District Court, Archuleta County, Colorado
449 San Juan St., Pagosa Springs, Colorado 81147

Pat Alley, Dave Brackhahn, Wayne Bryant, Greg Giehl, Cole Graham, Dean Greenamyer, Bill Gottschalk, Sue Gottschalk, Stephen Keno, Tom Kramer, Jeffrey Maehr, Sharon Parker, Tracy Salazar, Dennis Spencer, John and Jane Does, 1-600, representing most signatories on ballot initiatives; Plaintiffs v. Archuleta County Board of County Commissioner Clifford Lucero, Commissioner Steve Wadley, Commissioner Michael Whiting, County Attorney Todd Starr; Defendants	▲ COURT USE ONLY Case No. 16-CV-4

MOTION FOR RECONSIDERATION AND REHEARING, AND LAWFUL ADJUDICATION OF ALL EVIDENCE PRESENTED AT THE OCTOBER 2, 2017 EVIDENTIARY HEARING

Plaintiffs come before this court with this Motion for Reconsideration of all facts presented in their defense regarding attorney fees, and adjudication of all evidence of October 2, 2017 not addressed by Defendants or Judge Wilson. Plaintiff's actions were, and are, clearly not groundless or frivolous. Plaintiffs state for the record the following facts in evidence:

1. Plaintiffs have proven that they were showing good faith efforts, based on the evidence of record. There is a sufficiency of evidence to substantiate CRS 13-17-102

to not authorize attorney fees against Plaintiffs.

Oct. 2, 2017 evidence presented easily substantiates Plaintiff's good faith belief in their actions. Supporting evidence, corroborated by Judge Wilson's conflicting Order for this is provided as follows.

2. Plaintiffs contend that virtually none of the evidence presented in the October 2, 2017 evidentiary hearing was considered in the issue of attorney fees under C.R.S. 13-17-102. Defendants failed to object to any of the statutory or constitutional evidence presented throughout. Failure to object to this evidence is prima facie evidence that Defendants agree to this evidence.

3. Plaintiffs comment on the following conclusions by Judge Wilson in his Order;

> a) "... the plaintiffs were aware that their effort to place the initiative they drafted on the ballot in Archuleta County lacked substantial justification."

Plaintiff's provided clear evidence that this conclusion is not of record and mere hearsay and presumption, with no findings and conclusions([1]) on the statutory or constitutional evidence being provided to Judge Wilson. It also conflicts with Judge Wilson's own statements at b), d) & g) below.

> b) "...While the plaintiffs did believe that they had a constitutional right to place the initiative on the ballot, such belief is based upon a deeply flawed understanding of constitutional and statutory law, as well as a complete refusal to accept that their legal beliefs could be wrong."

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[1] "The parties are entitled to know the findings and conclusions on all of the issues of fact, law, or discretion presented on the record." *Federal Maritime Commission V. South Carolina State Ports Authority et al,* citing *Butz v. Economou* 438 U.S. 478, 98 S. Ct. 2894, 57 L. Ed. 2d 895, (1978).

FRCPA Rule 52. (a) Findings and Conclusions. (1) In General. In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court.

The Supreme Court of Oregon has ruled on this issue. By 1912, the Court acknowledge that "a county is clearly a municipality or district..." Schuber v Olcott, 120 p379 Ore. 1912. Oregon's local provision reads as follows: (1906). Const. art. IV, sec. 1(5).

> "The initiative and referendum powers reserved to the people by this Constitution are further reserved to the legal voters of every municipality and district, as to all local, special and municipal legislation, of every character, in or for their respective municipalities and districts. The manner of exercising said powers shall be prescribed by general laws, except that cities and towns may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation." (Emphasis added).

The Colorado's provision reads as follows: Article V section 1(9):

> "The initiative and referendum powers reserved to the people by this section are hereby further reserved to the registered electors of every city, town, and municipality as to all local, special, and municipal legislation of every character in or for their respective municipalities. The manner of exercising said powers shall be prescribed by general laws; except that cities, towns, and municipalities may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. Not more than ten percent of the registered electors may be required to order the referendum, nor more than fifteen percent to propose any measure by the initiative in any city, town, or municipality." (Emphasis added).

