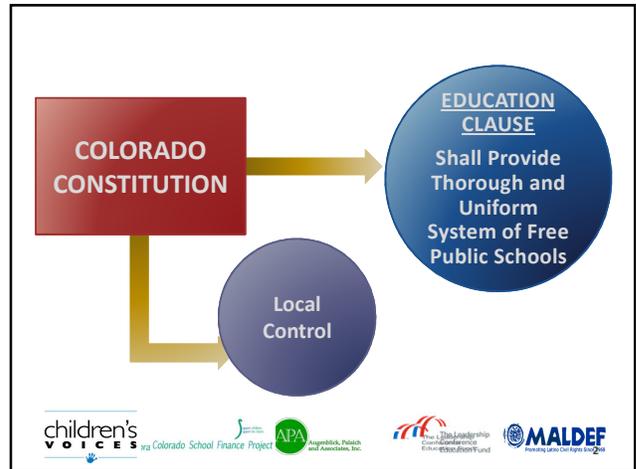


Lobato/Remedies

November 10, 2011



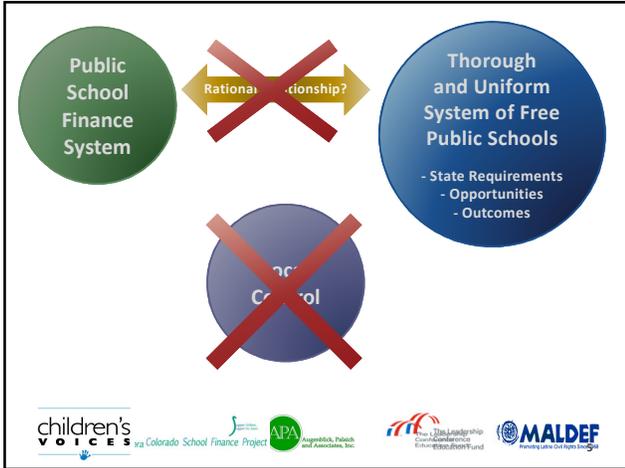
The Constitutional Basis

Article IX, Section 2 of the Colorado State Constitution: the General Assembly “ shall provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the State.”

In *Lobato*, plaintiff parents and school districts challenge the state's failure to meet the **state's obligation to create such a system that enables every child to become engaged, effective members of their communities and of the workforce.**

Lobato Lawsuit – Toward a “thorough and uniform system”

- Filed in June 2005.
- *Lobato* suit represents 21 school districts and parents and students from around the state.
- Argues that the state of Colorado is not complying with the constitutional requirement of maintaining “a thorough and uniform system of free public education.”
- Five-week trial completed in early September, decision pending.



An Historical Context: Then.

- Expectations – equal opportunity, not equal outcomes and growth
- No special ed mandates
- Few languages spoken
- High School degree garnered well-paying jobs
- Little change in technology over years
- Colorado kids competed with others in the United States
- Property taxes paid for more than 60% of total school funding
- Colorado met or exceeded national per pupil average

Logos: children's VOICES, Colorado School Finance Project, APA, The Leadership Conference on Educational Equity, MALDEF

Now.

- Expectation: universal proficiency. Enter “ready to learn” and exit “ready to work or attend college”
- Student populations considerably more diverse; over 170 languages
- Recognition of individual needs & rights of children – e.g., special ed, GT, ELL, at-risk
- Post-secondary degree required for most well-paying careers
- Preparing students for technology-driven jobs that don't yet exist
- Colorado kids competing internationally
- Property tax only 37% of total K-12 funding
- Colorado in bottom quintile for funding

Logos: children's VOICES, Colorado School Finance Project, APA, The Leadership Conference on Educational Equity, MALDEF

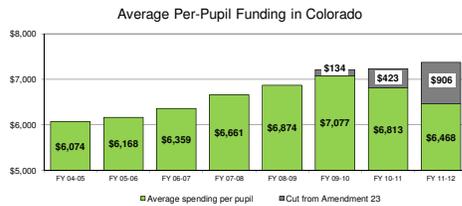
Recent Reforms

- CAP4Kids creates a new system of standards and assessments (2008)
- New Accountability and Accreditation (2009)
- Senate Bill 191 – Educator effectiveness legislation (2010)
- Not aspirational goals: these are legislative mandates with consequences

Logos: children's VOICES, Colorado School Finance Project, APA, The Leadership Conference on Educational Equity, MALDEF

Recent Funding Cuts

- Governor’s proposed 2012-13 budget cut takes per pupil spending down to FY05-06 levels. That’s >\$1B (or \$1,100+ per pupil) below Amendment 23 requirements.



