas I asked if he was qualified.
 14 A. You mean as an attorney? I don't know.
 15 **Q. (BY MS. MARKEL) I'll clarify. I'll just**
 16 **narrow this. In your summary of expert testimony that**
 17 **you provided in this case, Dr. Murphy, you used the**
 18 **word -- the phrase "The Public School Finance Act is**
 19 **not rationally related to the thorough and uniform**
 20 **stated purpose of the act," and in your deposition**
 21 **testimony, I believe you testified the basis of those**
 22 **statements were factual reasons.**
 23 MS. GEBHARDT: Your Honor --
 24 **Q. (BY MS. MARKEL) And I'm just -- my voir**
 25 **dire is simply to establish you are not intending to**

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1 **opine as to the legal reasons around those provisions?**
 2 MS. GEBHARDT: That was not in the scope
 3 that I listed him as.
 4 THE COURT: I think that goes more to
 5 cross-examination. So do you have any other voir dire?
 6 MS. MARKEL: That's it.
 7 THE COURT: All right. Thank you. He'll
 8 be admitted as an expert in the areas tendered.
 9 MS. MARKEL: Thank you.
 10 DIRECT EXAMINATION (continued)
 11 BY MS. GEBHARDT:
 12 **Q. Mr. Murphy, you testified that you have**
 13 **served on some legislative councils, some committees**
 14 **for the legislature?**
 15 A. Yes.
 16 **Q. Can you tell me when you first remember**
 17 **servng on committees for the legislature?**
 18 A. I'm sure I'd done some things in 1980, but
 19 that's a long time ago. I did serve on an advisory
 20 committee for the -- the initiation or the beginning of
 21 the Colorado School Finance Act, the 1994, which was
 22 also -- there were really two committees. It was the
 23 same committee, but there were two -- two pieces of it.
 24 The first part was about an analysis of the setting
 25 categories and some of the issues there that related to

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1 the second part of the advisory committee, which was
 2 what was appropriate to move forward for a new finance
 3 act. And that was -- with legislative council.
 4 **Q. What was your understanding of why you**
 5 **were asked to be on the committee?**
 6 A. I believe they wanted experience from the
 7 field and what our observations were and to combine
 8 that knowledge with other individuals that either had
 9 done some of those things or were considered experts in
 10 school finance.
 11 **Q. And what was your understanding of why**
 12 **there was a committee to look at changing the School**
 13 **Finance Act from 1988?**
 14 A. I believe they began to determine or feel,
 15 believe that the 1988 act was not addressing all the
 16 issues that districts were dealing with, particularly
 17 in relation to such things as demographics related to
 18 what someone would define as at-risk students. Of
 19 course, that was part of our discussion. And they
 20 generally believed that the 1988 act was not
 21 appropriate for going forward and taking care of the
 22 needs of kids and that something else was needed.
 23 **Q. Do you remember if there was a report**
 24 **written on the committee workings?**
 25 A. There was a report written prior to the

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1 committee, and then based on that, there was a initial
 2 report that came from the committee based on, I
 3 believe, House Bill 1344. That was in March of 1993.
 4 And then there was a subsequent report that was issued
 5 in August of 1993.
 6 **Q. Is that the report to which you're**
 7 **referring, Mr. Murphy?**
 8 A. Yes. That's the August report.
 9 MS. GEBHARDT: If I might approach the
 10 witness, Your Honor.
 11 THE COURT: Yes.
 12 MS. GEBHARDT: I'm just going to give him
 13 a copy of the exhibit to read, because that's hard to
 14 read up there.
 15 **Q. (BY MS. GEBHARDT) So can you identify,**
 16 **please, what you have, Mr. Murphy, what I've just**
 17 **handed you.**
 18 A. I have a Legislative Council Staff Report
 19 on Senate Bill 93-87, a Setting Category Study. It was
 20 a research publication from legislative council
 21 No. 378 issued August of 1993.
 22 **Q. Have you seen that document before?**
 23 A. Yes.
 24 **Q. And you're familiar with that document?**
 25 A. Much of it

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1 **Q. So what -- what was your understanding of**
 2 **what the work was that went into that report? Was it**
 3 **work you were involved with?**
 4 A. Yes, it was.
 5 **Q. Can you explain that, please.**
 6 A. Yes. I was a member of a team of
 7 individuals advising the legislative council chaired by
 8 Charlie Brown at that point in time on various elements
 9 that should be looked at and what should be included in
 10 a revision to the School Finance Act.
 11 **Q. Can you turn, please, to page 12.**
 12 A. Yes.
 13 **Q. And do you see right above where it says**
 14 **"Organization of Report," the paragraph that talks**
 15 **about two tasks?**
 16 A. Yes.
 17 MS. GEBHARDT: I'm still learning how to
 18 use the Elmo, Your Honor. I'm sorry.
 19 THE COURT: That's fine.
 20 MS. GEBHARDT: It's not zooming for you.
 21 I'm sorry. Can you read that okay?
 22 THE WITNESS: Not now.
 23 **Q. (BY MS. GEBHARDT) There we go.**
 24 **Mr. Murphy, did have you an understanding of whether**
 25 **there were any tasks that remained undone as a result**

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1 **of the work that you did on the task force?**
 2 A. Yes, I do.
 3 **Q. And can you tell us what those were,**
 4 **please.**
 5 A. There was -- they did not and they were
 6 unable to finish their work with regard to the funding
 7 component values. There were funding component values
 8 from '88, and they -- but the major one that they had
 9 is they really weren't able to zero in on what a base
 10 amount of funding should be for a district prior to
 11 adjusting it by what today we call factors. But at
 12 that point they were beginning to determine what those
 13 factors were.
 14 **Q. And was that an important part of the work**
 15 **on the School Finance Act, was looking at the base?**
 16 A. Well, unfortunately, it was not. The
 17 committee had some -- some of the committee members had
 18 some fairly strong feelings about that. There was much
 19 discussion about the factors, but not so much about the
 20 base.
 21 **Q. And can you explain again what the factors**
 22 **are that were being addressed, please.**
 23 A. The factors that were being addressed,
 24 they were talking about cost of living, definition for
 25 at-risk students. Later, as we got into the act

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1 itself, there were several other factors that were
 2 included. But this really focused on some of the
 3 cost-of-living issues and the at-risk issues.
 4 **Q. And to your knowledge, did this group ever**
 5 **go back and look at the base funding and, as it says up**
 6 **here, method for establishing a base per-pupil funding**
 7 **component?**
 8 A. Not that I'm aware of.
 9 **Q. Now, you've heard some discussion about**
 10 **the cost-of-living factor. Does that report also**
 11 **address the cost-of-living factor that you have before**
 12 **you?**
 13 A. I believe it does.
 14 **Q. Do you have an understanding of what was**
 15 **addressed when the cost of living was talked about in**
 16 **the report?**
 17 A. Yes, to some extent. Yes.
 18 **Q. Can you explain what your understanding**
 19 **is, please.**
 20 A. At that time there was a group that
 21 legislative council worked with, a Runtime
 22 International I believe was the name of the group, and
 23 they were initially looking at what are the factors
 24 that drive cost of living in school districts. And I
 25 think they started with a traditional market basket of

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1 goods we've heard many times with price indices. But
 2 they then narrowed in on using housing values
 3 and -- because the majority of people in a school
 4 district do own or rent a home, and they began to look
 5 at square footage and the cost per square foot so they
 6 could start to develop an indices of who had a higher
 7 cost of living in that list.

8 **Q. And did the state conduct a cost-of-living**
 9 **study, to your knowledge?**

10 A. My knowledge is not the best on that. But
 11 from my understanding, what I've heard, and
 12 conversations I've had, they have done that several
 13 times.

14 **Q. And to your knowledge, Mr. Murphy, have**
 15 **they ever fully implemented the cost of living?**

16 A. No. To the best of my knowledge, no.

17 **Q. Did the interim committee also look at**
 18 **categorical funding?**

19 A. Yes.

20 **Q. And did they look at special education**
 21 **funding?**

22 A. Yes.

23 **Q. And if you could, please, Mr. Murphy, if**
 24 **you could turn to page 87 of the report, please.**

25 A. Yes. I mean, I have that

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1 **Q. Okay. What was your understanding of how**
 2 **special education costs were paid for back then by the**
 3 **state?**

4 A. Just to step back, in the early '80s, the
 5 conversation was much around that 80 percent of the
 6 costs of special education were to be paid. This is
 7 reflected -- reflective of those statements. At least
 8 the first time I had seen them. Up to that point, I
 9 wondered if it was folklore, because it was talked
 10 about, but I didn't see it.

11 In this report we began to state that.
 12 And then my understanding with that, even though it was
 13 80 percent, it was prorated based on essentially what
 14 the money available was.

15 **Q. So is it your understanding that the -- to**
 16 **your knowledge, did the state ever reimburse 80 percent**
 17 **of approved costs for special education?**

18 A. No.

19 **Q. And in the time that you were serving on**
 20 **this committee, what was the percentage of**
 21 **reimbursement by the state for special education costs?**

22 A. There are several ways to calculate it.
 23 But I believe it was about a third. About a third
 24 based on what they believed were entitled costs. But
 25 on the actual appropriation for each district of what

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1 they were spending on special education, I think it was
 2 around 20 percent or slightly less.

3 **Q. Can you turn to the last page of the**
 4 **report, please, Mr. Murphy. Table 7. Can you tell us**
 5 **what Table 7 shows, please.**

6 A. Table 7 lays out the categorical funding
 7 on special education, vocational, English Language
 8 Proficiency Act, or ELPA, transportation, and increased
 9 enrollment. And it talks about what the
 10 reimbursement -- well, it talks about the costs. What
 11 the actual costs, entitled costs, the amount that was
 12 appropriated for those, and then the percentage based
 13 on either appropriation or entitlement.

14 **Q. And so does this -- on the special**
 15 **education line, is that what you were referring to when**
 16 **you talked about the reimbursement?**

17 A. Yes.

18 **Q. And what was the reimbursement of actual**
 19 **costs to school districts by the state back in**
 20 **1992 -- well, '91-'92, and '92-'93?**

21 A. 19.34 percent.

22 **Q. And as you go down that column, did the**
 23 **state ever reimburse a hundred percent of what**
 24 **was -- of the expenses on any of those categoricals?**

25 A. No.

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1 MS. GEBHARDT: Your Honor, at this time I
 2 would move for the admission of Exhibit 9302.

3 THE COURT: Any objection?

4 MS. MARKEL: None, Your Honor.

5 THE COURT: 9302 will be admitted.

6 **Q. (BY MS. GEBHARDT) Mr. Murphy, are you**
 7 **familiar with something that's been called the**
 8 **transitional fiscal year?**

9 A. Yes. Do you need this back?

10 **Q. Can you tell us -- sure.**

11 A. The transitional fiscal year was a change
 12 in the fiscal year that was established by the
 13 legislature from a calendar year period, which was
 14 previous to that, which was January through December,
 15 and it made a -- a six-month fiscal year in order to
 16 transition to a July 1 to June 30 fiscal year for
 17 school districts, and I believe the state as well. It
 18 was a six-month period, and I -- I can -- I can answer
 19 more questions if you want.

20 **Q. What was your understanding of why the**
 21 **state went to a transitional fiscal year?**

22 A. The reason -- my understanding, the reason
 23 why, so it could lower the appropriations from the
 24 State of Colorado to public school districts. At that
 25 time, they -- most people began to realize that

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1 property tax collections were in the first half of the
 2 fiscal year, primarily April, May, and June, and if
 3 they divided the appropriation, the amount that school
 4 districts owed, and then they looked at how much the
 5 state would pay over the full year.
 6 Well, they looked at that first six months
 7 and said gosh, we don't have to pay very much, because
 8 the school districts are collecting so much at the
 9 beginning, they were able to lower their contribution,
 10 so to speak, a great deal, and that saved the state
 11 money.
 12 **Q. What was the impact on school districts?**
 13 A. Well, the impact on school districts is
 14 when we began to use all of our money, our fund
 15 balances dropped, fund balances being the difference
 16 between revenue and expenditures, money we start with
 17 and money we ended up. It dropped dramatically because
 18 the state was not sharing during that period of time
 19 their obligation. So who else was there? There was
 20 school districts. We had to begin to use all our
 21 money. The impact then is we lowered our fund
 22 balances. We didn't have investable resources, so now
 23 our investments earnings began to drop dramatically.
 24 Additionally, our teachers, who earn their
 25 salary over a nine-month period, but are paid ten

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1 months, under the old system, in December, four-ninths
 2 of what they had worked and what they were owed was in
 3 place. By the time we had a transitional fiscal year,
 4 and every year thereafter, the accrued salaries, they
 5 had -- they had worked the majority of -- actually, all
 6 of their contract, yet we still owed them all of their
 7 money now, which is very different than four-ninths
 8 which is in December.
 9 So we lost interest earnings, we lost
 10 flexibility, and our financial standing began to be
 11 recognized immediately by Moody's and Standard &
 12 Poor's, and they began to have far more questions about
 13 the stability of school districts at that minute in
 14 time.
 15 **Q. Do you have the knowledge as to what the
 16 actual financial impact was on Littleton School
 17 District?**
 18 A. I have to think back.
 19 **Q. You talked about the investment income.**
 20 A. The investment income dropped. We were
 21 once collecting approximately \$1.9 million. Today it's
 22 anywhere from about a hundred thousand to 300. Now,
 23 interest rates have gone down, but it -- you could take
 24 our interest earnings and drop them by about one-half.
 25 And the other problem that we had is we didn't have the

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1 ability any longer to invest long term. So now we're
 2 into short-term investments, when it's like going to
 3 the bank as opposed to buying a CD, three-year CD. We
 4 just couldn't do it anymore because we needed our cash
 5 flow to try to get us through our payroll periods.
 6 **Q. Do you have knowledge as to whether some
 7 school districts were able to operate in this new
 8 fiscal environment, or did they need to take out loans?**
 9 A. Many had to take out loans.
 10 **Q. And did the state -- can you explain that,
 11 please.**
 12 A. Yes. At that time, one of the trade-offs
 13 was in the system, when districts said whoa, whoa, wait
 14 a second, we're losing our money, we can't make
 15 payroll, is the state said we will start an
 16 interest-free loan program, and you can borrow money
 17 from us. You have to pay it back immediately after
 18 your dollars come in from the county for property tax,
 19 and they get balanced out, and we will not charge you
 20 interest. And the state would then go out and
 21 interest -- would issue debt at a fairly low interest
 22 rate to be able to assist us in that way.
 23 **Q. And that same situation continues today?**
 24 A. It continues today. Or we -- we hope it
 25 will. There's conversation that they would like it not

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1 to. I think that's a function of people's memory of
 2 this situation.
 3 **Q. Did school districts testify against the
 4 transitional fiscal year?**
 5 A. I don't recall.
 6 **Q. Okay. So then, Mr. Murphy, you also have
 7 testified that you were the chair of the Colorado
 8 General Assembly School Finance Interim Committee. Do
 9 you recall that?**
 10 A. Yes.
 11 **Q. What was the --**
 12 A. Or the advisory committee to the -- yeah.
 13 **Q. And was that in -- did that meet in 2005?**
 14 A. Yes.
 15 **Q. And what was your role to the -- on that
 16 committee?**
 17 A. I was -- I chaired that committee. A
 18 number of our -- and there were a number of individuals
 19 on the committees.
 20 MS. GEBHARDT: Your Honor, again, if I
 21 might approach.
 22 THE COURT: Yes.
 23 **Q. (BY MS. GEBHARDT) Mr. Murphy, you've been
 24 handed what's been marked as Trial Exhibit No. 26. Can
 25 you identify that, please.**

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1 A. This was the final report of this task
 2 force that was advisory to the school finance interim
 3 committee.
 4 **Q. And the date on that report?**
 5 A. September 13, 2005.
 6 **Q. And when did the committee -- when did the**
 7 **task force meet? Just in general. Not specifics.**
 8 A. That summer. The summer of 1995.
 9 **Q. And if you could turn to the page that**
 10 **says "Members of the school finance task force." Do**
 11 **you have that page?**
 12 A. Yes.
 13 **Q. See if I can get the whole thing on the**
 14 **screen, Your Honor. There we go. Who made up the**
 15 **members of the task force, please. Just in general.**
 16 A. We had representatives from the
 17 superintendents or chief executive officers, we had
 18 school board members. We had some of our statewide
 19 associations representing the school board and the
 20 state board of education. We had chief financial
 21 officers, which at that time, that was part of my
 22 responsibility. We had the -- the director of the
 23 Colorado School Finance Project. We had parents,
 24 charter school representation, our state teacher
 25 associations, some business representatives. We also

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1 had a member from the Colorado Department of Education.
 2 **Q. And who was that?**
 3 A. And some experts.
 4 **Q. Who was the CDE member?**
 5 A. Vody Herrmann.
 6 **Q. And you had a member from the charter**
 7 **school who was also -- who was that?**
 8 A. Nina Lopez. I believe she was the public
 9 affairs or lobbyist.
 10 **Q. If you could turn to the page, please,**
 11 **Mr. Murphy, that says "Executive Summary." I believe**
 12 **it's Roman II.**
 13 A. Yes.
 14 **Q. And can you -- do you remember what the**
 15 **purpose was for the task force --**
 16 A. Yes.
 17 **Q. -- what your role was?**
 18 A. Well, the purpose of the task force was to
 19 look at the funding in relation to was there funding in
 20 Colorado. Not only just thorough and uniform, but was
 21 there an adequate level of funding.
 22 **Q. Okay. And what did you do to undertake**
 23 **that task?**
 24 A. We began to bring people that had
 25 information about funding that would come and testify

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1 before us. We'd have long conversations about --
 2 because there was experts from different areas and
 3 different perspectives. We'd have long conversations
 4 about where we are with school finance today, what
 5 people's attitudes were to that. How rational, if you
 6 will, they thought it was. And -- and what are the
 7 areas that we needed to focus on.
 8 So we began to develop a set of principles
 9 that guided the work, and that took some time. Not
 10 everybody, as you can understand, would be on the same
 11 page at the same time. But after discussion, I think
 12 we came to those, and that helped us shape
 13 recommendations.
 14 **Q. Did the task force have any position on**
 15 **whether the current School Finance Act was fine as it**
 16 **was or whether it needed to be changed?**
 17 A. Yes. I think as you'll see the
 18 recommendations, and they felt like the School Finance
 19 Act did need to be changed and have significant
 20 increases in funding. The thing they began to look at
 21 was the base per-pupil amount needed to be adjusted.
 22 That was a complicated task. But I think everybody
 23 recognized that the base was -- there was not -- there
 24 wasn't knowledge about where the case came from. I
 25 think people probably appreciated -- and my

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1 understanding and my thinking at that time was everyone
 2 appreciated and understood that there were factors that
 3 applied to that, and some of those factors had -- were
 4 believed to be appropriate.
 5 But the base was one they wanted to look
 6 at. The other piece that they wanted to have
 7 recommendations about or -- and they did recommend
 8 about was about capital, areas for capital, whether it
 9 was in terms of construction, ongoing maintenance,
 10 safety, those kind of things.
 11 **Q. At that time how were capital construction**
 12 **projects funded in Colorado, if you know? Was there**
 13 **any state share for that?**
 14 A. No. Not to the best of my knowledge.
 15 With the exception of the capital reserve fund, which
 16 is really minor for the -- in terms of major capital.
 17 But we all received \$200-plus per year, which a portion
 18 would be divided --
 19 **Q. You mean \$200 per pupil?**
 20 A. Per pupil. Excuse me. It would be kind
 21 of low at \$200. \$200 per pupil. And that could be
 22 used for operations capital. And so to some extent it
 23 was, yes.
 24 **Q. If a school district wanted to build a**
 25 **building, how did they do that at the time of this act?**

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1 A. They needed to have some securities
 2 instrument, some bond instrument. Primarily they would
 3 go to a bond election, and then they would -- which
 4 would -- the public would pledge that they would
 5 increase their mill levy to pay the principal and
 6 interest of the bonds over a period of time. Much like
 7 a mortgage. And they would take the money and either
 8 build or repair their buildings.

9 **Q. Was there a disparity in the ability of**
 10 **districts to be able to raise money to build schools?**

11 A. Oh, yes.

12 **Q. Can you explain that, please.**

13 A. Well, some districts, even though they had
 14 a high assessed valuation per pupil, which some --
 15 which logically has some bearing to some people's
 16 interpretation of the wealth of the district. Frankly,
 17 there were districts that their entire assessed
 18 valuation times a mill levy generated so little that
 19 they could never come close to building a building.

20 **Q. Was that some of the concerns you wanted**
 21 **to have addressed in the task force in this executive**
 22 **summary?**

23 A. Yes. Yes.

24 **Q. Did the task force use any terms of art,**
 25 **such as adequate or other terms?**

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1 MS. MARKEL: Objection. Leading, Your
 2 Honor.

3 MS. GEBHARDT: You're right.

4 THE COURT: Sustained.

5 **Q. (BY MS. GEBHARDT) Did the task force have**
 6 **a term -- I see you used -- well, I'll just turn your**
 7 **attention to page 3 and ask why it was that the task**
 8 **force put that footnote, please. Do you see the**
 9 **footnote?**

10 A. Yes. Well, they needed to put a
 11 definition in there, and they did so there. They
 12 referenced adequate, that a school finance system
 13 requires an adequate amount of funding. The definition
 14 that the task force used was the -- for the word
 15 "adequate" meant the amount of funding necessary to
 16 provide for the programs and services needed for a
 17 student to meet the academic expectations of
 18 accreditation, school accountability reports, and at
 19 that time the -- the federal No Child Left Behind Act.

20 And then it went on to say that -- and we
 21 can read this. This is not to say a school district
 22 should not be permitted to generate revenue above that
 23 level, 'cause there's other sources that people could
 24 do that from.

25 **Q. Can you turn now to the introduction,**

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1 **please.**

2 A. Yes. I've got it.

3 **Q. And as you were discussing earlier,**
 4 **Mr. Murphy, did the task force address the base in the**
 5 **act?**

6 A. Did the task force --

7 **Q. Task force address the issue of the base**
 8 **funding amount in the -- in the report?**

9 A. They did -- they did, in the sense that
 10 they recognized that the base needed to be analyzed and
 11 some rationale or understanding of how that was
 12 created.

13 **Q. And what did they -- what did they**
 14 **discover?**

15 A. There was not a -- they discovered as they
 16 looked at it there was not information or analysis
 17 previously done that would say that there was a base
 18 that made sense.

19 **Q. And did they come to a conclusion as to**
 20 **how the original base per-pupil funding was reached?**

21 A. Yes.

22 **Q. And what was that conclusion?**

23 A. That the base was created as -- well, the
 24 base was created by backing into it by the dollars
 25 available from the prior act and what people believed

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1 would be available for the next act.

2 **Q. And to your knowledge, that base never**
 3 **changed from the time of 1994 until at least the time**
 4 **of 2005, when you studied it again?**

5 MS. MARKEL: Objection. Leading.
 6 THE COURT: Sustained.

7 **Q. (BY MS. GEBHARDT) Did the base change**
 8 **from the time you started looking at it in 1994 till**
 9 **the time you started looking at it again in 2005?**

10 A. Not that I'm aware of.

11 **Q. Then if you could turn to the page,**
 12 **Mr. Murphy, that starts page 7. I believe you**
 13 **referenced guiding principles. Is that what you were**
 14 **referring to?**

15 A. Yes.

16 **Q. Can you identify some of the guiding**
 17 **principles, please.**

18 A. Well, the first one, "Funding should be
 19 adequate and reliable, structured to equitably meet the
 20 education of students served by public education in
 21 Colorado." The No. 4, the funding system should be
 22 built on a per-student base that reflects the revenue
 23 needed for a regular student, a student without any
 24 special needs, to meet the state-mandated model content
 25 standards and other legislative accountability matters.

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1 The base cost should be -- no. 5, should
 2 equitably reflect added cost of delivery of services
 3 associated with the school district or the student that
 4 required supplementary expenditures. There's several
 5 others under local control that gave -- would give
 6 flexibility to the school districts once they
 7 determined what the base should be and factors should
 8 be applied to it that the districts would have the
 9 primary responsibility and allowance to distribute
 10 those funds. And, of course, there's some there on
 11 holding people accountable.

12 **Q. And --**
 13 A. And capital. The capital near the end.

14 **Q. That we talked about.**
 15 A. I think I'm going to finish everyone's
 16 water.

17 **Q. We can get you some more. So after the**
 18 **guiding principles were decided, what was the work of**
 19 **the task force?**
 20 A. The task force, after some discussion on
 21 what those principles should be, talked about how that
 22 would -- how they would -- how those would manifest
 23 themselves and to come up with recommendations in
 24 certain areas. And as they begin to do this, then we
 25 send off a writing team to basically take the

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1 conversation and bring it back in terms of draft and
 2 put down what they'd heard based on the principles here
 3 of some possibilities.

4 **Q. And what was the result of the writing**
 5 **team?**
 6 A. The writing team came back with a written
 7 document in draft and with some of their ideas.

8 **Q. And that document is what we've been**
 9 **talking about today?**
 10 A. Yes. It's this document.

11 **Q. Exhibit 26?**
 12 A. Yes.

13 **Q. Did the -- did the interim task force**
 14 **reach any conclusions --**
 15 A. Yes.

16 **Q. -- as a result of the work?**
 17 A. Yes.

18 **Q. Can you turn to page 9, please. Crooked.**
 19 **Sorry. What were some of the conclusions that the**
 20 **committee reached?**
 21 A. Well, in general, I think they believed
 22 that the funding has not kept up with requirements that
 23 are needed in a whole number of areas. What costs were
 24 going up like and in relation to the funding that was
 25 changing. And the demands regarding standards-based

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1 education and a host of other things, capital and so
 2 on.

3 **Q. Did the committee also look at**
 4 **Amendment 23?**
 5 A. Yes.

6 **Q. What did the committee discover when it**
 7 **looked into Amendment 23?**
 8 A. Well, they looked at how it was created
 9 and what was occurring.

10 **Q. And what was your understanding of how it**
 11 **was created?**
 12 A. It was created by the use of one-third of
 13 1 percent of state income tax, which was put into a
 14 state -- what was called the State Education Fund. And
 15 that was the source of the revenue.

16 **Q. And what was the mechanism of**
 17 **Amendment 23? What did it do to school finance?**
 18 A. The mechanism -- the way it applied to
 19 school finance is the legislature, under Amendment 23,
 20 was required to increase funding by -- or the base
 21 funding upon which the factors applied, but that base
 22 funding was to go up by the rate of inflation plus
 23 1 percent.

24 **Q. And do you know how the 1 percent was**
 25 **calculated, Mr. Murphy?**

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1 A. The 1 percent was based on what was
 2 believed under funding since the 1988 School Finance
 3 Act.

4 **Q. And is that what they're referring to in**
 5 **this part of the report on page 8 -- or page 9? I'm**
 6 **sorry.**
 7 A. Yes.

8 **Q. And did the committee reach any**
 9 **conclusions about the relationship between Amendment 23**
 10 **and the school finance formula?**
 11 A. Yes. I believe to some extent they did.

12 **Q. And what was that, please.**
 13 A. They believed that it should be -- it's
 14 not the ceiling in the base -- in what the
 15 legislature's giving. They also believed that
 16 Amendment 23 should be carefully used. That it was
 17 intended to be filling of the gap, because revenue
 18 would go up at a certain pace, but expenditures were
 19 going up far more, and that education fund was to be
 20 used to supplement that and to ensure that funding for
 21 public education would remain in place. That then
 22 would stabilize funding, to some extent, and create the
 23 very -- stop the variation that was occurring either by
 24 what the legislature was giving -- well, basically by
 25 what the legislature was giving for whatever reason.