The textual similarities in these statutes are obvious. Does Judge Wilson also consider the Supreme Court of Oregon as having a "deeply flawed understanding of constitutional and statutory law?" Plaintiffs previously presented evidence proving

that a county is a municipality([2]), and thus falls within the purview of the Colorado statutes on initiatives, Dellinger notwithstanding.([3])

Plaintiffs based their entire case on the statutory and constitutional evidence quoted in previous documents, and on county government employee Madrid's video statement evidence. The evidence was never rebutted or objected to by Defendants, and Judge Wilson failed to adjudicate all the elements of this case which were key to Plaintiff's suit.

> c) "...The plaintiffs also acted because they either will not or cannot accept that previous decisions made by appellate courts that do not conform to the plaintiffs' flawed beliefs are correct statements of the law.

This is another example of a presumptive statement based on hearsay. Plaintiffs have repeatedly requested rebuttal and comment on their statutory evidence and conclusions regarding the Dellinger case. This was clearly elucidated and expanded upon in previous documents, but this was continually ignored.

> d) "The Court finds the legal beliefs of the plaintiffs, while sincerely held, are unreasonable."

Plaintiffs contend this statement, along with failure to lawfully adjudicate the evidence of record (findings and conclusions...) is more hearsay without evidence of

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[2] Daniel G. DELLINGER and Committee for Growth Limits, an unincorporated association, Plaintiffs-Appellants, v. Board of County Commissioners for the County of Teller, 20 P.3d 1234 (2000).

Municipality. "A legally incorporated or duly authorized association of inhabitants of limited area for local governmental or other public purposes. **Political subdivision or public agency or instrumentality of a State**. Bankruptcy Act, § 1 0 1 (29)." Blacks Law Dictionary. Counties fall into this "political subdivision" category as well and cannot be excluded from the county People's reach for initiatives. In Senate Bill, 12 Colo. 188, 21 P. 481 (1988) it states: "Municipal", as used in this section, is not confined to counties, townships and the like."

[3] *Dellinger* was originally introduced by Defendant Starr as Defendant's primary defense, and the court seems to believe that because one case is sited as evidence as the ultimate law and authority on the issue, that Plaintiffs were to merely accept this case as fact and law and not investigate the origins and issues of the case. Plaintiffs proved they spent countless hours researching this entire topic and found *Dellinger* conflicting with the legislature's clear intent.

record, and prima facie evidence of Judge Wilson's presentation of bias and prejudice against them.

> e) "The plaintiffs did not present any evidence that would overcome the prima facie showing that the County was entitled to attorney's fees."

Plaintiffs spent most of the day on October 2, 2017 presenting documents and video evidence clearly proving they were grounded in their actions. These actions were, stating once again, supported by Archuleta County Recorder June Madrid, who is in charge of the entire ballot/initiative process, providing clear video statements agreeing that the Plaintiffs did everything right and that the Defendants did everything wrong. How can Plaintiffs hear such testimony, and, combining all the other unrebutted evidence of record, and then believe we were groundless and frivolous in our attempts? How much more evidence is needed for due process of law and justice to be had?

> f) "The motion to show cause was clearly groundless."

Plaintiffs hold up all the documents to date as evidence this conclusion breaches the bounds of proper judicial conduct by Judge Wilson, and is prima facie evidence for further investigation into judicial misconduct in this case.

> g) "After hearing the evidence, the Court finds that the plaintiffs truly believed that Dellinger was improperly decided and that they had a constitutional right to have their initiative placed upon the Archuleta County ballot. While the plaintiffs did believe that they had a constitutional right to place the initiative on the ballot...The Court finds the legal beliefs of the plaintiffs, while sincerely held..."

Judge Wilson above admits Plaintiffs had a good faith belief in their suit... ("truly believed"...) and Plaintiffs pursued this based on their evidence in the record. Plaintiffs point out the clear contradiction to the Order granting attorney fees in the above statements by Judge Wilson and demands of Rule 13-17-102, Section 6...

> "(6) No party who is appearing without an attorney shall be assessed attorney fees unless the court finds that the party clearly knew or reasonably should have known that his action or defense, or any part thereof, was substantially vexatious, substantially groundless, or substantially frivolous; (Emphasis added).

Judge Wilson's conclusions in the above observations at g) agree that Plaintiffs clearly did not believe their "action or defense, or any part thereof, was substantially vexatious, substantially groundless, or substantially frivolous."

Court testimony of Plaintiffs also proves that the October 2, 2017 evidentiary hearing evidence more than substantiated their good faith belief, and is more than sufficient evidence overwhelming the alleged evidence by Defendants, both which vitiates any demand for attorney fees under Rule 13-17-102 (6).

