

COLORADO SUPREME COURT

2 East 14th Avenue

Denver, Colorado 80203

Case No. _____

Opinion Judge J. Jones, Judge Terry, Judge Nieto

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Dennis Spencer, P.O. Box 2877, Pagosa Springs, CO 81147, 970-264-0988;

Plaintiffs/Appellants

v.

Archuleta County Board of County Commissioner Clifford Lucero, Commissioner Steve Wadley, Commissioner Michael Whiting; Previous County Attorney Todd Starr;

Defendants/Appellees

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 1653 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

For each issue raised by the appellant, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

In response to each issue raised, the appellee must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

Signature of attorney or party

Jeffrey Maden,
Stephen Kern
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Dennis Spencer
Tom Kamm
David Bruchak

Questions Presented

Can the County governments, and State Courts, deny Colorado Citizens the right to ballot initiatives as reserved long ago in the Colorado Statutes and Colorado Constitution?

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully prays that a Writ of Certiorari issue to review Colorado Constitutional and Statutory reservations of initiative rights to all county residents in Colorado being denied by county government and State Courts.

OPINIONS BELOW

[x] March 14, 2017, Summary Judgment Order by District Court Judge Wilson and copy of same is in Appendix A.

[x] October 17th, 2018 Order by District Court Judge Wilson ordering attorney fees and copy of same is in Appendix B.

[x] The denial of the Colorado Court of Appeals timely filed was denied on January 24th, 2019, and copy is in Appendix C.

[x] The denial of the Colorado Court of Appeals En Banc Rehearing timely filed

was denied on February 28, 2019, and copy is in Appendix D.

JURISDICTION

Petition is timely filed with the Colorado Supreme Court.

-Rule 49. Considerations Governing Review on Certiorari.
Review in the supreme court on a writ of certiorari as provided in section 13-4-108, C.R.S., and section 13-6-310, C.R.S., is a matter of sound judicial discretion and will be granted only when there are special and important reasons. The following, while neither controlling nor fully measuring the supreme court's discretion, indicate the character of reasons that will be considered:

- (a) the district court on appeal from the county court has decided a question of substance not yet determined by the supreme court;
- (d) the court of appeals has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such procedure by a lower court as to call for the exercise of the supreme court's power of supervision.

Petitioners believe all evidence supports both (a) and (d) above, as these issues have not been properly addressed but have been longstanding conflicts in Colorado.

- The date on which the Colorado Court of Appeals decided Petitioner' s case was January 24th, 2019, and,
- A timely filed petition for rehearing was denied by the Colorado Court of Appeals En Banc on February 28, 2019.

TABLE OF AUTHORITIES

10th Amendment.....

16 Am Jur 2d 177, Late Am Jur 2d. 256.....

70 AmJur2nd Sec. 50, VII Civil Liability.....

Article II, Section 1.....

Article II, Section 2.....

Article II, Section 6.....

Article III.....

Article V, Section 1.....

Article V, Subsection 9.....

Article V, Subsection 10.....

Article V, Section 25.....

C.R.S. 13-17-102.....

C.R.S. 13-80-102.....

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

C.R.S. 1-40-103.....

C.R.S. Article 11 of title 31.....

C.R.S. 31-11-101.....

C.R.S. 30-11-103.5,.....

C.R.S. 30-11-104.....

C.R.S. 1-40-130.....

C.R.S. 1-13-111.....

C.R.S. 31-11-115.....

2 Pet. R. 522; 12 Wheat. 270;.....

3 Dall. 286; 4 Dall. 18......

Bankruptcy Act, § 101 (29).” Blacks Law Dictionary.....

Board of County Commissioners v. Love, 172 Colo. 121, 470 P.2d 861
(1970).....

Brookfield Co. v Stuart, (1964) 234 F. Supp 94, 99 (U.S.D.C., Wash. D.C.)

Billings v. Buchanan, 192 Colo. 32, 555 P.2d 176 (1976).....

Chisholm V. Georgia (US) 2 Dall 419, 454, 1 L Ed 440, 455 @DALL 1793 pp,
471-472.....

City of Fort Collins v. Dooney, 178 Colo. 25, 496 P.2d 316 (1972).....

City of Glendale v. Buchanan, 195 Colo. 267, 578 P.2d 221 (1978).....

Colo. Project-Common Cause v. Anderson, 178 Colo. 1, 495 P.2d 220
(1972).....