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1 **Q. Could you explain what your understanding**
 2 **was of the state role of the State Education Fund under**
 3 **Amendment 23?**
 4 A. Yes, the State Education Fund was to
 5 provide resources to support the allocation from the
 6 legislature for per-pupil increases, per-pupil
 7 increases being inflation plus 1 percent. Now, if they
 8 authorized that, there may not be -- they may not be
 9 putting sufficient money into it under what they had
 10 been doing.
 11 So now you have a fund that has helped to
 12 supplement that. Each year, one-third of 1 percent of
 13 income tax is going into the -- I keep holding the
 14 box -- the State Education Fund, and then as needed,
 15 money could be drawn out to support that. And that was
 16 its primary purpose. There were other things that it
 17 could be used for, I think it was peer one technology,
 18 for instance. But there were special projects. That
 19 was its primary purpose.
 20 **Q. And did the committee study how the State**
 21 **Education Fund had been used since it had first**
 22 **been -- since inception?**
 23 A. I don't recall.
 24 **Q. Do you recall if they reached any**
 25 **conclusions about the way the State Education Fund had**

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1 **been used?**
 2 A. Yes.
 3 **Q. And what was that?**
 4 A. That the -- that the use of the State
 5 Education Fund was not to be construed as sufficient
 6 dollars to meet the needs of public education. It was
 7 really intended to meet the needs of base plus
 8 1 percent going up and to have some flexibility within
 9 that. Devoted to education, not devoted to state for
 10 balancing its budget or any other means. 'Cause the
 11 state was still required to increase its appropriation
 12 by 5 percent. State aid was to -- that appropriation
 13 was to go up unless personal income dropped to -- I
 14 believe it was 4 1/2 percent or less over two
 15 consecutive years.
 16 **Q. Do you recall the recession that the state**
 17 **and the country went through in the early 2000s?**
 18 A. Yes, I do.
 19 **Q. Do you have any knowledge of how the State**
 20 **Education Fund was used then?**
 21 A. At that point in time, it was used to help
 22 balance the state budget.
 23 **Q. And do you -- do you agree with the**
 24 **statement in the report that's highlighted there at the**
 25 **bottom of page 9?**

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1 A. Yes.
 2 **Q. So how was the State Education Fund used**
 3 **then?**
 4 A. The state, the best of my memory, began to
 5 shift its -- its funding for public education over to
 6 the State Education Fund. So what it may have intended
 7 to do is as their resources went down, they began to
 8 use the State Education Fund in a manner that was not
 9 considered best use to sustain it for the long term.
 10 Remember, the State Education Fund was
 11 collecting about 300 million at that time. They had
 12 estimated over ten years that annual collection would
 13 be 600 million-plus. So if you'd just look at it, you
 14 have over \$4 billion that should have been collected,
 15 be able to sustain funding for an extended period of
 16 time.
 17 We have had seen printouts and charts
 18 where this thing was going to be able to support school
 19 districts, be able to consider the kind of things that
 20 needed to be done in school districts for a period of
 21 at least 20 years. They'd always put the chart out
 22 around 20 years.
 23 **Q. And did that happen?**
 24 A. No.
 25 **Q. And why not?**

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1 A. Because money began to be drawn down and
 2 other projects began to go into the State Education
 3 Fund to draw money out of that. And, frankly, any time
 4 there's a downturn, they go and take it out of the
 5 State Education Fund, and then -- well, I'm going to
 6 get opinionated here. Sorry.
 7 **Q. No, it's okay. Answer the question as**
 8 **best you can.**
 9 A. Amendment 23 then all of a sudden became
 10 the whipping boy, as if it's causing the problem in the
 11 state, when, in fact, it was the funding source.
 12 Amendment 23 did not create an economic crisis, 9/11
 13 did, the tech crash did. It was a -- it was a source
 14 to be able to stabilize funding. But the state, if
 15 they began to use more of that to balance their budget,
 16 there's less to adhere to the original purpose.
 17 **Q. Which was?**
 18 A. Which was to stabilize the growth in
 19 expenditures for public schools.
 20 **Q. I'm going to direct your attention back to**
 21 **page 5 of the introduction. And do you see again in**
 22 **the -- the first full paragraph in the second column**
 23 **where the -- you see that language?**
 24 A. Yes.
 25 **Q. Do you remember discussion about whether**

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1 **the committee addressed the base?**
 2 A. Yes, I remember this.
 3 **Q. And what did the committee conclude as a**
 4 **result of its investigation of the base and how it was**
 5 **calculated?**
 6 A. The committee came to the same conclusion,
 7 that the base amount per pupil was established for the
 8 most part -- actually, I think people believed totally
 9 from what the dollars were available from the prior
 10 act, not in relation to the objectives that were talked
 11 about, what are the major principles and goals from
 12 this report.
 13 **Q. And to the best of your understanding, is**
 14 **that what was meant by afterthought?**
 15 A. Read that. Yes.
 16 **Q. Now, Mr. Murphy, as a result of all this**
 17 **work that was put into the school finance task force**
 18 **interim committee, what came out of that?**
 19 A. Out of this -- this committee? I believe
 20 my recollection is that a number of bills did come out.
 21 **Q. And did any of them pass?**
 22 A. That I don't remember.
 23 **Q. Okay.**
 24 A. But I could look.
 25 **Q. I don't think it's in there. Now,**

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1 **Mr. Murphy, what I'd like to do is turn your attention**
 2 **to your expert report, please. Which you don't have in**
 3 **front of you, but I'll put it up on the screen.**
 4 MS. GEBHARDT: And for reference, Your
 5 Honor, it is part of Exhibit -- I can zoom out -- 4800,
 6 which has already been admitted into evidence.
 7 Your Honor, before I move on, I move for
 8 the admission of Exhibit 26.
 9 THE COURT: Any objection?
 10 MS. MARKEL: None, Your Honor.
 11 THE COURT: 26 will be admitted.
 12 **Q. (BY MS. GEBHARDT) Have you seen this**
 13 **report before, Mr. Murphy? In fact, I call you**
 14 **Dr. Murphy in the report.**
 15 A. No. Not in this format. I've seen pieces
 16 of it. And I do appreciate getting the -- getting the
 17 doctorate here today.
 18 **Q. Is this a report that --**
 19 A. That's a Mr.
 20 **Q. -- that you drafted as part of your expert**
 21 **opinion in this case?**
 22 A. No, I did not draft this. These
 23 are -- pieces of this I communicated.
 24 **Q. And this contains your opinions in this**
 25 **case?**

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1 A. Yes. Yes.
 2 **Q. And as Ms. Markel pointed out, you -- in**
 3 **your report, you talk about irrationality?**
 4 A. Yes.
 5 **Q. Can you explain to the Court what you**
 6 **meant by that, please. And I'll -- I'll put it up on**
 7 **the screen.**
 8 A. Irrationality from -- from the point of
 9 view -- or from my point of view is something that from
 10 the -- from my observations, my experience, doesn't
 11 make sense --
 12 **Q. So --**
 13 A. -- why they do things.
 14 **Q. So we're looking at the third -- well, the**
 15 **second full paragraph on this page. Do you see the**
 16 **bottom paragraph on the -- on the screen there?**
 17 A. Yes.
 18 **Q. Okay. So can you explain what you meant**
 19 **when you said the inequities and irrationality that**
 20 **were built into the funding?**
 21 A. Just have to turn a little bit here.
 22 Could you ask the question again?
 23 **Q. Can you just explain what you meant when**
 24 **you talk about the inequities and irrationality?**
 25 A. What I was talking about as the inequities

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1 and irrationality. The rationale that was built into
 2 the funding levels had never been addressed because the
 3 whole finance formula is one piece, but if you don't
 4 have the base established to why it should be there, in
 5 some ways, I know this is a little harsh, but you got a
 6 little bit of a house of cards. You've established --
 7 **Q. Can you explain that, please.**
 8 A. Well, you're multiplying factors that may
 9 make sense by themselves, but they're being multiplied
 10 against the greatest power in the finance act, which is
 11 the base. And if people don't know where that's going
 12 to come from, then how do you know what's -- what's the
 13 adequate amount for a non-special needs student.
 14 It's like going out and hiring baseball
 15 players and having a ball and a bat, but you don't have
 16 a baseball field. I mean, it just plain does not make
 17 sense.
 18 **Q. In your -- in your paragraph here, you**
 19 **reference real levels of funding. Do you see that in**
 20 **the -- in your report?**
 21 A. Once again, I'm going to have to look.
 22 **Q. Halfway down.**
 23 A. Of the inequity?
 24 **Q. Yes. Same paragraph.**
 25 A. Yes.

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1 **Q. What did you mean by that, please.**
 2 A. I meant that the -- for the most part,
 3 the -- the level of inflation was greater than the
 4 amount of funding that was going in. Plus, if you --
 5 if you discount the increases in revenue by inflation
 6 and look at the actual costs of a school district, that
 7 makes it even worse. Because now your real costs are
 8 much -- much greater -- or the gap is much greater in
 9 terms of the real costs in comparison to your real
 10 revenue. Your buying power essentially goes down.
 11 **Q. So were school districts able to keep up?**
 12 **Is that what you're talking about with the actual costs**
 13 **that they were facing?**
 14 MS. MARKEL: Objection. Leading, Your
 15 Honor.
 16 THE COURT: Sustained.
 17 **Q. (BY MS. GEBHARDT) What's the impact on**
 18 **school districts?**
 19 A. School districts had to make dramatic
 20 decisions based on whatever school district it was,
 21 their capacity, their economy of scale, because dollars
 22 did not keep up. You --
 23 **Q. Were you finished? Go ahead.**
 24 A. I was going to say, one of the major
 25 pieces of evidence is that if you go back and look at

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1 what was occurring with school districts at the time, I
 2 mean, just go through the metro area, go through the
 3 small districts. I can't tell you how many budget cut
 4 committees. We used to call them strategic funding
 5 committees, a/k/a budget cut committees, and they
 6 occurred at district after district after district.
 7 And as peers, you'd asked did I help other
 8 districts earlier. Yes, I did, because this is one of
 9 the major functions that the finance officers, of
 10 course, we had to go through.
 11 **Q. I'm going to turn your attention to the**
 12 **top of your report here, Mr. Murphy. And we've already**
 13 **talked about the initial sentence of this. Can you**
 14 **please explain what you mean by "No attempt to**
 15 **determine actual costs in providing necessary services**
 16 **to children with disabilities," et cetera?**
 17 A. No one took a look at what was needed and
 18 what the actual cost was in terms of providing services
 19 and funding the services that were required. I talked
 20 about those earlier in relation to the analysis done by
 21 the legislative council and that -- that August
 22 publication.
 23 So that's what I was talking about. The
 24 example that was there is 80 percent funding for
 25 special education, but yet it was prorated back. So

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1 how can it be prorated back to something? That's just
 2 arbitrary. I mean, you're going to prorate. What's
 3 the needs of the student? Today, Littleton Public
 4 Schools, there's not 80 percent. We have less than
 5 20 percent funding. Who's picking that up? The rest
 6 of the general fund has to pull it off.
 7 **Q. Is that same analysis true for children to**
 8 **be defined at risk or children who are learning**
 9 **English?**
 10 A. Yes. Particularly for some of those.
 11 **Q. And in this paragraph, you also mention**
 12 **something called the "j" curve. Can you explain,**
 13 **please, what the "j" curve is?**
 14 A. Yes. With the '94 act, there was more
 15 funding created for smaller districts.
 16 **Q. And why is that?**
 17 A. Pardon me?
 18 **Q. Why was that?**
 19 A. Economy of scale. And it's just more
 20 expensive to run small districts, dramatically. And so
 21 they received the higher level of funding. But as
 22 district got larger, it's almost a backwards J. The
 23 funding levels went down to a district. And then what
 24 occurred -- here's where the J -- the forward J came,
 25 is at the very end, imagine funding goes down, down,

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1 down, and the other axis is how large that district is,
 2 and then all of a sudden at the end, I think there were
 3 four districts that popped up with greater funding.
 4 So the objection was, from those of us
 5 that were affected by that, is that there was not
 6 rationale -- or at least no study at that time that
 7 said they should be getting greater funding than the
 8 rest of us had. So after the '94 act, legislation was
 9 introduced to modify that, and, in fact, it did get
 10 modified.
 11 **Q. You also addressed the issue of declining**
 12 **enrollment. Why is that a significant issue?**
 13 A. Declining enrollments. The easiest way to
 14 talk about it is the revenue goes away before the costs
 15 do.
 16 **Q. Can you explain that, please.**
 17 A. Yes. We still have the same -- you're
 18 losing students at different classrooms, but you might
 19 lose two from a classroom of 25, makes it 23, another
 20 school at another side of the district you might go
 21 from 24 to 22. You still got the teacher, you still
 22 got the same number of buses, and you're not going to
 23 change materially the rest of the district. You're
 24 going to be mowing as much grass and watering, 'cause
 25 you don't close a school. It happens in stair steps.

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1 You got to go down and up. But that whole period of
 2 time you're losing revenue.
 3 Ask any district what they would rather
 4 be, a growing enrollment or declining enrollment
 5 district, and they'd say growing, because in that case
 6 you're receiving revenue before the expenditures.
 7 **Q. What effect does declining enrollment have**
 8 **on a school district budget?**
 9 A. It takes away the resources available.
 10 The only solution they had to that is they began
 11 averaging. In the '88 act, they said well, we'll give
 12 you minimum 1 percent. So you really still had to pay
 13 the price, you just got to pay it over a longer period
 14 of time.
 15 **Q. And is it a fair characterization that**
 16 **you're receiving money for students you don't have?**
 17 A. I wouldn't characterize it that way.
 18 **Q. And how would you characterize it,**
 19 **Mr. Murphy?**
 20 A. I would say you've got to delay payment.
 21 You basically use the state as a Visa. So they're
 22 giving you a Visa card, so they're letting you average,
 23 but eventually, if you go up in enrollment, doesn't
 24 make any difference, you're still having to pay the
 25 cost for the students that weren't there. So it's

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1 really just allowing you to slowly adjust yourself.
 2 But that difference from where your funding will be and
 3 where it was is that declining enrollment. They're
 4 trying to fill that in. But you don't -- you don't get
 5 free -- there's no phantom student payment here.
 6 **Q. Your last paragraph, Mr. Murphy, talks**
 7 **about private fundraising activities of a district.**
 8 **Can you address that, please.**
 9 A. Yes. Districts have varying abilities to
 10 raise funds. It's usually a function of foundations or
 11 the wealth of their community. If they have more
 12 business, you'll see larger foundations, larger
 13 contributions. I've been in a district where in one
 14 evening, they raised \$1 million. I've been in a school
 15 in one evening that they've raised a hundred thousand
 16 dollars in our district. I've been in another school
 17 in our district where they can raise nothing.
 18 **Q. And why is that?**
 19 A. They have a very poor population, and the
 20 contributions are pretty much to the extent that the
 21 parents are able -- not working or feel comfortable
 22 coming into a school, might be able to give a little
 23 sweat equity, but not much.
 24 **Q. And do you have an opinion as to the**
 25 **effect of those fundraising activities on school**

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1 **finance?**
 2 A. Well, yes.
 3 **Q. And what is that?**
 4 A. Well, it's dis-equalizing to what -- to
 5 some extent. It certainly supports a school to be able
 6 to do more of what it chooses to do, which for the most
 7 part is to enhance the instruction in the classroom
 8 and . . .
 9 **Q. And what about those other schools?**
 10 A. They do not have that.
 11 **Q. Do you see the paragraph that starts "Open**
 12 **enrollment and charter legislation"? Do you see that?**
 13 A. Yes.
 14 **Q. Do you have an opinion as to the effect of**
 15 **open enrollment and charter legislation on school**
 16 **districts?**
 17 A. Yes.
 18 **Q. And what is that opinion?**
 19 A. From a financial viewpoint, open
 20 enrollment hurts some districts that are losing
 21 students and assists other districts who might have
 22 been losing students, but had the capacity to bring
 23 more students in. Such as Littleton.
 24 **Q. And how does charter legislation create**
 25 **problems for districts?**

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1 MS. MARKEL: Object. Objection, Your
 2 Honor. Leading.
 3 MS. GEBHARDT: I said how.
 4 THE COURT: Overruled.
 5 **Q. (BY MS. GEBHARDT) How does charter**
 6 **legislation affect districts?**
 7 A. Charter legislation had some of the same
 8 effects, because what you're doing now is you're paying
 9 a full per-pupil amount and moving it to an alternate
 10 site to start a new school, where you're effectively
 11 creating increasing enrollment. The dollars are
 12 growing, but the costs can go out at the same rate.
 13 Somebody else is gaining revenue and you're not.
 14 The way I've heard it best told that I
 15 thought was very clear is you have four people going
 16 out to dinner, one happens to leave and the other three
 17 are left paying the bill. And that's kind of the
 18 situation that we have. Creates -- and there
 19 was -- there was no funding addition to account for
 20 that, just averaging.
 21 **Q. So where did that funding -- how did you**
 22 **make up for that funding in Littleton, for example?**
 23 A. We made cuts.
 24 MS. GEBHARDT: Your Honor, I have about
 25 another, oh, half hour, 40 minutes. Do you want me to

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1 continue?

2 THE COURT: Let me ask the reporter. How

3 are you doing? We can go a little longer. She's fine.

4 MS. GEBHARDT: I'll go a little longer.

5 That's fine. Just have to find the page. I just

6 misplaced it. Sorry, Your Honor.

7 THE COURT: No problem.

8 **Q. (BY MS. GEBHARDT) So, Mr. Murphy, you're**

9 **currently the superintendent of Littleton?**

10 A. Yes.

11 **Q. And does -- does the school district**

12 **receive accreditation ratings?**

13 A. Yes, we do.

14 **Q. And what was your accreditation rating**

15 **from the state most recently?**

16 A. We were accredited with distinction.

17 **Q. And you address that again in your -- in**

18 **your report, correct? That last paragraph there right**

19 **above --**

20 A. Yes. Yes.

21 **Q. Okay. What does it mean to be accredited**

22 **with distinction, Mr. Murphy?**

23 A. It basically means your test scores, as

24 measured by CSAP, as well as several other things, but

25 ranking the highest among your peers. It's a

413

1 comparative analysis.

2 **Q. I've put up on the screen, Your Honor,**

3 **Trial Exhibit 7808. Do you recognize this document,**

4 **Mr. Murphy?**

5 A. Yes, I do.

6 **Q. And could you explain to the Court what it**

7 **is, please.**

8 A. The document goes -- it basically goes

9 through and says the percentage of children that are

10 meeting -- are proficient or advanced in comparison to

11 a cut point with others. And it does it by all

12 students, and then it takes a -- then it goes down to

13 specific subgroups.

14 **Q. And what does the color red mean on this**

15 **chart?**

16 A. The color red means we've got work to do.

17 **Q. And is this for Littleton School District**

18 **middle schools?**

19 A. Yes, that is.

20 **Q. So even though you've been accredited with**

21 **distinction, does that mean you've succeeded in all**

22 **categories for all children?**

23 A. No, it does not.

24 **Q. I'll put up on the screen 7807. Do you**

25 **recognize that document?**

414

1 A. Yes.

2 **Q. And what is it, please.**

3 A. This is the document that is public school

4 district accountability data, and it is on, I

5 think -- it's the elementary schools, yes.

6 **Q. And is it the same purpose that you**

7 **described the other exhibit?**

8 A. Yes.

9 **Q. And what does the red on this indicate**

10 **again?**

11 A. It indicates that we're either -- well,

12 basically, we're not meeting the standards that were

13 set out.

14 **Q. And then one last document, Mr. Murphy.**

15 **This is 7809. What document is this, please, sir.**

16 A. It's a similar document to the previous

17 one I had mentioned, and it's the high school.

18 **Q. And, again, there's red on this chart, and**

19 **what does that red indicate?**

20 A. That red indicates that there are

21 subgroups within our -- within our population that are

22 not meeting the -- the progress standards that we're

23 looking for at this date.

24 **Q. And the yellow?**

25 A. Those are areas that are under caution

415

1 We need to watch. We're not failing yet. We may be

2 approaching, but we're not there yet. Consider it a

3 green light, yellow light, red light. Yellows are

4 caution, red stop and do something.

5 MS. GEBHARDT: Your Honor, at this time I

6 move for admission of 7807, 7808 and 7809.

7 THE COURT: Any objection?

8 MS. MARKEL: None, Your Honor.

9 THE COURT: Thank you. They'll be

10 admitted.

11 THE WITNESS: Your Honor.

12 **Q. (BY MS. GEBHARDT) Mr. Murphy --**

13 **THE COURT: Pardon. Just a second. He**

14 **had a question.**

15 **Q. (BY MS. GEBHARDT) Do you want me to take**

16 **that back?**

17 A. That's what I wanted to know.

18 **Q. Thank you.**

19 A. I'm sorry.

20 **Q. Do you have any knowledge, Mr. Murphy, as**

21 **to what categories of students are falling into the red**

22 **and yellow?**

23 A. Yes.

24 **Q. What categories are those?**

25 A. I can almost not look, but our English

416

1 language learners, our special education student, our
 2 free and reduced lunch, our students with disabilities.
 3 Probably missing some there. Economically
 4 disadvantaged.

5 **Q. And as superintendent of Littleton Public**
 6 **Schools, is this a concern to you?**

7 A. Absolutely.

8 **Q. And why is that?**

9 A. Because all students, all students need to
 10 be prepared academically to have an opportunity to
 11 participate successfully in our economy, in our world.
 12 They will not get in the front door of some of our
 13 businesses without having proper and strong academic
 14 preparation.

15 Certainly there's other things once they
 16 get in the door, but they're not going to get there.
 17 And if we don't do something about it, these kids are,
 18 in my mind, permanently disabled. They will not have
 19 the opportunities that many of our other students do.

20 **Q. Have the demographics changed in Littleton**
 21 **since you have been working there?**

22 A. Yes.

23 **Q. And how have they changed?**

24 A. Our -- our minority population has
 25 increased Our economically disadvantaged has

417

1 increased. In fact, we've been running at four times
 2 the state average -- or twice the state average, excuse
 3 me, and it's quadrupled, basically. Now, we were at a
 4 low number, so but for us, it gives you a trend, an
 5 idea how fast we're growing. Gone from 5 to 20 and
 6 continues to grow. And some of schools are in 70,
 7 75th percentile now.

8 **Q. When you say that, what do you mean? What**
 9 **are you talking about?**

10 A. Talking about at-risk children as
 11 determined by the free lunch program or the free and
 12 reduced lunch program for economically disadvantaged.

13 **Q. And what impact does that have on the**
 14 **Littleton School District's ability to be able to**
 15 **deliver the educational program you'd like to deliver?**

16 A. It requires we put more resources in to
 17 help those schools, to help those students.

18 **Q. And are you able to do that, Mr. Murphy?**

19 A. Yes.

20 **Q. To the extent you believe necessary?**

21 A. We'll see. I think -- I think we measure
 22 how we do after we apply some of those solutions. Or
 23 what we believe to be solutions, which cost significant
 24 dollars. But . . .

25 **Q. And do you have sufficient dollars as you**

418

1 **sit here today to meet all the students' needs in**
 2 **Littleton School District?**

3 A. I can answer that two ways. Not from
 4 state funding certainly, but from the support of our
 5 community.

6 **Q. And how are you allocating your resources**
 7 **to support those children?**

8 A. We -- we put in more -- more personnel, we
 9 put in special technology systems that have helped them
 10 with language, sequencing, vocabulary. Many of our
 11 students do not understand how language is -- is
 12 constructed. So we have technology systems we put in
 13 known as Fast Forward. We also have access at our
 14 lower income schools to computers where we do writing,
 15 particularly. Some reading, but particularly writing,
 16 some of our science programs. We've seen -- it's
 17 expensive, but we have seen dramatic changes.
 18 We -- I -- well . . .

19 **Q. Continue.**

20 A. For instance, with the Fast Forward
 21 system, we -- we've been getting a year-and-a-half
 22 academic growth. That just doesn't happen. It's
 23 expensive. But because we have to have the para pros
 24 and the teachers working with them. And we also have
 25 to purchase the Fast Forward. We have now put

419

1 computers in every fourth grade, fifth grade, sixth
 2 grade, eighth grade.

3 We're seeing good progress with fourth and
 4 fifth, 'cause if we don't capture that learning in the
 5 early elementary, we don't have much hope as they go
 6 into the middle school. Translated -- English language
 7 learning specialists, obviously, with federal programs,
 8 Title I.

9 Also put in instructional coaches for our
 10 teachers, special reading and literacy specialists and
 11 double staffed as many as we can, have as many para
 12 pros as we can. Also strong volunteer program,
 13 fortunately, because of community. Lockheed Martin, we
 14 have many engineers retired, professionally retired,
 15 and we're able to do some things in our community with
 16 our volunteers that perhaps others cannot do. They
 17 essentially -- their hours contribute millions of
 18 dollars to us.

19 **Q. Since the start of implementation of**
 20 **standards-based education, has that had an impact on**
 21 **Littleton's staffing?**

22 A. Yes.

23 **Q. And what was that impact?**

24 A. Well, you know, you have to go back in
 25 time. Fortunately I can do this. One, because of my

420

1 age, but how long I've been in Littleton Public
 2 Schools. I came in 1990. The -- the instructional
 3 group was about 10, 11 folks that helped run our
 4 instructional division. Today it's 77.
 5 **Q. And why is that?**
 6 A. Because the standards, the assessments,
 7 the CSAPs, the teaching. You can put all the standards
 8 out there you want, you're not going to get there,
 9 you're not going to get the learning there unless you
 10 put coaches out there with those kids, unless you
 11 change your calendar, unless you have specialists,
 12 language specialists, to work with certain kids.
 13 Unless you have the technology and -- you know, that
 14 covers every one of our schools. So it ramps up the
 15 larger the school is. And so it's really people. I
 16 mean --
 17 **Q. And does that come at a cost to the**
 18 **district?**
 19 A. Oh, yeah. Millions. It's the right thing
 20 to do.
 21 **Q. Has Littleton been successful in passing**
 22 **mill levy elections?**
 23 A. Yes, we have.
 24 **Q. And how many mill levy elections have you**
 25 **passed, to your knowledge, in the past 20 or 30 years?**

421

1 A. Since I came into the district, well, year
 2 before, I believe we've passed seven. One was a TABOR,
 3 a de-Brucing election. But the other --
 4 **Q. Can you explain what that is? Because I**
 5 **don't think we've had that testimony yet.**
 6 A. The TABOR election for us is that we were
 7 allowed to keep the revenue that we collected. That
 8 was based in fees. We were not sure our early
 9 childhood program, where people had to pay for portions
 10 of that, it was growing so rapidly, it was far beyond
 11 the 6 percent limit that TABOR had of how much your
 12 revenues could grow, and we were afraid it was going to
 13 be capped and we would have to get rid of our early
 14 childhood programs in some way. And so we went and
 15 de-Bruced, and our community supported it by over
 16 70 percent.
 17 **Q. And have you passed any mill levy**
 18 **elections?**
 19 A. They've actually passed every one in the
 20 history of the school district since 1905.
 21 **Q. So what's the current limit of how much of**
 22 **a percentage of your -- of your -- I'm trying to think**
 23 **how it was calculated. What percentage are you at in**
 24 **your mill levy?**
 25 A. The general fund mill levy that they have

422

1 this cap of 25 percent of your per-pupil program, we're
 2 at about 24 percent, maybe just a touch under that. We
 3 have about a million dollars capacity still to go for,
 4 or that we could go to.
 5 **Q. So you have no ability, really, to**
 6 **increase your general fund anymore?**
 7 A. No, we wouldn't go out. Given the size of
 8 our population. We'll have to wait till that grows.
 9 **Q. And given the changing demographics and**
 10 **changing needs of those demographics, does that cause**
 11 **you concern as superintendent of Littleton Public**
 12 **Schools?**
 13 A. Not immediately, but, yes, in the long
 14 run. As I said, we are so grateful to our community
 15 for supporting Littleton Public Schools. The state --
 16 our community gets it, that the funding isn't adequate.
 17 **Q. But you have no ability to grow unless you**
 18 **see significant growth in the per pupil, correct?**
 19 A. No.
 20 **Q. The question was bad. Do you have any**
 21 **ability to raise additional money through mill levy**
 22 **elections to address the needs of those children?**
 23 A. Not substantially. Not significantly.
 24 **Q. Now, Mr. Murphy, you testified earlier**
 25 **about the cuts that you're having to -- that school**

423

1 **districts, including Littleton, are having to take.**
 2 **Has Littleton had to endure cuts?**
 3 A. Yes.
 4 **Q. And how are you implementing those cuts?**
 5 A. We've -- we've cut over a hundred
 6 teachers. We've closed two schools. We've cut a
 7 number of our paraprofessionals and staff. And
 8 we've -- yet we've tried to, even with this new
 9 election, not cut more, but not increase. Because we
 10 know there could be more cuts from the state. So in
 11 the most part, unfortunately, we have to cut people.
 12 **Q. And do you have an understanding as to**
 13 **what your next year's budget could look like, as far as**
 14 **the support from the state?**
 15 A. Not entirely. It's a little early. But
 16 every indication we've had is there'll be more cuts.
 17 **Q. And how will you implement those cuts?**
 18 A. We'll supplement them to some extent
 19 through the election. The problem is that we had
 20 promised our public that these election dollars would
 21 last far longer than we may be able to allow them.
 22 We'll hit the wall like anyone else. Once you use all
 23 your resources, you start to cut.
 24 So I imagine that's exactly -- if the
 25 state continues to cut, we will cut as well. We will

424

1 continue to furlough employees, cut people, cut salary
 2 schedules, just -- what I do not want to do, if
 3 possible, to be able to have to make the cuts for the
 4 kids that need it the most, and that's probably my
 5 biggest fear.
 6 MS. GEBHARDT: Your Honor, it's about
 7 lunchtime. Would it be an appropriate time to take a
 8 break?
 9 THE COURT: That would be fine. That's
 10 okay. It's five minutes till 12:00. We'll take the
 11 recess until 1 o'clock. Okay. We'll see you back
 12 then. Thank you.
 13 (Recess taken, 11:54 a.m. to 1:04 p.m.)
 14 THE COURT: Thank you, sir. You are still
 15 under oath, of course.
 16 THE WITNESS: Okay.
 17 THE COURT: Thank you.
 18 THE WITNESS: Thank you.
 19 **Q. (BY MS. GEBHARDT) Good afternoon,**
 20 **Mr. Murphy.**
 21 A. Good afternoon.
 22 **Q. I'm going to put on the Elmo what we have**
 23 **marked as trial Exhibit 10094. Do you recognize that**
 24 **document, Mr. Murphy? Can you read it?**
 25 A. Yes

425

1 **Q. What is it, please.**
 2 A. It's the unified improvement plan.
 3 **Q. For which district?**
 4 A. Hopefully it's ours. Yes. Littleton.
 5 **Q. Is it for Littleton?**
 6 A. Yes, it says that.
 7 **Q. Okay. And can you explain, please, what a**
 8 **unified improvement plan is?**
 9 A. A unified improvement plan is -- it's
 10 intended -- what it is is looking at the data, where
 11 you want to go. And the primary process that's been
 12 set up at the state is where are your students now,
 13 where do they need to go, what processes do you need to
 14 put in the plan. It's all oriented toward getting to
 15 the root cause. That's the big thing the state's
 16 talked about, is root causes, where are you now, where
 17 do you want to go, and how are you going to get there
 18 and how you arrived, essentially.
 19 **Q. Do you remember earlier, when you talked**
 20 **about the students that were -- the exhibit that we**
 21 **have, Exhibit 7808?**
 22 A. Yes.
 23 **Q. And does the unified improvement plan then**
 24 **address -- how does the unified improvement plan**
 25 **address those students? Does it address the needs of**

426

1 **those students?**
 2 A. It's an attempt.
 3 **Q. And what kinds of things -- what kinds of**
 4 **programs in recent -- what kinds of programs would you**
 5 **need to address some of the issues that you've**
 6 **identified in your unified improvement plan? I'll put**
 7 **them up here, and if you can -- that's the first page**
 8 **of it. And then you go to the root cause analysis**
 9 **page, which is page 7. So can you explain what this**
 10 **page shows, please.**
 11 A. I'm sorry, I'm having a little difficulty
 12 reading it.
 13 **Q. We're also looking for an actual copy of**
 14 **it. Can you read it?**
 15 A. Okay.
 16 **Q. Okay.**
 17 A. Yes. Yes.
 18 **Q. And it goes on to a narrative, which is on**
 19 **page 11. I'm going to back out. And what's on**
 20 **page 11?**
 21 A. Is this page 11?
 22 **Q. Yes, it's page 11. You're right, it**
 23 **doesn't show.**
 24 A. It's the areas that we need to focus on.
 25 MS. GEBHARDT: May I approach, Your Honor.

427

1 We found an actual --
 2 THE COURT: Yes.
 3 THE WITNESS: Thank you.
 4 **Q. (BY MS. GEBHARDT) Would you turn to**
 5 **page 11, please, of this same document.**
 6 A. Okay.
 7 **Q. And what does page 11 contain?**
 8 A. It contains a description of hypotheses
 9 that are -- we put forward as root causes and things we
 10 need to work on and essentially to try to improve our
 11 proficiency levels. Particularly with certain
 12 populations.
 13 **Q. And, Mr. Murphy, do you believe you have**
 14 **sufficient financial resources to address the**
 15 **proficiency needs identified in your improvement plan?**
 16 A. No.
 17 MS. GEBHARDT: Your Honor, I would move
 18 for admission of 10094, please.
 19 THE COURT: Any objection?
 20 MS. MARKEL: None, Your Honor.
 21 THE COURT: Thank you. 10094 will be
 22 admitted.
 23 **Q. (BY MS. GEBHARDT) Mr. Murphy, were you**
 24 **familiar with a 2009 interim school finance committee**
 25 **that the legislature conducted?**

428

1 A. Yes.

2 **Q. And why is it you're familiar with it?**

3 A. I was asked by the chair, Karen Middleton,

4 I cannot recall whether she was Senator or Rep. at the

5 time, to testify. I -- to come forward and -- with the

6 team of people or representatives from the 2005 group

7 who had authored the task force report for the interim

8 committee at that time and give a review of that. I'd

9 also seen their charge for the interim committee. I

10 can't recall exactly what was in there.

11 **Q. And did you follow the progress of the**

12 **2009 interim committee?**

13 A. A little.

14 **Q. And are you aware of any changes made to**

15 **the School Finance Act or formula as a result of the**

16 **2009 interim committee?**

17 A. No. There may have been something, a

18 membership count. That's about it. And unfortunately,

19 I think a lot of people expected a little bit more, but

20 there wasn't much that came from this committee.

