

<p>SUPREME COURT, STATE OF COLORADO</p> <p>101 West Colfax Avenue, Suite 800 Denver, CO 80203</p>	
<p>District Court of the City and County of Denver Honorable Sheila A. Rappaport Case No. 05CV4794</p>	<p>▲ COURT USE ONLY ▲</p>
<p>PLAINTIFFS: Anthony Lobato, as an individual and as parent and natural guardian of Taylor Lobato and Alexa Lobato; Denise Lobato, as an individual and as parent and natural guardian of Taylor Lobato and Alexa Lobato; Miguel Cendejas and Yuri Cendejas, individually and as parents and natural guardians of Natalia Cendejas and Salma Cendejas; Pantaleón Villagomez and Maria Villagomez, as individuals and as parents and natural guardians of Chris Villagomez, Monique Villagomez and Angel Villagomez; Linda Warsh, as an individual and as parent and natural guardian of Adam Warsh, Karen Warsh and Ashley Warsh; Herbert Conboy and Victoria Conboy, as individuals and as parents and natural guardians of Tabitha Conboy, Timothy Conboy and Keila Barish; Terry Hart, as an individual and as parent and natural guardian of Katherine Hart; Larry Howe-Kerr and Anne Kathleen Howe-Kerr, as individuals and as parents and natural guardians of Lauren Howe-Kerr and Luke Howe-Kerr; Jennifer Pate, as an individual and as parent and natural guardian of Ethan Pate, Evelyn Pate and Adeline Pate; Robert L. Podio and Blanche J. Podio, as individuals and as parents and natural guardians of Robert T. Podio and Samantha Podio; Tim Hunt and Sabrina Hunt, as individuals and as parents and natural guardians of Darean Hunt and Jeffrey Hunt; Doug Vondy, as an individual and as parent and natural guardian of Hannah Vondy; Denise Vondy, as an individual and as parent and natural</p>	<p>Case No. 12SA_____</p>

Guardian of **Hannah Vondy** and **Kyle Leaf**; **Brad Weisensee** and **Traci Weisensee**, as individuals and as parents and natural guardians of **Joseph Weisensee**, **Anna Weisensee**, **Amy Weisensee** and **Elijah Weisensee**; **Stephen Topping**, as an individual and as parent and natural guardian of **Michael Topping**; **Debbie Gould**, as an individual and as parent and natural guardian of **Hannah Gould**, **Ben Gould** and **Daniel Gould**; **Lillian Leroux Sr.**, as an individual and natural guardian of **Lillian Leroux III**, **Ashley Leroux**, **Alixandra Leroux** and **Amber Leroux**; **Theresa Wrangham**, as an individual and natural guardian of **Rachel Wrangham**; **Lisa Calderon**, as an individual and natural guardian of **Savannah Smith**; **Jessica Spangler**, as an individual and natural guardian of **Rider Donovan Spangler**

and

Jefferson County School District No. R-1; Colorado Springs School District No. 11, in the County of El Paso; Bethune School District No. R-5; Alamosa School District, No. RE-11J; Centennial School District No. R-1; Center Consolidated School District No. 26JT, of the Counties of Saguache and Rio Grande and Alamosa; Creede Consolidated School District No. 1 in the County of Mineral and State of Colorado; Del Norte Consolidated School District No. C-7; Moffat, School District No. 2, in the County of Saguache and State of Colorado; Monte Vista School District No. C-8; Mountain Valley School District No. RE 1; North Conejos School District No. RE1J; Sanford, School District No. 6, in the County of Conejos and State of Colorado; Sangre de Cristo School District, No. RE-22J; Sargent School District No. RE-33J; Sierra Grande School District No. R-30; South Conejos School District No. RE10; Aurora, Joint School District No. 28 of the Counties of Adams and Arapahoe; Moffat County School District Re: No. 1; Montezuma-Cortez School District No. RE-1;