4. The issue of attorney fees as it relates to the Defendants in case 16 CV 4, are these:

The public service corporation known as County of Archuleta did not injure the Plaintiffs. In fact, it's machinery is still waiting to be put into service for the Plaintiffs to process the petitions and get the Initiatives in front of the electors.

The County of Archuleta and all electors have been, in fact, injured by the Defendants in Archuleta County District Court, civil case 16 CV 4...

> A) The four Defendants, Todd Starr, Clifford Lucero, Michael Whiting, and Steve Wadley, using their public service employment positions within the County of Archuleta, have, in fact, injured the signed plaintiffs, and have in fact, injured the 600+ signers of the eleven Initiative Petitions, and that injury has continued non-stop, ever since election day November 2014.
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> B) The four named Defendants, using their public service employment positions, have broken the public trust and violated their sworn Oaths of

Office, thereby losing any civil immunity bestowed upon them as government employees in the service of their community.

C) The four named Defendants have, in fact, violated several election laws by their individual participation in a conspiracy to suppress initiative petitions, by tampering with the public record for the County of Archuleta, and in fact, committed felony Fraud upon the Court.

D) If any party should be required to reimburse the County of Archuleta for attorney fees, it should be the Defendant's CTSI Crime Insurance policy.

E) The Plaintiffs are the initial injured parties, in fact. It is a serious assault upon the sensibilities of the community to think that Judge Wilson could or would attempt to use his Public Service position as Chief Judge to again injure the plaintiffs and force them to pay County of Archuleta for the criminal behavior of the Defendants.

5. CRCP 11 was clearly complied with in evidence presented from the beginning Motion to Show Cause brief and subsequent documents. Plaintiffs clearly proved in the record that good faith actions were ongoing, and that statutory laws and constitutional rights were cited. This conclusively proves there was no frivolous or groundless basis for their actions.

**Because the relevant constitutional and statutory evidence was prematurely dismissed, and based on the ongoing criminal investigation, Plaintiffs present the following dialog to further substantiate their good faith actions;

6. Evidence of Fraud on the court: Judge Wilson erred in denying Plaintiff's Rule 60 Motion([4]). Judge Wilson incorrectly based his ruling on poor service of

[4] Judge Wilson has the authority to set the Order Judgement aside per Rule 60(b) Mistakes; Inadvertence; Surprise; Excusable Neglect; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake,

Defendant's May 25th Response rather than the fraud. Fact; The fraud occurred when the Defendants filed a false Affidavit in Support of Motion for Summary Judgment. Time line...

On 12-28-2016, Defendants filed a false document titled Affidavit in Support of Summary Judgement.

On 5-12-17, Plaintiffs filed New Evidence package([5]) which lists the time line and proves suppression of petitions, tampering with the public record, and fraud upon the court which has never been properly addressed.

On 6-20-17, Plaintiffs filed a Notice of Fraud criminal complaint on the District Court for Archuleta County, and copied to Archuleta County Sheriff.

On 7-10-17, Plaintiffs appeared in court prepared to present and explain all evidence filed on May 12, 2017. Plaintiffs were denied the opportunity to present the evidence.

On 7-19-17, Plaintiffs presented evidence to Sheriff Valdez to begin the investigation into felony fraud upon the court. Sheriff Valdez then assigned case number S17000707 to the criminal investigation complaint. Sheriff Valdez recused himself for conflict of interest and forwarded information to Montezuma County Sheriff Nowlin for investigation.

On 9/25/17, Judge Wilson filed denial of Plaintiff's Motion for Rule 60 Relief for Fraud while a criminal investigation was underway and not completed. He provided no findings of fact or conclusions of law, and no findings related to the

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inadvertence, surprise, or excusable neglect; (2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

[5] Rule 59(d) Grounds for New Trial. Subject to provisions of Rule 61, a new trial may be granted for any of the following causes: (4) Newly discovered evidence, material for the party making the application which that party could not, with reasonable diligence, have discovered and produced at the trial;

fraudulent documents filed by Defendants on 12-28-16, and without standing to proceed at all based on the ongoing criminal investigation.

On 9-28-17, Plaintiffs contacted Sheriff Nowlin and explained the details of the criminal complaint and he stated he would provide a response.