21 **Q. And, Mr. Murphy, have you had**

22 **opportunities to testify in front of any legislative**

23 **committees?**

24 A. Yes.

25 **Q. And do you review bills?**

429

1 A. Yes.

2 **Q. Do you know what a fiscal note is, or a**

3 **fiscal impact statement?**

4 A. Yes.

5 **Q. Can you explain what -- to the best of**

6 **your knowledge what a fiscal impact note is as it**

7 **refers to a bill in the legislature?**

8 A. The -- one of the groups within the

9 legislature and -- actually, there are several groups.

10 Legislative Legal Services looks at the legal point of

11 view, and then there's another group, I believe maybe

12 with legislative council, that analyzes the fiscal

13 impact on the state, and any time a piece of

14 legislation comes through, they're supposed to put some

15 cost related to that, whether it's the amount of people

16 or materials or supplies, so the committees, as they

17 review bills, know what they're dealing with,

18 particularly when it goes to appropriations committees.

19 **Q. Have you seen a fiscal impact note that**

20 **identified need -- or impact on school districts?**

21 A. No. No.

22 **Q. And is that a concern to you?**

23 A. Yes, it is.

24 **Q. Why?**

25 A. Because what's happening is when the state

430

1 doesn't have money, they tend to use our money. They

2 pass bills, with objectives. May be well-meaning, but

3 they don't have the dollars. And to be blunt, they

4 pass the obligation, financial obligation, back to us.

5 Now, what would be helpful in the

6 dialogue, and I've been down there since the mid-'90s

7 bringing this issue up, and -- is that we need a fiscal

8 impact statement always on bills that are going to

9 affect us. Otherwise, what we're ending up with is

10 unfounded mandates. And you'll hear that term a lot

11 from school districts. But it's very, very serious.

12 It costs a lot of money. It's like the legislature

13 doing any other branch of government.

14 **Q. As we sit here today, Mr. Murphy, do you**

15 **have an expert opinion as to what you believe thorough**

16 **and uniform means?**

17 A. Yes.

18 **Q. And can you share that with us, please.**

19 A. My opinion would be uniform would be about

20 consistency in application. Such that if we're all

21 going to be poor, let's make it consistent. But -- and

22 vice versa. Thorough to me says that we need to have

23 the right resources, and maybe even adequate resources

24 necessary to do a thorough job in educating the student

25 to be prepared.

431

1 **Q. To be prepared for what?**

2 A. To be successful, to go outside that --

3 our school setting. Be able to -- whether it's going

4 to the workplace, go on to postsecondary education or

5 training. Ultimately to be able to provide for

6 themselves and their families.

7 **Q. And, Mr. Murphy, do you have an expert**

8 **opinion about whether, with current resources provided**

9 **by the state, Littleton is able to bring all students**

10 **to proficiency and provide the opportunity just**

11 **described?**

12 A. Yes.

13 **Q. And what is that opinion?**

14 A. I believe there are not sufficient

15 resources to do so.

16 **Q. And what's the basis for your opinion,**

17 **Mr. Murphy?**

18 A. My opinion is when I look at the groups

19 that we talked about here, we can meet basic needs.

20 You know, there'll be a teacher, they'll be a

21 classroom, probably be able to get the bus, not in all

22 circumstances, because we cut back on those as well.

23 But the schools where we have the largest challenge is

24 with our highest at-risk populations, where they're

25 economically disadvantaged, limited language learners.

432

1 you're talking about fundamental changes.
 2 A school year, for instance, and this is
 3 modest, going from a 180 to a 200-day school year, that
 4 costs \$500,000 per elementary building. We've been
 5 trying to look at that. We can't fit that in.
 6 Anything we brought from the election is just
 7 offsetting the cuts from last year without doing more.
 8 We need more teachers. People say class size doesn't
 9 make a difference. I believe every piece of research
 10 out there will say if you can get class size below 18
 11 and 15, it will be have an impact.
 12 These kids need that. They need support
 13 in their families. They need language transition. We
 14 need programs that engage parents. These parents may
 15 love their kids to death. They don't know how to help
 16 them with homework. We have some very, very bright
 17 students, but we need to give them access to
 18 information in such a way that they can grasp it,
 19 understand it, and excel.
 20 MS. GEBHARDT: Thank you very much,
 21 Mr. Murphy. I don't have any other questions.
 22 THE COURT: Thank you. Counsel.
 23 MR. HINOJOSA: Thank you.
 24
 25

433

1 DIRECT EXAMINATION
 2 BY MR. HINOJOSA:
 3 Q. Good afternoon, Mr. Murphy. I keep on
 4 calling you Dr. Murphy because of some of the
 5 designations that I've been reading, and I found out
 6 today that you're Mr. Murphy.
 7 A. Yes. Thank you.
 8 Q. I think you would still be Mr. Murphy if
 9 you weren't Dr. Murphy, though.
 10 A. Okay.
 11 Q. Anyway, I'll get on with the relevant
 12 questions. You talked about some of the achievement
 13 gaps in your testimony earlier today, correct?
 14 A. Yes.
 15 Q. And I just want to run through some
 16 demonstrative exhibits that we've created based on your
 17 CSAP results. And you are accredited with distinction
 18 despite the achievement gaps; is that correct?
 19 A. That's correct.
 20 Q. And when you talked about being accredited
 21 with distinction, was it that you met specific targets,
 22 or was it just that you performed better than other
 23 similarly situated school districts?
 24 A. I think from a comparative viewpoint, we
 25 performed better than other districts, the targets.

434

1 yes, to some extent. But not in all areas.
 2 Q. So first we'll look at the 2010 CSAP
 3 reading results. And this is comparing your free and
 4 reduced price lunch program students versus your
 5 non-free and reduced price lunch program students. I
 6 believe you testified earlier that approximately
 7 20 percent of your students are identified as free and
 8 reduced price lunch; is that correct?
 9 A. Yes, that's correct.
 10 Q. And then you have approximately 6 percent
 11 of English language learners in your school
 12 district; is that right?
 13 A. That's correct.
 14 Q. So we'll look at free and reduced price
 15 lunch first. What we see -- I think the smallest gap
 16 is between your reduced price lunch program and your
 17 third grade -- and the non-free and reduced price
 18 lunch, correct? And that's about 10 percentage points
 19 in the third grade? If you look at the light blue line
 20 that you can probably barely see.
 21 A. The difference between 88 and 65? Is that
 22 what you're looking --
 23 Q. Well, the light blue line is 78 percent.
 24 This one right here. Sorry.
 25 A. Oh, I'm sorry. I don't see light blue.

435

1 Okay.
 2 Q. Yeah, that's very, very light.
 3 A. Okay. Now I see. Okay. Thank you.
 4 Q. Okay. And that's the reduced price lunch
 5 program.
 6 A. Okay.
 7 Q. And then as you go along the grade levels,
 8 and these are from third all the way to tenth grade.
 9 Let me help you out a little bit. There we go. Some
 10 of the smaller gaps, especially as we get to the latter
 11 grades, are between 21 percent, and all the way up to
 12 the tenth grade they're about 41 percent; is that
 13 correct?
 14 A. That's correct.
 15 Q. We'll go to math now. Start out in the
 16 year 2008. Comparing the same three groups of students
 17 on the CSAP math, 2008 test. And here once again at
 18 the early grade in third grade it looks like there's a
 19 12 percentage point gap between the reduced price lunch
 20 program and your non-free and reduced price lunch
 21 students, and then a 22 percent gap between the free
 22 lunch program and those other students; is that
 23 correct?
 24 A. Yes.
 25 Q. And as we go to -- to the latter grades,

436

1 the gaps still remain pretty significant; is that
 2 correct? Well, they even grow greater, correct?
 3 A. Absolutely. That's correct.
 4 Q. And this -- and this is Demonstrative
 5 Exhibit 134 for the record. And then if we go to 2009,
 6 the math, we still see some of the same similar gaps,
 7 except here it was a bigger gap in third grade between
 8 the reduced price lunch program and non-free and
 9 reduced price lunch, correct?
 10 A. That's correct.
 11 Q. And as you move to the right, even if you
 12 look at your non-free and reduced price program, there
 13 was 46 percent that weren't meeting the minimal
 14 proficiency standards set by the state; is that
 15 correct?
 16 A. In the later grades, you said?
 17 Q. Yes. 46 percent?
 18 A. Yeah, that's correct.
 19 Q. And then with respect to the students on
 20 the reduced price lunch program, and if you'll follow
 21 with me, you have 69 percent of the kids not meeting
 22 the minimum proficiency standard, correct?
 23 A. Subtracting from a hundred the 31 percent,
 24 correct.
 25 Q. And then the free lunch program, it's not

437

1 much of a difference, but there were 84 percent of your
 2 kids in the tenth grade who weren't meeting the minimum
 3 math proficiency standards set forth by the state; is
 4 that correct?
 5 A. That's correct.
 6 Q. Now, if we look at the year 2010, this is
 7 Demonstrative Exhibit 20124. The same comparators.
 8 Looks like there was a reduction in the gap in the
 9 third grade between the reduced price lunch program and
 10 your non-free and reduced price lunch program; is that
 11 correct?
 12 A. That's correct.
 13 Q. And you still had a 25 percent gap between
 14 the third grade free lunch program students versus the
 15 non-free and reduced price lunch program students,
 16 correct?
 17 A. That's correct.
 18 Q. And then once again, once we get to the
 19 tenth grade, you only have one-half of your students
 20 meeting the minimum proficiency standards set by the
 21 state for math, and that's the non-free and reduced
 22 price lunch program students, correct?
 23 A. Correct.
 24 Q. And then you have over, well, 79 percent
 25 of the reduced price lunch program and 82 percent at

438

1 the tenth grade free lunch program students not meet
 2 the minimum proficiency standards, correct?
 3 A. That's correct.
 4 Q. And moving over to science. This is
 5 Demonstrative Exhibit 20126. We have 70 percent of
 6 your non-free and reduced price lunch students meeting
 7 the minimum standard in science in fifth grade; is that
 8 correct?
 9 A. That's correct.
 10 Q. And then you had over one-half of your
 11 students on the reduced price lunch program not meet
 12 the minimum standard, and that was consistent all the
 13 way through the tenth grade; is that correct?
 14 A. That's correct.
 15 Q. And then with your free lunch program,
 16 they performed a little worse, it looks like, with
 17 72 percent failing to meet the minimum standard in the
 18 fifth grade, 66 percent in the eighth grade, and
 19 72 percent in the tenth grade; is that correct?
 20 A. That's correct.
 21 Q. But you're aware of whether or not these
 22 similar gaps exist on the writing test, the CSAP
 23 writing test?
 24 A. Yes.
 25 Q. Okay.

439

1 A. There is a gap.
 2 Q. Let's just look at that gap, just so we
 3 get this into the record. On the writing, it looks
 4 like in the third grade, almost one out of three
 5 students in your non-free and reduced price lunch
 6 program weren't quite hitting the standard, correct?
 7 A. Correct.
 8 Q. Then about one-half of your students met
 9 the standard in the third grade on the reduced price
 10 lunch program, correct?
 11 A. Correct.
 12 Q. And then 65 percent failed to meet the
 13 minimum writing standard in the third grade?
 14 A. That's correct.
 15 Q. When we go all the way to the tenth grade,
 16 the tenth grade's the last year that CSAP is tested,
 17 correct?
 18 A. Correct.
 19 Q. And what is the CSAP test?
 20 A. Writing.
 21 Q. What standards? Or who sets the standards
 22 for the CSAP?
 23 A. State.
 24 Q. Okay. And if we look at the tenth grade,
 25 you have 72 percent of students on your free lunch

440

1 program failed to meet the standard, correct?
 2 A. That's correct.
 3 Q. And then more than -- well, we
 4 already -- well, more than one-half of your students on
 5 the reduced price lunch program failed to meet the
 6 standard, correct?
 7 A. That's correct.
 8 Q. And then almost one out of three students
 9 in the tenth grade on the non-free and reduced price
 10 lunch program failed to meet the standard, correct?
 11 Almost one out of three failed to meet the standard
 12 from the non-free and reduced price lunch program?
 13 A. Yes.
 14 Q. So do you have an opinion as to whether or
 15 not the funds made available through the Public School
 16 Finance Act and the additional at-risk funding is
 17 sufficient to meet -- is sufficient to provide you the
 18 funding for the tools to help these students meet the
 19 minimum proficiency standards set by the state?
 20 A. Yes, I do.
 21 Q. What is your opinion?
 22 A. I believe we do not have from the state
 23 the resources necessary to do that.
 24 Q. Do you believe those students can achieve
 25 those standards?

441

1 A. Yes. With the right help and the right
 2 assistance. I mean, I know everybody says commitment
 3 also, and that's absolutely there. But you've got to
 4 have the resources and the assistance and the right
 5 curriculum aligned for these kids.
 6 Q. So high expectations alone, is that going
 7 to do the job?
 8 A. No.
 9 Q. Let's look at the English language learner
 10 versus your non-English language learner population.
 11 And most of these will be the light blue line will be
 12 your limited English proficient students, on rare
 13 occasion you might see a darker line, darker blue line.
 14 That's the non-English proficient. And then the red,
 15 of course, is -- they're not applicable. They're not a
 16 English language learner.
 17 A. Right.
 18 Q. This is Demonstrative Exhibit 20131. And
 19 here you have in the writing test, for example, you
 20 have 36 percent of your non-English language learners
 21 failed to meet the standard, correct?
 22 A. Correct.
 23 Q. And then you had 66 percent of your LEP
 24 students fail to meet the standard, correct?
 25 A. Correct.

442

1 Q. That's in the third grade. And that's a
 2 30-percent gap between the English language learners
 3 and non-English language learners, correct?
 4 A. Correct.
 5 Q. And that's the smallest gap for the CSAP
 6 writing test in 2010, correct?
 7 A. Correct.
 8 Q. If we go down to the tenth grade, you had
 9 zero percent of your LEP students meet the minimum
 10 writing standards set by the state in 2010, correct?
 11 A. Correct.
 12 Q. And then even for your non-English
 13 language learners, you still have just over one out of
 14 three failed to meet the minimum standard, correct?
 15 A. Correct.
 16 Q. If we go over to the 2010 science test,
 17 2010 science CSAP test, there's over -- well, looks
 18 like there's a 60 percent gap in the fifth grade with
 19 your non-English language learners scoring a 65 --
 20 65 percent of your non-English language learners
 21 scoring proficiency, versus 5 percent of your LEP
 22 students, correct?
 23 A. Correct.
 24 Q. And I just want to point out that the blue
 25 lines here indicate that NEP state average, not

443

1 necessarily your district average.
 2 And then if we go all the way down across
 3 to the tenth grade, science test in 2010, you have
 4 virtually the same gap in performance between your LEP
 5 students and your non-English language learner
 6 students, correct?
 7 A. That's correct.
 8 Q. And then math in 2010, looks like there
 9 was a 15 percent gap between the third grade LEP
 10 students scoring 70 percent versus your non-English
 11 language learners, scoring an 85 percent, correct?
 12 A. Correct.
 13 Q. The gaps seemed to increase more or less
 14 as the grades go up; is that correct?
 15 A. Absolutely.
 16 Q. Is that often the result -- is that a
 17 result of the rigor increasing?
 18 A. Well, some of those percentages we have
 19 less and less kids that are coming in late.
 20 Q. Okay.
 21 A. I mean, many that are coming in late, and
 22 the others are no longer classified as ELL, and they
 23 should be classified, but they're up in the other line.
 24 Q. Okay. And some of these -- and regardless
 25 if a student comes in late or not, they still have to

444

1 meet the standards that have been put in place?
 2 A. Oh, absolutely.
 3 Q. And there's no curve in grading recent
 4 immigrants as opposed to non-recent immigrants in the
 5 state accountability system, correct?
 6 A. No.
 7 Q. And the tenth grade -- it looks like in
 8 the seventh grade, perhaps, we have the biggest gap.
 9 66 percent of your non-English language learners
 10 scoring proficient versus 4 percent of your LEP
 11 population, right?
 12 A. That's correct.
 13 Q. And then if we go to the tenth grade, you
 14 had less than one-half of your non-English language
 15 learner population meet the standard for math versus
 16 zero percent in the tenth grade?
 17 A. That's correct.
 18 Q. And that's for the LEP students, zero
 19 percent for the LEP students?
 20 A. Yes.
 21 Q. And if we look at your ELL versus non-ELL
 22 students for the year 2010 on the CSAP reading test, in
 23 the third grade, between your LEP students scoring
 24 61 percent, there's a 23 percent gap, versus your
 25 non-ELL students scoring an 84 percent, correct?

445

1 A. That's correct.
 2 Q. And then if we go all the way down to the
 3 tenth grade, there's 80 percent of your non-English
 4 language learners meeting the minimum reading standard
 5 versus 14 percent of your LEP students, correct?
 6 A. That's correct.
 7 Q. Do you have an opinion as to whether or
 8 not the funding provided under the Public School
 9 Finance Act and the supplemental funding available
 10 under the English Language Proficiency Act are
 11 sufficient to provide you the tools necessary to help
 12 these ELL students reach proficiency?
 13 A. Yes.
 14 Q. And what is that opinion?
 15 A. I believe we do not have sufficient
 16 resources to do that.
 17 Q. Is it your opinion that these students can
 18 achieve the proficiency standards set forth if they are
 19 provided the appropriate tools?
 20 A. Absolutely.
 21 Q. And earlier you testified about your mill
 22 levy overrides. I think you said that you've had about
 23 seven -- seven overrides successful; is that correct?
 24 A. Yes. Since I've been -- yes.
 25 Q. And you've had some pretty great support

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1 from your community; is that correct?
 2 A. That's correct.
 3 Q. And does part of that support also come
 4 from the fact that your residents feel that they can
 5 afford the mill levy overrides?
 6 A. I'm sure that's part of it.
 7 Q. And what percentage of funding in your
 8 district comes from mill levy overrides?
 9 A. About -- I think of our state funding,
 10 what we get, it's about 25 percent of -- of the amount.
 11 We get about \$92 million. We get another \$28 million
 12 through the elections.
 13 MR. HINOJOSA: Okay. Pass the witness.
 14 Thank you.
 15 THE COURT: Thank you. Cross-examination.
 16 MS. MARKEL: Thank you, Your Honor.
 17 CROSS-EXAMINATION
 18 BY MS. MARKEL:
 19 Q. Good afternoon, Superintendent Murphy.
 20 A. Good afternoon.
 21 Q. How are you?
 22 A. Good. And you?
 23 Q. Good. Just have a few questions for you,
 24 and if technology will cooperate --
 25 A. Yeah.

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1 Q. -- I won't keep you up here very long. My
 2 name is Carey Markel. We met earlier when we were
 3 doing voir dire. But just for the record, my name is
 4 Carey Markel. I'm here on behalf of the State of
 5 Colorado.
 6 When you were answering questions in
 7 response to questions in response to questions from
 8 Ms. Gebhardt, she asked you in particular your
 9 understanding of thorough and uniform. When you gave
 10 the response, Superintendent Murphy, you were not
 11 rendering a legal opinion, were you?
 12 A. I'm not an attorney. So . . . I wouldn't
 13 be rendering a legal opinion.
 14 Q. And the same with regard to the use of the
 15 word "rational" or "rationally" as it's used in your
 16 expert summary, which is Exhibit 4800, that was not
 17 used -- you were not using it from a legal standpoint,
 18 were you?
 19 A. I don't have the legal definition, so I
 20 would say no.
 21 Q. Earlier this morning, when you were
 22 talking about the work that you did on the 1994 study
 23 group.
 24 A. Yes.
 25 Q. One of the things that the study group did

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1 was looked at the conditions of -- within a district
 2 and how they should be differentiated for a funding
 3 basis as -- as part of a change from the 1988 act; is
 4 that correct?
 5 A. Are you talking about the March '93 or the
 6 August '92?
 7 Q. The August '93.
 8 A. Yes. To the best of my recollection, it
 9 was.
 10 Q. And that study group also looked at
 11 proxies for at risk, correct?
 12 A. Yes.
 13 Q. And a consensus was reached by that study
 14 group to use the school lunch program as a proxy for at
 15 risk; is that correct?
 16 A. That's correct.
 17 Q. The study group also looked at the
 18 cost-of-living index; is that correct?
 19 A. That's correct.
 20 Q. And you're aware that not only did that
 21 study group look at the cost-of-living index, but the
 22 general assembly of our state has also studied cost of
 23 living over at least seven times, are you aware of
 24 that?
 25 A. To some extent.

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1 Q. For example, they studied it in 1997 and
 2 again in 1999, 2001? Are you --
 3 A. Okay.
 4 Q. Does that sound familiar? Are you aware
 5 of that?
 6 A. Within the range of about 15 years, yeah.
 7 Q. And again in 2003? Are you aware of that?
 8 A. No.
 9 Q. Would it help to show you a document that
 10 would perhaps refresh your recollection of that
 11 particular study group?
 12 A. Sure.
 13 Q. If we could pull up 30158. 30156,
 14 actually. Does that -- we've --
 15 A. Oh. I'm sorry.
 16 Q. That's okay. I can be technology
 17 challenged. So does that particular document refresh
 18 your recollection about the --
 19 A. No, it doesn't.
 20 Q. So would it be fair to say that you're in
 21 general aware that the general assembly has looked at
 22 cost-of-living index over a period of time, but you're
 23 not specifically aware of the years that it did so?
 24 A. Yes.
 25 Q. Okay. You also provided testimony around

450

1 the work that you did on the 2005 interim committee.
 2 A. Yes.
 3 Q. You served on that advisory committee
 4 along with other individuals from school districts,
 5 school boards, charter schools, and others, other
 6 school employees?
 7 A. Yes.
 8 Q. Other school --
 9 A. School board, business, yeah.
 10 Q. But it included charter school
 11 representatives as well, correct?
 12 A. Representative. Single. One person.
 13 Q. As part of the work that you did for the
 14 2005 committee, the committee advised the general
 15 assembly committee members regarding school finance,
 16 correct?
 17 A. They advised the interim committee.
 18 Q. And in your testimony regarding the "j"
 19 curve, just to clarify, that -- the concerns that were
 20 raised by the advisory committee were actually
 21 addressed by the general assembly, correct?
 22 A. State that one more time. I'm not sure I
 23 understood it.
 24 Q. It's my understanding that the -- the --
 25 one of the concerns that was raised by the advisory

451

1 committee was around the "j" curve?
 2 A. Which advisory committee?
 3 Q. The 2005 interim committee.
 4 A. No, that's not correct.
 5 Q. What was the -- when was the "j" curve
 6 raised?
 7 A. The "j" curve issue was raised after the
 8 initiation of the '94 School Finance Act and began --
 9 as they saw the runs, they then began to see that there
 10 was a disparity between four of the largest districts,
 11 and that's when a majority of the districts,
 12 particularly at the lower end of the axis, said
 13 that's -- we need rationale for that. People felt
 14 there wasn't any. So they moved up the -- the bar
 15 where everyone's supposed to be funded. So -- and I
 16 believe the four districts were Denver, Jeffco,
 17 Colorado Springs, and Cherry Creek.
 18 Q. And were those concerns addressed in any
 19 way by the general assembly?
 20 A. Yes. In the approval of the finance act
 21 at the time. So, yeah, I would say yes.
 22 Q. So those concerns were actually addressed
 23 when they adopted the '94 act; is that correct?
 24 A. No. It was a year or two after.
 25 Q. The '96?

452

1 A. Somewhere in that range. It wasn't the
 2 year they did '94. But it was in -- let's see.
 3 Probably within one or two years there.
 4 **Q. Okay. So let's see if we can come to some**
 5 **sort of general agreement. Concerns were raised**
 6 **regarding the "j" curve, and at a certain point**
 7 **thereafter the general assembly addressed those**
 8 **concerns?**
 9 A. Yes.
 10 **Q. Okay. In addition to the -- your service**
 11 **that you provided to the state on the '93, '93-'94**
 12 **interim committee or advisory committee as well as the**
 13 **2005 committee, I believe that you've also testified in**
 14 **front of the general assembly on numerous occasions**
 15 **about school finance; is that correct?**
 16 A. Yeah. Yes.
 17 **Q. And just to be clear, you've never been**
 18 **elected to serve in the -- in the general assembly**
 19 **either as a state senator or a state representative; is**
 20 **that correct?**
 21 A. That's correct.
 22 **Q. In addition to the studies that**
 23 **were -- that have been discussed earlier today, are you**
 24 **aware that the general assembly has also studied, for**
 25 **example, capital construction finance in 1996? Are you**

453

1 **aware of that?**
 2 A. There may be two questions there. Yes,
 3 I'm aware they studied it. I'm not aware it was 1996.
 4 I don't know the exact date.
 5 **Q. So you're aware that the general assembly**
 6 **has studied capital construction finance?**
 7 A. Yes. Both before and after the court
 8 suits.
 9 **Q. And you are aware that they've also issued**
 10 **reports regarding capital construction in the state?**
 11 A. Yes.
 12 **Q. You're aware that the general assembly's**
 13 **also studied at-risk funding on more than one occasion?**
 14 A. I'm sorry, I'd have to think about that.
 15 I'm not sure.
 16 **Q. Are you aware that they've studied -- that**
 17 **the general assembly has studied at-risk funding on at**
 18 **least one occasion?**
 19 A. On one occasion, yes.
 20 **Q. Let's shift gears a bit, Superintendent**
 21 **Murphy, and talk about your school district. As**
 22 **Ms. Gebhardt pointed out, the school district is**
 23 **accredited with distinction, is it not?**
 24 A. Yes.
 25 **Q. And it's one of, I believe, 14 in the**

454

1 **state, and there are 178 districts in the state, that**
 2 **holds that high distinction; is that correct?**
 3 A. I know there's 178. I'm not sure if 14
 4 hold it or not. I understand we're in the top
 5 8 percent.
 6 **Q. Would you agree that all three of the high**
 7 **schools in Littleton Public Schools have been**
 8 **nationally recognized and are award-winning high**
 9 **schools?**
 10 A. Yes.
 11 **Q. They've even been featured in Newsweek**
 12 **Magazine's Top High Schools in America?**
 13 A. Yes.
 14 **Q. Would you agree that Littleton Public**
 15 **Schools' high schools have the highest graduation rate**
 16 **and lowest dropout rate of any high schools in the**
 17 **Denver metro area?**
 18 A. Yes.
 19 **Q. Would you agree that 90 percent of**
 20 **Littleton Public School graduates are college bound?**
 21 A. Yes. Or postsecondary.
 22 **Q. Would you agree that Littleton Public**
 23 **School seniors earn on average \$25 million annually in**
 24 **college scholarships?**
 25 A. Yes. At least.

455

1 **Q. At least?**
 2 A. Yes.
 3 **Q. And would you agree that the Littleton**
 4 **Public Schools consistently has a high number of**
 5 **National Merit scholars?**
 6 A. Yes.
 7 **Q. Boettcher scholars?**
 8 A. Yes.
 9 **Q. And Presidential scholars?**
 10 A. Yes.
 11 **Q. And that each year students that graduate**
 12 **from Littleton Public Schools earn appointments to the**
 13 **U.S. military academies?**
 14 A. I think so. There may be a year or two
 15 missing. But we generally say that.
 16 **Q. You agree with the statement that**
 17 **18 percent of Littleton Public Schools are open**
 18 **enrolled?**
 19 A. Yes.
 20 **Q. And open enrollment means they choice in**
 21 **to your district; is that correct?**
 22 A. That's correct.
 23 **Q. And just to clarify earlier, when you were**
 24 **speaking with Ms. Gebhardt about charter schools,**
 25 **you're -- are you opposed to choice, the parent's**

456

1 **choice to choose where their children go to school?**
 2 A. No.
 3 **Q. And, in fact, it's my understanding that**
 4 **Littleton Public Schools has the highest percentage of**
 5 **any school district in our state -- or, actually, any**
 6 **school district its size or larger along the Front**
 7 **Range with open enrollment; is that correct?**
 8 A. That's correct.
 9 **Q. Is it also correct that Littleton Public**
 10 **Schools ranks at the top in math, science, reading, and**
 11 **writing in all grades and in all areas tested on the**
 12 **Colorado Student Assessment Program, or the CSAP test?**
 13 **Compared to other Denver area school districts.**
 14 A. The last part is true, and the first
 15 part's true with one exception. That was last year.
 16 And we hope it'll continue.
 17 **Q. Is it true that more than 10,000**
 18 **computers, laptops, and netbooks are used by students**
 19 **and staff within Littleton Public Schools?**
 20 A. Yes.
 21 **Q. And that represents an 82 percent increase**
 22 **since 2006?**
 23 A. I don't have the exact calculation. But
 24 it's quite an increase.
 25 **Q. Would you agree that Littleton Public**

457

1 **Schools offers one-to-one competing learning**
 2 **environments in all fifth grades and in all language**
 3 **art classes, grades 6 through 10?**
 4 A. I'm not sure about seventh.
 5 **Q. But other than seventh grade, would you**
 6 **agree with that statement?**
 7 A. Yes.
 8 **Q. Okay. And would you agree that Littleton**
 9 **Public School teachers are known internationally for**
 10 **their use of instructional technology?**
 11 A. Yes. At least one.
 12 **Q. Now, you're a former president of CASE,**
 13 **correct?**
 14 A. Correct.
 15 **Q. And as we heard earlier, CASE encouraged**
 16 **school districts in the state to support this lawsuit,**
 17 **correct?**
 18 A. Yes.
 19 MS. MARKEL: I have no further questions.
 20 Thank you, Superintendent Murphy.
 21 THE WITNESS: You're welcome.
 22 THE COURT: Redirect.
 23 REDIRECT EXAMINATION
 24 BY MS. GEBHARDT:
 25 **Q. Hello again, Mr. Murphy.**

458

1 A. Hello.
 2 **Q. Now, Ms. Markel asked you about at-risk**
 3 **funding and the proxy. What is -- what's the language**
 4 **used for the free lunch program? Is it free and**
 5 **reduced?**
 6 A. It's free and reduced lunch program that
 7 we offer.
 8 **Q. Sorry. I'm getting stickied to death**
 9 **here.**
 10 A. Okay. I've been there.
 11 **Q. Do you receive at-risk funding for free**
 12 **and reduced students?**
 13 A. It's free students.
 14 **Q. Only?**
 15 A. That's --
 16 **Q. Not reduced lunch?**
 17 A. No.
 18 **Q. And do you know of any rationale as to why**
 19 **it's only free lunch?**
 20 A. I probably do, but I'm going to have to
 21 think for a while. I apologize.
 22 **Q. That's okay. We'll move on. We've talked**
 23 **a little about capital construction, the methods for**
 24 **capital construction funding. Can you explain again**
 25 **what the primary method of capital construction funding**

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1 **was in the '94 act?**
 2 A. For capital construction funding within
 3 the general fund, it was the cap -- the per-pupil
 4 allocation that was allowed to be transferred to the
 5 capital reserve fund at that point in time. The other
 6 method was to create debt, pay the debt off.
 7 **Q. And which is the primary method for**
 8 **building schools?**
 9 A. Bond redemption -- or issuing bonds,
 10 securities, paying principal and interest through mill
 11 levy.
 12 **Q. And you raised -- and the interim**
 13 **committee raised a concern about that, the 2005?**
 14 A. Yes.
 15 **Q. And to your knowledge, has anything in the**
 16 **School Finance Act changed as regards to capital**
 17 **construction funding since 1994?**
 18 A. Only the amount.
 19 **Q. What do you mean by that, sir?**
 20 A. Well, the amount per pupil changes
 21 modestly for the capital. But in terms of bond
 22 redemption funds, no. When issuing bonds.
 23 **Q. So despite the fact the state studied**
 24 **this, are you aware of any significant changes to the**
 25 **capital construction funding mechanism?**

460

1 A. No.

2 **Q. And you've talked about the great results**

3 **that you've received in Littleton. Are you aware of**

4 **the results in your neighboring districts, Englewood or**

5 **Sheridan?**

6 A. Yes.

7 **Q. And what do those look like?**

8 A. They're far less than ours. Sheridan's

9 are quite low. I believe they have turnaround school

10 or schools over there. Englewood is struggling as

11 well.

