ALLISON EID ON EDUCATION

Highlights:

- Allison Eid supported efforts to make schools underfunded and discriminatory.
  - Eid opposed a Colorado Supreme Court decision that struck down a school district's program using public funds which allowed discrimination on the basis of disability.
  - Eid was hostile to public education funding.
    - Eid joined a majority opinion hostile to a challenge to Colorado's education funding system.
    - Eid was the lone dissenter in a case involving public school funding.
    - Eid assisted the Colorado attorney general's opposition against granting in-state tuition status to undocumented immigrants.
      - As Colorado solicitor general, Eid assisted in preparing a formal opinion for the attorney general concluding that Colorado could not grant in-state tuition status to undocumented immigrants

Eid Opposed Accessible And Safe Education

2015: EID DISSENTED FROM A COURT DECISION THAT STRUCK DOWN A PROGRAM ALLOWING DISCRIMINATION ON THE BASIS OF DISABILITY

2015: The Colorado Supreme Court Struck Down Douglas County School District's Choice Scholarship Program

2015: The Colorado Supreme Court Struck Down Douglas County School District's Choice Scholarship Program, Which Channeled Public Funds To Religious Schools. According to the Washington Post. "The Colorado Supreme Court struck down a voucher program in the state's third-largest school district Monday, finding the program unconstitutional because it channels public funds to religious schools. The divided ruling reversed a decision by a state appeals court and means that the Douglas County School District will not be able to administer its Choice Scholarship Pilot Program, which allowed families to use taxpayer dollars to pay for private school." [Washington Post, 6/29/15]

- **The Choice Scholarship Program Permitted "Private School Partners" To Discriminate Against Students With Disabilities.** According to Justice Márquez's Concurrence of the Colorado Supreme Court Decision in "Taxpayers For Public Education v. Douglas County School District," "The Private School Partners are plainly not public schools, and the trial court found that fourteen of the twenty-three Private School Partners are located outside the Douglas County School District. Sixteen are sectarian or religious and teach 'sectarian tenets or doctrines' as this term is used in article IX, section 8 of the Colorado Constitution. At least eight discriminate in enrollment or admissions on the basis of religious beliefs or practices. In addition, the trial court found that the CSP permits Private School Partners to discriminate against students with disabilities; that one school has an 'AIDS policy' under which it can refuse to admit, or expel, HIV-positive students; and that another participating school lists homosexuality as a 'cause for termination' in its teacher contract. Finally, every single one of the CSP's Private School Partners charges tuition." [2015 CO 50, "Taxpayers For Public Education v. Douglas County School District," The Supreme Court of the State of Colorado, No. 13SC233, Filed 6/29/15]

Eid Dissented From The Colorado Supreme Court's Opinion

Eid Dissented From The Colorado Supreme Court's Opinion, Claiming Allegations Of Anti-Catholic Aminus. According to Justice Eid's Dissent of the Colorado Supreme Court Decision in "Taxpayers For Public Education v. Douglas County School District," "In the end, the plurality's head-in-the-sand approach is a disservice to Colorado, as it allows allegations of anti-Catholicf animus to linger unaddressed. The plurality should squarely address the issue of whether section 7 is enforceable, as this court has done with other provisions of the Colorado Constitution. See, e.g., Colo. Educ. Assoc. v. Rutt, 184 P.3d 65, 79 (Colo. 2008) (interpreting article XXVIII of the Colorado Constitution as enforced against labor organizations consistently with First Amendment jurisprudence). Because the plurality fails to do so, and because it misinterprets the text of section 7 and ignores relevant Establishment Clause jurisprudence, I respectfully dissent from its

opinion." [2015 CO 50, "Taxpayers For Public Education v. Douglas County School District," The Supreme Court of the State of Colorado, No. 13SC233, Filed 6/29/15]

The U.S. Supreme Court Remanded The Case, But The Program Was Rescinded And The Case Was Dismissed

The U.S. Supreme Court Remanded The Case For Reconsideration In Light "Trinity Lutheran Church Of Columbia, Inc. v. Comer," But The School District Rescinded The Program And The Case Was Dismissed. According to the University Of Colorado Law Review, "The Colorado Supreme Court in 2015 ruled that the Choice Scholarship Program indeed violated Article IX, § 7. In 2017, the United States Supreme Court granted certiorari, vacated the Colorado Supreme Court's decision, and remanded the case for reconsideration in light of its recent opinion in Trinity Lutheran Church of Columbia, Inc. v. Comer. But prior to the rehearing, the Douglas County School District Board of Education rescinded the Choice Scholarship Program, and the case was dismissed as moot. In an instant, the effect of years of litigation completely vanished.[University Of Colorado Law Review, Accessed 6/26/24]

