



May 23 2011
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<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202</p>	<p><input type="checkbox"/> COURT USE ONLY <input type="checkbox"/></p>
<p>PLAINTIFFS: Anthony Lobato, et al.</p> <p>and</p> <p>PLAINTIFFS-INTERVENORS: Armandina Ortega, et al.</p> <p>vs.</p> <p>DEFENDANTS: The State of Colorado; et al.</p>	
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<p>DEFENDANTS' FIFTH SUPPLEMENTAL EXPERT WITNESS DISCLOSURES</p>	

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

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

Finally, Defendants reserve their right to disclose additional experts to rebut matters contained in the expert reports or summaries of opinions of Plaintiffs or Plaintiff-Intervenors' expert witnesses, including without limitation expert witnesses on cost studies, school funding, the economics of education, and Colorado constitutional law.

Subject to and without waiving the above reservations, Defendants disclose the following expert witness pursuant to Colo. R. Civ. P. 26(a)(2)(B)(II). This designee is a fact witnesses who may also provide expert opinion:

13. Henry Sobanet
Director, Governor's Office of State Planning and Budget
200 East Colfax Ave., Room 111
Denver, CO 80203

The subject matter of Mr. Sobanet's testimony includes, without limitation, Colorado's budget and finances, the impact of constitutional provisions on Colorado's budget and finances, comparative analyses between Colorado and other states on fiscal and budgetary issues, and related matters.

Mr. Sobanet is expected to testify that, in considering the allocation of funds to K12 education, the state must consider the overall budget and its inherent constraints: Various constitutional provisions create certain tensions. Specifically, the state must balance allocations to education, including allocations required by Amendment 23, with other provisions restricting revenue, such as TABOR and Gallagher. Further, the people of Colorado, through their elected representatives, have exercised their judgment to pass laws to fund other state programs and services to address fundamental health, safety, and welfare needs of society. Many of these laws and programs have now become, essentially, embedded values. For example, Medicaid has spending and maintenance of effort requirements from the federal government; de-funding Colorado's state financial obligations to Medicaid would mean that Colorado would lose the significant accompanying federal dollars. In short, the legislature makes its annual budget decisions in light of more than a century of the constitutional amendments and lawmaking that are the fundamental result of the republican form of government and the democratic process. The legislature also must make its budget decisions in a state in which the voters must approve any new resources. The bottom line is that it is impossible to think of K12 funding in a vacuum.

Mr. Sobanet is also expected to testify about the various factors that have strained the state's budget and revenues: The state's budget challenges are a result of both a revenue problem and a spending problem. On the revenue side, the problem is caused by a combination of constitutional revenue restrictions/mandates and the state's economic performance. Over the past ten years, there has been nearly flat general fund revenue growth coupled with a growing population demanding additional state services. On top of that, the state has seen significant growth in K12 education spending mandated by Amendment 23, and has seen the state/local burden for funding K12 education flipped, from majority local funded to majority state funded. The state faces high demand for public goods – K12 education among them – and a constitutionally and economically impaired ability to provide them.

Mr. Sobanet may also testify about the specific impacts of the constitutional revenue restrictions, specifically TABOR and the Gallagher Amendment: For example, the result of the change in residential assessment rates that stems from the combination of Gallagher and TABOR led to a reduction in revenues of approximately \$3 billion per year. Because TABOR and Gallagher are constitutional provisions, only the people of Colorado can unwind these revenue restrictions.

Mr. Sobanet is also expected to testify about the significant level of funding that is devoted to K12 education: Relative to other states, Colorado has a low state tax burden and a high local tax burden. Considering both, Colorado is somewhere in the middle regarding total taxation. Of those tax revenues, approximately half of local tax dollars go to K12 education, and approximately 40% of state tax dollars goes to K12 education. Moreover, the burden of funding K12 education has flipped in the past several years, with the state now providing the majority of total program funding. In light of these commitments, it is difficult to say that K12 is not “adequately” funded. There is no way to significantly increase the dollars flowing to K12 without impacting other fundamental state values.

Mr. Sobanet is also expected to testify that K12 education is not the only program that has funding challenges as a result of the constitutional and economic impacts on state revenues: For example, there has been a major reduction in state support for higher education, which has resulted in tuition increases. There have been reductions in health care, human services, and other core safety net programs. Additionally, the state's ability to construct and maintain buildings has been severely compromised. Essentially every state agency and program can demonstrate some adverse impact.

Mr. Sobanet is also expected to testify about the impossibility of finding significant additional dollars within the current general fund for K12 education: After K12 education, Medicaid is the largest portion of the general fund. However, there are rules that must be followed in order to draw the federal Medicaid match. If the state eliminated the Medicaid program, all funding would then be required to be provided through the state – the federal match would be lost. Public safety is another significant fraction of the general fund. In furtherance of the obligation to protect public safety, the state has determined that certain people must be incarcerated and that a humane level of treatment should be provided – both of which require a

commitment of resources. Human services is another large piece of the general fund. Eliminating or significantly reducing spending on human services would impact the most vulnerable people in our society. The people of this state, via their elected representatives, have decided these are fundamental values which must be preserved. Further, about five cents of every dollar is used to operate the judicial branch. Eliminating or significantly reducing these funds is unacceptable as well; it is difficult to have the checks and balances required by the constitution, or to ensure the redress of grievances, without a functional judiciary.

Relatedly, Mr. Sobanet is expected to testify about the irresponsibility of reallocating in the neighborhood of \$2-\$4 billion annually (the amounts referenced in the Augenblich, Palaich and Associates study produced by plaintiffs in this litigation) from other general fund programs to K12 education: If such a reallocation were required, default would be the most advisable course of action. As an example of the task of finding an additional \$2 billion, the entire Medicaid program would be eliminated. After elimination of Medicaid, we would still be required to find another \$500 million; that's the elimination of higher education funding. The state could not find an additional \$4 billion in the general fund to allocate to K12 education. There simply is not \$4 billion "extra" in the general fund (i.e., dollars not already committed to K12 education).

Finally, Mr. Sobanet is expected to testify that, from his perspective as an executive staff member dealing with state budget issues, the evidence is clear that the Joint Budget Committee, as proxies of the full legislative body, spends thousands of hours at the staff and legislator level trying to hash through funding levels and balance competing priorities in setting the annual budgets. This legislative model of deliberation, balancing, and decision making is fundamental to the fabric of this country.

DATED: May 23, 2011

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

This is to certify that I have duly served the within **DEFENDANTS' FIFTH SUPPLEMENTAL EXPERT DISCLOSURES** upon all parties herein via electronic mail, Lexis/Nexis File & Serve, and/or U.S. Mail this 23rd day of May, 2011:

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