12 **Q. And do you know why?**

13 A. Well, to the best of my -- in my opinion,

14 they have a number of -- well, they don't have some of

15 the things we do in our district. They're much more

16 highly economically disadvantaged. They have more

17 immigrants than we do. They're -- they're -- the level

18 of education of the parents is less. So that sometimes

19 creates involvement. So it's a number of demographic

20 factors.

21 **Q. Are you aware, Mr. Murphy, of any district**

22 **in the urban area that are replicable to the results**

23 **you get in Littleton?**

24 A. Yes.

25 **Q. Who?**

461

1 A. Boulder.

2 **Q. Any others?**

3 A. Douglas County.

4 **Q. Do you know what their accreditation**

5 **ratings are?**

6 A. I don't know what you'd call it. Yeah.

7 They're not the same as ours.

8 **Q. So are you aware of any other urban**

9 **districts that have the same accreditation rating as**

10 **yours?**

11 A. No.

12 **Q. Are there any others to your knowledge?**

13 A. None.

14 **Q. You talked about technology. How are you**

15 **able to afford some of those technology programs that**

16 **you've talked about?**

17 A. Grants. Donations. Private fundraising.

18 Primarily.

19 MS. GEBHARDT: Okay. I don't have any

20 other questions. Thank you.

21 THE COURT: Counsel, any questions?

22 MR. HINOJOSA: Just one.

23 THE COURT: Yes.

24

25

462

1 REDIRECT EXAMINATION

2 BY MR. HINOJOSA:

3 **Q. Regarding the mill levy override funds**

4 **that you raised locally.**

5 A. Uh-huh.

6 **Q. Do you use portions of those funds to try**

7 **and meet the basic educational needs or try and bring**

8 **up the needs -- try and raise the proficiency levels of**

9 **the students that are set forth by the state?**

10 A. To some extent. I have to go back and

11 explain. Remember, we passed a mill levy election

12 on -- the most recent is the best example. But we've

13 been taking cuts from the state. So, for instance, we

14 just passed a \$12 million election. We had \$8 million

15 cut from the state, so we've only got the \$4 million,

16 and our board's very cautious about putting it into new

17 programs, anticipating that there's another cut coming

18 this year. So to some extent if we have flexibility,

19 we do.

20 **Q. Okay.**

21 A. But not to the level of resources our

22 children need.

23 MR. HINOJOSA: Okay. Thank you.

24 THE COURT: Recross?

25 MS. MARKEL: Just briefly, Your Honor.

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1 RECROSS-EXAMINATION

2 BY MS. MARKEL:

3 **Q. Superintendent Murphy, I just have a few**

4 **follow-up questions just to clarify. When you were**

5 **asked the question by Ms. Gebhardt regarding changes in**

6 **the capital construction program, the Public School**

7 **Finance Act, you're aware of the BEST program, aren't**

8 **you?**

9 A. Yes.

10 **Q. And you're aware --**

11 A. Not intimately, but, yes, I'm aware.

12 **Q. You're aware that the BEST program, while**

13 **it may not be inside of the Public School Finance Act,**

14 **has been a source of funding for new schools throughout**

15 **the state, including the San Luis Valley, aren't you?**

16 **In conjunction with local district matches?**

17 A. That's where I was getting stuck. In

18 conjunction with local district matches.

19 **Q. So would it be fair to say that the BEST**

20 **program, while it may not be contained within the**

21 **Public School Finance Act itself, it is a source of**

22 **funding through the state through which schools in**

23 **the -- throughout the state receive moneys in which to**

24 **either build or repair their buildings if they provide**

25 **a percentage match along with the grant application?**

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1 MS. GEBHARDT: I'm going to object.
 2 Because that's not a fair characterization. And
 3 there's no evidence about that yet.
 4 THE COURT: Well --
 5 MS. GEBHARDT: And I guess --
 6 THE COURT: She can ask the question,
 7 'cause he's an expert in the area of finance.
 8 A. If you don't mind asking again.
 9 **Q. (BY MS. MARKEL) I'll try again. I loaded**
 10 **it up, Superintendent Murphy, and that was not my**
 11 **intention. I was trying to get you off the stand.**
 12 A. That's okay. Go ahead.
 13 **Q. You are -- I think you testified that**
 14 **you're aware of the BEST program?**
 15 A. Yes.
 16 **Q. And you're aware that the BEST program**
 17 **provides a source of funding for capital construction**
 18 **for districts in our state as long as the districts are**
 19 **able to provide some sort of match?**
 20 A. Yes.
 21 **Q. Are you aware of the number of districts**
 22 **that have been able to benefit from the program?**
 23 A. No, I'm not.
 24 **Q. Okay. When you were asked on redirect,**
 25 **Superintendent Murphy, regarding the source of funding,**

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1 **would you agree with the statement that at least for**
 2 **Littleton Public Schools, that Littleton Public Schools**
 3 **has taken control of its own destiny?**
 4 A. Could you back up? You said something
 5 about the source of funding. I wasn't sure what you
 6 were referring to.
 7 **Q. There were questions asked of you this**
 8 **afternoon regarding whether the sources of funding that**
 9 **you were receiving from the state would allow the**
 10 **district to meet the needs of certain populations of**
 11 **students. As I understand it, Littleton Public Schools**
 12 **has been very active in raising funds through the mill**
 13 **levy and also seeking other sources of either private**
 14 **donations or grants?**
 15 A. Uh-huh.
 16 **Q. Is that a fair characterization?**
 17 A. That's correct.
 18 **Q. Would you agree with the statement that**
 19 **Littleton Public Schools has taken control of its own**
 20 **destiny in part?**
 21 A. That's a question I don't know how to
 22 answer. 'Cause you --
 23 **Q. I read it on your website, Superintendent**
 24 **Murphy.**
 25 A. Okay. Public relations person probably

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1 put it on there. But go ahead.
 2 **Q. Would you --**
 3 A. Is there another way --
 4 **Q. Would you agree with that statement? I**
 5 **understand it perhaps is a PR statement, but would you**
 6 **agree with the statement by seeking mill levy overrides**
 7 **from your citizens and constituents, by seeking grants**
 8 **and donations, that that, in part, reflects Littleton's**
 9 **having taken control over its own destiny?**
 10 A. It reflects that we have the desire to do.
 11 And that we have had the desire and we will continue to
 12 try to do so given the -- you know, conditions of the
 13 state, to the best we know how.
 14 MS. MARKEL: I have no further questions.
 15 THE WITNESS: Okay.
 16 THE COURT: Thank you. Thank you, sir.
 17 You may step down. Thank you.
 18 THE WITNESS: Oh. I'm sorry.
 19 THE COURT: Thank you. I think you're
 20 done for this afternoon. Thank you.
 21 THE WITNESS: Sorry.
 22 MR. HINOJOSA: Most witnesses normally
 23 jump.
 24 THE COURT: Pardon?
 25 MR. HINOJOSA: I said most witnesses

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1 normally jump at that.
 2 THE COURT: Next witness for the
 3 plaintiff.
 4 MS. GEBHARDT: Thank you, Your Honor. The
 5 plaintiffs would call Mr. Glenn Gustafson, please.
 6 THE COURT: Raise your right hand, sir.
 7 GLENN GUSTAFSON,
 8 having been first duly sworn to state the whole truth,
 9 testified as follows:
 10 THE COURT: Thank you, sir. Please be
 11 seated. And once you're seated, if you could state
 12 both your first and last name, and why don't you spell
 13 both for the record.
 14 THE WITNESS: Glenn Gustafson. G-l-e-n-n,
 15 G-u-s-t-a-f, as in Frank, s-o-n.
 16 THE COURT: Thank you.
 17 DIRECT EXAMINATION
 18 BY MS. GEBHARDT:
 19 **Q. Good afternoon, Mr. Gustafson. Can you**
 20 **please identify the current position that you hold.**
 21 A. I'm deputy superintendent, chief financial
 22 officer of Colorado Springs School District No. 11.
 23 **Q. And how long have you held that position?**
 24 A. Since June of 2000, approximately 11 1/2
 25 years.

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1 MS. GEBHARDT: Your Honor, I have the same
 2 situation we had yesterday with Mr. Welsh. We have a
 3 new exhibit that is his resume. I've already conferred
 4 with the state, and I would like to --
 5 THE COURT: Yes.
 6 **Q. (BY MS. GEBHARDT) We have put on the Elmo**
 7 **Plaintiffs' Trial Exhibit 10442. Do you recognize that**
 8 **document, Mr. Gustafson?**
 9 A. I do.
 10 **Q. And what is it, please.**
 11 A. It's my resume.
 12 **Q. Can you tell us briefly what your job**
 13 **responsibilities are as the chief financial officer,**
 14 **assistant superintendent of District 11, please.**
 15 A. I am responsible for eight different
 16 departments in the school district that include
 17 accounting and payroll, budgeting, procurement, food
 18 service, production printing, risk management, employee
 19 benefits, food service, and charter schools.
 20 **Q. Can you tell us a little about your**
 21 **college education, please.**
 22 A. I have a bachelor's degree in accounting
 23 and an MBA in finance.
 24 **Q. And do you hold any certifications or**
 25 **professional associations or certificates?**

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1 A. I do. I'm a Certified Public Accountant.
 2 I'm also a Certified Government Finance Officer.
 3 **Q. And when did you obtain those**
 4 **certifications?**
 5 A. I got my CPA certification in 1985 -- '4
 6 or '5, I'm not remembering exactly, and my CPFO
 7 certification in approximately 1995. I'm not
 8 remembering exactly.
 9 **Q. That's okay. When did you first start**
 10 **working in public education?**
 11 A. I became employed with School District 11
 12 on January 13, 1992.
 13 **Q. Did you work in any other school districts**
 14 **before that employment?**
 15 A. I did not. But I was an auditor with a
 16 CPA firm, and I audited many different districts as
 17 part of my audit responsibilities.
 18 **Q. Tell me what you did, please, from -- in**
 19 **District 11 from 1992 up until the time you became the**
 20 **CFO.**
 21 A. From 1992 to 1998 I was the director of
 22 accounting, and then from 1998 to 2000, I was over all
 23 of our -- our production printing and risk management
 24 areas. And in addition, I was our Peoplesoft project
 25 implementation manager for a Y2K implementation of

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1 software.
 2 **Q. And I understand you've presented and**
 3 **taught a number of classes on school finance. Can you**
 4 **tell us about those, please.**
 5 A. I have. I guest-lectured at a number of
 6 different classes at the University of Phoenix, Regis,
 7 and the University of Colorado at Colorado Springs. In
 8 addition to that, I've done numerous school finance
 9 classes at -- in association with the Colorado
 10 Association of School -- School Boards, CASB.
 11 **Q. Do you also consult with other school**
 12 **districts on issues of school finance matters?**
 13 A. Not for pay, but I certainly talk to other
 14 school districts all the time. Many of them look at me
 15 as the -- the senior statesman in El Paso County. I
 16 talk to a lot of different school districts. We meet
 17 monthly in the Pikes Peak area. So we're always
 18 communicating on what's happening in school finance.
 19 MS. GEBHARDT: Your Honor, I would move
 20 for admission of Exhibit 10442.
 21 THE COURT: Any objection?
 22 MS. MARKEL: No objection.
 23 THE COURT: Thank you. That exhibit will
 24 be admitted.
 25 MS. GEBHARDT: And in addition, I would

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1 move to have Mr. Gustafson recognized as an expert in
 2 the area of school finance, school finance history of
 3 the '94 act, and other issues about education and
 4 finances related to District 11 and the surrounding
 5 areas.
 6 THE COURT: Any objection?
 7 MS. MARKEL: No.
 8 THE COURT: He'll be admitted as an expert
 9 in those areas.
 10 MS. GEBHARDT: Thank you.
 11 **Q. (BY MS. GEBHARDT) And, Mr. Gustafson, did**
 12 **you draft a summary of your expert opinions in this**
 13 **case?**
 14 A. I did.
 15 MS. GEBHARDT: And, again, Your Honor,
 16 this is contained in deposition -- or Trial Exhibit
 17 4800, which we've already admitted.
 18 THE COURT: Yes.
 19 **Q. (BY MS. GEBHARDT) And Mr. Gustafson's**
 20 **summary starts on page 14. Is that the start of your**
 21 **summary, Mr. Gustafson?**
 22 A. I believe it is.
 23 **Q. So, Mr. Gustafson, are you familiar with**
 24 **the School Finance Act of 1994?**
 25 A. Yes, ma'am. I eat, drink, and sleep it.

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1 **Q. I'm going to show you a demonstrative**
 2 **exhibit, and it is contained in the Demonstrative**
 3 **Exhibit 10429, contained in that packet. Have**
 4 **you -- do you recognize this document, Mr. Gustafson?**
 5 A. I do. This is fairly similar to a chart I
 6 use in my CASB presentations.
 7 **Q. And what's the purpose of this chart?**
 8 **What does it show you or show us?**
 9 A. It shows the mechanics of how the School
 10 Finance Act of 1994 works, and in particular shows all
 11 the different components that are used in the formula
 12 to arrive at per-pupil funding for each school
 13 district. This example happens to be just District 11,
 14 because each district literally has its own per-pupil
 15 funding level.
 16 **Q. Could you please walk us through what this**
 17 **example shows us.**
 18 A. Sure.
 19 **Q. Is it an accurate example of the current**
 20 **funding or --**
 21 A. It is.
 22 **Q. Okay. Could you walk us through, please.**
 23 A. The base funding, of course, is set by
 24 statute in the School Finance Act each year, and that's
 25 the number \$5,634.77. The cost-of-living factor is the

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1 formulaic adjustment to recognize the different cost of
 2 livings reflective of each individual school district.
 3 The district size factor is the formula for their
 4 position on the formerly "j" curve, now the "l" curve
 5 that's already been testified to. And then the
 6 personnel costs and the non-personnel cost factors,
 7 which always add up to a hundred, reflect the actual
 8 cost of compensation in a school district.
 9 You get a subtotal by working off of that
 10 formula. It's not as simple as multiplying each of
 11 those. I didn't show what you multiply and what you
 12 divide, because it gets a little bit mathematically
 13 complicated. But if you go through that formula, you
 14 get a subtotal.
 15 Then you're allowed to use an at-risk
 16 factor. You're allowed to use averaging for the number
 17 of at-risk students. So in this case, the district, on
 18 the average, for every pupil gets \$397.95. But that's
 19 not for each at-risk pupil. That's for every student
 20 in the district. And so you add that up, and you get
 21 your per-pupil revenue as it would be in accordance
 22 with Amendment 23, before the budget stabilization
 23 factor. And then we add or subtract in this case the
 24 12.97 percent adjustment. For the budget stabilization
 25 factor, which is the cumulative of three years where

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1 we've been reduced, which brings our adjusted per-pupil
 2 revenue, or PPR, down to \$6,328.44.
 3 **Q. So what does that adjusted PPR number**
 4 **represent? Does that -- is there additional funding**
 5 **for other types of students outside of this categorical**
 6 **students?**
 7 A. We do -- think about that a minute. Yes,
 8 this is our -- for our total program revenue, and total
 9 program revenue is the per-pupil funding times the
 10 number of pupils. In addition to that, we get
 11 categorical funding from six different sources. And,
 12 of course, grants, gifts, donations, interest income,
 13 miscellaneous revenues, all kinds of little things.
 14 But total program funding is approximately 90 percent
 15 of our revenue stream.
 16 **Q. Thank you. I'll put this up for a few**
 17 **more questions. You've heard some discussion today,**
 18 **Mr. Gustafson, about the cost-of-living factor. Are**
 19 **you familiar with the cost-of-living factor, sir?**
 20 A. I am.
 21 **Q. And to your knowledge, has the state ever**
 22 **fully implemented the cost-of-living factor?**
 23 A. To the best of my knowledge, they have
 24 not.
 25 **Q. Thank you. Now, Mr. Gustafson, did you**

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1 **also serve on the 2005 interim committee?**
 2 A. I did.
 3 **Q. I'll put up on the Elmo Plaintiffs' Trial**
 4 **Exhibit No. 26. Do you recognize this document?**
 5 A. I do.
 6 **Q. And what is it, please.**
 7 A. That's the cover of the interim
 8 report -- or the final report to the general assembly
 9 from the interim committee.
 10 **Q. And, Mr. Gustafson, what was your role in**
 11 **the interim committee?**
 12 A. I served on the task force as one of two
 13 school finance -- or one of two chief financial
 14 officers.
 15 **Q. You along with Mr. Murphy?**
 16 A. Correct.
 17 **Q. What was your understanding,**
 18 **Mr. Gustafson, of the purpose of the interim committee?**
 19 A. My understanding of the committee was that
 20 we at that point in time knew that substantial things
 21 had changed since the adoption of the 1994 act.
 22 Typically, a School Finance Act across the country will
 23 last between 10 and 15 years. It had already been over
 24 ten years for the '94 act. Lots had happened between
 25 the '94 act and 2005. In particular, No Child Left

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1 Behind, a lot of the different standards, a lot of the
 2 instructional initiatives had all been passed and
 3 adopted, accreditation rules.
 4 And so in 2005, we felt like it was
 5 time -- when I say we, I -- I think I can share that.
 6 I've shared the opinion of the general assembly that it
 7 was time to reexamine the act to see if it was meeting
 8 the needs of Colorado students.
 9 **Q. And did you, as a member of the interim**
 10 **school finance committee, reach a conclusion as to that**
 11 **question?**
 12 A. I did.
 13 **Q. And what was it?**
 14 A. My personal opinion was that although the
 15 formula was working well in terms of a customization
 16 model, the formula needed to be enhanced by adding new
 17 factors, and it needed to be modified to be adequate in
 18 terms of total amount of compensation, and it was
 19 sorely deficit in the needs of capital construction and
 20 at-risk students.
 21 **Q. And in examining the school finance**
 22 **formula, did the task force look at the base?**
 23 A. We did look at the base. We felt like the
 24 base was inadequate, and because of that, of course,
 25 all the formula factors drive off of the base, and that

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1 was compounding the problem of inadequacy.
 2 **Q. Can you explain that further, please.**
 3 A. Sure. Because of the formulaic mechanism
 4 of the per-pupil funding, you start with the base.
 5 Being as low as the base was, everything else is a
 6 multiplier or -- or a divider, in some cases, off of
 7 the base, and because of that it was artificially
 8 lowering all the different components so that total
 9 program revenue was lower than it needed to be to meet
 10 the requirement.
 11 **Q. And did the committee investigate what**
 12 **the -- how the base was determined?**
 13 A. We had discussions about the base a number
 14 of times, about how the base actually was arrived at.
 15 **Q. And what did the committee come to as a**
 16 **conclusion?**
 17 A. There was a number of different opinions
 18 on that. We know that in some cases we felt like it
 19 was backed into. But mostly we believed it was based
 20 on spreadsheet modeling, to try to fit the total
 21 formula within the appropriation level of school
 22 funding in the state budget.
 23 **Q. So no analysis was made as to result**
 24 **needs?**
 25 A. No, ma'am.

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1 **Q. You talked about how you believed or the**
 2 **committee believed that there should be adjustments**
 3 **made in the -- in the School Finance Act to total**
 4 **programming. I'll turn your attention to page 14. Is**
 5 **that what you're referring to?**
 6 A. It is.
 7 **Q. And why was the task force recommending,**
 8 **if you know, the changes to -- or adjustments to total**
 9 **program funding?**
 10 A. We felt at that time, in 2005, that we
 11 finally had a much better grip on the requirement of
 12 public education, what the outcome was established at,
 13 and that these factors would equitably drive funding in
 14 order to address those instructional requirements.
 15 **Q. And to your knowledge, Mr. Gustafson, have**
 16 **any of these adjustments been made to total program?**
 17 A. No.
 18 **Q. The task force also came to several**
 19 **recommendations. Do you recognize this page? It's**
 20 **page 13 of Exhibit 28.**
 21 A. I do.
 22 **Q. And what were the recommendations that the**
 23 **task force made?**
 24 A. To revise the School Finance Act, in
 25 particular some of the factors, and to look at the base

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1 per-pupil funding being too low, to see if there was a
 2 way to increase that and to increase the total
 3 appropriation into K-12 spending.
 4 **Q. And to your knowledge, Mr. Gustafson, did**
 5 **any of these occur?**
 6 A. There -- no, not at that -- not after
 7 2005. There was another recommendation. I didn't know
 8 if you were going to get to that.
 9 **Q. Sure. Go ahead.**
 10 A. There was a second recommendation to
 11 address capital funding.
 12 **Q. And did anything happen about capital**
 13 **funding?**
 14 A. Not subsequent to 2005, no.
 15 **Q. And are you familiar with the BEST**
 16 **program, Mr. Gustafson?**
 17 A. I am. One of my staff members serves on
 18 the BEST advisory committee.
 19 **Q. And how does the BEST program work?**
 20 A. Grants -- excuse me, districts submit
 21 grant applications to an advisory board which are
 22 ranked and sorted based on emergency. Each district
 23 is what we call power-equalized based on their at-risk
 24 percentage for matching contribution determination.
 25 And then the number of grants awarded is dependent on

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1 the total appropriations allowed by the state in terms
 2 of funding for the BEST program. Typically only the
 3 most severe capital improvements are allowed, things
 4 like fire alarms, urgent safety issues for school
 5 districts.
 6 We've had a number of successful
 7 applications, fairly small fire alarm-type things. But
 8 anything more than the most urgent safety improvements
 9 are rejected.
 10 **Q. Are you aware of any proposed legislation**
 11 **that came out of the 2005 task force recommendations?**
 12 A. Yes, I am. I think in my original
 13 deposition I mentioned six, but in my subsequent review
 14 of my computer drive, I saw that there were actually 11
 15 bills that came out of that committee.
 16 **Q. And did any of those pass?**
 17 A. None.
 18 **Q. Are you aware of the 2009 interim**
 19 **committee --**
 20 A. I am.
 21 **Q. -- on school finance?**
 22 A. I was familiar with some of the people
 23 involved.
 24 **Q. And did you participate in that?**
 25 A. I did not.

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1 **Q. Why not?**
 2 A. I was frustrated with the -- the state's
 3 inability to address the work we did in 2005, which I
 4 thought was stellar.
 5 **Q. So let's -- let's turn now a little bit to**
 6 **District 11. Have the demographics in District 11 been**
 7 **changing since you have been CFO?**
 8 A. Oh, my. You know, people think of us as
 9 that beautiful scenic resort city at the foot of Pikes
 10 Peak. We are a rapidly changing school district. In
 11 some ways I -- I draw an analogy to Denver. When -- we
 12 were the first in El Paso County, formed in 1873. But
 13 there are 17 school districts in El Paso County. And
 14 we have been the victims of suburban flight and urban
 15 changes in populations to now our English language
 16 population is doubling every four or five years, and
 17 our free and reduced lunch population has gone from
 18 approximately 25 percent to 51.9 percent in just a
 19 matter of 10 or 11 years.
 20 **Q. Do you have knowledge, Mr. Gustafson, of**
 21 **some of the socioeconomic demographics of surrounding**
 22 **districts to District 11?**
 23 A. Yes, of course.
 24 **Q. Can you explain some of those, please.**
 25 A. With 17 different school districts.

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1 probably similar to Denver, although I'm not familiar
 2 with Denver, we have a wide variety of socioeconomic
 3 factors. Of course immediately adjacent to us to the
 4 north is Academy School District 20, with a
 5 single-digit free and reduced lunch population. Many
 6 of the realtors inadvertently steer students to Academy
 7 District 20 as the district to belong to. And then, of
 8 course, to the southwest of us, we have Cheyenne
 9 Mountain School District, home of The Broadmoor, where
 10 we have some of the most affluent citizens of Colorado
 11 Springs.
 12 **Q. And what impact does having those kinds of**
 13 **school districts surround you have on District 11?**
 14 A. It creates an interesting dynamic.
 15 It's -- with so much school choice in Colorado Springs,
 16 not just because of public schools, but also private
 17 schools, charters, and a myriad of other options,
 18 students have ready access to other districts, and so
 19 there is an intense competition for students in
 20 Colorado Springs.
 21 **Q. And you've heard a discussion about**
 22 **declining enrollment. Do you have an understanding of**
 23 **the declining enrollment impact in District 11?**
 24 A. Perhaps maybe better than anybody in the
 25 state. I believe we have the largest percentage

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1 decline in the state of Colorado. We have lost over
 2 15 percent of our enrollment over the last 10 to 12
 3 years.
 4 **Q. And to what do you attribute that?**
 5 A. A combination of things. Suburban flight,
 6 without a doubt. We tend to see a phenomena that as
 7 new homes are built, families with young children tend
 8 to migrate to those neighborhoods. And we have an
 9 older community; less than 20 percent of our taxpayers
 10 have kids and students. So the vast majority of it
 11 would be student flight, but certainly some of it is
 12 school choice. Lots of choices in Colorado Springs.
 13 **Q. Are you familiar with the declining**
 14 **enrollment provision in the school finance formula?**
 15 A. Yes, ma'am, of course. We've utilized it
 16 heavily.
 17 **Q. And can you explain how you've used it?**
 18 A. Right. They --
 19 **Q. What it allows you to do.**
 20 A. The declining enrollment averaging formula
 21 in the '94 act allows you to take the highest of the
 22 current year, a two-year, three-year, four-year, or
 23 five-year average. We've been using five-year
 24 averaging. Generally that means if you're always using
 25 five-year averaging is two things: One, your decline

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1 is significant; and, two, it's steady, meaning you're
 2 not roller coaster, you're just steadily dropping down.
 3 **Q. And what impact does declining enrollment**
 4 **have on the District 11 budget?**
 5 A. It's very significant. People don't
 6 realize that public education is a labor-intensive
 7 business. We have -- our fixed costs really are more
 8 related to staffing and facilities. And so just as one
 9 of the other testimonies indicated, when we lose a
 10 student out of a classroom, we don't necessarily get to
 11 reduce a teacher. We don't necessarily get to close a
 12 school. We may not even get to sell a textbook. We're
 13 just out 6 or \$7,000 of income. So the economic impact
 14 when you're losing 3, 4, 500 students a year is
 15 significant.
 16 **Q. Do you see it as receiving money for**
 17 **students that you don't have?**
 18 A. I don't.
 19 **Q. Why not?**
 20 A. Two reasons. One is I think that
 21 characterization of declining enrollment is totally
 22 opposite of the legislative intent of declining
 23 enrollment averaging, which is to smother those
 24 enrollment fluctuations so as not to negatively impact
 25 students. If we had to react to a drop in enrollment,

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1 where we don't know what the drop is until count day on
 2 October 1, that means that we would remove a teacher
 3 after they've already bonded with the children for two
 4 years. That's practically impossible, and certainly
 5 damaging to the child.
 6 So the intent of the act is to not put
 7 school districts into the position of that, but to
 8 allow them to smooth that drop over time. It's very
 9 effective. It's been very helpful for us. The other
 10 thing is whereas I've heard that characterization of
 11 phantom students in the legislature, it doesn't
 12 acknowledge all the students that we have to teach that
 13 we don't get to count, students that come after count
 14 day or less than a half-time pupil. There's lots of
 15 those students that nobody ever acknowledges.
 16 **Q. So when do you set your budgets?**
 17 A. We adopt a budget. We propose a budget by
 18 May 31 each year. The board of education is required
 19 to adopt it by June 30, and then we adjust it by
 20 December 31 to reflect the final student counts.
 21 **Q. And can you explain what the October 1**
 22 **student count is and its significance to your budget?**
 23 A. The October 1 student count is the single
 24 biggest driver of economics in school finance. It is
 25 the basis for the vast majority of our funding. As I

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1 mentioned, in total program, it's half of the equation
 2 of total program funding, pupil count times per pupil
 3 revenue. And so count day is a big deal for us. We
 4 want our count to be as accurate as possible, and, of
 5 course, we would like it to be as high as possible.
 6 **Q. And when students come in on January 1,**
 7 **are you able to turn them away?**
 8 A. Oh, absolutely not.
 9 **Q. And do you receive funding for those**
 10 **students?**
 11 A. We don't receive funding that year, no.
 12 **Q. What is the impact of having the districts**
 13 **that you've described, such as Academy and Cheyenne,**
 14 **have on your ability to attract and retain teachers?**
 15 A. It has been very detrimental in two
 16 pieces: One, we certainly have the largest number of
 17 permits out of the district to Academy School District
 18 20, which means we have fewer resources, which affects
 19 our only -- our teacher compensation. And as a result
 20 of that, we are finding that we are losing our
 21 competitiveness in terms of our salary structures
 22 across the board.
 23 **Q. You've talked about the charters at**
 24 **District 11. How many does District 11 have?**
 25 A. We have -- District 11 has seven district

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1 charters within its boundaries, and we have six
 2 additional state charters within our boundaries. I
 3 always include those, because we do have interaction
 4 with those six state charters.
 5 **Q. And are you aware of the performance of**
 6 **those charter schools?**
 7 A. Only at a high level.
 8 **Q. And at a high level, how do they compare**
 9 **to District 11 schools?**
 10 A. They are approximately similar for similar
 11 socioeconomic schools.
 12 **Q. And can you talk about the economic impact**
 13 **of the school choice on District 11, please.**
 14 A. It's been gigantic. It's a nuance that
 15 very few people understand. I actually testified in
 16 the legislature at the request of Senator Windels on
 17 this matter a number of years ago. The financial
 18 impact of a student choosing out of a traditional
 19 school into a charter school, and I don't say public,
 20 because they're all the public school students, but
 21 from a traditional school to a charter school is
 22 similar, but different to us losing a child to another
 23 district.
 24 **Q. Can you explain that, please.**
 25 A. Sure. When we lose a child to another

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1 district, we get to take advantage of the declining
 2 enrollment averaging mechanism. When we lose a child
 3 to a charter, we do not get to take advantage of the
 4 declining enrollment averaging, 'cause the child is
 5 still in our pupil count, but we lose the funding. So
 6 we -- not only do we have to fund the student at a
 7 hundred percent plus the administrative cost, which is
 8 very small, about 2 percent, but we're left with the
 9 same overhead. And having been through the school
 10 closure process and the beatings that we took in the
 11 community, it's not easy to be left with an
 12 infrastructure like that.

13 **Q. Is there an impact on facilities?**
 14 A. Absolutely. We tend to have underutilized
 15 facilities because many of the charter schools are
 16 using their own facilities or different types of
 17 alternatives for facilities. And even when they're
 18 using our facilities, they don't maintain them to the
 19 same standard of care that we do.