Committee For Better Health Care v. Meyer, 830 P.2d 884 (Colo. 1992).....

Daniel Dellinger v. Board of County Commissioners for the County of Teller,
Colorado Court of Appeals, Division V. September 14, 2000

House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975).....

Hudson v. Annear, 101 Colo. 551, 75 P.2d 587 (1938).....

Legislative Reapportionment, 150 Colo. 380, 374 P.2d 66 (1962).....

Lansing v. Smith, 21 D. 89., 4 Wendel 9 (1829) (New York).....

Margolis v. District Court, 638 P.2d 297 (Colo. 1981).....

McKee v. City of Louisville, 200 Colo. 525, 616 P.2d 972, 969 (1980)

Medina v. People, 154 Colo. 4, 387 P.2d.....

Ohio L. Ins. & T. Co. v. Debolt, 16 How. 416, 14 L.Ed. 997.....

Pacific Mutual Life Insurance Co. v. Haslip, et Al.....

People v Herkimer, 4 Cowen (NY) 345, 348 (1825).....

Pennobscot, Inc. v. Board of County Commissioners, 642 P.2d 915 (Colo. 1982)
.....

People ex rel. Cheyenne Erosion Dist. v. Parker, 118 Colo. 13, 18-19, 192 P.2d
417, 420 (1948).....

Senate Bill 12 Colo. 188, 21 P. 481 (1988)

Yenter v. Baker, 126 Colo. 232, 248 P.2d 311 (1952).....

Yick Wo v Hopkins, 118 US 356, at pg. 370.....

STATEMENT OF THE CASE

Petitioners come before this court with this Petition to the Colorado Supreme Court to hear a long-standing dispute by county governments and state courts in defiance of standing Colorado Constitutional reservations in numerous Colorado Statutes regarding initiative ballot rights of local, county residents being suppressed by county Board of County Commissioners (hereafter BoCC) and local court actions.

Petitioners bring this suit under the Colorado Constitutional rights of actions, and under Supreme Court original jurisdiction, with the following evidence of claim since damage has been conclusively done to Petitioners and all the people of Archuleta County, Colorado, whether known or unknown by them, being now past the November, 2014 election cycle. It was at this point that any statute of limitations (See Exhibit D) began its course, and refutes defendant's Brief and Affidavit in Support of Summary Judgement.

THE LOWER COURTS ERRED IN THE FOLLOWING WAYS:

1. The courts failed to provide due process of law on the actual evidence of record regarding the denied ballot initiative process as reserved for the people at the county level by statute.
2. The defendants and courts made false claims regarding the timeliness of petitioner's filings being outside the statute of limitations, (C.R.S. 13-80-102), and contrary to plain and clear evidence of record. (See Exhibit D).
3. The Appeals Court denied rehearing using the same exact response as the first denial, with no findings and conclusions of law on the evidence presented.
4. The courts focused entirely on attorney fees, contrary to C.R.S. 13-17-102, and plain evidence of record proving petitioner's positions were not substantially groundless or frivolous. (See Exhibit A & B).

CAR Rule 53 (5)(a) Concise questions submitted for review

1. Did defendants violate multiple election statutes?

Petitioners were unaware of the election statutes that had been violated by the

defendants acquiring their summary judgement through District Court Judge Wilson (hereafter Wilson), until they had received documents from the state archives. Only then did they realize the crime of suppression of petitions had been committed against them by the defendants. Defendant Starr counseled the Board of County Commissioners (hereafter BoCC) to suppress the Petitioners efforts from the very beginning of the process. Starr's personal documents were submitted to the court after Wilson's summary judgement order, that prove his personal counseling of co-defendants to suppress Petitioners petitions. It had become apparent that the crimes have been committed and required Wilson's attention.

Petitioners filed a notice of fraud upon the court in the district court and notified the county sheriff of the issue. The sheriff recused himself and forwarded the information to the Montezuma County sheriff for review. The information was presented to Sheriff Nowlin. He concurred that Petitioners were following proper legislative procedures and that the defendants were in fact suppressing the petitions, in his words, "stonewalling the Petitioners". Documents of all these facts are part of the court record and are reproduced in Exhibits B, C & E.