**and Pueblo, School District No. 60 in the
County of Pueblo and State of Colorado;**

and

**PLAINTIFF-INTERVENORS: Armandina
Ortega**, individually and as next friend for her
minor children **S. Ortega** and **B. Ortega**; **Gabriel
Guzman**, individually and as next friend for his
minor children **G. Guzman**, **Al. Guzman** and **Ar.
Guzman**; **Robert Pizano**, individually and as
next friend for his minor children **Ar. Pizano** and
An. Pizano; **Maria Pina**, individually and as next
friend for her minor children **Ma. Pina** and **Mo.
Pina**; **Martha Lopez**, individually and as next
friend for her minor children **S. Lopez** and **L.
Lopez**; **M. Payan**, individually and as next friend
for her minor children **C. Payan**, **I. Payan**, **G.
Payan** and **K. Payan**; **Celia Leyva**, individually
and as next friend for her minor children **Je.
Leyva** and **Ja. Leyva**; and **Abigail Diaz**,
individually and as next friend for her minor
children **K. Saavedra** and **A. Saavedra**;

vs.

DEFENDANTS: The State of Colorado; the
Colorado State Board of Education; **Robert K.
Hammond**, in his official capacity as
Commissioner of Education of the State of
Colorado; and **John Hickenlooper**, in his official
capacity as Governor of the State of Colorado.

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NOTICE OF APPEAL

Defendants the State of Colorado, the Colorado State Board of Education, Robert K. Hammond, in his official capacity as Commissioner of Education of the State of Colorado, and John Hickenlooper, in his official capacity as Governor of the State of Colorado, by and through the Attorney General of the State of Colorado, submit this Notice of Appeal.

I. NATURE OF THE CASE

A. NATURE OF THE CONTROVERSY:

In 2005, Plaintiffs, a group of school districts, parents, and students, filed suit in the District Court for the City and County of Denver against the State of Colorado, the Governor, the State Board of Education, and the Commissioner of Education, alleging that due to inadequate funding and state mandates, the state public school finance system fails to provide a thorough and uniform system of free public schools and maintain local control over instruction as guaranteed by the Colorado Constitution. Although the District Court dismissed the case as non-

justiciable, in October 2009, the Colorado Supreme Court reversed and remanded for trial on the issue of whether the public school finance system is rationally related to the constitutional mandate that the General Assembly establish and maintain a thorough and uniform system of free public schools.

On remand, several more school districts from across the state joined as Plaintiffs, and a group of parents of low-income and English Language Learner students from four additional school districts joined the case as Plaintiff-Intervenors. Extensive fact and expert discovery was conducted, and numerous issues were litigated. The District Court struck Defendants' affirmative defenses asserting the failure to join all necessary parties, inability to enjoin the unnamed General Assembly, lack of standing, and pursuit of an unconstitutional remedy. The District Court denied Defendants' requests for determination of questions of law on the burden of proof, meaning of the Education Clause, harmonizing the entire Constitution, including the Taxpayers' Bill of Rights ("TABOR") and Gallagher Amendments and Amendment 23, standard of rational basis review, unfunded educational mandates, and injunctive relief against the General Assembly. Also, the District Court granted Plaintiffs' request to exclude evidence of the General Assembly's non-education constitutional mandates and appropriations, as well as TABOR's revenue restrictions, as irrelevant.

A five-week trial to the court commenced in August 2011. Former legislator Norma Anderson contacted Defendants during trial about her involvement in drafting the 1994 Public School Finance Act, but the District Court precluded her testimony. After trial, the parties submitted proposed findings of fact and conclusions of law. The District Court adopted Plaintiffs' proposed findings and conclusions and declared the state public school finance system unconstitutional. Specifically, the District Court held the public school finance system was not rationally related to the Constitution's mandate for a thorough and uniform system of free public schools and guarantee of local control over instruction. The District Court enjoined Defendants from adopting, implementing, administering, or enforcing any and all laws and regulations that fail to establish, maintain, and fund a thorough and uniform system of free public schools throughout the state and that is in full compliance with the requirements of the Local Control Clause. The District Court also ordered Defendants to design, enact, fund, and implement a system of public school finance that provides and assures that adequate, necessary, and sufficient funds are available in a manner rationally related to accomplish the purposes of the Education and Local Control Clauses. The District Court stayed its order until the end of the 2012 legislative session or in the event of an appeal, final order from the Colorado Supreme Court.