20 **Q. Now, you've talked in your initial**
 21 **comments, Mr. Gustafson, about some of the changing**
 22 **demographics. Can you talk about the financial impact**
 23 **of the increasing at-risk population in District 11,**
 24 **please.**
 25 A. Yes, ma'am. The -- probably the single

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1 biggest challenge for us has been funding the cost of
 2 intervention programs to address at-risk kids. Things
 3 like summer school and more importantly additional
 4 time. It really -- much of the conversation besides
 5 the software and instructional supplies and materials,
 6 which is not always cheap, some of the software
 7 licenses, we're looking at a thousand dollars per
 8 license for intervention models. But the biggest part
 9 is time. We need more time with these students, and
 10 time is expensive. Whether that's time within the day
 11 or additional days within the school year or additional
 12 people to lower the student-teacher ratio. All those
 13 things are very expensive for us.

14 **Q. And do you currently have sufficient**
 15 **financial resources to meet those additional**
 16 **requirements you believe is in the best practice to**
 17 **provide to those students?**
 18 A. Absolutely not.

19 **Q. What about your English language**
 20 **population?**
 21 A. Interestingly, Colorado Springs, like
 22 Colorado, is -- like the state of Colorado, is going
 23 through a transformation. By far our largest growing
 24 population of students are English language learners.
 25 **Q. And what financial impact does that have?**

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1 A. Very similar to the at-risk kids. With
 2 the addition of language classes. And many people
 3 think that's just Spanish, and it's not.

4 **Q. How many languages are there in**
 5 **District 11?**
 6 A. I don't know the exact number, but I do
 7 know it's over a hundred. And so we're trying to deal
 8 with the variety of different languages, to bridge the
 9 literacy gap, so then we can tackle the achievement
 10 gap. So many people don't understand, sure, there's a
 11 CSAP-A, the alternative CSAP test for Spanish-speaking
 12 students, but that doesn't necessarily help if you
 13 you're from Croatia or Africa or the Sudan. So we have
 14 to get these students to literacy in English in order
 15 for them to understand the assessment.

16 **Q. And do you -- in your professional**
 17 **opinion, Mr. Gustafson, do you have sufficient**
 18 **financial resources to meet the proficiency needs of**
 19 **those ELL students?**
 20 A. Absolutely not.

21 **Q. Are you familiar with the special**
 22 **education population in District 11?**
 23 A. I am.

24 **Q. And has that changed since your time as**
 25 **CFO?**

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1 A. It has changed. Interestingly, the
 2 percentage of students has not changed very much. On
 3 the average, District 11 mirrors the United States at
 4 approximately between 10 and 11 percent of our students
 5 qualify for special education, but the severity of
 6 needs is dramatically different than other districts.
 7 I don't know if it's Colorado Springs, the mountains,
 8 or the altitude, or whatever it is, but we have a
 9 disproportionate number of students with autism and
 10 more expensive, higher cost needs.

11 **Q. And do you, in your professional opinion,**
 12 **find that you have sufficient resources to meet that**
 13 **increasing severity of needs of your special education**
 14 **students?**
 15 A. Absolutely not.

16 **Q. What is -- what would you say the**
 17 **condition of your facilities are in District 11?**
 18 A. On a scale of A to F, I would give us a
 19 B-minus to a C-plus. We are blessed that we've passed
 20 two bond issues since 1996 where we've invested
 21 approximately \$250 million in the infrastructure of our
 22 facilities.

23 **Q. Are you able to keep up with all of the**
 24 **maintenance requirements that are necessary to keep**
 25 **your buildings in good and operational condition?**

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1 A. We are not. We just had a study done
 2 where --
 3 MS. GEBHARDT: Can you hear okay?
 4 **Q. (BY MS. GEBHARDT) Okay. Go ahead.**
 5 A. -- the estimated industry average for
 6 annual cost for repair and maintenance for a facility
 7 is approximately 2 percent of your infrastructure. In
 8 District 11, we have approximately \$800 million of
 9 assets, so 2 percent of that would be approximately
 10 \$16 million a year, and we're applying a little less
 11 than \$2 million a year towards that requirement.
 12 **Q. And as a CFO of District 11, does that**
 13 **cause you any concern?**
 14 A. It causes me great concern.
 15 **Q. And why is that?**
 16 A. We're losing ground every single day. And
 17 what we worry the most about is it's not just boilers
 18 and lights and equipment, it's -- at some point, if you
 19 don't maintain a facility, it starts to become a
 20 self-fulfilling prophecy as a ghetto school. If the
 21 weeds are growing, then it gets tagged with graffiti,
 22 the neighborhood starts to ignore it, students start
 23 opting out of the school, and it becomes a
 24 self-fulfilling prophecy, a repetitive cycle that we
 25 can't escape

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1 **Q. And what happens to the costs for fixing**
 2 **that building?**
 3 A. They continue to rise, and they rise at a
 4 faster level than the 2 percent. If you start to
 5 ignore the needs, then you have more problems
 6 compounding those, and so it becomes more expensive
 7 than the 2 percent number we use as a rule of thumb.
 8 **Q. And as a CFO in District 11, do you have**
 9 **an expert opinion as to whether you have the sufficient**
 10 **financial resources to maintain your facilities?**
 11 A. I do. In my expert opinion, we do not
 12 have the sufficient resources.
 13 **Q. Are you also responsible in your position**
 14 **as the assistant superintendent for transportation?**
 15 A. I'm the deputy superintendent.
 16 **Q. Sorry, deputy superintendent.**
 17 A. But not just for transportation. But,
 18 yes, transportation falls under my area of purview.
 19 **Q. And are you familiar with the funding**
 20 **requirements and issues for transportation?**
 21 A. Absolutely.
 22 **Q. And what are the issues that the**
 23 **transportation department faces in District 11?**
 24 A. We're dealing with three major factors.
 25 One is the cost of replacing our fleet. Average cost

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1 of a school bus is between 85 and \$90,000. We keep a
 2 school bus approximately 15 years before we replace it.
 3 Of course, mountains and hills are extremely hard on
 4 school buses. The cost of fuel, which has risen
 5 dramatically over the last few years, and then, of
 6 course, drivers. We are the second-lowest paying
 7 school district in the Pikes Peak region for school bus
 8 drivers.
 9 **Q. And, again, do you believe, as the chief**
 10 **financial officer and deputy superintendent of**
 11 **District 11, that you have sufficient financial**
 12 **resources to maintain your transportation needs?**
 13 A. We do not. We have an avalanche of bus
 14 replacements coming at us that we will not be able to
 15 fulfill.
 16 **Q. Now, in the demonstrative exhibit that we**
 17 **put up, there was something in there called the budget**
 18 **stabilization factor. What is the budget stabilization**
 19 **factor, Mr. Gustafson?**
 20 A. I'll pass on the morbid humor and just
 21 simply state that this is the state's mechanism for
 22 balancing the state budget by reducing K-12 funding.
 23 **Q. And have there been other changes to the**
 24 **school finance formula, negative changes to the school**
 25 **finance formula?**

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1 A. Yes, of course. The state uses a process
 2 called a rescission. Rescissions are particularly
 3 challenging for school districts, because they reduce
 4 our funding within the school year. So when they
 5 announce a rescission, they reduce our funding.
 6 They'll usually spread that over our remainder payments
 7 in the fiscal year and reduce our funding for the
 8 rescission.
 9 **Q. And why is that particularly challenging,**
 10 **to receive a mid-year rescission?**
 11 A. Because we've already balanced our budgets
 12 in terms of staffing, in terms of equipment, materials.
 13 Everything's been balanced. Usually the rescissions
 14 happen in the fourth quarter of the fiscal year, and so
 15 at that point there's very little we can do to adjust
 16 our budget to reflect the loss of revenue.
 17 **Q. And have there been any categorical**
 18 **changes or freezes since you've been CFO?**
 19 A. Yes. Almost all the categoricals have
 20 been frozen.
 21 **Q. Are there any deductions off of the school**
 22 **finance formula before you receive your allocations**
 23 **under the school finance formula?**
 24 A. I characterize it as rescission, but as an
 25 example, is a number of years ago, when the state

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1 started to cut its own budget for the department of
 2 education, they started taking a number of costs of CDE
 3 off the top, is what they call it, off of the funding
 4 formula, and that includes the cost of the school
 5 finance unit and the cost of the assessment program for
 6 CSAP and all the other assessments. So they actually
 7 roll that cost to all the school districts so that we
 8 would have to pay for their department.
 9 **Q. So is that a deduction that's taken before**
 10 **you even receive your base funding?**
 11 A. Well, they usually do it after the fact.
 12 And so we get our total program funding, and then they
 13 adjust our total program funding after the fact.
 14 **Q. Downward?**
 15 A. Downward.
 16 **Q. So how -- so you've been decreasing your**
 17 **revenues. Have your expenditures been similarly**
 18 **decreasing?**
 19 A. I wish. We -- we've been blessed in a few
 20 small areas that the recession has held down some
 21 costs, but it's been remarkable in these recessionary
 22 times to see some of the increases.
 23 A great example is the City of Colorado
 24 Springs, as you know, along with many other
 25 municipalities in Colorado, is fighting for water as a

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1 result of the drought. And so the City of Colorado
 2 Springs just is participating in a project called the
 3 Southern Delivery System, and they have passed on the
 4 cost of that water project to all users, including
 5 government and school districts. The City of Colorado
 6 Springs has already locked in a 16 percent annual
 7 increase for six consecutive years, and that's
 8 96 percent without compounding, and that's a compounded
 9 water rate increase. We're in year one of six.
 10 Certainly higher than the Denver-Boulder
 11 consumer price index, I would say.
 12 **Q. And why do you refer to the Denver-Boulder**
 13 **CPI index?**
 14 A. Because that's the acknowledged measure of
 15 inflation in TABOR, the Taxpayer Bill of Rights.
 16 **Q. Are there --**
 17 A. By the way, there's a number of other
 18 examples where we're fighting inflation, particularly
 19 in the area of textbooks, intervention materials,
 20 science chemicals, fuel prices for school buses,
 21 insurance benefits, all of those kinds of things we're
 22 seeing. Even the cost of food, because corn is more
 23 expensive, is rising at 5 to 10 percent annual
 24 increases right now.
 25 **Q. So what has your district done to adjust**

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1 **to the reduction of funds and the increases in costs?**
 2 A. Well, I feel like that's all I've done
 3 since I've been chief financial officer. We've been in
 4 a declining enrollment district, so we've been dealing
 5 with the cuts before the state had cuts, and then when
 6 the state started having cuts, that's just compounded
 7 our cuts. We've already taken all the low-hanging
 8 fruit. We take advantage of best practices in school
 9 business matters. We're self-insured for worker's
 10 compensation, for employee benefits. We believe we
 11 save millions of dollars by doing that.
 12 We even print -- we go to our -- the
 13 publisher of textbooks, and we purchase the copyright
 14 to we can print some of the materials that teachers use
 15 in our own production printing facilities at about a
 16 third of the cost. So we've done some very creative
 17 things. We've done tremendous work in energy
 18 conservation. All of our new schools are built with
 19 geo exchange, where you take advantage of geothermal
 20 activity in the ground to heat and cool your
 21 facilities. We've done some great things.
 22 But unfortunately, it's not enough, and
 23 we're now at the point where we're reducing programs
 24 and staff and compensation all three. I often say it
 25 comes into the three Ps, people, pockets, or programs,

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1 and we're affecting all three.
 2 **Q. Have you had to consider furlough days?**
 3 A. Yes. The district implemented two
 4 furlough days. Yesterday was payday. I got to see my
 5 first deduction on my paycheck yesterday.
 6 **Q. And do furlough days have the effect of**
 7 **reducing seat time for students in addition?**
 8 A. They do. These are instructional furlough
 9 days. So we will be going from 175 contact days to 173
 10 contact days.
 11 **Q. And you had testified earlier about the**
 12 **importance of time. Are there other programs that**
 13 **you've had to cut as a result of the budget cuts?**
 14 A. Yes. Not only in addition to the state
 15 cuts, but the federal governments's been cutting back.
 16 We've eliminated the time requirements. We had an
 17 extended one-hour day for Title I schools. We had to
 18 first reduce that to a half hour, from 60 minutes to
 19 30 minutes, and now we've had to eliminate that
 20 provision. And we've eliminated our summer school
 21 program, which was extremely important to us. We've
 22 also reduced, not eliminated, but reduced, our tutoring
 23 program.
 24 **Q. And what -- what were those programs**
 25 **intended to help? What student populations were those**

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1 **intended to help?**
 2 A. The vast majority of the recipients of
 3 those populations were at-risk students.
 4 **Q. Are you aware of the impact of the budget**
 5 **cuts on other districts?**
 6 A. Sure. We talk about them. We all share
 7 ideas, looking for ways to keep the cuts as far away
 8 from the classroom as possible. By the way,
 9 Ms. Gebhardt, I forgot to mention the cost of PERA and
 10 the cost of increases.
 11 **Q. In the -- when you were discussing the**
 12 **costs of increases?**
 13 A. (Nodded head up and down.)
 14 **Q. Okay.**
 15 MS. GEBHARDT: May I approach, Your Honor?
 16 THE COURT: Yes.
 17 **Q. (BY MS. GEBHARDT) This is -- I need to**
 18 **get one more copy of this for you, Your Honor.**
 19 A. I forgot to grab my glasses. Thank you.
 20 Are they me?
 21 **Q. Can you tell me what number it is?**
 22 A. 10395.
 23 **Q. Okay. We'll get another copy. If you**
 24 **want to share. But I'm not going to ask specific**
 25 **questions on this. So see if I can read my notes here.**

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1 **What is deposition -- or Trial Exhibit 10395?**
 2 A. This is a spreadsheet prepared by the
 3 Colorado School Finance Project that summarized a
 4 survey, survey results for budget cuts for major
 5 districts across the state of Colorado.
 6 **Q. And does the information on that -- thank**
 7 **you.**
 8 MS. GEBHARDT: May I approach, Your Honor?
 9 THE COURT: Yes.
 10 THE WITNESS: Want your glasses back?
 11 MS. GEBHARDT: There's one if you'd like
 12 to read it.
 13 THE COURT: Thank you.
 14 **Q. (BY MS. GEBHARDT) And in reviewing**
 15 **Exhibit 10395, is the information on that reflective of**
 16 **what you understand to be the nature of budget cuts**
 17 **taken by other districts?**
 18 A. Absolutely.
 19 **Q. And can you describe what kinds of**
 20 **other -- of what impact the budget cuts have had on**
 21 **other districts, please.**
 22 A. You can see, since it's up on the Elmo,
 23 that the vast majority of reductions have been in the
 24 neighborhood of staffing reductions and compensation
 25 reductions. And some significant reserve draws, which

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1 I know we've utilized pretty heavily. The classroom
 2 impact seems to have the fewest number of X's, meaning
 3 the least number of districts that implemented that,
 4 but there's still a substantial amount of X's in that
 5 category too.
 6 **Q. Mr. Gustafson, do you have an**
 7 **understanding of what next year's budget will hold?**
 8 A. Yes. It's my understanding that we're
 9 looking at an additional 150 million to \$200 million
 10 reduction for K-12 across the state of Colorado.
 11 **Q. And do you have an understanding of what**
 12 **the impact will be on District 11 if that were to**
 13 **occur?**
 14 A. If -- if that same -- if that number comes
 15 to fruition, then we'll be looking at another 10 to
 16 \$15 million, depending on how it's actually effected.
 17 **Q. And have you started planning for how you**
 18 **would implement cuts of that size?**
 19 A. Only in a high level. Any good chief
 20 financial officer and superintendent -- don't forget
 21 that most of the school districts in Colorado, the
 22 superintendent does the budget, is already doing
 23 multiple-year planning on budget reductions, and we are
 24 as well, trying to phase these reductions over a period
 25 of time to minimize the impact on students.

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1 **Q. Mr. -- excuse me. Mr. Gustafson, have you**
 2 **tried to do -- have you tried to pass a de-Brucing**
 3 **election?**
 4 A. We have. We had a de-Brucing measure.
 5 **Q. And we've heard that described, but can**
 6 **you give a brief description of what that is?**
 7 A. A de-Brucing ballot measure would relieve
 8 the school district of some of the obligations of
 9 TABOR. There are some things that you cannot be
 10 relieved of, some of the election provisions, the
 11 emergency reserve provisions, things like that. But it
 12 would exempt you out of primarily the revenue and
 13 spending limit limitations of TABOR.
 14 **Q. Did that pass?**
 15 A. It did not. It was soundly defeated. I
 16 would remind the audience that Mr. Bruce is a resident
 17 of District 11.
 18 **Q. And have you tried to pass mill levy**
 19 **overrides?**
 20 A. We have. We've passed two mill levy
 21 overrides in District 11, one very significant and
 22 large.
 23 **Q. How much?**
 24 A. The first one was passed in 1996, it was
 25 fairly small, it was \$3 million, and it was sunsetted.

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1 The second one was passed in the year 2000. It was
 2 very large, \$27 million. It did pick up the \$3 million
 3 from the first one. So 3 million rolled into the new
 4 one of \$27 million, which at the time was fairly close
 5 to the cap on mill levy overrides in the school
 6 district. Since then it's drifted down because
 7 it -- back then you couldn't inflation-adjust your mill
 8 levy override. So as time has passed, we've kind of
 9 ratcheted down a tad.

10 **Q. And have you tried to pass any other mill**
 11 **levy overrides?**

12 A. Yes. In an effort to address our student
 13 achievement challenges, we went back to the voters in
 14 2008 with another mill levy override question that was
 15 very specific on addressing a number of factors,
 16 performance pay, student achievement, things like that.
 17 It was soundly defeated.

18 **Q. And do you have an understanding as to why**
 19 **it was defeated?**

20 A. Well, certainly it was a little bit the
 21 victim of the economy. We had polling data that was
 22 very strong at the time. But at that time, gas prices
 23 had climbed to close to \$4 a gallon. There was the
 24 start of the recession, so we were starting to see some
 25 of the impact from that. But we also heard an

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1 overwhelming outcry from our community that we were
 2 already fairly high in terms of mill levy override at a
 3 thousand dollars per pupil, and that people couldn't
 4 afford more.

5 **Q. Your community is not like that of**
 6 **Cheyenne Mountain or Academy?**

7 A. No. Our median household income is
 8 significantly less.

9 **Q. And so the -- one of the concerns you**
 10 **heard, was that related to the income levels of the**
 11 **family and their ability to pay?**

12 A. Absolutely.

13 **Q. Now, Mr. Gustafson, do you have an**
 14 **understanding of the local control of instruction**
 15 **clause in the constitution?**

16 A. I do.

17 **Q. And what is your layperson's understanding**
 18 **of that?**

19 A. My layperson's understanding of local
 20 control is that in Colorado, we give local school
 21 boards the authority to select curriculum, hire staff,
 22 set budgets, and set some graduation requirements in
 23 order to not only meet the state standards, but to meet
 24 local standards of the community, and to also provide
 25 for innovation or various other programs that are kind

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1 of unique to our community or region.

2 **Q. And do you have an opinion as to whether**
 3 **District 11 is able to meet that -- that standard that**
 4 **you just described?**

5 A. Well, we're seeing the state chip away at
 6 local control. Graduation requirements used to be
 7 exclusively the domain of local school boards, now
 8 they're starting to require certain things at the state
 9 level. We're starting to see some heavy curriculum
 10 influence, and without a doubt, the -- the legislation
 11 involving the Colorado Achievement Plan for Kids,
 12 Senate Bill 191, Senate Bill 163, those kinds of
 13 initiatives seem to be further constraining our
 14 flexibility in local control.

15 **Q. Do you have sufficient resources to**
 16 **address what you talked about, local innovation or**
 17 **programs that your community would want?**

18 A. Absolutely not.

19 **Q. And do you have an understanding of what a**
 20 **thorough and uniform system of public schools is, a**
 21 **layperson's understanding?**

22 A. Well, I have my opinion of what it is.

23 **Q. Can you tell us what your layperson's**
 24 **understanding is, please.**

25 A. Sure. From my perspective, a thorough and

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1 uniform system of free public education is a system
 2 that allows us to have students reach both
 3 postsecondary eligibility or opportunities or career
 4 opportunities regardless of race, creed, color,
 5 national origin, or religion. That all students have
 6 those opportunities to be successful, to be good
 7 citizens of our community, but most importantly to have
 8 either a career or a postsecondary opportunity that's
 9 equivalent for all.

10 **Q. And in your expert opinion, Mr. Gustafson,**
 11 **is District 11 able to meet that standard that you just**
 12 **described?**

13 A. Unfortunately, where three out of ten
 14 students do not graduate from District 11, maybe even
 15 higher, over 40 percent of our students not proficient
 16 in reading, writing, math, and science, no, I don't
 17 think we meet that requirement.

18 MS. GEBHARDT: And, Your Honor, one
 19 administrative task. I would move for the admission of
 20 Exhibit 10395.

21 THE COURT: Any objection?

22 MS. MARKEL: None, Your Honor.

23 THE COURT: That will be admitted.

24 MS. GEBHARDT: Okay. That ends my direct
 25 questioning. Thank you.

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1 THE COURT: Okay. We'll go ahead and take
 2 the break then. It's about 10 to 3:00. Let's say ten
 3 after. How's that? Okay. We'll resume at about ten
 4 after 3:00. Thank you.
 5 (Recess taken, 2:46 p.m. to 3:12 p.m.)
 6 THE COURT: Thank you. We're back on the
 7 record. Counsel.
 8 MR. HINOJOSA: Thank you.
 9 DIRECT EXAMINATION
 10 BY MR. HINOJOSA:
 11 Q. Good afternoon, Mr. Gustafson.
 12 A. That's correct.
 13 Q. I keep on wanting to say Gustavison.
 14 A. Any way is fine.
 15 Q. Former football player. Are you familiar
 16 with the exclusion of students on the reduced price
 17 lunch program from the proxy for at-risk funding?
 18 A. I am.
 19 Q. And can you think of any rational reason
 20 why discounts on the reduced price lunch program would
 21 be excluded from that proxy?
 22 A. I cannot. Obviously the primary intent of
 23 the free categorization versus the reduced
 24 categorization is in accordance with the USDA
 25 guidelines for lunch, and so that's the primary reason.

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1 But in terms of the state adopting that as a proxy for
 2 at risk, we certainly see just as many, if not more
 3 characteristics of at-risk behavior from reduced lunch
 4 kids as we do from free lunch kids. And D-11 is not
 5 significantly different. We're like 41 percent free
 6 and like 10 percent reduced, for a total of 51.9 or
 7 whatever. But it really should be both, in our
 8 opinion.
 9 Q. And can you think of any -- or are you
 10 familiar with the two-year limitation on ELPA funding?
 11 That's funding under the English Language Proficiency
 12 Act?
 13 A. I am.
 14 Q. Can you think of any rational reason why
 15 the state would limit ELPA funding to two years?
 16 A. No. It's clear to me we need more time
 17 for those students for literacy for all english
 18 language learners.
 19 MR. HINOJOSA: Pass the witness.
 20 THE COURT: Thank you. Cross-examination.
 21 CROSS-EXAMINATION
 22 BY MS. MARKEL:
 23 Q. Good afternoon, Mr. Gustafson.
 24 A. Hi.
 25 Q. My name is Carey Markel. I just have a

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1 few questions for you this afternoon. As I understand
 2 it from your prior testimony, you believe that the
 3 basic structure of the Public School Finance Act is
 4 okay, but it's -- the problem you have with it is that
 5 with regard to all the educational reform statutes,
 6 there's not enough money in the system; is that
 7 correct?
 8 A. That's close to correct. I would -- I
 9 would add with the caveat that we -- I echo the
 10 sentiments of the 2005 committee report, that there are
 11 some factors that need to be modified in the formula.
 12 But I think the -- the basic premise of the formula
 13 is -- is still a good model to work with. But you're
 14 certainly right, between the adequacy level and
 15 the -- the tweaking of the factors, it's a -- it's a
 16 fairly sound model.
 17 Q. And I also understand that you agree that
 18 one possibility would be either fund the requirements
 19 or simply repeal them; is that correct?
 20 A. Correct.
 21 Q. So you -- so in your mind, if the, say,
 22 CAP4K, Senate Bill 191, the accountability standards,
 23 those were repealed, you would be -- that would be one
 24 solution?
 25 A. I think it would be a partial solution.

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1 I'm not sure society's willing to accept what kind of
 2 achievement levels we might have as a result of that.
 3 But I think it could be a partial solution.
 4 Q. And, in fact, you've testified to that in
 5 your prior testimony in this case?
 6 A. Correct.
 7 Q. Would you agree that the biggest single
 8 determinant of student achievement is an effective
 9 teacher in the classroom?
 10 A. I think it's one of the biggest
 11 determinants. I think in addition, they say the
 12 education level of the mother is also very high as
 13 well.
 14 Q. But as far as if you were to say the
 15 single biggest determinant, would you agree that it's
 16 an effective teacher in the classroom?
 17 A. You know, honestly, I don't know the data
 18 well enough to say. I would think it would be one of
 19 them.
 20 Q. When D-11 was managing its budget process
 21 for this last year, it's my understanding that you
 22 increased class size by one in at least some of your
 23 classes; is that correct?
 24 A. That is correct.
 25 Q. And as a result of that, the district had

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1 **a savings of \$3 million; is that correct?**
 2 A. We did. In the end, subsequent to my
 3 deposition, and the board actual adopted the final
 4 budget. And at that time, what the board did was
 5 although they increased class size by one student per
 6 teacher, they took some of those savings related to
 7 that and reinvested it in what -- I hate to use this
 8 word, because they really are people, but we call them
 9 spare teaching staffing units. And so these are
 10 flexible positions where we can say this is a school
 11 that's in need of a lower class size, so we can
 12 differentiate the staffing formula. So we reinvested
 13 about two-thirds of that money back into teachers, to
 14 differentiate the staffing formula.
 15 **Q. So with that, what I take from that is**
 16 **that the board reallocated those resources based on**
 17 **proposals that staff made with regard to budget --**
 18 **proposed budget cuts, and then the board, in exercising**
 19 **its authority over the board -- over the budget, made**
 20 **that determination that you just described?**
 21 A. That's close. You almost characterized it
 22 right. The board made that determination based on
 23 schools being allowed to apply based on their -- either
 24 their programic needs or their student achievement
 25 needs for the additional teacher resource.

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1 **Q. But, again, that was a decision made by**
 2 **the board, not by the state?**
 3 A. Correct. The board and the
 4 superintendent.
 5 **Q. Okay. You testified earlier in response**
 6 **to some of Ms. Gebhardt's questioning that D-11 is a**
 7 **declining enrollment district; is that correct?**
 8 A. Yes, ma'am.
 9 **Q. And I believe you've also testified that**
 10 **approximately 90 percent of D-11's budget goes to**
 11 **compensation; is that correct?**
 12 A. No. No. Not quite that much. I said
 13 90 percent of our revenue comes from total program.
 14 **Q. How much of your budget is dedicated in**
 15 **D-11 to compensation?**
 16 A. Probably in the general fund about
 17 85 percent, I would guess.
 18 **Q. With regard to declining enrollment since**
 19 **2002 to 2010, it's my understanding that approximately**
 20 **4,000 students have left the district; is that correct?**
 21 A. That's right.
 22 **Q. Over that same time period, it is also my**
 23 **understanding that there's been an addition of ten FTE,**
 24 **or full-time teacher equivalents, to the district; is**
 25 **that correct?**

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1 A. Yes, ma'am.
 2 **Q. It's my understanding also that the**
 3 **district does not have data on the correlation, if any,**
 4 **between adding teachers to a classroom and student**
 5 **achievement?**
 6 A. I -- we don't have any district data.
 7 **Q. It's also my understanding, just as part**
 8 **of the managing the district, in 2006-'07, that period**
 9 **of time, the district bought out the contract of the**
 10 **then superintendent of the district for an amount of**
 11 **approximately \$400,000; is that correct?**
 12 A. Yes, ma'am.
 13 **Q. Given your length of time that you've**
 14 **dedicated to education in this case, it's my**
 15 **understanding that you have an understanding of the**
 16 **historical share of the state versus the local share of**
 17 **funding of -- for D-11; is that correct?**
 18 A. Yes, ma'am.
 19 **Q. And as I understand it, in 1992 or**
 20 **thereabouts, the state share was around 40 percent, and**
 21 **D-11 picked up the balance; is that correct?**
 22 A. Local taxpayers, yes. Our percentages
 23 closely mirror the state shift.
 24 **Q. And what we're looking at today is almost**
 25 **a reversal of that; is that correct?**

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1 A. That's correct. And it's fairly
 2 reflective of the entire state.
 3 **Q. Under -- you mentioned this afternoon that**
 4 **the 2008 mill levy was unsuccessful?**
 5 A. (Nodded head up and down.)
 6 **Q. Have there been any efforts since 2008 to**
 7 **pass the mill levy?**
 8 A. We have had preliminary conversations with
 9 elected officials. But in these economic times, one of
 10 the things we use as a measure or a gauge is what's
 11 happening with other districts. There's been a couple
 12 of failed attempts in our community from other
 13 districts. The timing feels very wrong right now. So
 14 we have not gone since 2008. That's only, you know,
 15 two years ago. But we have not gone since 2008.
 16 **Q. So you haven't gone back to the voters**
 17 **since 2008?**
 18 A. No, we have not.
 19 **Q. It's my understanding that there's**
 20 **approximately 37 -- 37 million and change of capacity**
 21 **for mill levy in -- does that sound correct?**
 22 A. Yes, ma'am.
 23 **Q. Okay. And the last mill levy that D-11**
 24 **passed was in 2000; is that correct?**
 25 A. Yes, ma'am.