2. Did Petitioners file their action timely?

The crime of suppression of initiative petitions was not complete until November, 2014 election cycle ended. By November 2015, one year after the Petitioners petitions had been suppressed and denied access to the ballot box, it became apparent that seeking remedy through the defendants had come to a loggerhead.

Petitioners then filed their 16 CV 4 action in May, 2016. Wilson substituted the *defendants stated time of December, 2013*, found in defendant's motion for summary judgement, with supporting brief and affidavit, to establish the start time for CRS 13-80-102 statute of limitation, for Petitioners claimed actual time of November, 2014.

Petitioners filed documents with their motion to reconsider, that completely refute alleged starting date sworn to by affidavit of defendant Starr. Wilson's actions after summary judgement order were to award attorney fees and deny Petitioners due process rights. See Exhibit D for petitioner's evidence of timeliness.

3. Are Petitioners actions founded upon state constitution legislative principles and procedures?

Petitioners followed proper statute procedures for acquiring and circulating initiative petitions. Sheriff Nowlin concurred. The initiative forms were approved by the county, and later accepted in a timely manner once signatures of over 600 residents were obtained.

Defendant Starr counseled the BoCC to suppress the Petitioners efforts from the very beginning of the process. Starr's personal documents were submitted to the court after the initial summary judgement order, that prove his personal counseling of co-defendants to suppress Petitioners petitions.

During the October 2017 attorney fee hearing, video evidence was played for Wilson in which, Archuleta County Clerk, June Madrid (hereafter Madrid) stated that "You, the Petitioners, had done everything correct to a "T", and that We, the BoCC, had done everything wrong in handling the petitions." CRS 30-11-103.5 clearly states, "*The county clerk and recorder shall resolve any questions about the applicability of the procedures in part 1 of article 11 of title 31, C.R.S.*" The County Clerk and Recorder Madrid confirmed that petitioners had procedurally done everything correct through January 23rd, 2014 video evidence date. (See video evidence in 17CA2206 CD record).

Violations of election statutes and due process rights have in fact occurred. All that is required to remedy the situation, is for someone with an unbiased perspective to review the evidence that was filed May, 2017, and entered into the court record October, 2017, and in Court of Appeals June 2018 record, and render a decision based upon constitutional facts and election statutes. See Exhibit A&B.

REASONS FOR GRANTING THE WRIT

Petitioners move the court to grant Writ of Certiorari on the grounds that the Colorado Constitution and Colorado Statutes are being ignored and the people of Archuleta County, Colorado and most counties in Colorado are being disenfranchised regarding ballot initiatives.

Respectfully submitted,

APPENDIX:

Appendix A: March 14, 2017, Summary Judgment Order by District Court Judge Wilson.

Appendix B: October 17th, 2018 Order by District Court Judge Wilson ordering attorney fees.

Appendix C: The denial of the Colorado Court of Appeals timely filed was denied on January 24th, 2019.

Appendix D: The denial of the Colorado Court of Appeals En Banc Rehearing timely filed was denied on February 28, 2019.

Exhibits A-E

CERTIFICATE OF SERVICE

I, Greg Giehl, certify that I have mailed a true and complete copy of this
Petitioner's Brief to the Colorado Supreme Court, and hand delivered to the party
or address below counsel for defendants on _____, 2019:

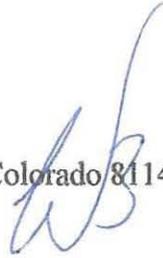
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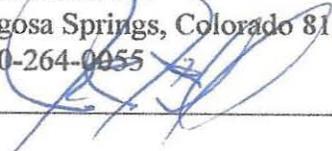
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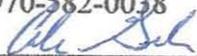
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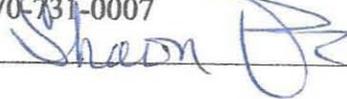
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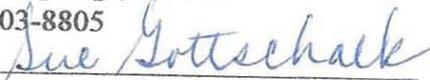


EXHIBIT A

The 1876 Constitution for the State of Colorado for a Republican form of government is the paramount law of the land.

Article III clearly states;

The powers of the government of this state are divided into three distinct departments,--the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

The people of Colorado amended the state constitution to specifically reserve unto themselves the authority to create law. The General Assembly codified the procedure for the Initiative and Referendum process.

