

In Re: Hickenlooper v. Coffman
2015 SA 296

Attorney General's Brief Addressing Jurisdictional Questions

Exhibit A

FILED IN THE
SUPREME COURT
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OF THE STATE OF COLORADO

SUPREME COURT, STATE OF COLORADO
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**ORIGINAL PROCEEDING PURSUANT TO COLO.
CONST. ART. VI, § 3**

**PEOPLE OF THE STATE OF COLORADO, EX
REL. KEN SALAZAR, IN HIS OFFICIAL
CAPACITY AS ATTORNEY GENERAL FOR THE
STATE OF COLORADO,**

Petitioner,

v.

**DONETTA DAVIDSON, IN HER OFFICAL
CAPACITY AS SECRETARY OF STATE FOR
THE STATE OF COLORADO,**

Respondent.

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Case Number: 03-SA-133

**GOVERNOR'S BRIEF IN OPPOSITION TO
PETITIONER'S REQUEST FOR RELIEF**

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The Governor of the State of Colorado, Bill Owens, the supreme executive officer of the State of Colorado, Colo. Const. art. IV, §§1 and 2, submits this Governor's Brief in Opposition to the Petitioner's Request for Relief.

STATEMENT OF FACTS

The Governor is the supreme executive official of the State of Colorado. Colo. Const. art. IV, § 2. The Attorney General is an inferior and subordinate executive official. Colo. Const. art. IV, § 1. No powers or duties are assigned to the Attorney General by Article IV, §1 or any other provision of the Constitution. The Governor, along with all other executive officials of the State of Colorado, has an attorney-client relationship with the Colorado Attorney General. Section 24-31-101(1)(a), C.R.S.

This matter comes before the Court by an unprecedented route that began with the Attorney General notifying the General Assembly that he "1.) would not defend state defendants in a challenge to Senate Bill 352 and 2.) would support claims that the bill was unconstitutional." [See Exhibit A]. Both houses of the General Assembly adopted Senate Bill 03-352. Governor Owens signed Senate Bill 03-352 into law on May 9, 2003, and later that day two plaintiffs brought an action in Denver District Court challenging the constitutionality of Senate Bill 03-352. See Maryanne Keller v. Davidson, Secretary of State and the General Assembly, Case No. 03-CV-3452 (Denver District Court).

On May 13, 2003, the Governor, through counsel, wrote to the Attorney General to confirm his expectation that the Attorney General would honor his duty of loyalty and the attorney-client relationship with regard to Senate Bill 03-352¹ [See Exhibit B]. On May 14, 2003, the Attorney General attempted to disavow his statutory attorney-client relationship with

¹ Governor Owens has consented to waiver of his attorney-client privilege with regard to this specific communication for purposes of the Colorado Supreme Court's review of the facts.

Governor Owens [See Exhibit C], and filed the Petition in the instant action. To date, Governor Owens has not required, directed, authorized or otherwise consented to any action against any other executive branch official.

On May 15, 2003, this Court issued an Order and Rule to Show Cause that required the Secretary of State to respond to the Petition, and solicited the participation of the Governor and other interested persons.

ARGUMENT

I. ORIGINAL JURISDICTION IS NOT PROPER AND THIS COURT SHOULD DEFER JURISDICTION TO THE ONGOING LOWER COURT PROCEEDING

The Colorado Supreme Court has the power to issue original and remedial writs as may be provided by rule of the Court. Colo. Const. art. VI, § 3. Such relief is “extraordinary in nature” and shall be granted only when “no other adequate remedy” is available. C.A.R. 21(1).

Extraordinary writs may only issue when a petitioner has no other adequate remedy, including relief available by appeal or under C.R.C.P. 106. “We have repeatedly held that this court will not exercise original jurisdiction when the question may be properly submitted and determined and the right of the petitioner fully protected and enforced in the lower courts.” Rogers v. Best, 115 Colo. 245, 247, 171 P.2d 769, 770 (1946) citing (In Re Stidger, 37 Colo. 407, 86 P. 219 (1906)). Accord In Re Rainbolt, 64 Colo. 581, 172 P. 1068, (1918); In Re Arakawa, 78 Colo. 193, 240 P. 940 (1925); People ex rel. v. Adams, 83 Colo. 321, 264 P. 1090 (1928).