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1 **Q. When you were discussing declining**
 2 **enrollment with Ms. Gebhardt, just to be clear, you're**
 3 **not suggesting that parents should not have a choice as**
 4 **to where they send their children to school, are you?**
 5 A. Absolutely not.
 6 **Q. And with regard to charters in D-11, it's**
 7 **my understanding that the demographics of the charter**
 8 **schools in D-11 mirror the demographics of the D-11**
 9 **population as a whole; is that correct?**
 10 A. Yes, ma'am.
 11 **Q. In your testimony earlier this afternoon,**
 12 **you noted that as part of this budget process that D-11**
 13 **is experiencing, that you are, in fact, having your**
 14 **first furlough day; is that correct?**
 15 A. We have two days this year.
 16 **Q. Two days this year?**
 17 A. And they're the first ones.
 18 **Q. And these are the first ones that D-11 has**
 19 **experienced since the downturn in the economy?**
 20 A. Yes, ma'am.
 21 **Q. When you were speaking about the 2005**
 22 **school finance task force, there -- just to be clear,**
 23 **there were actually two items that were passed, I**
 24 **believe, one was the -- the local mill -- the mill levy**
 25 **freeze; is that -- do you have that understanding?**

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1 A. The mill levy freeze was passed subsequent
 2 to the 2005 changes to the report.
 3 **Q. And there was also an increase in the mill**
 4 **levy override limit, if I'm correct?**
 5 A. That's correct. Subsequent to 2005.
 6 **Q. You mentioned the BEST program and the**
 7 **kinds of things that D-11 has been able to take -- been**
 8 **able to receive under the BEST program. And I pulled**
 9 **for the record Exhibit 30178. 30178. And I don't know**
 10 **if you can see the D-11?**
 11 A. Yes, ma'am. And I did bring my glasses
 12 up. But this is far, so it's . . .
 13 **Q. Colorado Springs D-11, in the '01-'02**
 14 **cycle, received \$110,000, is that correct, for a fire**
 15 **alarm replacement?**
 16 A. Yes, ma'am. I believe that I alluded to
 17 that in my testimony.
 18 **Q. And then, actually, I apologize. In**
 19 **chronological order, this would have been the first**
 20 **one. In 2000-2001 cycle, D-11 received \$206,300 for**
 21 **boiler and plumbing repair?**
 22 A. Yes, ma'am.
 23 **Q. 2003-2004 cycle, it looks like D-11**
 24 **received three grants totaling approximately**
 25 **\$90,000 -- no, I apologize. I'm not a mathematician.**

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1 **It's approximately \$60,000. Is that correct?**
 2 A. You were closer the first time.
 3 **Q. Okay.**
 4 A. But yes, ma'am.
 5 **Q. Late in the day for me. I apologize,**
 6 **Mr. Gustafson. And then in 2009-'10, D-11 again**
 7 **received a BEST grant of \$269,923. That, again, was a**
 8 **fire alarm upgrade?**
 9 A. Yes, ma'am.
 10 **Q. And then in 2010-'11, it looks like D-11**
 11 **received two grants, one for \$314,902.50 for fire**
 12 **separation sprinkler, and the other grant was \$284,350**
 13 **for a fire sprinkler; is that correct?**
 14 A. Yes, ma'am.
 15 **Q. And again, not being a mathematician, I**
 16 **think that totals around a million dollars, if I'm**
 17 **correct?**
 18 A. Out of an \$800 million capital
 19 infrastructure, not counting our white fleet, which is
 20 all of our service vehicles, and our yellow fleet,
 21 which is all of our school buses.
 22 **Q. But just if you would correct me on my**
 23 **math if I'm wrong, that's about a million dollars in**
 24 **BEST grants that the district has received over the**
 25 **period of time of 2000 to the present?**

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1 A. Correct.
 2 MS. MARKEL: I have no further questions.
 3 THE WITNESS: Thank you.
 4 THE COURT: Thank you. Redirect.
 5 REDIRECT EXAMINATION
 6 BY MS. GEBHARDT:
 7 **Q. Mr. Gustafson, you testified about the**
 8 **increase in the FTE. Why did you -- do you have any**
 9 **knowledge as to why the FTE increased?**
 10 A. Absolutely, I do.
 11 **Q. And why is that?**
 12 A. We're desperately trying to address our
 13 student achievement challenges in District 11, and with
 14 teachers being such a relevant factor in student
 15 achievement, we've been adding teachers over the last
 16 decade, starting with early childhood education. We
 17 started full-day kindergarten free for all students in
 18 Colorado Springs, so we added teachers as a result of
 19 that. We added teachers as a result of our passed mill
 20 levy, and we've also added teacher mentors, teacher
 21 coaches, science teachers, and math teachers. But most
 22 importantly, intervention, strategy-type teachers.
 23 **Q. You offer full-day kindergarten?**
 24 A. Yes, ma'am, we do.
 25 **Q. And what's the percentage of the**

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1 reimbursement -- or the percentage share that the state
 2 pays for full-day kindergarten?
 3 A. 58 percent.
 4 **Q. And how do you pay for the rest?**
 5 A. We pay for it with -- mostly with mill
 6 levy override funds.
 7 **Q. And how have you been able to increase the**
 8 **FTE? You had to cut your budget in other places?**
 9 A. Yes, ma'am. Reallocation of budget.
 10 **Q. And can you explain some of those, what**
 11 **you've had to do to accommodate the increase in FTE?**
 12 A. Well, it's -- it's been a wide variety of
 13 cuts and adjustments. We start with administration
 14 first every year and constantly whacking away at
 15 administration. We've made a number of different cuts
 16 to programs. We've cut back on facility maintenance
 17 and repairs. We've gut back on technology. We've cut
 18 back on all of our replacement cycles, including school
 19 buses, instructional materials, capital improvements.
 20 All of those things have been reallocated.
 21 **Q. Have you looked at closing schools?**
 22 A. Yes, ma'am, we have.
 23 **Q. And what did you do?**
 24 A. After three unsuccessful tries in 2000
 25 and -- I want to say '9, I could be wrong on the year,

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1 the school board closed nine facilities in District 11
 2 out of 61.
 3 **Q. And there was a question about the state**
 4 **and local share. Does District 11 have any control**
 5 **over that shift from the state to the local or local to**
 6 **state?**
 7 A. No. Being a -- no, ma'am.
 8 **Q. And you talked about the \$1 million. What**
 9 **is the -- have you done an assessment of what the**
 10 **overall capital needs are in your district?**
 11 A. We do. Every two years we do an annual
 12 five-year capital plan to identify all of our capital
 13 requirements. That number is approximately
 14 \$200 million right now.
 15 MS. GEBHARDT: All right. Thank you. I
 16 have no further questions, Your Honor.
 17 THE COURT: Any questions?
 18 MR. HINOJOSA: No, Your Honor. Thank you.
 19 THE COURT: Recross?
 20 MS. MARKEL: Just a matter of
 21 housekeeping, Your Honor. I would like to go ahead and
 22 enter the exhibits that I used.
 23 MS. GEBHARDT: Oh, sure. No problem. No
 24 objection, Your Honor.
 25 THE COURT: It's the last one, 3178?

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1 MS. MARKEL: It's 30177, 30178, 30180,
 2 30186, and 30187.
 3 THE COURT: Those will be admitted. Thank
 4 you.
 5 MS. MARKEL: Thank you. No further
 6 questions.
 7 THE COURT: Thank you. Thank you, sir.
 8 You may step down. Thank you. Next witness for the
 9 plaintiff.
 10 MR. KAWANABE: Your Honor, plaintiffs call
 11 Dr. Tom Romero, II. Your Honor, an update on
 12 scheduling issues as Dr. Romero approaches the stand.
 13 We are hopeful that we will finish Dr. Romero today,
 14 and if we do have a few minutes, perhaps we might start
 15 some of the fact and exhibit stipulations that the
 16 parties have agreed upon. And if not, certainly we can
 17 address it at a later time.
 18 THE COURT: All right. Would you raise
 19 your right hand, sir.
 20 TOM I. ROMERO, II,
 21 having been first duly sworn to state the whole truth,
 22 testified as follows:
 23 THE COURT: And would you state your full
 24 name and spell your last name for the record.
 25 THE WITNESS: Tom I. Romero. My last name

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1 is R-o-m-e-r-o.
 2 THE COURT: Thank you.
 3 DIRECT EXAMINATION
 4 BY MR. KAWANABE:
 5 **Q. Good afternoon, Dr. Romero.**
 6 A. Good afternoon.
 7 **Q. Would you please do me a favor and pull**
 8 **that microphone closer. Thank you. Dr. Romero, what**
 9 **is your current position?**
 10 A. Currently I am an associate professor of
 11 law at the University of Denver Sturm College of Law.
 12 I'm also an affiliated faculty member with the
 13 department of history at the University of Denver.
 14 **Q. What does that mean, affiliated faculty**
 15 **member with the department of history?**
 16 A. As an affiliated faculty member, I have a
 17 relationship with the department of history. I can
 18 teach courses in the department of history. I can have
 19 students from the department of history take classes
 20 with me over at the law school.
 21 **Q. And what are your classes or duties as an**
 22 **associate professor at the Sturm College of Law?**
 23 A. Currently I teach -- this past year, I
 24 teach -- taught water law and property law. This
 25 upcoming year I'll be teaching water law, property law,

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1 as well as legal history.
 2 **Q. What is legal history?**
 3 A. Legal history is basically the -- putting
 4 law and juris prudence in its historical context. It's
 5 the study of the past legal decisions, legal
 6 correspondence, juris prudence, statutes in order to
 7 understand both internal legal decision making as well
 8 as the impact of legal decisions, legal institutions on
 9 society.
 10 **Q. And as to this case, you looked at the**
 11 **legal history of the education clause of the Colorado**
 12 **Constitution?**
 13 A. Yes, I have.
 14 **Q. Let's go over your CV, please. I'm**
 15 **showing you what's been marked Trial Exhibit 7200.**
 16 **What is this document?**
 17 A. That is my current CV.
 18 MR. KAWANABE: Your Honor, may I approach?
 19 THE COURT: Yes.
 20 MR. KAWANABE: For ease of reference, I'm
 21 handing you an extra copy. And, Your Honor, this is in
 22 your book, but would you like an extra copy for now?
 23 THE COURT: That's fine. Thank you.
 24 Thank you.
 25 MR. KAWANABE: Your Honor, we'd also move

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1 for the admission of Exhibit 7200.
 2 THE COURT: Any objection?
 3 MR. FERRO: No objection, Your Honor.
 4 THE COURT: 7200 will be admitted.
 5 **Q. (BY MR. KAWANABE) Dr. Romero, tell us**
 6 **about your educational background.**
 7 A. Yes. I received my bachelor of arts from
 8 the University of Denver in 1995, a master of arts in
 9 history from the University of Michigan-Ann Arbor in
 10 1999, my juris doctorate from the University of
 11 Michigan Law School in 2000, and my doctor of
 12 philosophy in history at the University of Michigan-Ann
 13 Arbor in 2004.
 14 **Q. What was your thesis for your Ph.D.?**
 15 A. My thesis was a legal history of race
 16 relations in post-World War II Denver. It's called "Of
 17 Race and Rights, Legal Culture and Social Change and
 18 the Making of a Multiracial Metropolis."
 19 **Q. Tell us about your work experience.**
 20 A. I have worked in a variety of capacities.
 21 Post-J.D., but previous to the completion of the Ph.D.,
 22 I was a western legal studies fellow at the University
 23 of Colorado. In that capacity, I was identifying and
 24 locating resources related to the history of Colorado.
 25 In so doing, I would write a column, a regular column,

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1 for the Colorado Lawyer, historical perspectives
 2 column, basically to detail my findings. I'd also talk
 3 to local bar associations to talk about the importance
 4 of legal history in practice.
 5 **Q. And as a -- well, first, a western**
 6 **resources fellow, who was that with? What was -- who**
 7 **your fellowship with?**
 8 A. My fellowship, the primary relationship
 9 was with the Center of the American West. But I did
 10 have an affiliation with the law school and the
 11 department of history.
 12 **Q. As part of your work in examining the**
 13 **legal history in Colorado, what general types of**
 14 **documents did you look to or research?**
 15 A. Most of the documents that I looked at
 16 were mostly anything that any historian or any scholar
 17 of Colorado had written about the state, tied in
 18 particular to legal issues. I also looked at -- I --
 19 going through archives to identify documents, primary
 20 documents, correspondence, newspaper archives, judicial
 21 decisions, copies or records of important cases tied to
 22 Colorado's legal history, and tried to identify where
 23 those were located and what was in them.
 24 **Q. After your fellowship what did you do**
 25 **next?**

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1 A. After my fellowship, I was -- I joined the
 2 faculty, tenure track position, at Hamline University
 3 School of Law in St. Paul, Minnesota. I was there for
 4 six years, where I received tenure and a promotion to a
 5 full professor during that time.
 6 **Q. And what types of classes did you teach at**
 7 **Hamline University?**
 8 A. At Hamline University School of Law, I
 9 taught property, I taught -- I taught legal history, I
 10 taught land use and planning, I taught seminars on
 11 metropolitan development of cities, I taught a seminar
 12 on Latinos in the law, I taught a seminar on legal
 13 history.
 14 **Q. And you were at Hamline University until**
 15 **approximately what year?**
 16 A. 2010.
 17 **Q. What happened in 2010?**
 18 A. In 2010 I joined the faculty as a tenured
 19 faculty member at University of Denver Sturm College of
 20 Law.
 21 **Q. I'm sorry, did you say you are a tenured**
 22 **professor at the University of Denver?**
 23 A. I am.
 24 **Q. Tell us about your publications.**
 25 A. I have -- my research interests revolve

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1 around the legal history of the American West, in
 2 particular tied to my dissertation research. I'm
 3 really interested in the relationship -- or the legal
 4 history of land use, of education, of planning,
 5 juvenile courts. I kind of dabble in a lot of
 6 different areas.

7 My very first law review article was in
 8 the Colorado Law Review, and it was a survey of the
 9 importance of doing legal history in the state. There
 10 I identified a broad range of sources related to
 11 Colorado's legal past.

12 **Q. Specifically what publications or research
 13 have you done with regard to Colorado's constitution?**

14 A. The first one, the first article that I
 15 would point you to, is my -- the article I just spoke
 16 of, my 2002 University of Colorado Law Review article,
 17 "Uncertain Waters and Contested Lands." I have also
 18 looked at the Colorado Constitution, in particular the
 19 history of the Colorado Constitution, in an Albany Law
 20 Review article I wrote in 2006, "Wringing Rights Out of
 21 the Mountains, Colorado's Centennial Constitution and
 22 the Ambivalent Promise of Human Rights and Social
 23 Equality in the State Constitution."

24 I also have several publications which
 25 have looked at in particular the issue of school

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1 desegregation in the state, in particular the Keyes
 2 case that was looked at both by the United States
 3 Supreme Court and also talking a little bit about the
 4 Poundstone Amendment that came after the decision of
 5 that case in 1973.

6 **Q. Dr. Romero, you described generally legal
 7 history. What is a legal historian?**

8 A. A legal historian is a person who is
 9 trained to identify resources, both primary and
 10 secondary resources. And when you talk about primary
 11 resources, we talk about resources that were created at
 12 the time of the study. So if I'm studying the 1870s,
 13 anything that was created in the 1870s, in there or
 14 there about, as well as secondary resources, these
 15 would be resources done by, compiled by either
 16 historians or other experts in the area who have looked
 17 at these documents and attempted to synthesize and give
 18 meaning to the area -- to the era.

19 So a legal historian, and what I do, is
 20 identify those resources and bring meaning to those
 21 resources in order to understand the larger context of
 22 the issue that I'm looking at.

23 **Q. What credentials are necessary for a legal
 24 historian, in your opinion?**

25 A. Well, I say as an initial threshold, any

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1 sort of historical training. Certainly an M.A. would
 2 help, but I think a Ph.D., in which there is specific
 3 training in historical methodology, historical training
 4 in identifying what are the major issues that one is
 5 studying. So that would be as -- the primary
 6 threshold, I guess, would be any sort of advanced
 7 degree in history.

8 **Q. And you have a Ph.D. in history?**

9 A. I do.

10 **Q. Let's go back to something you touched
 11 upon, primary resources and secondary resources. Let's
 12 focus specifically on the Colorado Constitution.**

13 A. Yes.

14 **Q. What types of primary resources would you
 15 look to or did you look to for purposes of your
 16 research in this case?**

17 A. The very first resource that I turned to
 18 were the official proceedings of the constitutional
 19 convention of 1876. And those were actually published
 20 in 1907. So that would be the first primary source I
 21 would look at. I looked at the newspaper articles at
 22 the time. The Denver Daily Tribune, the Denver
 23 Tribune, and the Rocky Mountain News were considered by
 24 the constitutional convention to be the newspapers of
 25 record, outside of the official proceedings of the

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1 constitutional convention.

2 I tried to identify any sort of clippings
 3 files that were located in archives, both the state
 4 archives as well as historical archives in the state,
 5 particularly at the Denver Public Library in their
 6 western history collection. These clipping files might
 7 contain newspaper articles, they might contain
 8 correspondence, they might contain reports. The
 9 clipping files I looked at usually contained basically
 10 newspaper accounts.

11 I also wanted to look at original
 12 documents, so certainly the different draftings of the
 13 state constitution, the previous constitutions that
 14 were contemplated by citizens of the state of Colorado.
 15 Territorial constitutions. I wanted to look at reports
 16 that were done by any sort of state bureaucrats related
 17 to education. So those were the sorts of primary
 18 documents I have looked at.

19 **Q. What about territorial statutes?**

20 A. I did look at territorial statutes as
 21 well.

22 **Q. And Colorado was a territory before it was
 23 a state; is that correct?**

24 A. It was. That is correct.

25 **Q. And when you say public officials, does**

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1 **that include the governor or the superintendent of**
 2 **schools during Colorado's territorial time?**
 3 A. It does.
 4 **Q. And you mentioned something about**
 5 **newspapers. What were the main newspapers during the**
 6 **time of the framing of the constitution?**
 7 A. The main newspapers in Denver, and the
 8 newspapers that the constitutional convention
 9 delegates, I believed, would be the records of the
 10 newspapers of record were the Rocky Mountain News, the
 11 Denver Daily Tribune -- or the Denver Daily News, and
 12 the Denver Tribune.
 13 **Q. And you mentioned they served as some sort**
 14 **of official capacity for the record?**
 15 A. Yeah. So in the official proceedings of
 16 the constitutional convention, if I recall correctly,
 17 one of the delegates -- or I believe the chair of the
 18 convention hoped that the citizens of the state of
 19 Colorado -- of the territory of Colorado would follow
 20 the proceedings of the constitutional convention
 21 through these newspapers.
 22 **Q. We've discussed primarily resources. What**
 23 **about secondary sources that you looked to in this**
 24 **case?**
 25 A. Yeah. So I wanted to identify as many

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1 resources as possible on the legal history of Colorado
 2 and to see if anybody had talked about education in
 3 particular. So I looked at a Ph.D. thesis done at the
 4 University of Colorado in the 1950s by Donald Hensel,
 5 which is basically a history of -- a legal history of
 6 the constitution and its creation in 1876, some of its
 7 consequences. I looked at Gordon Morris Bakken, a
 8 historian who has written on the Colorado state
 9 constitution and compared it to other intermountain
 10 west constitutions.
 11 There are a couple historical articles,
 12 one done by Colin Goodykoonts, who was in the history
 13 department at the University of Colorado in the 1940s.
 14 Also an essay on education in Colorado by Harry Barrett.
 15 **Q. Where were these resources or sources**
 16 **generally housed?**
 17 A. Secondary resources, most of them can be
 18 found at public libraries.
 19 **Q. And primary resources?**
 20 A. Primary resources, state archives, not too
 21 far away from here, across the street, western history
 22 collection at the Denver Public Library, same thing.
 23 Those would be the two collections I looked most
 24 prominently to. There's another collection of
 25 materials that I -- I was not able to access. These

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1 related to the Colorado History Museum and the Colorado
 2 Historical Society, and because of the building that's
 3 taking place across the street, their archives have
 4 been closed down until the new building comes on line.
 5 **Q. The archives were closed down. What**
 6 **weren't you able to access that you would have liked**
 7 **to?**
 8 A. So what I was able to gain in particular
 9 from talking to people at the Denver Public Library was
 10 basically the full run of the Denver Tribune, which the
 11 Denver Public Library has clippings files of the Denver
 12 Tribune, but not the entire microfilmed run of that.
 13 So I was not able to look at that in any sort of
 14 thorough manner.
 15 **Q. And you compiled notes and copies of**
 16 **certain materials you relied upon in forming your**
 17 **opinion in this case?**
 18 A. Yes. Anything that we thought might be of
 19 importance or we thought we might not have immediate
 20 access to we attempted to copy or to take notice upon.
 21 **Q. And you have those notes or resource --**
 22 **let's call it your work file. You have that with you**
 23 **now?**
 24 A. I do.
 25 **Q. We've also marked that as Trial Exhibit**

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1 **7208, which, Your Honor, is stipulated to. We'd move**
 2 **for its admission at this time.**
 3 THE COURT: 7208?
 4 MR. KAWANABE: Yes.
 5 THE COURT: Any objection?
 6 MR. FERRO: No objection, Your Honor.
 7 THE COURT: It will be admitted.
 8 MR. KAWANABE: And, Your Honor, at this
 9 time we submit Dr. Romero for qualification as an
 10 expert in legal -- as a legal historian of Colorado.
 11 THE COURT: Any voir dire or objection?
 12 MR. FERRO: Briefly voir dire, Your Honor.
 13 VOIR DIRE EXAMINATION
 14 BY MR. FERRO:
 15 **Q. Dr. Romero, if I heard correctly, it**
 16 **sounds like you have -- prior to that, to your work in**
 17 **this case, you have written, published articles on the**
 18 **education clause in the Colorado Constitution; is that**
 19 **right?**
 20 A. Prior to this case, I have looked at the
 21 larger legal context of education in Colorado.
 22 **Q. And what about specifically the education**
 23 **clause?**
 24 A. Not specifically the education clause, no.
 25 **Q. And prior to your work in this case, have**

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1 **you written any published articles about the legal**
 2 **history behind the local control clause in the Colorado**
 3 **Constitution?**
 4 A. No, I haven't.
 5 **Q. And so your analysis in this case was the**
 6 **first time that you've examined the legal history of**
 7 **the local control clause?**
 8 A. This is the first time I had the chance to
 9 delve into the primary and secondary materials
 10 regarding both Section 2 and Section 15 of Article IX,
 11 yes.
 12 MR. FERRO: Sorry, what are you --
 13 MR. KAWANABE: Yes, Mr. Ferro. We offer
 14 Dr. Romero as an expert in the -- as a legal historian
 15 of Colorado.
 16 MR. FERRO: No objection.
 17 THE COURT: He'll be admitted as an expert
 18 in that area.
 19 DIRECT EXAMINATION (continued)
 20 BY MR. KAWANABE:
 21 **Q. Dr. Romero, are you being compensated for**
 22 **your work in this case?**
 23 A. No, I'm not.
 24 **Q. Okay.**
 25 A. I'm only being compensated for my

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1 deposition testimony and my trial testimony.
 2 **Q. So other than your deposition testimony**
 3 **that was approximately four or five hours; is that**
 4 **right?**
 5 A. Correct.
 6 **Q. And other than your testimony in this**
 7 **case, how much are you being paid for your research or**
 8 **your report in this case?**
 9 A. It's being done on a pro bono basis.
 10 **Q. And why did you agree to do this on a pro**
 11 **bono basis?**
 12 A. Largely because it's tied directly to my
 13 research interest in the legal history of Colorado.
 14 **Q. So you looked to Article IX of the**
 15 **Colorado Constitution; is that correct?**
 16 A. That is correct.
 17 **Q. Let's begin there.**
 18 MR. KAWANABE: Mr. Ferro, for the record,
 19 this is from the Colorado Revised Statutes, a copy of
 20 Section 2 of Article IX.
 21 **Q. (BY MR. KAWANABE) Is this one of the**
 22 **sections of the constitution that you researched?**
 23 A. Yes, it is.
 24 **Q. And it is a short section, but for the**
 25 **record, would you please read that into the record.**

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1 A. Yes. "Section 2, Establishment and
 2 maintenance of public schools. The general assembly
 3 shall, as soon as practicable, provide for the
 4 establishment and maintenance of a thorough and uniform
 5 system of free public schools throughout the state,
 6 wherein all residents of the state between the ages of
 7 6 and 21 years may be educated gratuitously. One or
 8 more public schools should be maintained in each school
 9 district within the state at least three months in each
 10 year. Any school district failing to have such schools
 11 shall not be entitled to receive any portion of the
 12 school fund for that year."
 13 **Q. Thank you, Dr. Romero. And then let's**
 14 **turn to Section 15 of the Colorado Constitution. What**
 15 **does that Colorado provision state?**
 16 A. "Section 15, School districts, board of
 17 education. The general assembly shall, by law, provide
 18 for organization of school districts of convenient
 19 size, in each of which shall be established a board of
 20 education, to consist of three or more directors to be
 21 elected by the qualified electors of the district.
 22 Said directors shall have control of instruction in the
 23 public schools of their respective districts."
 24 **Q. And is it okay if I refer to this section**
 25 **as the local control clause?**

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1 A. That is fine.
 2 **Q. All right. Article IX, generally, what is**
 3 **Article IX of the Colorado Constitution?**
 4 A. Article IX generally is the education
 5 provision that was in the constitution and includes 15
 6 subsections.
 7 **Q. So Article IX is solely devoted to**
 8 **education?**
 9 A. Yes. Yes, it is.
 10 **Q. And how many clauses did the framers write**
 11 **as to education?**
 12 A. 15, I believe.
 13 **Q. And how important was education to the**
 14 **framers of the Colorado Constitution?**
 15 A. Education was centrally important. I
 16 think among all of the provisions in the state
 17 constitution, it was the -- it was the part of the
 18 constitution that was -- that spoke directly to the
 19 importance of education to an educated citizenry, spoke
 20 directly to the importance of education to providing
 21 the citizenry the skills to participate and be
 22 effective in an emerging Colorado economy.
 23 **Q. Dr. Romero, let me show you Exhibit 7204.**
 24 **Do you recognize this document?**
 25 A. Yes. That is a cover letter, and then

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1 this proceeding, and it's attached to my final report
 2 on Article IX, Section 2 and Section 15.
 3 **Q. As to this case, correct?**
 4 A. Correct.
 5 MR. KAWANABE: Your Honor, we move for the
 6 admission of Trial Exhibit 7204, which I believe is
 7 stipulated to.
 8 THE COURT: Is that just the letter or
 9 also the report?
 10 MR. KAWANABE: Both, Your Honor.
 11 THE COURT: The letter and the report.
 12 Okay. Any objection?
 13 MR. FERRO: None, Your Honor.
 14 THE COURT: Thank you. 7204 will be
 15 admitted.
 16 MR. KAWANABE: Your Honor, may I approach?
 17 THE COURT: Yes.
 18 MR. KAWANABE: And, Your Honor, we have an
 19 extra copy for you as well, if you would like.
 20 THE COURT: Thank you.
 21 **Q. (BY MR. KAWANABE) Dr. Romero, was there a**
 22 **qualitative component to the framers in writing a**
 23 **thorough and uniform system of free public schools?**
 24 A. Absolutely. It spoke -- this is the
 25 provision of the education article that speaks directly

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1 to the importance of education in educating a citizenry
 2 to -- to be good Democratic citizens in the republic
 3 and also to give them all -- all of the children of the
 4 citizenry the skills to be productive citizens in an
 5 emerging economy.
 6 **Q. So, one, to be -- the skills to become**
 7 **effective citizens, and what about the economy?**
 8 A. A thorough and uniform education would
 9 give -- would give the students who attend these
 10 schools the skills to be -- to be productive members
 11 who would -- who could labor and -- in that emerging
 12 economy.
 13 **Q. Okay. What about local control?**
 14 A. Local control was certainly meant as a
 15 check, in one sense, on -- on the state. It was
 16 certainly emblematic. Section 15 was emblematic of the
 17 importance of education happening at the lowest common
 18 jurisdictional level. It was certainly emblematic of
 19 the framers and of educators of the time understanding
 20 that there would be different sorts of needs for
 21 different types of students across the state, and local
 22 school districts are in the best position to meet those
 23 needs.
 24 **Q. Generally what did you find with regard to**
 25 **the terms "thorough and uniform system"? Were they the**

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1 **original words proposed in the first drafts?**
 2 A. No, they weren't. The terms "thorough and
 3 uniform" actually emerge as the final draft reading of
 4 the constitution for the state of Colorado. In January
 5 of 1876, the first draft provision of Section 2 of
 6 Article IX asked for a thorough and efficient system of
 7 education.
 8 **Q. And that was ultimately changed before the**
 9 **constitution was ratified and finalized?**
 10 A. Yeah, it was ultimately changed. The
 11 first draft reading, as well, had a provision that
 12 there wouldn't be discrimination on the basis of color
 13 and religion in particular. Those drafts were changed,
 14 and ultimately by March of 1876, you get the language
 15 that we see in the final constitution that there needed
 16 to be a thorough and uniform system. Issues dealing
 17 with discrimination on the basis of race and color were
 18 at least deleted from subsection 2 -- or Section 2 of
 19 Article IX.
 20 **Q. Were non-discrimination terms completely**
 21 **deleted from the education clause?**
 22 A. No. I believe they re-emerge in
 23 Article IX, I believe -- or excuse me, Article IX,
 24 Section 9.
 25 **Q. Let's go back in time. Tell us about the**

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1 **territory of Colorado. Before we became a state.**
 2 A. Sure. Colorado emerges out of the gold
 3 rush of the -- of 1859. The founding and the finding
 4 of gold on the Platte -- on the banks of the Platte
 5 River, it started a rush of miners in particular,
 6 fortune seekers to the state of Colorado.
 7 At the time, many of these new citizens to
 8 the state, they -- they thought that their needs and
 9 interests, being on the banks of the Rockies, being on
 10 the banks of Platte River, were different than the
 11 needs and interests of what was then Kansas territory.
 12 Colorado was part of Kansas territory.
 13 Most of the Front Range of Colorado was
 14 known as Arapahoe County in Kansas. Also at the time,
 15 there existed in the states a population of Mexican
 16 Americans who had been in the state at least ten years
 17 prior to the finding of gold, if not longer, on the
 18 banks of the Platte River. And these Mexican Americans
 19 had been basically incorporated as citizens into the
 20 United States under the treaty of Guadalupe Hidalgo in
 21 1848.
 22 So beginning in 1859, there's attempts,
 23 particularly by these miners, to create a state, an own
 24 independent state, and the first attempt for this
 25 happens in August 20 of 18 -- August 20 of 1859, when

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1 there's a proposed constitution for the state of
 2 Jefferson.

3 **Q. What is the state of Jefferson?**

4 A. Basically these miners, for the most part,
 5 who came to the state in 1859, were trying to create a
 6 jurisdiction out of -- out of Kansas that would be able
 7 to enter on equal footing with other states and in the
 8 Republic.

9 **Q. Did the state of Jefferson become a state?**

10 A. It did not.

11 **Q. All right.**

12 A. It did not.

13 **Q. And when was the territory of Colorado**
 14 **created?**

15 A. Territory of Colorado was created in 1861.

16 **Q. At that time, what societal divisions**
 17 **existed?**

18 A. As you can imagine, there were certainly
 19 an influx of all these newcomers, Americans, Germans,
 20 German miners, from all across the United States, as
 21 well as the world. They suddenly encountered a -- a
 22 long-standing Mexican American or Latino population in
 23 the southern half of the state. So there were
 24 certainly divisions among those newcomers and the
 25 people that had been here. There were also divisions

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1 that were tied to urban versus rural, and urban
 2 is -- is not necessarily -- we might not think about it
 3 in the sense that we do today, but we can think about
 4 it in terms of mining towns and mining districts,
 5 certainly towns that suddenly emerge to -- to feed and
 6 to serve these mining districts, tied to more of your
 7 rural districts that had both ranching as well as
 8 agriculture that was taking place on them.

9 **Q. And the Latino communities that you**
 10 **referred to, did that include the San Luis Valley, what**
 11 **we now call the San Luis Valley?**

12 A. It was located almost exclusively in the
 13 San Luis Valley.

14 **Q. So Colorado territory existed in the**
 15 **1860s. How did Colorado become a state?**

16 A. Colorado became a state -- there were a
 17 couple of attempts to achieve a statehood in Colorado
 18 both in 1864 and 1865. But this was not successful
 19 until congress passed the enabling act in 1875 that
 20 allowed the citizens of Colorado, the territorial
 21 citizens of Colorado, to come together to form a state
 22 constitution that then congress then had to vote upon
 23 with the majority vote, which they did, and the
 24 president needed to sign off on it.