Whereas, 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

and whereas, 1-40-103. Applicability of article (2) The laws pertaining to municipal initiatives, referenda, and referred measures are governed by the provisions of article 11 of title 31, C.R.S. (3) The laws pertaining to county petitions and referred measures are governed by the provisions of section 30-11-103.5, C.R.S.

and whereas, 31-11-101. Legislative declaration It is the intention of the general assembly to set forth in this article the procedures for exercising the initiative and referendum powers reserved to the municipal electors in subsection (9) of section 1 of Article V of the state constitution. It is not the intention of the general assembly to limit or abridge in any manner these powers but rather to properly safeguard, protect, and preserve inviolate for municipal electors these modern instrumentalities of democratic government. Exhibit D Page 1 of 2 The third piece of legislation the general assembly created granting authority, at the county level, procedures for placing petition of the electors of a county on the ballot, is C.R.S. 30-11-103.5.

and whereas, 30-11-103.5. County petitions and referred measures The procedures for placing an issue or question on the ballot by a petition of the electors of a county that is pursuant to statute or the state constitution or that a board of county commissioners may refer to a vote of the electors pursuant to statute or the state constitution shall, to the extent no such procedures are prescribed by statute, charter, or the state constitution, follow as nearly as practicable the procedures for municipal initiatives and referred measures under part 1 of article 11 of title 31,

C.R.S. The county clerk and recorder shall resolve any questions about the applicability of the procedures in part 1 of article 11 of title 31, C.R.S.

Therefore the General Assembly's declared intention and legislative action properly safeguard, protect, and preserve inviolate for them these modern instrumentalities of democratic government.

Whereas the General Assembly then passed the legislation to enforce the statutes that created the Initiative and Referendum process with the following:

1-40-130. Unlawful acts – penalty (1) It is unlawful: f) For any officer or person to do willfully, or with another or others conspire, or agree, or confederate to do, any act which hinders, delays, or in any way interferes with the calling, holding, or conducting of any election permitted under the initiative and referendum powers reserved by the people in section 1 of article V of the state constitution or with the registering of electors therefor;

(2) Any person, upon conviction of a violation of any provision of this section, shall be punished by a fine of not more than one thousand five hundred dollars, or by imprisonment for not more than one year in the county jail, or by both such fine and imprisonment

and whereas, 1-13-111. Penalties for election offenses In all cases where an offense is denominated by this code as being a misdemeanor and no penalty is specified, the offender, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

and whereas, 31-11-115. Tampering with initiative or referendum petition (1) Any person commits a class 2 misdemeanor who: (a) Willfully destroys, defaces, mutilates, or suppresses any initiative or referendum petition; (b) Willfully neglects to file or delays the delivery of the initiative or referendum petition; (d) Adds, amends, alters, or in any way changes the information on the petition as provided by the elector; or (e) Aids, counsels, procures, or assists any person in doing any of such acts. (2) Any person convicted of committing such a misdemeanor shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

Therefore it is the duty of the Executive and Judicial Departments to prosecute any deprivation of election statutes need to find statutes for violation of duty

Exhibit B

The Initiative Petition and Voting Rights of the People who live in Archuleta County have been violated.

The Due Process Rights of the plaintiffs in case 16 CV 4 in which 15 Plaintiffs attempted to seeking remedy have been violated.

Whereas, 11 Am jur 2 states, "A state Constitution has been aptly termed a legislative act by the people themselves in their sovereign capacity and, therefore, the paramount law. It has again been defined to be "an act of extraordinary legislation by which the people establish the structure and mechanism of their government." In short, the Constitution is the charter creating the government.

and Whereas, Colorado Constitution, Article II, Section 1 clearly states, "That all political power is vested in and derived from the people; that all government, of right, originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

and Whereas, Colorado Constitution, Article II, Section 2 clearly states, "That the people of this State have the sole and exclusive right of governing themselves, as a free, sovereign and independent State; and to alter and abolish their constitution and form of government whenever they may deem it necessary to their safety and happiness, provided such change be not repugnant to the Constitution of the United States.

and Whereas, Colorado Constitution, Article V, Section 25 clearly states, "The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: "...regulating county or township affairs;..."

and Whereas, Colorado Constitution as amended in 1910, Article V, Section 1 clearly states, "The legislative power of the state shall be vested in the general assembly consisting of a senate and house of representatives, both to be elected by the people, but the people reserve to themselves the power to propose laws and amendments to the constitution and to enact or reject the same at the polls independent of the general assembly and also reserve power at their own option to approve or reject at the polls any act or item, section, or part of any act of the general assembly.