B. THE ORDER(S) BEING APPEALED AND THE BASIS FOR THE APPELLATE COURT'S JURISDICTION:

Appellants appeal the following orders of the District Court, City and County of Denver:

1. Findings of Fact and Conclusions of Law entered on December 9, 2011, declaring the state public school finance system unconstitutional and enjoining Defendants, which is stayed pending appeal.
2. Trial order denying Defendants' request to examine former legislator Norma Anderson on drafting the 1994 Public School Finance Act.
3. Court Order entered on July 21, 2011, striking Defendants' Second, Third, and Fourth Affirmative Defenses to the Complaint, as amended, and Defendants' Second, Third, Fourth, and Fifth Affirmative Defenses to the Complaint in Intervention, as amended.
4. Court Order entered on July 14, 2011, denying Defendants' First and Third through Thirteenth requests for determination of questions of law.
5. Court Order entered on July 11, 2011, and trial orders granting Plaintiffs' Motion *in limine* to Exclude Evidence of Non-Education Appropriations and TABOR provisions.

The Supreme Court has initial appellate jurisdiction in this matter pursuant to subsection 13-4-102(1)(b), C.R.S, (2011), because the trial court declared unconstitutional the entire state school finance system, including but not limited to the Public School Finance Act of 1994, categorical funding program laws, and capital constructions funding laws. *See, e.g., Mesa County Bd. of County Comm'rs v. State*, 203 P.3d 519, 526 n.7 (Colo. 2009); *Town of Telluride v. San Miguel Valley Corp.*, 185 P.3d 161, 164 (Colo. 2008); *Owens v. Colo. Congress of Parents, Teachers and Students*, 92 P.3d 933, 935 n.1 (Colo. 2004).

C. WHETHER THE ORDER RESOLVED ALL ISSUES BEFORE THE TRIAL COURT:

Yes. The order dated December 9, 2011, resolved all merits issues before the District Court. Plaintiffs and Plaintiff-Intervenors have been granted extensions of time to seek recovery of attorneys' fees and costs. The parties have agreed in

principle to a mutual waiver of any and all attorneys' fees and costs and expect to file notice of a written agreement in the District Court within the next few weeks.

D. WHETHER THE JUDGMENT OF THE TRIAL COURT WAS MADE FINAL FOR PURPOSES OF APPEAL PURSUANT TO C.R.C.P. 54(b):

No. The District Court's December 9, 2011, order resolved all merits issues in the case as to all parties, and no C.R.C.P. 54(b) motion was necessary.

E. DATE OF ORDER(S) FROM TRIAL COURT:

The District Court's Findings of Fact and Conclusions of Law order is dated December 9, 2011. The three pre-trial orders also being appealed are dated July 11, 14, and 21, 2011. The District Court precluded former legislator Norma Anderson from testifying on August 31, 2011, the 23rd day of trial.

F. WHETHER ANY EXTENSIONS WERE GRANTED TO FILE ANY MOTIONS FOR POST-TRIAL RELIEF:

No extensions to file any motions for post-trial relief pursuant to C.R.C.P. 59 have been requested or granted.

G. THE DATE ANY MOTION FOR POST-TRIAL RELIEF WAS FILED:

No motions for post-trial relief pursuant to C.R.C.P. 59 have been filed.

H. THE DATE ANY MOTION FOR POST TRIAL RELIEF WAS DENIED:

No motions for post-trial relief pursuant to C.R.C.P. 59 have been filed.

I. WHETHER THERE WERE ANY EXTENSIONS GRANTED TO FILE THE NOTICE OF APPEAL:

No extensions of time to file a Notice of Appeal have been requested or granted.