EID WAS HOSTILE TO PUBLIC EDUCATION FUNDING

2015: Eid Joined A Majority Opinion Hostile To A Challenge To Colorado's Education Funding System

Amendment 23 Directed The Colorado To Spend More Money On K-12 Education. According to the Colorado Sun, "In 2000, Colorado voters passed a constitutional amendment directing the state to spend more money on K-12 education. Known as Amendment 23, the measure did a few things, but the most significant was requiring the state to increase base per-pupil school funding by at least the rate of inflation each year. For the first 10 years, per-pupil funding also increased by an additional 1% on top of that." [Colorado Sun, 1/27/21]

Colorado Lawmakers Crafted A Workaround Called The "Negative Factor," Which Allowed Them To Skirt Fully Funding Education. According to the Colorado Sun, "That year, however, with the state's budget in the throes of a financial crisis inflicted by the Great Recession, state lawmakers decided they could no longer afford to keep up with the growing cost of education. Facing steep budget cuts, lawmakers rescinded $130 million owed to schools during the 2009-10 fiscal year. A year later, they created the inscrutable budget writing device known as the 'negative factor,' providing a legal mechanism to cut education funding without running afoul of Amendment 23. The 'negative factor' refers to the amount that state budget writers are falling short of school finance requirements each year. It was later renamed the budget stabilization factor because lawmakers thought the original name had, well, a negative connotation." [Colorado Sun, 1/27/21]

2015: Eid Joined Colleagues In The Colorado Supreme Court Ruling That Upheld The "Negative Factor"

The Colorado Supreme Court Ruled To Uphold The "Negative Factor" And Its Use. According to the Colorado Sun, "In Dwyer v. State of Colorado, the Colorado Supreme Court in 2015 ruled that the negative factor is allowed under the state constitution. But the narrow 4-3 decision shows how controversial the budget maneuver was. The court's decision hinged on the distinction between base per-pupil funding and total program funding, which includes the additional factors within the School Finance Act, like educating at-risk children or those with special needs. Lawmakers argued that Amendment 23 only required the statewide base funding to increase by inflation each year, not the districts' total program funding. The court agreed, ruling that the negative factor is legal as long as it comes out of the additional money districts receive for those other factors." [Colorado Sun, 1/27/21]

2015: Eid Joined The Narrow Majority Opinion. According to the Supreme Court of the State of Colorado Opinion in "Dwyer v. State of Colorado," "Plaintiffs allege that the State has improperly reduced statewide base per pupil funding in violation of Amendment 23. In so doing, they confuse 'base' with 'total.' Interpreting the term 'statewide base per pupil funding' according to its plain and statutorily defined meaning, we hold that the negative factor has not reduced the base below its constitutional minimum and thus does not violate Amendment 23. Therefore, Plaintiffs have failed to state a claim for relief. Accordingly, we make our rule absolute, and we remand this case to the trial court with instructions to dismiss Plaintiffs' complaint." [2015 CO 58, "Dwyer v. State of Colorado," The Supreme Court of the State of Colorado, No. 15SA22, Filed 9/21/15]

2009: Eid Was The Lone Dissenter In A Case Involving Public School Funding

The Colorado Supreme Court Ruled To Uphold Locally Raised Revenue To Address Public School Funding

The Colorado Supreme Court Ruled To Uphold Locally Raised Revenue To Address Public School Funding. According to the Supreme Court of the State of Colorado Opinion in "Mesa County Board Of County Commissioners v. State of Colorado," "We conclude that SB 07-199 was a constitutional application of article X, section 20 to the School Finance Act. The plaintiffs failed to prove it unconstitutional beyond a reasonable doubt. Subsection (4)(a) does not require a second election for legislation directing a local school district to use funds received as a result of a valid waiver election under subsection (7). Article X, section 20 does not expressly address the situation raised by the dual funding nature of the School Finance Act except to prohibit local school districts from refusing to pay their mandated share of funding. The school districts remained the relevant taxing authority for purposes of the locally raised revenue, and a statewide vote is not required to waive a revenue limit at the local level. […] We find that there is ample evidence and authority to find SB 07-199 constitutional, and conclude that the plaintiffs failed to show it violated a constitutional provision. The judgment of the district court is reversed and the case is remanded to that court with directions to enter judgment for the defendants." [203 P.3d 519 (2009), "Mesa County Board Of County Commissioners v. State of Colorado," The Supreme Court of the State of Colorado, No. 08SA216, Filed 3/16/09]