This Court has consistently declined to issue original writs in cases where the issues can be properly resolved in the lower courts. “[W]e would decline to take jurisdiction if satisfied, as we are here, that the issues can be fully determined and the rights of all parties preserved and enforced in the district court.” Clark v. Denver I.R.R., 78 Colo. 48, 53, 239 P. 20, 21 (1925).

“[T]his court will exercise such power...only when satisfied that the issues are not likely to be determined, and the rights of all parties properly protected, and enforced in the lower courts.”

People ex rel. Foley v. Montez County Clerk, 48 Colo. 436, 439, 110 P. 639, 640 (1910).

“Besides, a case may be one *publici juris*, yet if the court is satisfied that the issues can be fully determined and the rights of all persons preserved and enforced in the court below, it may, in the exercise of a sound legal discretion, decline to assume jurisdiction.” People ex rel. Rogers, 12 Colo. 278, 281, 20 P. 702, 703 (1888).

On May 9, 2003, plaintiffs Maryanne Keller and Pauline York brought an action in Denver District Court challenging the constitutionality of Senate Bill 03-352 and naming the Secretary of State and the General Assembly as defendants. See Maryanne Keller v. Davidson, Secretary of State and the General Assembly, Case No. 03-CV-3452 (Denver District Court). On May 15, 2003, the Keller plaintiffs added Governor Bill Owens as a named defendant in their lawsuit. See Keller v. Davidson, First Amended Complaint. On June 11, 2003, the Secretary of State filed an Answer in the district court proceeding.

Thus, the Denver District Court has before it a properly filed lawsuit challenging the constitutionality of Senate Bill 03-352. Each of the parties that have been ordered or invited to respond to the Attorney General’s Petition is a named defendant in the district court proceeding. The district court proceeding is progressing on schedule and in a timely manner. The Denver District Court is capable of resolving this dispute in the ordinary course of litigation and there are no circumstances requiring this Court to interrupt the ongoing district court matter.

The only justification the Attorney General offers regarding why the Denver District Court is not capable of resolving this dispute is that “It is uncertain whether the district court proceedings will end prior to commencement of election activities.” Petition at 6. As noted by

the Secretary of State, the courts actually have more time to process the Keller action than the courts had to redraw the congressional districts in 2002,² and the continuation of the Keller case will not endanger the orderly commencement of the election process. See Affidavit of Secretary of State Donetta Davidson. It was not until March 13, 2002, that this Court affirmed the congressional district lines for the 2002 election cycle in Beauprez v. Avalos, 42 P.3d 642 (Colo. 2002). By comparison, this Court will have ample time to exercise its appellate jurisdiction over the pending trial court action.

The case at bar is very similar to the case of People ex rel. v. McClees et al., 20 Colo. 403, 38 P. 468 (1894). There, a group of citizens sought an original writ to enjoin the Secretary of State from issuing certain certificates of election after the 1894 general election. This Court criticized the plaintiffs for attempting to use the original writ procedure to “short cut” proper proceedings in the lower courts. “[T]he present controversy must be heard and determined, if at all, in some proceeding where the jurisdiction of the court is undoubted. When it is heard and determined in a proceeding where the court has jurisdiction, not only to express its *opinion* but to render and enforce its *judgment*, the decision will have more weight.” McClees, 20 Colo. at 414-415.

Even assuming that this is a matter of *publici juris*, this Court has established that it will not exercise original jurisdiction unless the lower courts are incapable of resolving the dispute. This inquiry does not require speculation. The Denver District Court currently has before it a properly filed lawsuit that raises the same claim, seeks the same relief, and joins the same respondents as the Petition for original jurisdiction before this Court. This Court has issued a

² The Avalos plaintiffs filed the original action on May 31, 2001, while the Keller plaintiffs filed the original action on May 7, 2003. The 2002 redistricting case was initiated 24 days closer to the election dates, as compared to the Keller case.

somber warning against using an original writ to seize a matter that is properly before a lower court:

It would, moreover, be a sad blow to the rights and liberties of the people if the courts were thus to anticipate and decide controversies not regularly before them, and which may never actually be brought to trial. Despotism may do this, but free constitutional governments never.