On 9-29-17, Sheriff Nowlin provided a letter in response to Sheriff Valdez with his professional opinion recommending forwarding the case to the Special Prosecution Section of the Colorado Attorney General's Office. (See Attachment B). According to Sheriff Nowlin's advice "the case could be presented to a Grand Jury which could settle the allegations and provide public trust and transparency."

On 10/02/17, the Defendants expert witness testified that filing of false documents by an attorney constituted Fraud upon the Court.

On 10/02/17 we successfully entered into evidence Defendant Starr's own document dated 01/22/14 proving his Affidavit was false.

On 10/02/17, Plaintiff's successfully entered into evidence, video of the BoCC meeting that took place on 01/23/14.

That video proved three things;

a) Plaintiffs did everything by the statutes,
b) That the Public Record has been tampered with, and,
c) It proves Defendant's 12/28/16 "Affidavit in Support of Summary Judgement" was fraudulent.

On 10-26/17, the 6th District DA, Christian Champagne, recused himself from the criminal investigation, thereby moving it to the DA for the 22nd District of Montezuma for action.

On 10/27/17, the 22nd Judicial District DA, Christian Champagne contacted Plaintiff Giehl and Keno, stating that DA Will Furse, has agreed to accept the investigation from the AG's office when it has been completed.

7. These issues before the court and Judge Wilson remain, which are:

A. Have the Plaintiffs been damaged and have an injury in fact([6])?

B. Is the Colorado State constitution the paramount law for Colorado?

C. Does the Colorado State constitution reserve the right of initiative and referendum power to the people?

D. Do Colorado statutes presented as Exhibit D in evidence presented in court on 10-2-17, create the initiative and referendum procedure for a county?

E. Does House Bill 96-1061, presented as Exhibit I in evidence, explain how to process county petitions?

F. Do the Colorado statutes presented as Exhibit E on 10-2-17, enforce the initiative and referendum power of the people?

G. Did the Plaintiffs follow the Colorado statutes for the petition process?

H. Did the Defendants violate the Colorado statutes and Constitution by suppressing the People's petitions?

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[6] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992) (explaining that the constitutional minimum of standing contains three elements: (1) an injury in fact (2) that is both fairly traceable to the defendant and (3) that a favorable decision will redress); *Bennett v. Spear*, 520 U.S. 154, 162 (1997). Cloverleaf Kennel Club, Inc. v. Colorado Racing Commission, 620 P.2d 1051 Colo.,1980. Romer v. Board of County Com'rs of County of Pueblo, Colo., 956 P.2d 566; Colo., 1998 C.R.S.A. Const. Art. 6, § 1 .Copr. *Valley Forge Christian College v. Americans United* , 454 U.S. 464, 472 (1982), (See also *Allen v. Wright*, 468 U.S. 737, 751 (1984); *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 225-226 (1974)).

I. Was the intent of the State legislature to "NOT... limit or abridge in any manner the powers reserved to the people in the initiative and referendum?" (C.R.S. 1-40-101).

J. Has Judge Wilson upheld the initiative and referendum statutes, under Colorado Code of Judicial Conduct, or upheld the spirit of the legislature's intent such as was declared in CRS 1-40-101, stating...

C.R.S. 1-40-101. Legislative declaration

(1) The general assembly declares that it is not the intention of this article to limit or abridge in any manner the powers reserved to the people in the initiative and referendum, but rather to properly safeguard, protect, and preserve inviolate for them these modern instrumentalities of democratic government.([7])

K. Did the Defendants file a fraudulent document into the record on 12/28/16?

L. Did the Expert Witness confirm, in the 10/02/17 hearing, that filing a false document constituted fraud upon the court?

M. By not holding a Rule 60 hearing of the evidence of fraud upon the court presented by Plaintiffs, and passing judgment and prematurely ruling when an ongoing criminal investigation has not been completed, Judge Wilson has become a co-conspirator with fraud upon the court, due process depravation, and obstruction of justice.