Eid Dissented From The Colorado Supreme Court's Opinion

2009: Eid Dissented From The Colorado Supreme Court's Opinion. According to Justice Eid's Dissent of the Colorado Supreme Court Decision in "Mesa County Board Of County Commissioners v. State of Colorado," "Justice EID, dissenting. Today the majority holds that SB 07-199 — which in effect authorizes a $117 million tax increase on Colorado taxpayers — complies with article X, section 20 of the Colorado Constitution, even though the voters never approved it. The majority's rationale for its decision — namely, that SB 07-199 is simply not covered by article X, section 20 — is, in my view, utterly unconvincing. In order to reach this result, the majority discovers that a gaping hole exists in article X, section 20 — a hole so big that, according to the majority, SB 07-199 falls right through it. […] There has never been (and under the majority's opinion today, never will be) a vote of the people authorizing this change in state tax policy. Because the majority deprives the people of their right to vote on SB 07-199 and the $117 million tax increase it permits, I must respectfully dissent from its opinion." [203 P.3d 519 (2009), "Mesa County Board Of County Commissioners v. State of Colorado," The Supreme Court of the State of Colorado, No. 08SA216, Filed 3/16/09]

Eid Joined A Dissent Against Allowing A Group Of Parents To Challenge Colorado's School Funding System

The Colorado Supreme Court Ruled To Allow A Group Of Parents To Challenge The State's School Funding System As Contrary To The Colorado Constitution. According to the Supreme Court of the State of Colorado Opinion in "Lobato v. State of Colorado," "Accordingly, the plaintiffs must be provided the opportunity to prove their allegations. To be successful, they must prove that the state's current public school financing system is not rationally related to the General Assembly's constitutional mandate to provide a "thorough and uniform" system of public education." [218 P.3d 358 (2009)), "Lobato v. State of Colorado," The Supreme Court of the State of Colorado, No. 08SC185, Filed 10/19/09]

Eid Joined A Dissent Against Allowing A Group Of Parents To Challenge The State's School Funding System As Contrary To The Colorado Constitution. According to the Dissent of the Colorado Supreme Court Decision in "Lobato v. State of Colorado," "'Constitutions must necessarily be interpreted to meet the needs of changing times, but the critical, constitutionally-prescribed boundary separating the executive and legislative powers must remain constant.' Lamm, 704 P.2d at 1378. I would hold today that this court should apply this unquestionably prudent logic to the judiciary as well, reinforcing the boundaries between all three branches of government. Education funding in this state may represent a crisis demanding resolution, but that resolution must take place within the constitutionally-prescribed forum as the inherent policy determinations in such a remedy lie outside the scope of this court. For these reasons, I respectfully dissent from the majority opinion regarding justiciability. I am authorized to state that Justice COATS and Justice EID join in this dissent." [218 P.3d 358 (2009)), "Lobato v. State of Colorado," The Supreme Court of the State of Colorado, No. 08SC185, Filed 10/19/09]

Eid Assisted Opposition Against Granting In-State Tution Status To Undocumented Immigrants

As Colorado Solicitor General, Eid Assisted In Preparing A Formal Opinion For The Attorney General Concluding That Colorado Could Not Grant In-State Tuition Status To Undocumented Immigrants. According to the Colorado Department Of Law, "In sum, federal law requires that, in order for states to grant in-state tuition status to undocumented aliens, they must first affirmatively provide for such eligibility, and do so on a residency-neutral basis. Currently, state law provides in-state tuition status based on residency. Several bills have been introduced in the General Assembly that would eliminate residency classification and determine in-state tuition status based on residency-neutral criteria, but none has passed. The question posed by CCHE is whether it has the authority to make such a change, by policy or regulation. As set forth above, CCHE's authority under the Tuition Classification Act is quite limited, and does not encompass authority to change the criteria by which in-state tuition status is granted. For this reason, I conclude that CCHE lacks statutory authority to establish a policy or regulation granting in-state tuition status to undocumented aliens. Rather, such a determination would require an amendment to the Tuition Classification Act by the General Assembly." [Colorado Department Of Law, 1/23/06]

Eid Was Named On The Brief. According to the Colorado Department of Law,

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FORMAL OPINION	)	No. 06-01
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Of	)	AG Alpha No. HE HE AGBBT
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JOHN W. SUTHERS Attorney General	)	January 23, 2006

This opinion, requested by Executive Director Rick O'Donnell, concerns the authority of the Colorado Commission on Higher Education ("CCHE") to grant in-state tuition status to undocumented aliens.[1]

[Colorado Department Of Law, 1/23/06]