II. ADVISORY LISTING OF THE ISSUES TO BE RAISED ON APPEAL

The issues that may be raised on appeal are:

1. Whether the District Court reversibly erred in declaring the state public school finance system unconstitutional.
2. Whether the District Court reversibly erred in enjoining Defendants from adopting, implementing, administering, or enforcing any and all laws and regulations that fail to establish, maintain, and fund a thorough and uniform system of free public schools throughout the state and that is in full compliance with the requirements of the Local Control Clause.
3. Whether the District Court reversibly erred in ordering Defendants to design, enact, fund, and implement a system of public school finance that provides and assures that adequate, necessary, and sufficient funds are available in a manner rationally related to accomplish the purposes of the Education and Local Control Clauses.
4. Whether the District Court applied the correct legal standards, made reversibly erroneous findings of fact, and/or made erroneous conclusions of law in or in support of its December 9, 2011, order declaring the state school finance system unconstitutional and enjoining Defendants.
5. Whether the District Court reversibly erred in precluding the testimony of former legislator Norma Anderson regarding the drafting the 1994 Public School Finance Act.
6. Whether the District Court applied the correct legal standards, made reversibly erroneous findings of fact, and/or made erroneous conclusions of law in or in support of its trial order precluding the testimony of former legislator Norma Anderson.
7. Whether the District Court reversibly erred in striking Defendants' affirmative defenses asserting the failure to join all necessary parties, inability to enjoin the unnamed General Assembly, lack of standing, and pursuit of an unconstitutional remedy.
8. Whether the District Court applied the correct legal standards, made reversibly erroneous findings of fact, and/or made erroneous conclusions of law in or

in support of its July 21, 2011, order striking several of Defendants' affirmative defenses.

9. Whether the District Court reversibly erred in denying Defendants' requests for determination of questions of law on the burden of proof, meaning of the Education Clause, harmonizing the Constitution as whole, including the TABOR and Gallagher Amendments and Amendment 23, standard of rational basis review, unfunded educational mandates, and injunctive relief against the General Assembly.

10. Whether the District Court applied the correct legal standards, made reversibly erroneous findings of fact, and/or made erroneous conclusions of law in or in support of its July 14, 2011, order denying all but one of Defendants' requests for determination of questions of law.

11. Whether the District Court reversibly erred in excluding, by pre-trial order and also during trial, evidence of the General Assembly's non-education Constitutional mandates and appropriations, as well as the TABOR Amendment's revenue restrictions.

12. Whether the District Court applied the correct legal standards, made reversibly erroneous findings of fact, and/or made erroneous conclusions of law in or in support of its July 11, 2011, order excluding evidence of the General Assembly's non-education constitutional mandates and appropriations, as well as TABOR's revenue restrictions.

13. Whether any and/or all Plaintiffs and Plaintiff-Intervenors have standing.

14. Whether Plaintiffs and Plaintiff-Intervenors present a non-justiciable political question.

III. TRANSCRIPT OF EVIDENCE

The parties engaged Hunter and Geist, Inc. for certified real-time reporting during depositions and trial. All transcripts have been produced and are available in electronic format. The trial transcripts number 6,992 pages. Approximately 33 deposition transcripts were designated by the parties, exceeding 7,909 pages. The District Court admitted approximately 10,152 exhibits, numbering more than 38,000 pages. These exhibits were prepared by Blue Moose Litigation Support and

are available in electronic format. Defendants believe all trial and designated deposition transcripts, as well as all admitted trial exhibits, are necessary to resolve the issues that may be raised on appeal.

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V. APPENDIX OF ORDER(S) BEING APPEALED

A. Findings of Fact and Conclusions of Law entered on December 9, 2011, declaring the state public school finance system unconstitutional and enjoining Defendants, which is stayed pending appeal.

B. Court Order entered on July 21, 2011, striking Defendants' Second, Third, and Fourth Affirmative Defenses to the Amended Complaint as well as Defendants' Second, Third, Fourth, and Fifth Affirmative Defenses to the Amended Complaint in Intervention.

C. Court Order entered on July 14, 2011, denying Defendants' First and Third through Thirteenth requests for determination of questions of law.

D. Court Order entered on July 11, 2011, granting Plaintiffs' Motion *in limine* to Exclude Evidence of Non-Education Appropriations and TABOR provisions.

DATED: January 23, 2012

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **NOTICE OF APPEAL** upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 23rd day of January, 2012 addressed as follows:

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