McClees, 20 Colo. at 416. In accordance with established precedents, original jurisdiction is not proper and this Court should defer jurisdiction to the ongoing lower court proceeding.

II. THE ATTORNEY GENERAL HAS NO INDEPENDENT AUTHORITY TO SEEK INJUNCTIVE RELIEF PURSUANT TO ARTICLE VI, §3 OF THE COLORADO CONSTITUTION

The Attorney General lacks authority, whether derivative of the Constitution, statutes, or common law, to file this petition against the Secretary of State. Colo. Const. art. IV, § 1 and § 5; § 24-31-101, et seq., C.R.S. This Court has long recognized that the Attorney General's powers are conferred solely by legislative enactment. "Although the Constitution recognizes the attorney general as being part of the Executive branch of government, *Colo. Const. Art. IV, Sec. 1*, the attorney general does not have powers beyond those granted by the general assembly." People of the State of Colorado ex rel. Dale Tooley v. District Court for the Second Judicial District, 190 Colo. 486, 489, 549 P.2d 774, 777 (1976).

Further, the Attorney General has no residual common law authority to represent the people of Colorado. "Colorado however, has neither identified nor required the attorney general to serve as the 'people's elected chief law officer, as some states have.'" Tooley, 549 P.2d at 777.

The Attorney General offers the case of People of the State of Colorado ex rel. Miller v. Tool, 35 Colo. 225, 86 P. 224 (1905), as support for "the common law authority of the Attorney

General to bring an original proceeding to protect the integrity of the election process.” Petition at 5. In light of Tooley, the Attorney General’s reliance on People ex rel. Miller as a basis for present day common law authority is mistaken. Additionally, People ex rel. Miller, differs from the case at bar in several important respects. In People ex rel. Miller, Attorney General Miller as a co-petitioner with Governor Peabody and a third party sought the original jurisdiction of the Colorado Supreme Court in their belief that there was an imminent threat of violation of the election laws of the State and in recognition of violations of the Denver District Court’s previous injunctive orders. Miller Petition at 5-8, 12-13, 16. This was a matter of urgency as the Miller parties subscribed and swore their Petition on November 2, 1904. Miller Petition at 21. Election day was November 8, 1904. The parties in Miller, unlike here, had an urgent matter with no adequate remedy available to them through lower court determination. In the election six months earlier, the Denver District Court had ordered injunctive relief and that Court’s orders were violated. Miller Petition at 16. The imminent violation of the laws by election officials and previous violations of the Denver District Court’s orders validated the Attorney General’s and Governor’s Petition to the Colorado Supreme Court under Rule 21 of the Colorado Rules of Appellate Procedure³.

Because the Attorney General’s powers are exclusively enumerated by the General Assembly, and can have no foundation in either the Constitution or the common law, he must identify a grant of authority in a statute authorizing him to commence and maintain the instant

³ Additionally, though the Court in People ex rel. Miller does not spell out a statutory basis, the election code in effect in 1904 allowed *candidates* to seek judicial enforcement of the election code. Mills’ Ann. Stat., Volume 3, § 1625(t). Thus, the relator section of the Miller Petition identifies the Governor and the Attorney General both in their capacities as elected officials and also in their capacities as candidates. Miller Petition at 6. This is a statutory rather than a common law basis for the Attorney General as a candidate to seek the assistance of the courts in enforcing the election code.

action. The Colorado Revised Statutes contain no grant of power or discretion to petition this Court for this extraordinary writ absent directive from the Governor or other recognized client.

Instead, the statutes direct that “The Attorney General of the State shall be the legal counsel and advisor for each department, division, board, bureau and agency of the state government other than the legislative branch.” Section 24-31-101(1)(a), C.R.S. The Attorney General is directed by statute to “appear for the state and prosecute and defend all actions and proceedings, civil and criminal, in which the state is a party or is interested when required to do so by the governor and he shall prosecute and defend for the state all causes in the appellate courts in which the state is a party or is interested.” Section 24-31-101(1)(a), C.R.S. It is also the duty of the Attorney General to prosecute and defend all suits at the request of the Governor or Secretary of State. Section 24-31-101(1)(b), C.R.S.