25 **Q. And what did congress, the United States**

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1 **Congress, require in order for Colorado to become a**
 2 **state?**

3 A. In the enabling act, there's two
 4 subsections that speak directly to the importance of
 5 the state establishing common schools. Section 7 and
 6 Section 14 speak to basically the distribution of what
 7 were then federal lands, which would become state lands
 8 upon statehood, which would be used for the support of
 9 common schools. And basically, as the United States
 10 grew and as the federal government had initial
 11 authority, the federal government would survey the land
 12 into different townships.

13 And so Section 7 and Section 14 of the
 14 enabling act basically said that Section 16 and
 15 Sections 36 of each of these townships needed to be
 16 used for -- to be sold for common schools.

17 **Q. So -- so establishing a system of common**
 18 **schools was a requirement for Colorado to become a**
 19 **state?**

20 A. Yes.

21 **Q. I skipped over, what was the constitution**
 22 **for the territory of Jefferson?**

23 A. The constitution for the territory of
 24 Jefferson. So we speak a little bit about the
 25 importance of education certainly at the federal level

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1 in the enabling act. We see the importance of common
 2 schools both in Section 7 and Section 14 of the
 3 enabling act. Even as early as 1859, when you had a
 4 bunch of these -- these newcomers to the state that
 5 want to establish a state of Jefferson, they draft a
 6 state constitution, and in that constitution, the state
 7 of Jefferson, they provide an education clause that
 8 states that there needs to be a uniform system of
 9 common schools and for a uniform distribution of the
 10 school fund, and that's Article 11, Section 4 of the
 11 proposed State of Jefferson Constitution.

12 **Q. Did the constitution for the territory of**
 13 **Jefferson include specific language around thorough and**
 14 **uniform system of free public schools?**

15 A. No, it did not.

16 **Q. When was that term, "thorough and**
 17 **uniform," first used in -- in your research?**

18 A. So the first time that I came across the
 19 term "thorough and uniform" in the legal history of
 20 Colorado comes when William Gilpin, who was appointed
 21 as the first territorial governor of the territory of
 22 Colorado by Abraham Lincoln, addresses the first
 23 general territorial assembly of Colorado. And there he
 24 uses the phrase for the first time there needed to be a
 25 system of schools, of common schools, that need to be,

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1 quote, "uniform and thorough" in its character.
 2 **Q. And where is that in your final report,**
 3 **Dr. Romero, what page and paragraph? If you can find**
 4 **it.**
 5 A. It'd be on page 3, paragraph 3.
 6 Footnote -- and it's tied to footnote 19.
 7 **Q. I see. And who was Governor Gilpin again?**
 8 A. Governor Gilpin was appointed by Abraham
 9 Lincoln, and he was the first territorial governor of
 10 the territory of Colorado.
 11 **Q. Did Governor Gilpin expound or expand upon**
 12 **the terms uniform and/or thorough with regard to**
 13 **education that you know of?**
 14 A. Not that I know of.
 15 **Q. And who was Colorado's first**
 16 **superintendent of common schools for the territory**
 17 **before statehood?**
 18 A. So William Curtice was the first
 19 territorial superintendent of schools. Animated and
 20 certainly influenced by Governor Gilpin's instruction
 21 about the importance of common schools. The first
 22 general assembly passed an act to establish common
 23 schools, and as part of that act, they created a
 24 commissioner of education -- a superintendent of
 25 education, excuse me. And that was William Curtice.

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1 **Q. Do you know approximately when Mr. Curtice**
 2 **was the territorial superintendent of public education?**
 3 A. Roughly 1861 to 1865.
 4 **Q. And Mr. Curtice, and I'm looking at page 5**
 5 **of your expert report, made various pronouncements or**
 6 **statements with regard to public education; is that**
 7 **correct?**
 8 A. That is correct.
 9 **Q. Give us an example.**
 10 A. All right. So in introducing the school
 11 law to the first -- to the territorial assembly,
 12 William Curtice, Superintendent Curtice, highlighted
 13 the importance or, again, the centrality of public
 14 education in -- in terms of, I guess, Colorado's
 15 future.
 16 He, quote, said that "Developing an
 17 education system among us for the future is of greater
 18 value than the gold of our mountains and greater
 19 safeguards to the society than the elective franchise
 20 or standing armies."
 21 **Q. In your research, did you find any**
 22 **evidence to the contrary, folks not valuing the**
 23 **importance of public education?**
 24 A. None whatsoever. There seemed to be
 25 pretty broad consensus about this point.

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1 **Q. Now, this was the territory you said --**
 2 **when approximately was the Colorado -- Colorado**
 3 **considering statehood? Tell us about that process and**
 4 **specifically when the framers got together to draft our**
 5 **constitution.**
 6 A. So if you want to jump to -- there were a
 7 couple of, as I note, aborted attempts at statehood.
 8 We see the state of Jefferson back in 1859 and 1864, we
 9 have delegates -- there's, again, another attempt at
 10 statehood. Congress does not -- actually, the
 11 citizens, the territorial citizens, don't pass that
 12 state constitution. One year later they do. It makes
 13 it to congress, but then it doesn't receive executive
 14 sanction from President Johnson.
 15 So we don't get the successful attempt of
 16 statehood until 1875, when Colorado emerges as
 17 centrally important, and basically ending
 18 reconstruction after the civil war. And the ability of
 19 Colorado to become a state, and for Colorado to have
 20 electoral votes and have a voice in the national
 21 elective, national franchise process, basically
 22 produced the conditions for Colorado to achieve
 23 statehood.
 24 So you have the enabling act in 1875. You
 25 get then the -- and I believe it was September of 1875.

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1 You then get the convention, which was started, the
 2 state constitutional convention, which was started in
 3 December of 1875.
 4 **Q. And the constitution was drafted at**
 5 **the -- starting in December of 1875 through what time**
 6 **period in 1876?**
 7 A. Roughly April, I believe. So
 8 deliberations went on for about four, four-and-a-half
 9 months.
 10 **Q. You mentioned Colorado was -- achieved**
 11 **statehood at the end of reconstruction?**
 12 A. Correct.
 13 **Q. After civil war?**
 14 A. Correct.
 15 **Q. Was that important to the nation as a**
 16 **whole?**
 17 A. It was centrally important to the nation
 18 as whole. In particular, Colorado votes were needed to
 19 basically, in one sense, end federal authority over the
 20 South as the South gets reintegrated into the United
 21 States, and a compromise had been stricken in which
 22 Colorado's three electoral votes were essential in
 23 terms of that compromise actually happening.
 24 **Q. Let's talk about the framers of our**
 25 **constitution.**

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1 A. Yes.

2 **Q. Who were the framers? And don't name all**

3 **of them. Generally describe them, please.**

4 A. A lot of lawyers. They were largely

5 migrants to the state, newcomers to the state, even

6 though you did have three Mexican Americans from the

7 San Luis Valley who were on the state constitutional

8 convention, who had been in the state for -- who had

9 been in the state for years, if not decades.

10 More specifically, you also had various

11 committees, subcommittees that were formed in the

12 constitutional convention. There was a committee on

13 education. That committee of education had five

14 members, I believe. Those members were Daniel Hurd,

15 who was a Denver businessman, and he was -- he had come

16 from Illinois, and he was actually the director of the

17 public school system in Illinois. He joined the Denver

18 School Board in May of 1874 and became president of its

19 board in 1876.

20 Byron Carr, who had also been an educator

21 in Illinois, he was a superintendent of one of the

22 school districts out there. He established the first

23 public school in Longmont in 1875, and he became

24 attorney general in 1875 and also served on the state

25 board of education, which is constitutionally required

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1 in Article IX, Section 1.

2 Wilbur Stone was also part of the

3 subcommittee on education. He worked as a teacher in

4 Pueblo County. He served as county commissioner. And

5 in 1876, he was president of the Pueblo County School

6 Board. In 1877, he joined the Colorado Supreme Court.

7 Unfortunately, we have no education opinions from him

8 during his tenure on the court.

9 Robert Douglas, who was a member of the

10 1864 Colorado Constitutional Convention. He was also

11 the county superintendent of the El Paso County School

12 District in 1868. And also John Wheeler, who was very

13 active in Republican party politics.

14 **Q. So there were approximately, correct me if**

15 **I'm wrong, about 39 framers; is that about right?**

16 A. That's correct.

17 **Q. All were men; is that correct?**

18 A. All men.

19 **Q. And you did have some people of color --**

20 A. Yes.

21 **Q. -- that were framers of the Colorado**

22 **Constitution?**

23 A. Correct.

24 **Q. You mentioned Daniel Hurd. He was a**

25 **framer of our Colorado Constitution; is that correct?**

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1 A. That is correct. And he was actually the

2 chair of the committee on education.

3 **Q. Let me direct you to some of his**

4 **statements at the time of the framing of our**

5 **constitution. Specifically Trial Exhibit 7208, the**

6 **back of either page 4 or 5, Dr. Romero. What**

7 **did -- how did Dr. Hurd describe the importance of**

8 **public education? Excuse me, how did Daniel Hurd**

9 **describe it?**

10 A. Daniel Hurd. Well, he talked about -- and

11 this comes -- so his quote here is taken from an

12 unidentified newspaper in 1876. And this comes about a

13 few days after the first draft of the education clause

14 is submitted to the assembly of the whole in the

15 Colorado Constitutional Convention.

16 And he -- he basically is quoted as

17 saying, "A thorough and efficient school system whereby

18 every child and youth of this vast commonwealth shall

19 receive regular and free instruction, we propose to

20 erect a superstructure upon a solid footing and lasting

21 foundation, a system of education as high as our

22 snowcapped mountains, as broad as our boundless

23 prairies, and as free to all as the air of heaven."

24 **Q. And I noticed a couple misspellings in**

25 **your notes. You said snowcapped mountains; is that**

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1 **correct?**

2 A. Mountains, I believe. I would have to go

3 back and look at that clipping file to be sure. But

4 I'm pretty sure that's a typo that my computer did not

5 pick up for me.

6 **Q. Understood. It wasn't meant to be a**

7 **criticism. And then did you say upon a solid and**

8 **lasting foundation? You said the word "footing." But**

9 **footing wasn't --**

10 A. Excuse me, a solid and lasting foundation.

11 **Q. And this was Daniel Hurd, who was chair of**

12 **subcommittee and also a framer of our constitution,**

13 **correct?**

14 A. That is correct.

15 **Q. You also looked at various resource**

16 **materials, including the proceedings of the**

17 **constitutional convention itself; is that correct?**

18 A. That is correct.

19 **Q. Turn to page -- do you have that with you,**

20 **please.**

21 A. I do.

22 **Q. Turn to page 277, please. Were there**

23 **citizens groups involved with the framing of the**

24 **Colorado Constitution, and if so, how?**

25 A. Yeah, there were. The official

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1 proceedings of the constitutional convention put into
 2 the record a -- a document that was signed by an
 3 O. F. A. Greene and 135 others. And this document
 4 basically spoke to a couple things. First, the
 5 importance of free common schools, of public education,
 6 and second, to the importance of keeping these schools
 7 public. And the public schools were not meant to be
 8 private in any way, shape, or form, or to be -- private
 9 schools were not to be supported by the state.

10 **Q. And what, if anything, did citizens groups**
 11 **talk about non-sectarian common schools and their**
 12 **importance to Colorado?**

13 A. So let me read this here on page 277. "To
 14 Honorable Constitutional Convention of Colorado: We,
 15 the undersigned citizens of the United States and the
 16 residents of Colorado, firm in the belief that free,
 17 non-sectarian common schools are essential to the life
 18 and perpetuity of our form of government, and
 19 constitute the only security for a free, untrammelled
 20 ballot; and believing it better that such questions be
 21 settled at once and permanently, so that designing and
 22 corrupt politicians may not continually distract the
 23 attention and impose upon the minds of our people, do
 24 hereby most earnestly and respectfully petition your
 25 honorable body:

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1 "First, to make ample provision for the
 2 support of free common schools. Second, to compel
 3 parents or guardians to educate their children. Third,
 4 to guard well the public school land, guarding against
 5 hasty sales, that great results may be obtained for the
 6 school fund. And fourth; to now and forever settle the
 7 question of a non-sectarian character and non-division
 8 of the sacred school fund, thus taking the question of
 9 our politics entirely. This we will ever pray."

10 **Q. Thank you go, Dr. Romero. Let me go back**
 11 **to Dr. Hurd's thorough and efficient school system. Do**
 12 **you know where those words, "thorough and efficient,"**
 13 **may have come from?**

14 A. Thorough and efficient appear in several
 15 state constitutions that were drafted -- or that were
 16 changed prior to the drafting of the Colorado State
 17 Constitution. New Jersey, Minnesota, Illinois were
 18 some of them. Kansas, West Virginia as well.

19 **Q. Okay. Did any state prior to Colorado**
 20 **that you know of use the terms "thorough and uniform"**
 21 **in defining their public education in their**
 22 **constitution?**

23 A. Colorado's the first state to use thorough
 24 and uniform together.

25 **Q. So Colorado specifically first considered**

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1 **thorough and efficient from other constitutions, but**
 2 **actually finalized different language with regard to**
 3 **their public education system?**

4 A. That is correct.

5 **Q. And what did you find, if anything, with**
 6 **regard to local control, section -- the framers --**
 7 **strike that. Dr. Romero, what did you find with regard**
 8 **to the framers' intent or statements regarding local**
 9 **control?**

10 A. So Section 15 about local control was
 11 really the framers were trying to balance, as I had
 12 mentioned, the importance of letting local school
 13 districts teach to the needs of local school districts.
 14 So it was designed in a large sense to allow local
 15 school districts to control both the curriculum that it
 16 would teach and the credentialing of its teachers.

17 **Q. And why was it important for local**
 18 **communities to be able to control the curriculum as to**
 19 **what it taught local kids?**

20 A. I think most importantly is -- is
 21 education was -- was meant to be local. It had long
 22 been local. It had emerged in the history of the
 23 United States as local. So when you're talking about
 24 the local curriculum that local school districts were
 25 going to teach, this idea of local control and allowing

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1 local school districts to control both the contents and
 2 the credentialing of their teachers both furthered that
 3 goal.

4 **Q. Anything else with regard to the framers'**
 5 **statements or intents regarding thorough and uniform**
 6 **system of free public schools or local control?**

7 A. No.

8 **Q. All right. So Colorado did become a**
 9 **state?**

10 A. Colorado did become a state.

11 **Q. All right. And --**

12 A. In 1876.

13 **Q. And the constitution was ratified?**

14 A. Constitution was ratified by the citizens
 15 of the territory of Colorado. They did pass it by an
 16 overwhelming vote, and congress endorsed it with a
 17 majority vote and it was signed into law.

18 **Q. Let's just spend a few minutes on**
 19 **post-constitutional school laws. What was the meaning**
 20 **of education in those laws?**

21 A. So very quickly, the state assembly worked
 22 to implement Article IX and provided a pretty, I
 23 guess -- I was going to say a thorough -- kind of a non
 24 sequitur, right -- to basically follow through on its
 25 constitutional obligations by establishing a -- an act

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1 to establish common schools.
 2 There it provided for a superintendent of
 3 education. That superintendent of education would
 4 provide biennial reports that would report on a variety
 5 of things regarding education in the state, from class
 6 size to expenditures per pupil to teacher ratios to
 7 mill levies and taxes that were being paid.
 8 It would -- the superintendent reports
 9 would speak about the -- were designed to speak about
 10 the importance of public education in particular. They
 11 were designed to provide a forum to allow county
 12 superintendents to voice their concern to the state
 13 level. So it established for -- it established the
 14 state superintendent, it established state board of
 15 education, in which the state superintendent would be a
 16 member, as well as the attorney general. And it also
 17 provided for a great deal of provisions of local
 18 control, for state authorization to establish local
 19 school districts, for these local school districts to
 20 establish school boards, for those local school
 21 districts to have the power and authority to raise
 22 moneys, if necessary.
 23 **Q. So how were -- generally, how were public**
 24 **schools initially funded in Colorado?**
 25 A Public schools were initially funded from

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1 two sources. The first was from the sale of these
 2 public lands. So the idea would be that if every
 3 township -- if Section 16 and 36 of every township were
 4 sold off, the enabling act set a -- I guess a price per
 5 acre for each of these sections to be sold at \$2.50 an
 6 acre. If each -- if all of these sections would be
 7 sold off, that would provide about \$9 million in 1876
 8 dollars to be used for -- for the school fund.
 9 But then the idea, as well, was that
 10 property -- taxes on property would also be used to
 11 support the common schools.
 12 **Q. Was there a concern about the differences**
 13 **among counties in Colorado with regard to public**
 14 **education?**
 15 A. So in the superintendent reports, the
 16 biennial reports that emerged in the first ten years,
 17 which I've looked at, after the state constitution was
 18 ratified in 1876, the state superintendent was
 19 commenting very directly on differences that were
 20 existing across school districts, differences in terms
 21 of some school districts had better attendance ratios,
 22 some school districts had much higher levels of
 23 funding, some school districts had much better ratios
 24 of teacher to pupil.
 25 So the state superintendent in particular

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1 was -- was observing these sorts of differences, in
 2 particular in relation to school funding. That seemed
 3 to be a common theme in the biennial reports.
 4 **Q. Was there a particular concern about our**
 5 **Latino community in Colorado?**
 6 A. Yeah. So Joseph Shattuck, who is the
 7 state superintendent of education post-statehood, makes
 8 mention of the fact that -- that many of these
 9 disparities, many of these differences in terms of a
 10 higher student-teacher ratio, lowest -- lowest funding,
 11 are taking place in those sections of the state that
 12 have the largest Mexican American or Spanish-speaking
 13 populations, Las Animas County in particular, Costilla
 14 County in particular.
 15 **Q. Turning to page 9 of your report in this**
 16 **case, Dr. Romero. What was your conclusion in this**
 17 **case?**
 18 A. That thorough and uniform, that clause,
 19 was designed to -- in Article IX was designed to
 20 provide the superstructure, provide the basis for a
 21 educated citizenry, to give the citizens of the state
 22 of Colorado the ability to be effective citizens to be
 23 able to engage in electoral politics, as well as the
 24 schools necessarily -- the skills necessary to be
 25 successful in an emerging economy.

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1 At the same time, it balanced the -- it
 2 attempted to balance the statewide mandate for that in
 3 relation to the ability of local school districts to
 4 control both the content of the curriculum and the
 5 types of teachers that they would have in their
 6 schools.
 7 **Q. And how important was public education to**
 8 **the framers of our constitution?**
 9 A. It was centrally important. I think if we
 10 look to what Daniel Hurd had to say as chair of the
 11 education committee, as -- tied to the rigor, the
 12 number of sections that are in Article IX and the
 13 thought given to article, education is as important as
 14 industry and finance and the elected franchise in the
 15 constitution of Colorado.
 16 MR. KAWANABE: No further questions.
 17 Thank you.
 18 THE COURT: Thank you.
 19 MR. HINOJOSA: No questions, Your Honor.
 20 THE COURT: No questions.
 21 Cross-examination.
 22 CROSS-EXAMINATION
 23 BY MR. FERRO:
 24 **Q. Thank you, Your Honor. Good afternoon,**
 25 **Dr. Romero.**

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1 A. How are you doing?
 2 **Q. Fine, thank you. How are you?**
 3 A. Good. Thank you.
 4 **Q. You hold a Ph.D. in history, correct?**
 5 A. That is correct.
 6 **Q. And during that course of study, you**
 7 **learned standard methodology?**
 8 A. I did, correct.
 9 **Q. And you were discussing that methodology**
 10 **with Mr. Kawanabe, correct?**
 11 A. Correct.
 12 **Q. And you've referred to that methodology as**
 13 **a historical methodology; is that right?**
 14 A. That is correct.
 15 **Q. You have taught this historical**
 16 **methodology?**
 17 A. I have.
 18 **Q. And you employed this historical**
 19 **methodology in your analysis for this case?**
 20 A. Yes.
 21 **Q. Now, you also hold a juris doctorate**
 22 **degree, correct?**
 23 A. That is correct.
 24 **Q. But you're not admitted to the bar of any**
 25 **state; is that right?**

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1 A. That is correct.
 2 **Q. And you've never been admitted to the bar**
 3 **of any state?**
 4 A. That is correct.
 5 **Q. You have never practiced law?**
 6 A. I have never practiced law.
 7 **Q. You have taught courses to law students;**
 8 **is that correct?**
 9 A. That is correct.
 10 **Q. You continue to do so?**
 11 A. Yes.
 12 **Q. But you've never taught a constitutional**
 13 **law course; is that correct?**
 14 A. No.
 15 **Q. And you've never taught a course on**
 16 **constitutional interpretation; is that right?**
 17 A. That is correct.
 18 **Q. Now, as a law professor, you acknowledge**
 19 **that there can be a constitutional interpretation of**
 20 **framers' intent based upon juris prudence; is that**
 21 **right?**
 22 A. That there can be a constitutional
 23 interpretation? Can you rephrase the question?
 24 **Q. Yes. Well, just you're aware there can be**
 25 **a constitutional interpretation of intent based upon**

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1 **juris prudence?**
 2 A. Based upon juris prudence, if the juris
 3 prudence exists, yes.
 4 **Q. You did not undertake that type of**
 5 **analysis for this case; is that right?**
 6 A. I attempted to, but there was no juris
 7 prudence directly on point in the 19th century.
 8 **Q. Did you approach your analysis in this**
 9 **case as a historian?**
 10 A. I did.
 11 **Q. Your goal was to produce a report as a**
 12 **historian; is that correct?**
 13 A. That is correct.
 14 **Q. You did not approach your analysis as a**
 15 **holder of a juris doctorate, did you?**
 16 A. No, I didn't.
 17 **Q. And your goal was not to produce a report**
 18 **as a lawyer; is that correct?**
 19 A. My goal was to produce as a legal
 20 historian.
 21 **Q. Dr. Romero, historians cannot go into a**
 22 **time machine and travel to the past; is that right?**
 23 A. That is correct.
 24 **Q. Historians must rely on the existing**
 25 **historical record?**

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1 A. That is correct.
 2 **Q. And historians are limited by what exists**
 3 **in that historical record; is that right?**
 4 A. That is correct.
 5 **Q. Historians must rely, then, also on their**
 6 **ability to piece historical record together?**
 7 A. That is correct.
 8 **Q. And historians can make mistakes; would**
 9 **you agree?**
 10 A. I guess there's mistakes of -- of degree
 11 as well as kind. But certainly historians that -- that
 12 are trained in a methodology, in a particular type of
 13 methodology, can come to potentially a different
 14 perspective on those sources.
 15 **Q. A historian might not look at a particular**
 16 **source, for example; is that correct?**
 17 A. Correct.
 18 **Q. A source that maybe is available?**
 19 A. Correct.
 20 **Q. And something like that could put into**
 21 **question the historian's analysis?**
 22 A. Not necessarily.
 23 **Q. But it could?**
 24 A. It depends both on the content -- it would
 25 require an evaluation of that source that was left out.

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1 **Q. And I understand your qualification. But**
 2 **it could put that analysis into question; is that**
 3 **right?**
 4 A. Potentially.
 5 **Q. Now, I think you just mentioned historians**
 6 **are trained in different methodologies?**
 7 A. Historians can be trained in -- in
 8 methodologies that focus more on the economic impact.
 9 Some historians can be trained on social impact, some
 10 can be trained upon a particular emphasis on race and
 11 ethnic relations, but the methodology for the most part
 12 is the same.
 13 **Q. Many historians in the 1970s were trained**
 14 **in an empirical method; is that right?**
 15 A. That is correct.
 16 **Q. And those historians would try to crunch**
 17 **numbers to describe trends; is that fair to say?**
 18 A. Broad trends, absolutely. Particularly in
 19 comparison, in comparing different states or comparing
 20 different countries.
 21 **Q. Now, also in the 1970s, there were many**
 22 **historians that were trained in economic history; is**
 23 **that right?**
 24 A. Correct.
 25 **Q. And in the 1980s, many were trained in, I**

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1 **think you just mentioned, social history; is that**
 2 **correct?**
 3 A. Correct.
 4 **Q. And those historians would look at social**
 5 **factors such as race and gender?**
 6 A. That is correct.
 7 **Q. And would you consider yourself to be a**
 8 **social historian?**
 9 A. Certainly my primary training as a
 10 historian is as a historian of the American West, and
 11 as a legal historian of the American West, I've been
 12 trained in economic history, I've been -- some
 13 empirical studies. I've been trained in both social
 14 history as well as cultural and racial and ethnic
 15 history. I try to employ all those sources in my
 16 methodology.
 17 **Q. And you have certainly written on social**
 18 **factors such as race; is that correct?**
 19 A. That is correct.
 20 **Q. Now, you did conduct a historical analysis**
 21 **in this case; is that right?**
 22 A. That is correct.
 23 **Q. You examined primary and secondary**
 24 **historical documents?**
 25 A. I did.

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1 **Q. And you would consider your analysis of**
 2 **these primary and secondary historical documents to be**
 3 **comprehensive?**
 4 A. As comprehensive as both the record and
 5 the time allowed.
 6 **Q. You examined the official proceedings of**
 7 **the Colorado Constitutional Convention?**
 8 A. I did.
 9 **Q. And you were trying to discern what the**
 10 **drafters meant by the language in the education**
 11 **clause; is that right?**
 12 A. That is correct.
 13 **Q. As best as possible?**
 14 A. As best as possible.
 15 **Q. You were also trying to discern what the**
 16 **drafters meant by the language in the local control**
 17 **clause?**
 18 A. Correct.
 19 **Q. As best as possible?**
 20 A. As best as possible.
 21 **Q. You did not specifically try to discern**
 22 **what was meant by the other sections in Article IX; is**
 23 **that right?**
 24 A. No. That was not my task.
 25 **Q. You found the official proceedings of the**

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1 **constitutional convention to be largely procedural; is**
 2 **that right?**
 3 A. That is correct.
 4 **Q. And there is almost no discussion of**
 5 **conversations that took place over committee reports,**
 6 **correct?**
 7 A. That is correct.
 8 **Q. The official proceedings only record the**
 9 **convention as a whole?**
 10 A. That is correct.
 11 **Q. As far as you know, whatever was said in**
 12 **committees was not recorded?**
 13 A. Correct.
 14 **Q. And there was an education committee,**
 15 **correct?**
 16 A. There was.
 17 **Q. That committee met separately from the**
 18 **commission as a whole?**
 19 A. They met separately from the convention as
 20 a whole, that is correct.
 21 **Q. You are not able to find any recordings of**
 22 **the proceedings of that education committee, correct?**
 23 A. The only thing I was able to find were the
 24 clippings files of Daniel Hurd.
 25 **Q. And that's the Daniel Hurd that you**

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1 testified was chairman of the education committee?
 2 A. Correct.
 3 Q. And that was -- are you referring to the
 4 article that Mr. Kawanabe had posted?
 5 A. That is correct.
 6 Q. And you were not able to identify what
 7 newspaper that particular article was published in,
 8 correct?
 9 A. Correct.
 10 Q. Were you able to identify the author of
 11 that article?
 12 A. No.
 13 Q. And if I recall, the beginning of
 14 that -- your notation from that article said -- had the
 15 word "post;" is that right?
 16 A. That's correct.
 17 Q. And what do you understand was the context
 18 of that statement?
 19 A. I'd have to go back and look at the
 20 clipping file. But it might have been exactly sort of
 21 a celebration of the education clause and its
 22 importance being inserted into the constitutional
 23 proceedings.
 24 Q. And is it your understanding that that
 25 statement was made in the education committee

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1 proceeding?
 2 A. My understanding is that was made -- that
 3 that was done in context of discussions of the
 4 constitutional convention by the education committee.
 5 Q. I'm sorry, is it your understanding that
 6 that particular statement attributed to Mr. Hurd was
 7 made during a proceeding of the education committee?
 8 A. Yes, it's my assumption that it is.
 9 Q. And you assume that from an article that
 10 you summarize in your notes; is that correct?
 11 A. Correct.
 12 Q. An article that you're unable to identify
 13 the source of; is that correct?
 14 A. From the clippings files, correct.
 15 Q. And that particular statement does not
 16 appear in the official proceedings, does it?
 17 A. No, it does not.
 18 Q. And you did not include that quotation in
 19 your report, did you?
 20 A. I did not.
 21 Q. Now, when Mr. Kawanabe was asking you
 22 about the conclusion of the report, he had the final
 23 page up on the screen. Do you recall that?
 24 A. Yes.
 25 Q. And in your answer you used the word

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1 "superstructure." Do you recall that?
 2 A. Yes.
 3 Q. And that was a word that Mr. Hurd is
 4 attributed to using in that clipping; is that right?
 5 A. I believe he did say that, correct.
 6 Q. Now, if you were -- you have your report
 7 in front of you; is that correct?
 8 A. I do.
 9 Q. And if you'd turn that last page 9, where
 10 the conclusion paragraph is. Can you show me where the
 11 word "superstructure" is?
 12 A. I'd be happy to read the conclusion
 13 verbatim if you'd like me to.
 14 Q. No. I'd like you to tell me where the
 15 word "superstructure" is.
 16 A. It does not appear specifically in that
 17 conclusion.
 18 Q. So when you were describing your
 19 conclusion today, that's -- the word "superstructure"
 20 is something you added today for your testimony?
 21 A. Basically, it was meant to mean an
 22 infrastructure of public schools. It was meant to
 23 balance both a thorough and uniform comprehensive
 24 school system with one that recognized, respected local
 25 control.