What are the plaintiffs asking for?

- Based on Supreme Court ruling in 2009: Plaintiffs seek a declaration by the court that there is no rational relationship between the current school finance system and the standards/mandates the state has imposed.
- The court would give the legislature an **“appropriate period of time”** to bring the state in compliance with the constitution.



Lobato seeks to align funding with standards and mandates.

- Showcasing the consequences of failing to fund mandates and meet needs – pitting children against one another, while few are having their needs met.
- Creating a remedy will require public engagement and support for a long-term, equitable solution that does *not* come at the expense of other public needs.



What we learned at trial

Plaintiffs & Defense: Resources Matter

- *"If they're spending money, it implies that more money would lead to higher achievement, if they're efficient at it."*
Defense Expert: Eric Hanushek
- *"I believe we have significantly reduced our resources and we are going to have a hard time meeting our goals."*
Defense Witness: Harrison Superintendent Mike Miles
- *"More dollars in the right places makes a difference" for student achievement.*
Plaintiff Witness: Jeffco Superintendent Cindy Stevenson
- Resources are a *"necessary but not sufficient"* condition for improved student achievement.
Defense Witness: Lieutenant Governor Joe Garcia



What we learned at trial

Plaintiffs & Defense: Resources Matter

- Defense's evidence of "Islands of Excellence" also proved that resources matter: Every example of success in achievement came from a district or school that received significant additional public and/or private dollars outside the School Finance Act



What we learned at trial

Clear Evidence

- State did not contest evidence of increasing mandates and insufficient resources, as told through stories of parents, students, principals, school board members and superintendents from all parts of the state.
- State did *not* put on any evidence of misuse of dollars despite enormous Freedom of Information request.



What you're going to hear

- "Districts can rearrange their resources and meet standards."
 - Increasing standards and mandates combined with cuts leave little room for meaningful "redistribution".
- "Districts can increase their local mill rates to the statutory maximum"
 - That would violate local control and TABOR and also exacerbates existing inequities among districts.
- "Colorado is doing fine on national tests; and we're getting a lot of 'bang for the buck.'"
 - Standards require more than "fine," Colorado has among the largest achievement gaps in the nation.



What you're going to hear

- “Districts can pursue gifts, grants, donations, and private partnerships to fill in the gaps.”
 - Not sufficient, sustainable or equitable.
- “More money doesn't guarantee success.”
 - But lack of resources guarantees failure; state witnesses agreed.
- “This is a judicial takeover of a legislative function.”
 - Courts interpret constitutions and statutes.
 - Court's role is to determine if current system is “T&U”, not to rewrite the School Finance Act.
 - Then it's the legislature's duty to bring into compliance.



What you are going to hear (cont.):

Myth: “If Lobato succeeds, it will be devastating for the state budget . . . There will be no funding for anything but education.”

Reality: If *Lobato* succeeds, the legislature will be prohibited from further violating the Education Clause of the Constitution, placing it on equal footing with other Constitutional provisions. Lobato's vindication of children's right to a “thorough and uniform” education provides an uncharted opportunity for structural change and new revenues.



Uncharted Opportunities

Attorney General John Suthers: “The case could alter the relationship between the people of Colorado and their government for decades to come.”



Questions regarding the Lobato case and trial?