Thus, the Attorney General’s attempt to litigate against another executive branch official is not only unauthorized, it is specifically prohibited.

III. THE ATTORNEY GENERAL IS PROHIBITED BY THE RULES OF PROFESSIONAL CONDUCT FROM UNILATERALLY SUING ANOTHER EXECUTIVE BRANCH OFFICIAL

This Court’s rules governing appropriate attorney conduct warrant disqualification of the Attorney General from suing his own clients in contravention of his statutorily established attorney-client relationship.⁴ “Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their

⁴ Even if the Attorney General had common law powers, and such powers could extend so far as to permit him to represent the People, these powers were superseded by the statutory responsibilities established by the General Assembly. “Our general assembly had the power to repeal the common law either expressly or by the enactment of a statute inconsistent therewith.” Colorado State Board of Pharmacy v. Hallett, 88 Colo. 331,336-337, 296 P. 540, 542 (1931). The common law prevails in this state only by virtue of its adoption into the law of the state by legislative enactment.” Colorado State Board of Pharmacy v. Hallett, 88 Colo. 331,335, 296 P. 540, 542 (1931).

relationship with and function in our legal system.” In re Pautler, 47 P.3d 1175, 1178 (Colo. 2002).

Although section 24-31-101(1)(e) of the Colorado Revised Statutes recognizes that the Attorney General may refuse to represent the Governor and Secretary of State, such a refusal does not then enable him to abandon his continuing duty of loyalty to the Governor and Secretary of State as his clients. The Attorney General continues to actively represent and advise both the Governor and Secretary of State on a multitude of legal issues.

An attorney suing his own client while simultaneously representing that client on other matters has a clear conflict of interest. The Colorado Revised Statutes recognize that the Attorney General may not be able to provide legal services, but in no case do they permit the Attorney General to enter into litigation adverse to his client. Instead, the only option available for an attorney who can no longer represent his client is to withdraw. Colorado Rules of Professional Conduct Rule 1.16(a).

The Attorney General may not, under the Rules of Professional Conduct, represent a client if the representation will be directly adverse to another client. Colorado Rule of Professional Conduct 1.7 provides that a “lawyer shall not represent a client if the representation of that client will be directly adverse to another client.” The comments to Rule 1.7 explain: “Loyalty is an essential element in the lawyer’s relationship to a client.... As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client without that client’s consent. Thus, a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated.”

Here, the Attorney General did not secure Governor Owens’ consent to act in a manner adverse to his client. In fact, the only communication of the Attorney General’s intentions was

sent to a third party that does not normally enjoy an attorney-client relationship with him-- the Colorado General Assembly. While it is questionable that this particular conflict is capable of waiver by the client, it remains that only his client's consent would allow the Attorney General to act in a manner adverse to the Governor and the Secretary of State's interests. Prior to his filing of the Petition to this Court, Attorney General Salazar received a communication from Governor Owens concerning his attorney-client relationship with regard to matters surrounding Senate Bill 03- 352 [See Exhibit B]. The Attorney General has violated his duty of loyalty to the State of Colorado and its executive branch officials.

The Colorado Rules of Professional Conduct require an attorney to withdraw from representation that results in a violation of the Rules of Professional Conduct or other law. Colorado Rules of Professional Conduct Rule 1.16(a)(1). Rule 1.13 requires that if the Attorney General is concerned that the best interests of the organization are being disregarded, his responsibility is to refer the matter to the highest authority in the organization for a determination.⁵ Colorado Rules of Professional Conduct Rule 1.13(3). If the Attorney General cannot continue representation, he may resign from that action in accordance with Rule 1.16. Colorado Rules of Professional Conduct Rule 1.13(c).

