



KUTZ & BETHKE LLC  
**NEWSLETTER**

*legal updates for the charter school community*

**Charter Institute Upheld.** The Colorado Court of Appeals, in a 2-1 decision, has upheld the constitutionality of the Colorado Charter School Institute (CSI). In a case brought by Boulder Valley School District, the Court found that CSI did not violate constitutional “local control.” The Colorado Supreme Court has applied a “balancing” test on “local control” issues. In the Court of Appeals’ view, CSI was *less* intrusive on “local control” than appeals of local charter decisions to the State Board of Education — a form of State “supervision” upheld by the Supreme Court.

The Court distinguished a recent Florida case that struck down a similar state-chartering effort under Florida’s more rigorous “local control” standards. We expect Boulder to request the Colorado Supreme Court to review the case. The Supreme Court has discretion to take the case or leave the Court of Appeals decision intact. Kutz & Bethke filed an *amicus* brief in this case for Pinnacle Charter School.

**Building “Support” Case Argued.** On March 3, William Bethke argued *Dolores Huerta Preparatory High v. Pueblo School District* to the Colorado Court of Appeals. The argument was held before an assembly of students of Poudre High School, in Fort Collins.

DHPH was a newly-approved charter school in Pueblo School District 60 when Pueblo passed a \$98M bond. Unlike all other District 60 schools, DHPH received no building support. The local board and DHPH agreed on \$900,000 from the bond, but the board withdrew this support at the last minute.

In dispute resolution, Judge Coughlin ordered the \$900,000 restored to DHPH. The judge remarked that District 60 was improperly treating DHPH students — who for three years

studied in dry, used modulars — as if they were strangers, not District students. Pueblo appealed to the State Board, which reversed Judge Coughlin’s order largely based on the “local control” limits of Colorado law. DHPH filed suit. The District Court found that a charter school could not sue to enforce either the Charter Schools Act or the state constitution. That issue is before the Court of Appeals. William Bethke has been co-counsel with Dolores Atencio, the Cesar Chavez Network’s general counsel, throughout the court proceedings. A ruling by the Court of Appeals is likely by summer or early fall.

**“Thorough and Uniform” Case Scheduled for Supreme Court Argument.** A challenge to “school reform” legislation, brought by several school districts, is scheduled for argument to the Colorado Supreme Court in April. *Lobato v. State Board of Education*, was dismissed by the Denver District Court and the Court of Appeals on the grounds that the certain constitutional issues were not properly heard by the judiciary. The *Lobato* plaintiffs are attempting to argue that the Legislature has failed to live up to its constitutional duty to provide “thorough and uniform” public education — especially by placing new burdens on schools without adequately funding these efforts.

Colorado cases make such challenges difficult to win. Judges usually respect legislation and require strong proof of a constitutional defect. But the Court of Appeals in *Lobato* found it not

**Over:**  
Copier  
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difficult, but impossible, to pursue a “thorough and uniform” claim. This decision could restrict the rights of districts, taxpayers, parents and charter schools to get real constitutional disputes resolved. The Supreme Court’s decision to grant review indicated that it would look at whether “funding adequacy” claims were or were not properly brought in court — perhaps contrasting these with more traditional “funding equity” issues. Kutz & Bethke filed an *amicus* brief in *Lobato* for the Colorado League of Charter Schools.

**Watch Out for Copier Contracts!** A Colorado charter school has recently had a judgment for over \$40,000 entered against it for trying to use TABOR to break a multi-year copier contract. The School’s position under Colorado law appears to be sound, but the case was decided in Minnesota. The copier contract states that any breach of contract claim will be brought in Minnesota, applying Minnesota law. While an appeal is anticipated, this case is a useful reminder that even if TABOR *permits* ending a contract that failed to include proper TABOR language, the conservative course may be to live with a questionable multi-year obligation and make sure every new contract is either for one fiscal year *or* includes proper TABOR non-appropriation language.

**Dividing PPR With “Transfer” Students Held Improper.** In a strict application of the finance sections of the Charter Schools Act, the Court of Appeals agreed with a charter school that it was improper for a charter contract to divide PPR after “transfer” of students. Notably, this was another case in which an all-but-negotiated contract was changed at the last minute by school board demand. The Court of Appeals noted that school districts had overwhelming bargaining power over charters, and found this contract change contrary to statute. Colorado PPR is allocated based on October count, and

the Charter Schools Act provides in exacting detail how PPR is to be divided between a school and an authorizer. The Act does not allow for a separate division so that a fraction of PPR can follow a “transfer” student. *Ridgeview Classical Schools v. Poudre School District* recognizes the real risk of inequitable or arbitrary charter funding at the local level.

#### **Alternative**

**Campuses Organize.** To be one of Colorado’s Alternative Education Campuses a school must serve 95% “high risk” students. “High risk” students have documented and serious risk factors in their personal or family background. There are 58 AECs in Colorado. About 1/3rd of AECs are charter schools and 1/3rd of charter high schools are AECs. In January, assisted by William Bethke, a new Coalition of Colorado Alternative Education Campuses (CCAEC) formed. The mission of CCAEC is “To provide support for AECs by advocating for appropriate policies at the local, state and national level for education of high risk students through research-based best practices.”

**Board Training:** Does your board follow the Sunshine Act in holding meetings? Do Board members know how to spot and handle a conflict of interest? Does your Board avoid administrivia and focus on *governing* your school? Kutz & Bethke offers board training tailored to school needs, at

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