And Whereas Subsection 9 clearly states, "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.

and Whereas Subsection 10 clearly states, "This section of the constitution shall be in all respects self-executing; except that the form of the initiative or referendum petition may be prescribed pursuant to law."

and Whereas Article V, Section 1 and Subsections 9 & 10, and Section 25 includes the nouns, county, township, city, town, and municipality, and all of these nouns are used in the exact same context in regards to the rights of the people to be self governing and reserved by the people to the initiative process.

and, Therefore the right and self governing authority to the initiative petition process is reserved by the people in all land areas and/or political subdivisions, and jurisdictions of Colorado. and, Therefore the initiative process cannot be infringed by the General Assembly, as they are barred from passing local or special laws regulating county or township affairs.

Whereas, the Executive and Judiciary are sworn to uphold the state constitution as written and ratified by the people.

Therefore, the Executive and Judiciary have a fiduciary duty to enforce the statutes as written and passed by the General Assembly.

Exhibit C

The Plaintiffs filed an 18 USC 4, "Notice of Fraud Upon the Court" in the District Court and with Archuleta County Sheriff Valdez prior to any rulings by Judge Wilson after awarding Summary Judgement to the Defendants. All evidence filed and entered into case 16 CV 4 has been covered up by Defendant Starr and Judge Wilson.

Whereas the General Assembly passed the legislation to enforce the statutes that created the Initiative and Referendum process with the following:

CRS 1-40-130. Unlawful acts – penalty

(1) It is unlawful:

f) For any officer or person to do willfully, or with another or others conspire, or agree, or confederate to do, any act which hinders, delays, or in any way interferes with the calling, holding, or conducting of any election permitted under the initiative and referendum powers reserved by the people in section 1 of article V of the state constitution or with the registering of electors therefor;

(2) Any person, upon conviction of a violation of any provision of this section, shall be punished by a fine of not more than one thousand five hundred dollars, or by imprisonment for not more than one year in the county jail, or by both such fine and imprisonment.

and whereas, CRS 1-13-111. Penalties for election offenses In all cases where an offense is denominated by this code as being a misdemeanor and no penalty is specified, the offender, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

and whereas, CRS 31-11-115. Tampering with initiative or referendum petition

(1) Any person commits a class 2 misdemeanor who:

(a) Willfully destroys, defaces, mutilates, or suppresses any initiative or referendum petition;

(b) Willfully neglects to file or delays the delivery of the initiative or referendum petition;

(d) Adds, amends, alters, or in any way changes the information on the petition as provided by the elector; or

(e) Aids, counsels, procures, or assists any person in doing any of such acts.

(2) Any person convicted of committing such a misdemeanor shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

Therefore it is the duty of the Executive and Judicial Departments to prosecute any deprivation of election statutes.

and Whereas, the Defendants did commit multiple violations of election statutes in their official capacity, the Defendants also committed multiple violation of the Criminal code as well.

CRS 18-8-115 Duty to Report a Crime

It is the duty of every corporation or person who has reasonable grounds to believe that a crime has been committed to report promptly the suspected crime to law enforcement authorities. Notwithstanding any other provision of the law to the contrary, a corporation or person may disclose information concerning a suspected crime to other persons or corporations for the purpose of giving notice of the possibility that other such criminal conduct may be attempted which may affect the persons or corporations notified. When acting in good faith, such corporation or person shall be immune from any civil liability for such reporting or disclosure. This duty shall exist notwithstanding any other provision of the law to the contrary; except that this section shall not require disclosure of any communication privileged by law.

CRS 18-8-403 Official Oppression

(1) A public servant, while acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity, commits official oppression if, with actual knowledge that his conduct is illegal, he:

- (a) Subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, or lien; or
- (b) Has legal authority and jurisdiction of any person legally restrained of his liberty and denies the person restrained the reasonable opportunity to consult in private with a licensed attorney-at-law, if there is no danger of imminent escape and the person in custody expresses a desire to consult with such attorney.

(2) Official oppression is a class 2 misdemeanor.

CRS 18-8-405 Second degree official misconduct

(1) A public servant commits second degree official misconduct if he knowingly, arbitrarily, and capriciously:

- (a) Refrains from performing a duty imposed upon him by law; or
- (b) Violates any statute or lawfully adopted rule or regulation relating to his office.