The requirements of the Rules of Professional Conduct and the General Assembly's statutory structure harmonize perfectly. Under both legal structures, the Attorney General's proper approach to the dilemma with which he was potentially faced was to withdraw from activity for any side. Instead, the Attorney General has created a conflict of interest for himself

⁵ The comment to Rule 1.13 recognizes that a government lawyer may have difficulty in determining the precise identity of the client and acknowledges that a government attorney may be subject to statutes and regulation. Applying these observations from the comment, the Governor is specifically identified by the Colorado Constitution as the highest authority of the government organization as a whole and the Attorney General is obligated by statute to represent the Governor. Therefore, there should be no uncertainty on behalf of the Attorney General concerning the correct course of action under Rule 1.13 of the Colorado Rules of Professional Conduct.

and arguably for his office.⁶ Furthermore, the Attorney General's attorney-client relationship with the executive branch is statutory: he cannot abandon that relationship and its requisite duties while Attorney General. In accordance with Rule 1.16, the Attorney General must terminate his representation of his purported client in this petition for original jurisdiction.

IV. A GRANT OF THE RELIEF REQUESTED WOULD UNCONSTITUTIONALLY DEPRIVE THE GOVERNOR OF THE SUPREME EXECUTIVE POWER

Article IV, § 2 of the Colorado Constitution vests the supreme executive power in the Governor and vests the Governor with the responsibility to take care that the laws be faithfully executed. Thus, it is the Governor who is rightfully a party to secure enforcement of properly enacted laws and to seek restraint of subordinate executive officers who attempt to violate the law. "As it is the express duty of the governor to see that the laws be faithfully executed and to perform the other duties mentioned, who is more directly interested in seeing that the officers of the executive department, of which he is the supreme head, shall execute the duties imposed upon them by law, when the performance of those duties is necessary before the governor can properly discharge the duties imposed upon him?" People ex rel. Ammons v. Kennehan, 55 Colo. 589, 604, 136 P. 1033, 1038 (1913). No other executive branch official is identified in the Constitution as the appropriate party to secure this Court's review.

If this Court confers a power reserved for the Governor upon an inferior officer, the constitutional structure is destroyed and § 2 of Article IV of the Colorado Constitution is

⁶ Rule 5.1 requires a lawyer having direct supervisory authority over another lawyer to make reasonable efforts to ensure the subordinate lawyer conforms to the Rules of Professional Conduct. Colorado Rules of Professional Conduct Rule 5.1 Rule 5.2 provides a like responsibility on the subordinate lawyer regarding his or her conduct under the direction of a supervisory lawyer. Colorado Rules of Professional Conduct 5.2 In addition, the Attorney General's duty of loyalty extends to all attorneys in the Attorney General's office. Colorado Rules of Professional Conduct 1.10.

deprived of its meaning. Imposing the Petitioner's requested relief would recognize in the office of the Attorney General an authority that the Constitution reserves for the office of the Governor.

V. A GRANT OF THE PETITION WOULD UNCONSTITUTIONALLY EXPAND THE SPECIAL INTERROGATORY PROVISION OF ARTICLE VI, §3

The ability to request special interrogatories of the Court is confined to the Governor and to the General Assembly in urgent situations prior to passage of the act in question. Colo. Const. art. VI, § 3. This is sensible since the Governor and the General Assembly, unlike the Attorney General, have constitutionally recognized and detailed roles in the enactment of legislation. In essence, the Attorney General asks the Supreme Court to expand the Constitution's special interrogatory provision to any inquiry regarding the constitutionality of a legislative enactment after its adoption.

In practice, the Attorney General currently reviews each piece of legislation adopted by the General Assembly and sent to the Governor for action. The Attorney General provides legal advice to the Governor on each of these bills.⁷ If authorized to seek special post-enactment writs, the Attorney General's review would change to a quasi-judicial function related to determining the validity of what are presumptively valid laws. Original jurisdiction review could be sought at the discretion of the Attorney General without the inconvenience of a trial through the lower courts. This would be in direct contradiction to the Attorney General's role as legal advisor to state government, and indeed confers a power similar to that exercised by the courts.

CONCLUSION

For these reasons, the relief requested in the Petition must be denied.