Key Messaging

- Urgency
 - The state’s failure to meet its constitutional duty is having permanent consequences for Colorado’s children -- who don’t get “do-overs.” We have already delayed far too long and the outlook is only getting worse.
- Focus
 - This is not about taxes, this is not about the budget. This is about whether every Colorado child will have an opportunity to be a well-prepared, effective member of their community and of the 21st century workforce.
- Resources matter
 - Plaintiffs and Defendants agreed that adequate resources are a necessary component of student success and achievement. They are the means to an end.
- Legislative Accountability
 - The court’s role is to diagnose if there is a constitutional failure. It is the legislature’s role to cure it. **And it is our role to hold the legislature accountable for doing their duty.**



The Role of Public Advocacy

- “**The need for public engagement and advocacy is unending**, before, during, and after a court ruling. This is one of those public policy areas that requires ‘eternal vigilance.’” – *Molly Hunter, Director, Education Justice at the Education Law Center*
- **Successes in other states** show effectiveness and importance of public engagement.
- **Colorado poses unique challenges** -- heightening the importance of collective action and commitment.
- Only broad public advocacy can **maintain the laser focus on children** – not budget.

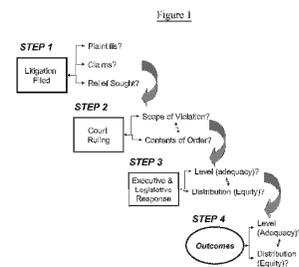


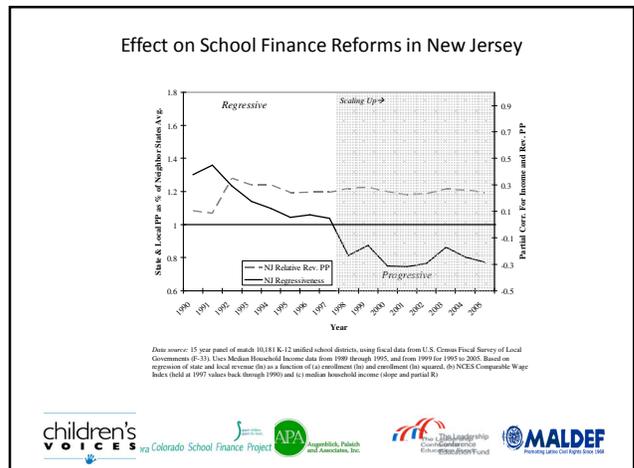
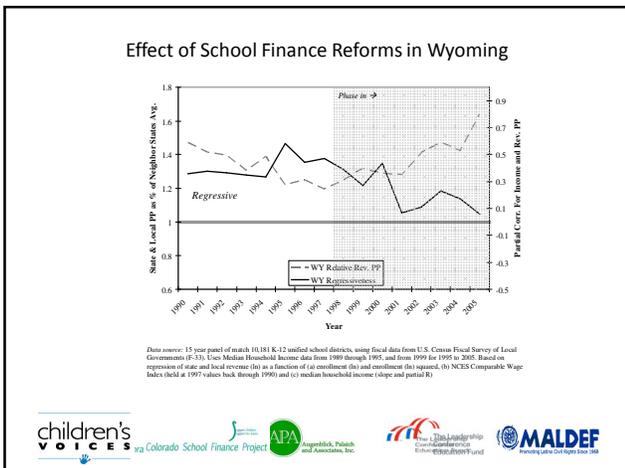
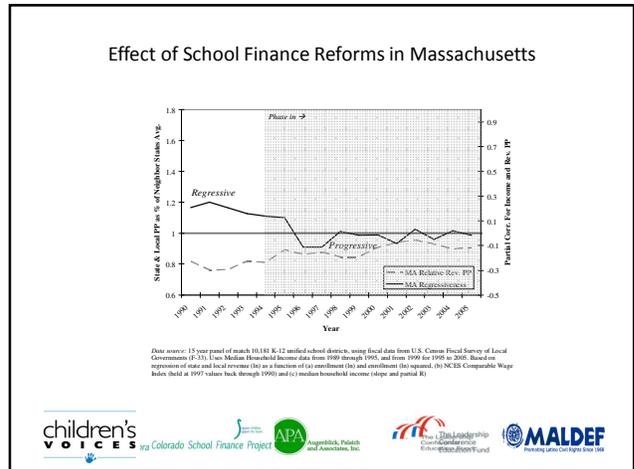
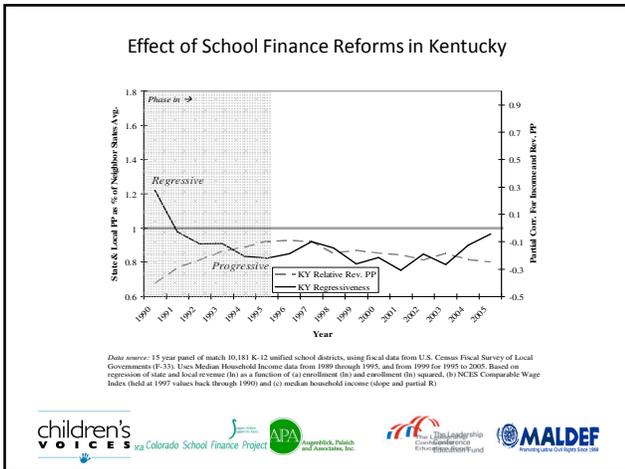
For discussion:

