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September 6, 2013

Honorable Elisabeth A. Shumaker
Clerk, U.S. Court of Appeals for the 10th Circuit
Byron White U.S. Courthouse
1823 Stout Street
Denver, CO 80257

RE: Governor's Citation of Supplemental Authorities,
Fed. R. App. P. 28(j)
Kerr, et al., v. Hickenlooper, No. 12-1445

Dear Madam Clerk:

Throughout this litigation, Plaintiffs have relied on the contentions in a state-court case, *Lobato v. State*. See, e.g., Complaint at ¶¶ 45, 72, 76-77, 80-81. Plaintiffs contend that the *Lobato* case showed that the "thorough and uniform" education clause of the Colorado Constitution gives the educator-plaintiffs an "ongoing constitutional responsibility to obtain the funds needed for their schools" and that TABOR interferes with this obligation. Ans. Br. at 47-49.

The Colorado Supreme Court has now ruled that the existing public school financing system (with TABOR in place) "complies with the Colorado Constitution" and satisfies the "thorough and uniform" clause of the Colorado Constitution. *Lobato v. State*, ___ P.3d ___, at ¶ 1, 2013 CO 30, 2013 LEXIS 383 (May 28, 2013).

The Supreme Court's ruling disproves, as a matter of law, Plaintiffs' contentions that "Colorado lacks funding to provide a uniform state-wide public

school system due to the constraints of TABOR” or that TABOR has interfered with the Plaintiffs’ ability to comply with an “Article IX constitutional obligation” to provide for public education. *See* Ans. Br. at 48-49.

Sincerely,

FOR THE ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read 'D. Domenico', written over a horizontal line.

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