⁷ The Governor did not receive the usual communication concerning the Attorney General's review of SB 03-352.

Respectfully submitted this 11th day of June, 2003.

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EXHIBIT A



ATTORNEY GENERAL OF COLORADO
Ken Salazar

May 5, 2003

Honorable John Andrews
President
Colorado State Senate
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Honorable Lola Spradley
Speaker
Colorado House of Representatives
Denver, CO 80203

Honorable Joan Fitz-Gerald
Minority Leader
Colorado State Senate
Denver, CO 80203

Honorable Jennifer Veiga
Minority Leader
Colorado House of Representatives
Denver, CO 80203

Dear Senators Andrews and Fitz-Gerald and Representatives Spradley and Veiga:

I am writing regarding SB 352, proposed legislation to re-draw Colorado's congressional districts.

There will undoubtedly be a legal challenge to whatever boundaries are adopted by the General Assembly, resulting in expensive litigation in which the State will needlessly incur costs and expenses.

Because of the extraordinary nature of this legislation, I write to advise you that, in my opinion, the General Assembly may not have the authority to redistrict congressional seats at this time. If SB 352 is enacted, legal action will be filed seeking a court order that SB 352 is unconstitutional. Because I believe the bill undermines the constitutional redistricting framework, I will (1) refuse to defend the State defendants in that action and (2) on behalf of the people of Colorado, I will support the claim that SB 352 is unconstitutional.

Our state and federal constitutions, as well as tradition and precedent, contemplate that congressional districts be re-drawn every ten years, following the decennial census--not multiple redistricting between the census years.

Governor's Brief
Exhibit A

Before 1974, Art. V, section 44 of the Colorado constitution read as follows:

One representative in the congress of the United States shall be elected from the state at large in the first election and thereafter at such times and places and in such manner as prescribed by law. When a new apportionment shall be made by congress the general assembly shall divide the state into congressional districts accordingly.

The present version of Art. V, section 44 reads:

The general assembly shall divide the state into as many congressional districts as there are representatives in congress apportioned to the state by the congress of the United States for the election of one representative to congress from each district. When a new apportionment shall be made by congress, the general assembly shall divide the state into congressional districts accordingly.

The latest version eliminated the language that gave discretion to the legislature to determine the time and manner of election. It kept the language that required the legislature to re-district after the reapportionment by the Congress. In my view, this amendment limits the power of the general assembly to redistrict only once during the decade.

Redistricting of Colorado's congressional districts has already taken place for this decade. Congressional elections have already been held. Congress has not held another reapportionment, which is a condition precedent under the state constitution to congressional redistricting in Colorado. SB 352 therefore violates the spirit of the state and federal constitutions.

To my knowledge, what is being proposed today is without precedent anywhere in the country.

Should this unprecedented action actually become law, it may very well trigger similar activity in other states based upon elections every two years, resulting in state-by-state and congressional instability that may have profound negative effects on our historic system of government.

I respectfully request that you take this letter into account as you consider SB 352.

Sincerely,



KEN SALAZAR
Attorney General

EXHIBIT B

EXECUTIVE CHAMBERS

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Bill Owens
Governor

Britt I. Weygandt
Chief Counsel

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

May 13, 2003

The Honorable Ken Salazar
Attorney General
Office of the Attorney General
1525 Sherman Street, 5th Floor
Denver, CO 80203

Dear General Salazar:

I write in light of your communications to the legislative leadership of the Colorado General Assembly on May 5 and May 7 of this year concerning Senate Bill 352 ("SB 352") as they relate to your defense of Governor Owens on this and other matters.

In your May 5, 2003 letter to the General Assembly you state that you will "refuse to defend the State defendants" in an action you anticipate will arise from the adoption of the bill and "I will support the claim that SB 352 is unconstitutional." Given your refusal to defend a properly enacted Colorado law, Governor Owens feels he has no choice but to exercise his authority under Colorado Revised Statute §24-31-101(e) to employ outside counsel in the event a state official must defend a challenge related to the adoption of the above referenced legislation.