8. Judge Wilson is in violation of the Code of Judicial Conduct regarding

[7] "Initiative and referendum are fundamental rights of a republican form of government which the people have reserved unto themselves and must be liberally construed in favor of the right of the people to exercise them. Conversely, limitations on the power of referendum must be strictly construed." Margolis v. District Court, 638 P.2d 297 (Colo. 1981). (Emphasis added).

adjudication of this case... in part;

> The objective of the Code is to maintain both the reality of judicial integrity and the appearance of that reality. For judges reviewing the propriety of other judges' behavior, the Code may function as the support for imposing discipline or the basis for review of a trial court's judgment. The text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system. Judicial ignorance of this Canon or any of its subparts is no defense or excuse.... A judge may be punished for any conduct that legitimately reflects upon the judge's ability to act in an official capacity. The leading view is that a court should review judicial behavior by its appearance 'to a reasonable person following review of the totality of the circumstances.

It is clear from the record that Judge Wilson has not fulfilled his judicial duty to provide due process of law, to avoid any hint of prejudice and bias against Plaintiffs, and to comply with the laws. Plaintiffs provide judicial NOTICE to Judge Wilson to review the Code of Judicial Conduct and amend the judgment accordingly per Motion Questioning the Sufficiency of the Evidence (attached herein), and per FRCPA, Rule 52.

9. No rebuttal was provided by Defendants to clear statutory and Constitutional evidence countering the lone Dellinger case used by Defendants and Judge Wilson. The County of Archuleta is a municipal corporation making it a municipality. (See Footnote 2).

Dellinger also did not have much of the evidence and argument presented in this instant case before it, such as what the intent of the General Assembly was declared in CRS 1-40-101, 31-11-101, (1910-1980) and 30-11-103.5 (1980 to

present).

The state constitution clearly states the people "reserved" the power of initiative and referendum, where Dellinger mistakenly states that the people were "granted rights of initiative on a county-wide basis in certain limited contexts." Plaintiffs presented HB 96-1061 which clearly directs the procedure for processing petitions of the "county" electors. CRS 30-11-103.5, and HB 96-1061 stands unrebutted by Dellinger or the Defendants. CRS 30-11-103.5, and HB 96-1061 have clear, unambiguous language as to the intent of the general assembly, after 1980, as to the procedure for handling county petitions. To suggest otherwise would bring up the issue of these statutes being "Void for Vagueness."

Unrebutted evidence stands as truth, and at the very least, is clear evidence of good faith grounds for this suit.

10. Judge Wilson's failure to adjudicate the evidence of record, and to depend on one court case, which was rebutted, is clearly collusion, conspiracy, obstruction of justice and failure to provide Due Process of law to Plaintiffs, and hints of a conspiracy against the people of Archuleta county in helping to suppress the petitions and laws. (See Exhibit A).

Some of these facts of law being ignored are presented for the record once again, as Exhibit A, and these issues present a new dimension of apparent fraud upon the court and collusion between Defendants and Judge Wilson.

11. Plaintiffs presented evidence showing that the public record of meetings on the ballot petitions was missing for approximately 6 months despite ongoing meetings and discussions (which video evidence of record proves). This is prima facie evidence that Defendants deliberately tampered with the public record by expunging any reference to any actions that took place during that time frame.

Why bother to expunge the record of these meeting minutes if Defendants truly believed Plaintiffs were groundless and frivolous? Why are they trying to hide

actual public meeting minutes on the petitions? Plaintiffs didn't discover this tampering with the public record until preparing the New Evidence package.

Conclusion

Plaintiffs question the sufficiency of the evidence supporting the Order regarding attorney fees especially since there is no mention of Colorado Statutes or the Colorado Constitution in any court findings. The open investigation precludes Judge Wilson from making any kind of ruling prematurely. Plaintiffs move the court to re-evaluate all the standing evidence of record proving Plaintiffs actions were NOT groundless and frivolous, and were firmly supported by standing constitutional and statutory evidence which was not considered, rebutted or in any other way a part of lawful due process.

Defendant's, through the preponderance of the evidence, have been proven to have committed multiple statutory violations, thereby removing their civil immunity, and making them personally responsible for reimbursement of any and all financial burden to the County of Archuleta.

If any party should be required to reimburse the County of Archuleta for attorney fees, it should be the Defendant's CTSI Crime Insurance policy.

Respectfully submitted,

_____

Greg Giehl for all Plaintiffs

CERTIFICATE OF SERVICE

I, Greg Giehl, hereby certify that on _____, I served a copy of the Plaintiffs Motion for Reconsideration, with Exhibits A & B, and Motion Questioning the Evidence, to the below named Counsel and Defendant by United States Postal Mail.

Todd Starr, 398 Lewis Street, P.O. Box 1507, Pagosa Springs, CO 81147

_____ _____

Date Signature