(2) Second degree official misconduct is a class 1 petty offense.

CRS 18-8-102 Obstructing government operations

(1) A person commits obstructing government operations if he intentionally obstructs, impairs, or hinders the performance of a governmental function by a public servant, by using or threatening to use violence, force, or physical interference or obstacle.

(2) It shall be an affirmative defense that:

- (a) The obstruction, impairment, or hindrance was of unlawful action by a public servant; or
- (b) The obstruction, impairment, or hindrance was of the making of an arrest; or
- (c) The obstruction, impairment, or hindrance of a governmental function was by lawful activities in connection with a labor dispute with the government.
- (3) Obstructing government operations is a class 3 misdemeanor.

CRS 18-8-105 Accessory to crime

- (1) A person is an accessory to crime if, with intent to hinder, delay, or prevent the discovery, detection, apprehension, prosecution, conviction, or punishment of another for the commission of a crime, he renders assistance to such person.
- (2) "Render assistance" means to:
 - (d) By force, intimidation, or deception, obstruct anyone in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of such person; or
 - (e) Conceal, destroy, or alter any physical or testimonial evidence that might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of such person.
- (6) Being an accessory to crime is a class 1 petty offense if the offender knows that the person being assisted has committed, or has been convicted of, or is charged by pending information, indictment, or complaint with a crime, or is suspected of or wanted for a crime, and if that crime is designated by this code as a misdemeanor of any class.

Therefore the Defendants are still awaiting official indictment, sanctioning and/ or prosecution for all crimes listed above. The Plaintiffs due process as victims of this criminal activity has been denied by both the district and appeals courts. Evidence of this fraud upon the court is part of the court file and to this day it has never been adjudicated.

Exhibit D

Plaintiff's original Motion to Show Cause contains all evidence that their actions were constitutionally, and/or statutorily sound, and not substantially groundless or frivolous.

The CRS 13-80-102 establishment of time to start statute of limitation clock, for timely filing the 16 CV 4 action, can be found in Plaintiff's original Motion to Show Cause at paragraph 4, on page 15 of 22, and also in the 16 CV 4 Court File, on page 21 of 332. November 2015, is when any negotiation for work sessions on the petitions ended.

Other un-refuted evidence in the court record supporting the November 2015 start date are;

February 5, 2015, email between defendant Michael Whiting and plaintiff Jeff Maher negotiating a petition work session. (16 CV 4 Hearing 10-02-2017 p. 104/106)

August 21, 2014, Dave West letter to District Attorney Risberg requesting Grand Jury investigation into petition suppression. (16 CV 4 Hearing 10-02-2017 p. 64/106)

June 14, 2014, Bill Gottschalk letter to District Attorney Risberg requesting Grand Jury investigation. (16 CV 4 Hearing 10-02-2017 p. 63/106)

January 23, 2014, Liberty Zone Petition Video B, filed with Motion to Reconsider evidence on May 12, 2017.

All of the above un-refuted evidence of record prove District Court Wilson's claim of December 2013, as start time for C.R.S. 13-80-102 Statute of Limitation is false and evidence of judicial bias against the plaintiffs.

Summary judgement and attorney fees were awarded to defendants in error by District Court Wilson. The CRS 13-17-102 claim of substantially groundless and substantially frivolous by District Court Wilson for issuing summary judgement and attorney fees against the plaintiffs, is refuted with multiple facts and documents of evidence that were filed May 12, 2017, and entered into evidence during the October 2, 2017 attorney fee hearing.

The plaintiffs original show cause motion establishes constitutional and statutory foundation for circulating plaintiffs initiative petitions.

Exhibits "A"& "B", attached with this certorari doc establish the constitutional, and statutorial authority of the people to initiate legislation at the local level.

Exhibit "C" establish the crime of Suppression of Petitions and Public Official Malfeasance for interfering with the people's constitutional reserved authority and general assembly created initiative procedure.

CERTIFICATE OF SERVICE

I, Greg Giehl, certify that I have mailed a true and complete copy of this Appellant's Petition for Rehearing En banc to the above named court, and hand delivered to the party or address below as alleged (but unnoticed to Appellants) counsel for appellees on 11 FEBRUARY, 2019:

Todd Weiver

398 Lewis Street

Pagosa Springs, CO 81147



Greg Giehl