Pursuant to §24-31-101(e) Colorado Revised Statutes (2002), "any expense incurred by reason of the employment of counsel pursuant to this paragraph (e) shall be a lawful charge against appropriations for this purpose made by the general assembly to the department of law." Therefore, I write to advise you to set aside a minimum of \$200,000 for the expense of hiring private counsel to defend the Secretary of State and any other state defendant requiring counsel. Governor Owens recognizes that had you chosen to fulfill your duties as the Attorney General the cost of representing the "state defendants" would be significantly reduced. However, your recent actions leave him with little choice but to be prepared to hire outside counsel to fulfill this responsibility.

The Honorable Ken Salazar
May 13, 2003
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Finally, no challenge related to this matter has been lodged against Governor Owens. Governor Owens continues to rely on you to defend him in matters unrelated to the constitutionality of SB 352. Though we recognize your interest in the outcome of any legal challenge to SB 352, please know that the Governor expects you to honor your duties to him in the attorney-client context. This particularly includes the duty you have to him through the Colorado Rules of Professional Conduct. Any assistance you might provide to those who desire to sue over the constitutionality of SB 352 would breach that duty. *See comment to Rule 1.7 Conflict of Interest General Rule.*

Thank you for your continued representation of Governor Owens on other state matters.

Sincerely,



Britt I. Weygandt
Chief Counsel to Governor Owens

EXHIBIT C



ATTORNEY GENERAL OF COLORADO
Ken Salazar

May 13, 2003

Governor Bill Owens
136 State Capitol
Denver, CO 80203

Dear Governor Owens:

Thank you for your call this morning concerning the subsequent letter I received from Britt Weygandt dated today as it relates to Senate Bill 352 ("SB 352").

I look forward to continuing to have a constructive relationship with you on the thousands of matters that we work on together.

Concerning Britt's letter, last year you thought it was best to appoint outside counsel in the redistricting litigation. I agreed with you and it was so done. In that case, I understand the legal fees came from what was then the existing Litigation Management Fund and appropriations for legal services to the Governor's Office. As set forth in the history of the payment for those services, it is important that the fiscal controls of the state be followed.

In this case, we will work with Secretary of State Donetta Davidson's office and your office concerning handling the financial impacts of this litigation. There is no specific money appropriated for this purpose, and the General Assembly eliminated the Litigation Management Fund during budget cuts.

I did inform the General Assembly that I would refuse to defend SB 352 because, in my view, SB 352 is unconstitutional. Because I am elected by the People of Colorado, my first responsibility is to support the Constitution of the State of Colorado. I will do so to the best of my ability.

Finally, I have had no confidential attorney-client communication with you concerning your position on SB 352. Your position is public and clear: you think SB 352 is constitutional. Based on my research, and as the chief legal officer for Colorado, I believe SB 352 is unconstitutional. I will therefore take whatever action I decide to take on behalf of the People of the State of Colorado, and in this case, Britt Weygandt's comment concerning *Rule 1.7 on Conflict of Interest General Rule* is inapplicable.

I look forward to continuing to serve the People of Colorado with you in the years ahead.

Sincerely,

KEN SALAZAR
Attorney General

Governor's Brief
Exhibit C

cc: Britt Weygandt, Chief Counsel to Governor Owens

CERTIFICATE OF SERVICE

This is to certify that I have duly served this GOVERNOR'S BRIEF IN OPPOSITION TO PETITIONER'S REQUEST FOR RELIEF to the following parties via hand-delivery and by depositing copies of same in the United States mail, postage prepaid, at Denver, Colorado, this 11th day of June, 2003, addressed as follows:

Secretary of State Donetta Davidson
Office of the Colorado Secretary of State
1560 Broadway, Room 200
Denver, Colorado 80202-5169

Attorney General Ken Salazar
Office of the Attorney General of Colorado
1525 Sherman Street, 7th Floor
Denver, Colorado 80203

and to the following party by depositing a copy of same in the United States mail, postage prepaid, at Denver, Colorado, this 11th of June, 2003, addressed as follows:

The Honorable Mark Udall
United States House of Representatives
115 Cannon House Office Building
Washington, D.C. 20515