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1 Q. I believe you testified that the first use
 2 of the words "thorough and uniform" together that you
 3 discovered was in the speech by territorial Governor
 4 William Gilpin; is that right?
 5 A. That is correct.
 6 Q. And is it your understanding that Gilpin
 7 called upon the territorial legislature to establish
 8 schools where all children would receive generous
 9 instruction, thorough and uniform in its character?
 10 A. I believe that's the quote, yes.
 11 Q. And the education clause does contain the
 12 phrase "thorough and uniform;" is that right?
 13 A. That is correct.
 14 Q. Talking about the education clause in the
 15 adopted Colorado Constitution?
 16 A. Section 2 of Article IX, correct.
 17 Q. But that constitution does not use the
 18 phrase exactly as Governor Gilpin did, does it?
 19 A. No, it didn't.
 20 Q. The education clause says thorough and
 21 uniform system of free public schools, correct?
 22 A. That is correct.
 23 Q. It does not say generous instruction,
 24 thorough and uniform in its character?
 25 A. We could certainly assume that generous

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1 instruction might be prefiguring of local control
 2 clause, but that's only speculation.
 3 **Q. But the education clause in the adopted**
 4 **Colorado Constitution does not say generous**
 5 **instruction, thorough and uniform in its character; is**
 6 **that right?**
 7 A. That is correct.
 8 **Q. Now, I believe you testified that you**
 9 **determined that a thorough and uniform education would**
 10 **give students skills to be productive members who could**
 11 **labor in the emerging economy; is that right?**
 12 A. That is correct.
 13 **Q. Now, is that a quotation from the official**
 14 **proceedings?**
 15 A. No, it's not.
 16 **Q. So was there no record of any delegate**
 17 **defining thorough and uniform as you've just described?**
 18 A. As I've described it, no.
 19 **Q. You also testified that you found no**
 20 **evidence in your analysis of folks in Colorado not**
 21 **valuing the importance of public education; is that**
 22 **right?**
 23 A. That is correct.
 24 **Q. And you were talking about a rejected**
 25 **Colorado Constitution from, I believe, 1864; is that**

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1 **right?**
 2 A. 1864, that is correct.
 3 **Q. And you reviewed that constitution for**
 4 **your analysis?**
 5 A. I did look at it.
 6 **Q. I should say proposed constitution. Now,**
 7 **was there an education clause in that constitution?**
 8 A. If I recall correctly, there was.
 9 Article XIV, Section 3 provides for the establishment
 10 of a uniform system of common schools.
 11 **Q. And are you reading from your report?**
 12 A. No. I'm looking at my notes.
 13 **Q. You did not include that in your report,**
 14 **however, did you?**
 15 A. No.
 16 **Q. Now, I believe you're testifying that**
 17 **before Colorado became Colorado, settlers here drafted**
 18 **a constitution for the proposed state of Jefferson; is**
 19 **that right?**
 20 A. That is correct.
 21 **Q. And you reviewed that proposed**
 22 **constitution?**
 23 A. I did.
 24 **Q. That constitution directed the general**
 25 **assembly to provide a uniform system of common**

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1 **schools; is that right?**
 2 A. That is correct.
 3 **Q. And it also directed for a uniform**
 4 **distribution of the school fund; is that right?**
 5 A. That is correct.
 6 **Q. You do quote that in your report, correct?**
 7 A. I do.
 8 **Q. Now, voters rejected the proposed**
 9 **Jefferson constitution?**
 10 A. That is correct.
 11 **Q. Colorado's constitution contains that same**
 12 **uniform system phrase; is that right? The adopted**
 13 **constitution.**
 14 A. The same uniform system phrase?
 15 **Q. It uses the words "uniform system;" is**
 16 **that correct?**
 17 A. It does.
 18 **Q. But it does not contain the phrase**
 19 **"uniform distribution of the school fund"?**
 20 A. That is correct.
 21 **Q. You also reviewed reports of state**
 22 **superintendents that were issued in the 1870s; is that**
 23 **right?**
 24 A. That is correct.
 25 **Q. You determined that state superintendents**

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1 **had remarked upon inequalities in the school system?**
 2 A. That is correct.
 3 **Q. Superintendent Shattuck was concerned with**
 4 **economic differences; is that right?**
 5 A. Yes, precisely.
 6 **Q. And in the 1870s, communities in the state**
 7 **had different tax levels; is that your understanding?**
 8 A. Yes, it is.
 9 **Q. Different parts of the state had different**
 10 **tax levels, correct?**
 11 A. Different school districts had different
 12 tax levels, in particular, as authorized by state law.
 13 **Q. And Superintendent Shattuck argued for a**
 14 **minimum local property tax; is that correct?**
 15 A. That is correct.
 16 **Q. He wanted to better equalize support of**
 17 **schools?**
 18 A. He did.
 19 **Q. At that time, local property taxes made up**
 20 **over 95 percent of the revenues for schools; is that**
 21 **right?**
 22 A. I'm not sure about that number.
 23 **Q. Have you ever heard that before?**
 24 A. 95 percent.
 25 **Q. In these -- this particular time period.**

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1 **It may have been in the reports, but I have not seen**
 2 **that number. That's not something you included in your**
 3 **report, however; is that right?**
 4 A. That is correct.
 5 **Q. Superintendent Shattuck contended that**
 6 **property must support schools, did he not?**
 7 A. He did.
 8 **Q. And you quote that in your report?**
 9 A. I do.
 10 **Q. Superintendent Shattuck did not state**
 11 **state property must support schools, did he?**
 12 A. He never made a distinction.
 13 **Q. You also examined the education clauses in**
 14 **other states' constitutions; is that right?**
 15 A. Tangentially, yes.
 16 **Q. For some of those states you reviewed**
 17 **recordings of substantive debates in their**
 18 **conventions; is that right?**
 19 A. That is correct.
 20 **Q. You found debate among drafters about how**
 21 **education clauses should be interpreted for future**
 22 **generations; is that right?**
 23 A. I believe in the Illinois constitutional
 24 convention debates, that is correct.
 25 **Q. And you also found debate about the**

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1 **meaning of the constitutional language, whether it**
 2 **should change over time?**
 3 A. That is correct.
 4 **Q. But you found no such debate recorded in**
 5 **the official proceedings of the Colorado Constitutional**
 6 **Convention, did you?**
 7 A. That is correct.
 8 **Q. You examined the Pennsylvania Constitution**
 9 **of 1874 for your analysis; is that right?**
 10 A. I tried to look at all the state
 11 constitutions that were -- that were passed or amended
 12 prior to statehood in 1876.
 13 **Q. Do you recall specifically examining the**
 14 **Pennsylvania Constitution of 1874?**
 15 A. Specifically on point, no.
 16 **Q. So are you aware that the Pennsylvania**
 17 **Constitution of 1874 required an annual state education**
 18 **appropriation of at least \$1 million?**
 19 A. No.
 20 **Q. You examined the Missouri Constitution of**
 21 **1875 for your analysis; is that right?**
 22 A. I did look at that, yes.
 23 **Q. And so you were aware that the Missouri**
 24 **Constitution of 1875 requires that no less than**
 25 **25 percent of state revenue must be applied annually to**

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1 **support free public schools?**
 2 A. I'm also aware that the Missouri
 3 Constitution also provided a segregation component to
 4 it, too. So I may have known about it, but it wasn't
 5 center on point.
 6 **Q. You did not find -- there's not a**
 7 **segregation provision in the Colorado Constitution; is**
 8 **that right?**
 9 A. In fact the opposite; there's an
 10 anti-discrimination provision.
 11 **Q. And also there is not a provision in the**
 12 **Colorado Constitution for 25 percent of state revenue**
 13 **being applied to support schools?**
 14 A. No.
 15 **Q. And did you find -- have you found any**
 16 **provision in the Colorado Constitution requiring an**
 17 **annual appropriation of at least \$1 million for**
 18 **education?**
 19 A. No.
 20 **Q. Dr. Romero, nothing in the official**
 21 **proceedings expressly states what was intended by the**
 22 **words "thorough and uniform;" is that right?**
 23 A. That is correct.
 24 **Q. Nothing in the official proceedings**
 25 **expressly states what was intended by the local control**

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1 **clause; is that right?**
 2 A. That is correct.
 3 **Q. So you were not able to determine what the**
 4 **constitutional drafters specifically intended with the**
 5 **phrase "thorough and uniform"?**
 6 A. Expressly in the official proceedings, no.
 7 **Q. You did determine that the framers**
 8 **intended the education clause to have some meaning,**
 9 **correct?**
 10 A. That is correct.
 11 **Q. But I believe specifically what they**
 12 **meant, would you agree, has been elusive?**
 13 A. Specifically in the official proceedings,
 14 yes.
 15 **Q. And that's because of the limited**
 16 **historical record?**
 17 A. The limitations of the official
 18 proceedings in particular, yes.
 19 MR. FERO: Thank you, Dr. Romero.
 20 THE COURT: Redirect.
 21 MR. FERO: No further questions, Your
 22 Honor.
 23 REDIRECT EXAMINATION
 24 BY MR. KAWANABE:
 25 **Q. Just a few follow-up questions,**

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1 **Dr. Romero.**
 2 MR. KAWANABE: And before I do, I don't
 3 know if I've moved for the admission of Exhibit 7204.
 4 If I haven't, I apologize. It is stipulated to, Your
 5 Honor.
 6 THE COURT: I think you did move. I think
 7 it is admitted.
 8 MR. KAWANABE: Thank you.
 9 **Q. (BY MR. KAWANABE) Dr. -- Mr. Fero asked**
 10 **you a few questions about constitutional**
 11 **interpretation. Is that -- do you recall those?**
 12 A. I do.
 13 **Q. All right. And did you take a**
 14 **constitutional law class at Michigan?**
 15 A. I did.
 16 **Q. And in that class, did you learn that**
 17 **constitutional interpretation also includes a look at**
 18 **history?**
 19 A. Yes.
 20 **Q. Mr. Fero asked you about hypothetically**
 21 **what other historians might have missed or mistakes**
 22 **they have made, correct?**
 23 A. Correct.
 24 **Q. Are you aware of any mistakes you may have**
 25 **made in this case?**

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1 A. None that I'm aware of, no.
 2 **Q. And other than the Denver Tribune that is**
 3 **locked up because the archives building is shut down,**
 4 **did you look at everything that you could possibly**
 5 **think of, at least at this time?**
 6 A. Everything that I had access and resources
 7 to get to.
 8 **Q. Mr. Fero asked you about things that you**
 9 **put in your report. Do you recall that?**
 10 A. I do.
 11 **Q. Did you put everything you found in your**
 12 **report?**
 13 A. No, I didn't.
 14 **Q. But you did produce your research file,**
 15 **correct?**
 16 A. I did.
 17 **Q. Okay. But your conclusion -- did your**
 18 **conclusion change between the time you wrote this**
 19 **report to the time you're testifying now?**
 20 A. Conclusion remains the same.
 21 **Q. All right. You did look at other**
 22 **constitutions; is that correct?**
 23 A. Yes, I did.
 24 **Q. And Mr. Fero pointed you to certain**
 25 **constitutions, including Missouri, correct?**

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1 A. Correct.
 2 **Q. And he stated that Missouri actually**
 3 **slotted a 25 percent figure in its constitution devoted**
 4 **to public education, correct?**
 5 A. Correct.
 6 **Q. You also mentioned there were other things**
 7 **that Missouri did that Colorado chose not to do.**
 8 **Please expound on that.**
 9 A. Missouri, both in 1865 and 1875, chose to
 10 segregate its schools as a constitutional matter. And
 11 that's certainly taken place in the context of the end
 12 of the Civil War and reconstruction.
 13 **Q. Did you see the 25 percent -- or do you**
 14 **have an opinion as to whether the 25 percent number in**
 15 **the Missouri Constitution was a limit with regard -- or**
 16 **a link to the segregation that they also put in the**
 17 **constitution?**
 18 A. Absolutely.
 19 **Q. Is that why you disregarded the 25 percent**
 20 **figure when looking at the Missouri constitution?**
 21 A. It was. It did not seem salient on point.
 22 **Q. Colorado's constitution is exactly**
 23 **opposite, is that what you said?**
 24 A. Yes.
 25 **Q. Do we segregate education based on color**

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1 **of skin?**
 2 A. We do not.
 3 **Q. In fact, we have a non-discrimination**
 4 **section in our provision, correct?**
 5 A. That is correct.
 6 **Q. Mr. Fero finally asked you the framers**
 7 **meant something, but specifically you couldn't figure**
 8 **out what that was, and he used the term "specifically."**
 9 **Do you recall that?**
 10 A. I do.
 11 **Q. Generally, is there any doubt that the**
 12 **framers knew and put the -- strike that. Is there any**
 13 **doubt about the framers' intent with regard to the two**
 14 **things that you testified to, the importance of**
 15 **education as to citizenry, and the importance of**
 16 **education as to our economy?**
 17 A. Generally, no.
 18 MR. KAWANABE: Okay. No further
 19 questions. Thank you.
 20 THE COURT: Any questions, Counsel?
 21 Recross?
 22 MR. FERRO: Yes, Your Honor. Thank you.
 23 RE-CROSS-EXAMINATION
 24 BY MR. FERRO:
 25 **Q. Dr. Romero, I take it you're aware of that**

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1 **there are rules established by the Colorado courts for**
 2 **constitutional interpretation; is that right?**
 3 A. Yes.
 4 **Q. And I believe you testified that there**
 5 **were no -- you looked for Colorado cases that had**
 6 **interpreted the education clause; is that right?**
 7 A. In the 19th century.
 8 **Q. Now, even though you didn't find anything**
 9 **helpful -- is that fair to say?**
 10 A. There's no case in the 19th century.
 11 **Q. All right. So even though there are no**
 12 **cases, you did not apply rules that the court has**
 13 **established to constitutional interpretation in your**
 14 **analysis; is that right?**
 15 A. I approached this as an historian.
 16 **Q. And solely as an historian, right?**
 17 A. Solely as a historian.
 18 MR. FERO: Thank you.
 19 THE COURT: Thank you, Doctor. You may
 20 step down. Thank you. Did you want to make a record
 21 on the exhibits, or do you have a list, or do you want
 22 to do it in the morning? Whatever your preference.
 23 MR. KAWANABE: If the court reporter and
 24 Your Honor are okay, we're happy to start. There are a
 25 number of stipulations, I apologize. We would like to

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1 make a record, I'll read it into the record. We have
 2 submitted that to the Court. But in order to make a
 3 record, we're happy to go through those and are
 4 prepared to go through those, as well as our exhibit
 5 stipulations, if you prefer.
 6 THE COURT: That's fine. Is it okay with
 7 you? Okay. Why don't we go ahead and do that.
 8 MR. KAWANABE: Okay. We may not finish
 9 Your Honor, so please cut me off when it's time.
 10 THE COURT: I have to stop about 5:00.
 11 MR. KAWANABE: Okay. If I may, we've
 12 submitted a number of testimony by preserved deposition
 13 testimony, and may I read into the record, and we'll
 14 provide the court reporter with a list of those
 15 names -- and excuse me, those witnesses that are
 16 submitted by preserved testimony, with the caveat or
 17 the agreement we've worked out with defendants in this
 18 case?
 19 THE COURT: Yes.
 20 MR. KAWANABE: First the listing of
 21 preserved testimony. And we will make a record as to
 22 our agreement. John Brackney. Robert Stein.
 23 THE COURT: Would you spell the last names
 24 so we have --
 25 MR. KAWANABE: And I'm happy to --

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1 THE COURT: Oh, you can give us a list.
 2 We can take a list, then. Just so we have a good
 3 spelling.
 4 MR. KAWANABE: I will give this list to
 5 you right after I -- I'm done. Bonnie Betz. David
 6 Gerkin. Dwight Jones. Robert Alejo. William Stewart.
 7 Casey Wardynski. Beverly Maestas. Mary Thurman.
 8 Nicholas Gledich. Christina Clayton. Randy Boyer.
 9 There are a number, I apologize. Angela Velasquez.
 10 Chris Vance. No. 80 is Brenda Atencio. And we have
 11 101, just for reference.
 12 81 is Rick Ivers. 82 is Joseph Petrone.
 13 Christine Villard. Kirk Banghart. Dwayne Newman.
 14 Patricia Boland. Corey Doss. Brady Stagner. Lauren
 15 Sheldrick. Marcella Garcia. Rose Cronk. Susan
 16 Chandler. Ryan Elarton. Ginger Adenucio. Stacey
 17 Houser. John Goss. Melissa Brunner. Lori Haukeness.
 18 Gerald Keefe. Barbara Medina. Mary Wickersham.
 19 And those are only the plaintiffs'. The
 20 plaintiff-intervenors also have their own list.
 21 THE COURT: Okay.
 22 MR. KAWANABE: Do you want to read those
 23 now?
 24 MR. HINOJOSA: Yeah.
 25 THE COURT: Did you submit a copy to the

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1 Court also?
 2 MR. KAWANABE: Yes.
 3 THE COURT: I do have one.
 4 MR. KAWANABE: The list as well as the
 5 depo designations. I'll explain that.
 6 THE COURT: Okay. Thank you.
 7 MR. HINOJOSA: For the record, the
 8 plaintiff-intervenors' deposition designations are in
 9 yellow and the defendants are in blue, and then
 10 overlapping designations are in green. And the
 11 plaintiff-intervenors' objections are red-lined,
 12 objections to non-rebuttal testimony is orange-lined,
 13 and defendants' objections are purple-lined.
 14 And the designations we're offering into
 15 the record are for Nancy Aschermann. Elaine Gantz
 16 Berman. Bonnie Betz. Lori Bowers for her testimony on
 17 February 15, 2011. Lori Bowers for her testimony on
 18 May 24, 2011. Daniel Gerken. Robert Hammond testimony
 19 on March 11, 2011. Commissioner Hammond again on
 20 June 30, 2011. William E. Hughes, Jr. Dwight Jones,
 21 Volume I for testimony on May 13, 2011. Dwight Jones,
 22 Volume II for testimony on June 8, 2011. Jacquelin
 23 Almeda Medina. Josephine O'Brien. Coleen O'Neil.
 24 Kristin E. Waters. And Rob Stein.
 25 THE COURT: We can make a copy.

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1 MR. KAWANABE: Your Honor, while we're
 2 looking for the list, here's how we've assembled the
 3 books, and we hope it's in a way that is the easiest
 4 for the Court. Friday we did submit three volumes,
 5 they're in black binders. They're labeled "plaintiffs'
 6 deposition designations," similar to the binders that
 7 plaintiff-intervenors' counsel just submitted to you.
 8 There's a key on the front page that is
 9 color coded. Very similar -- should be the same
 10 colors, where the initial designators are in yellow,
 11 state's counter-designations are in blue, and then
 12 there are objection lines either in red or purple,
 13 depending on the objecting side.
 14 And, of course, we filed our designations
 15 as pleadings with the Court, as well as objections. We
 16 also are happy, if we have an extra 15 minutes at the
 17 end of every day, to go over those objections, if you
 18 would like to rule on them with argument. Or defer to
 19 you on how you'd like to handle those.
 20 THE COURT: Okay. That's fine. I haven't
 21 read them all yet. So I will. I have them in my
 22 office.
 23 MR. KAWANABE: Okay. Your Honor, we do,
 24 as part of this submission, have a stipulation and an
 25 agreement for the Court's approval. Many of these

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1 witnesses are listed as may-call witnesses, so they may
 2 actually come live, and we've worked out, if the Court
 3 agrees, to still submit that preserved testimony,
 4 because it is testimony.
 5 Defendants have agreed to that, so long as
 6 they are able to go beyond the scope of examination.
 7 We are not -- we've agreed not to object if something
 8 is simply in the preserved testimony that isn't
 9 mentioned live, we will not object as to going beyond
 10 scope. And I defer to Mr. Heinke -- sorry -- to make
 11 sure I've got the agreement correct.
 12 MR. HEINKE: I believe that's right, Your
 13 Honor. One caveat, as Mr. Hinojosa noted yesterday,
 14 which is that there are some objections, obviously, to
 15 the designated testimony. Those objections are not
 16 waived. If we were to elicit the testimony live,
 17 parties would obviously preserve their right to raise
 18 the same objection to that.
 19 MR. HINOJOSA: That's correct, Your
 20 Honor.
 21 THE COURT: Thank you.
 22 MR. HEINKE: And the only other thing I
 23 might mention is the state did submit one set of
 24 preserved testimony. It was of Casey Wardynski. And
 25 that was submitted to the Court I believe on either

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1 Friday or Monday morning.
 2 THE CLERK: It was Friday. We have it.
 3 THE COURT: Okay. Thank you.
 4 MR. HEINKE: Thank you.
 5 MR. KAWANABE: Your Honor, if we may, we
 6 should probably save exhibits. That may take the
 7 longest. However, we do have some fact stipulations
 8 and other stipulations that we would like to read into
 9 the record, if that's okay with you.
 10 THE COURT: Go right ahead.
 11 MR. KAWANABE: Ms. Bezoza, would you read
 12 at least plaintiffs' stipulations, and I believe
 13 plaintiff-intervenors had additional stipulations as
 14 well.
 15 THE COURT: And do you have copies for the
 16 Court, too?
 17 MR. KAWANABE: Oh, we filed those as
 18 well.
 19 THE COURT: You filed those. Okay.
 20 Great. Thank you.
 21 MS. BEZOZA: Thank you, Your Honor. The
 22 first stipulations with respect to the individual
 23 plaintiff and plaintiff-intervenor testimony. The
 24 parties stipulate, one, that the plaintiffs agree to
 25 call as live witnesses at trial at least one individual

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1 plaintiff from each of the following school districts:
 2 Center, Pueblo 70, Woodlin, Denver, Adams 14, and
 3 Boulder.
 4 Two, the plaintiff-intervenors agree to
 5 call as live witnesses at trial least one
 6 plaintiff-intervenor from each of the following school
 7 districts: Rocky Ford, Mapleton, Sheridan, and
 8 Greeley.
 9 And No. 3, defendants agree not to move to
 10 dismiss the claims of any non-testifying individual
 11 plaintiffs or plaintiff-intervenors for failure to
 12 prosecute or on any other grounds related to the
 13 failure to present testimony in this case.
 14 I don't believe Your Honor has ruled yet
 15 on the stipulation.
 16 THE COURT: Well, I would accept them. I
 17 don't have a problem. If everyone agrees to them,
 18 that's fine. And I think we have copies. Yes. Okay.
 19 MS. BEZOZA: Thank you, Your Honor.
 20 THE COURT: Thank you.
 21 MS. BEZOZA: And the second stipulation is
 22 regarding undisputed facts. First section is with
 23 respect to plaintiffs.
 24 Each of the following individual
 25 plaintiffs is a resident of the state of Colorado, a

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597	<p>1 School.</p> <p>2 F. Denise Lobato is a resident of Center</p> <p>3 Consolidated School District No. 26JT. Her child</p> <p>4 Taylor Lobato is a graduate of Center High School. Her</p> <p>5 daughter Alexa Lobato is a student at Center High</p> <p>6 School.</p> <p>7 G. Maria Villagomez is a resident of</p> <p>8 Center Consolidated School District No. 26JT. Her son</p> <p>9 Chris Villagomez is a graduate of Center High School.</p> <p>10 Her daughter Monique Villagomez is a graduate of Center</p> <p>11 High School. Her son Angel Villagomez is a student at</p> <p>12 Skoglund Middle School.</p> <p>13 H. Pantaleon Villagomez is a resident of</p> <p>14 Center Consolidated School District No. 26JT. His son</p> <p>15 Chris Villagomez is a graduate of Center High School.</p> <p>16 His daughter Monique Villagomez is a graduate of Center</p> <p>17 High School. His son Angel Villagomez is a student at</p> <p>18 Skoglund Middle School.</p> <p>19 I. Linda Warsh is a resident of Center</p> <p>20 Consolidated School District No. 26JT. Her son Adam</p> <p>21 Warsh and daughters Karen and Ashley Warsh are</p> <p>22 graduates of Center High School.</p> <p>23 J. Miguel Cendejas is a resident of</p> <p>24 Center Consolidated School District No. 26JT. His</p> <p>25 daughter Natalia is a student at Haskin Elementary</p>	599	<p>1 County School District 70. His daughter Katherine Hart</p> <p>2 is a student at Pueblo County High School.</p> <p>3 P. Anne Kathleen Howe-Kerr is a resident</p> <p>4 of Pueblo County School District. Her daughter Lauren</p> <p>5 Howe-Kerr is a student at Pueblo West High School. Her</p> <p>6 son Luke Howe-Kerr is a student at the Connect Charter</p> <p>7 School.</p> <p>8 Q. Larry Howe-Kerr is a resident of</p> <p>9 Pueblo County School District 70. His daughter Lauren</p> <p>10 Howe-Kerr is a student at Pueblo West High School. His</p> <p>11 son Luke Howe-Kerr is a student at Connect Charter</p> <p>12 School.</p> <p>13 R. Jennifer Pate is a resident of Pueblo</p> <p>14 County school District 70. Her son Ethan Pate is a</p> <p>15 student at the Connect Charter School. Her daughter</p> <p>16 Evelyn Pate is a student at the Connect Charter School.</p> <p>17 Her daughter Adeline Pate is a student at Sierra Vista</p> <p>18 Elementary School.</p> <p>19 S. Blanche J. Podio is a resident of</p> <p>20 Pueblo County School District 70. Her son Robert T.</p> <p>21 Podio is a graduate of Pueblo West High School. Her</p> <p>22 daughter Samantha Podio is a student at Pueblo West</p> <p>23 High School.</p> <p>24 T. Robert L. Podio is a resident of</p> <p>25 Pueblo County School District 70. His son Robert T.</p>

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1 Podio is a graduate of Pueblo West High School. His
 2 daughter Samantha Podio is a student at Pueblo West
 3 High School.
 4 U. Tim Hunt is a resident of Woodlin
 5 School District No. R104 in Washington County. His
 6 child Darean Hunt is a student At Woodlin Undivided
 7 High School. His child Jeffrey Hunt is a student at
 8 Woodlin Elementary School.
 9 V. Sabrina Hunt is a resident of Woodlin
 10 School District No. R104 in Washington County. Her
 11 child Darean Hunt is a student at Woodlin Undivided
 12 High School. Her child Jeffrey Hunt is a student at
 13 Woodlin Elementary School.
 14 W. Doug Vondy is a resident of Woodlin
 15 School District No. R104. His stepson Kyle Leaf is a
 16 student at Woodlin Undivided High School. His daughter
 17 Hannah is a student at Woodlin Elementary School.
 18 X. Denise Leaf Vondy is a resident of
 19 Woodlin School District No. R104. Her son Kyle Leaf is
 20 a student at Woodlin Undivided High School. Her
 21 daughter Hannah is a student at Woodlin Elementary
 22 School.
 23 Y. Brad Weisensee is a resident of
 24 Woodlin School District No. R104. His son Joseph is a
 25 student at the Woodlin School. His daughter Anna is a

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1 student at the Woodlin School. His daughter Amy is
 2 student at the Woodlin School. His son Elijah is a
 3 student at the Woodlin school.
 4 Z. Traci Weisensee is a resident of
 5 Woodlin School District No. R104. Her son Joseph is a
 6 student at the Woodlin School. Her daughter Anna is a
 7 student at the Woodlin School. Her daughter Amy is
 8 student at the Woodlin School. Her son Elijah is a
 9 student at the Woodlin school.
 10 No. 2. The 21 school district plaintiffs
 11 include Jefferson County School District No. R1,
 12 Colorado Springs School District No. 11 in the county
 13 of El Paso, Bethune School District No. R5, Alamosa
 14 School District No. RE11-J, Centennial School District
 15 No. R1, Center Consolidated School District No. 26JT in
 16 the counties of Saguache and Rio Grande and Alamosa,
 17 Creede Consolidated School District No. 1 in the county
 18 of Mineral, Del Norte Consolidated School District
 19 No. C7, Moffat School District No. 2 in the county of
 20 Saguache, Monte Vista School District No. C8, Mountain
 21 Valley School District No. RE1, North Conejos School
 22 District No. RE1-J, Sanford School District No. 6 in
 23 the county of Conejos, Sangre de Cristo School District
 24 No. RE22J, Sargent School District No. RE33J, Sierra
 25 Grande School District No. R30, South Conejos School

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1 District No. RE10, Aurora Joint District No. 28 of the
 2 counties of Adams and Arapahoe, Moffat County School
 3 District RE No. 1, Montezuma-Cortez School District
 4 No. RE1, and Pueblo School District No. 60 in the
 5 county of Pueblo and state of Colorado.
 6 3. Each of the school district plaintiffs
 7 is a body corporate and subdivision of the state of
 8 Colorado exercising independent powers exclusively
 9 delegated to school districts by Article IX, Section 15
 10 of the Colorado Constitution.
 11 Your Honor, I'm up to the next section,
 12 and I'm aware that it's 5 o'clock. I don't know if
 13 you'd like me to continue or if you wanted to resume
 14 tomorrow.
 15 THE COURT: Well, I think there's just the
 16 Section II on the defendants. We can go ahead with
 17 that. That'd be fine. I have it here in front of me
 18 too. Thank you.
 19 MS. BEZOZA: Sure.
 20 No. II, Defendants. 4. Defendant the
 21 State of Colorado is a body politic.
 22 No. 5. Pursuant to Article IX, Section 1
 23 of the Colorado Constitution and legislation enacted
 24 pursuant thereto, the defendant Colorado State Board of
 25 Education, State Board, exercises the, quote, general

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1 supervision of the public schools of the state, close
 2 quote, and appoints the commissioner of education.
 3 No. 6. Robert K. Hammond, in his official
 4 capacity as the commissioner of education,
 5 commissioner, is the chief state school officer and
 6 executive officer of the Colorado Department of
 7 Education, CDE.
 8 7. John Hickenlooper, in his official
 9 capacity as governor, is vested with the supreme
 10 executive power of the state and charged with the duty
 11 to take care that the laws be faithfully executed.
 12 No. III, Other Stipulations.
 13 8. Defendants have not conducted a study
 14 to determine the cost of funding all public education
 15 programs set forth in statute and regulation.
 16 9. The state board adopted the Colorado
 17 consolidated state plan, the state plan, in 2002.
 18 10. Governmental funding for Colorado
 19 school districts is derived from local taxes, state
 20 funds, and federal funds.
 21 11. The large majority of state and local
 22 funding for public education is provided through the
 23 Public School Finance Act, PSFA. In school year
 24 2008-'09, local school district property tax and other
 25 sources contributed approximately 36.6 percent and the

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1 state contributed approximately 63.4 percent.
 2 12. School District authority to obtain
 3 funding by local property taxation is strictly fixed by
 4 statute.
 5 13. In 2008-'09, the Colorado Preschool
 6 Program Act served approximately 20,160 students.
 7 No. 14. The PSFA permits school districts
 8 an option to supplement their total program with
 9 additional local revenues by submitting an initiative
 10 to the electorate for approval to raise such revenues
 11 and authorizing an additional mill levy for that
 12 purpose.
 13 15. The Exceptional Children's
 14 Educational Act, ECEA, and the Federal Individuals with
 15 Disabilities Education Act, IDEA, require school
 16 districts to provide special education programs to all
 17 children with disabilities.
 18 16. Special education services are
 19 provided by administrative units, which may be a school
 20 district or group of school districts acting through a
 21 Board of Cooperative Educational Services, BOCES.
 22 17. Fiscal year 2009-'10, total state
 23 categorical funding for school district gifted and
 24 talented programs was approximately \$9 million, or \$150
 25 per student.

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1 18. The general assembly has established
 2 a categorical program for partial reimbursement of
 3 current operating expenditures for pupil
 4 transportation.
 5 19. The state contribution for
 6 transportation in 2008-'09 was approximately
 7 \$49.6 million.
 8 And that concludes the stipulation.
 9 THE COURT: Thank you. And it's been
 10 stipulated to, so it will be accepted. I did sign the
 11 order.
 12 MS. BEZOZA: Thank you, Your Honor.
 13 THE COURT: Thank you. All right.
 14 MS. BONO: Yes, Your Honor. We'll wait
 15 till tomorrow, since we're past our time here.
 16 THE COURT: Okay. Thank you. We'll
 17 reconvene at 8:30 tomorrow then. Thank you.
 18 WHEREUPON, the within proceedings were
 19 adjourned at the approximate hour of 5:07 p.m. on the
 20 2nd day of August, 2011.
 21 * * * * *
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REPORTER'S CERTIFICATE

STATE OF COLORADO)
) ss.
 CITY AND COUNTY OF DENVER)

I, CAROL M. BAZZANELLA, Registered
 Professional Reporter, Certified Realtime Reporter,
 and Notary Public, State of Colorado, do hereby certify
 that the within proceedings were taken in machine
 shorthand by me at the time and place aforesaid and was
 thereafter reduced to typewritten form; that the
 foregoing is a true transcript of the proceedings had.

I further certify that I am not employed by,
 related to, nor of counsel for any of the parties
 herein, nor otherwise interested in the outcome of this
 litigation.

IN WITNESS WHEREOF, I have affixed my
 signature this 8th day of August, 2011.
 My commission expires February 10, 2012.