- How do we introduce this topic to public education supporters?
- What messages are most effective?
- How do we educate, move and empower the legislature to meet its constitutional duty?
- What should we ask to the legislature to do?



Adequacy Litigation





• Thorough & Uniform System:

–“On remand, the trial court must give substantial deference to the legislature’s fiscal and policy judgments. It may appropriately rely on the legislature’s own pronouncements concerning the meaning of a ‘thorough and uniform’ system of education.”

–*Lobato v. State*, 218 P.3d 358, 363 (Colo. 2009)



• Rational Relationship:

–“To be successful, [plaintiffs] must demonstrate that the school finance scheme is not rationally related to the constitutional mandate of a ‘thorough and uniform’ system of public education.”

–*Id.* at 374



Remedy

• “If the trial court finds the current system of public finance irrational and thus unconstitutional, then that court must permit the legislature a reasonable period of time to change the funding system so as to bring the system in compliance with the Colorado Constitution.”

–*Lobato*, 218 P.3d at 363-64.



Remedy (cont.)

- Public school finance system is not rationally related to a “thorough and uniform system of free public schools”
- Public school finance system violates Local Control Clause
- Defendants have violated and are violating the constitutional rights of each and all of the Plaintiffs



- “In the name of the Education Clause, the General Assembly has established a comprehensive system of educational goals, methods, and measures, all of which it requires school districts to implement successfully. A system intended to finance a constitutional mandate cannot be rationally related to that purpose if it is created and funded without reference to the costs of providing the mandated services.”

– Court’s July 14, 2011 Order at 6.



Remedy for 800,000+ students

- Resources needed for the “new” education system of reforms
- Reforms are not only compliance or aspirational but are tied to sanctions
- Conflict of policy makers: accountability system or dictate resource allocation
- Educators know what is needed to improve education – need resources to implement



Principles of formula

- Must comply with the constitution – “thorough and uniform” and “local control”
- Supports all public school students
- Quality education for all students
- Sustainable revenue
- No rearranging of existing revenue
- Periodic review of School Finance formulas
- Mill Levy – distinction: formula vs. override



Base Funding

- Must be determined rationally – adequate and equitable distribution
- Must include:
 - resources for competitive salaries;
 - staff development;
 - technology;
 - full day kindergarten;
 - preschool for all at-risk 3 and 4 yr olds;
 - supplies and materials;
 - extra curricular activities



Adjustments to Base

- Accommodate district differences:
 - size based on enrollment
 - cost of living or cost of doing business
 - personnel cost

(addressing economies of scale)



Adjustments to Base

- Student characteristics
 - At-risk: free and reduced lunch and academic proficiency
 - ELL – based on proficiency/research/content
 - Gifted and talented
 - Special Education – reimbursement rates – high cost pool – quality programs
 - 5th Year



Categoricals

- Program specific
 - Alternative Education
 - Vocational Education
 - Transportation
 - Facilities
 - Food Services



Additional considerations

- Mill Levy overrides – must solve for variances created by:
 - Geography
 - Property wealth
 - Local Capacity
- Must honor Local Control of Instruction



BOCES/RSA

- Must identify and provide sustainable funding for services



Facilities

- State responsible to ensure that all students attend school in safe and adequate learning environment.
- This includes State funding for facilities.



Contacts

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