

In Re: Hickenlooper v. Coffman
2015 SA 296

Attorney General's Brief Addressing Jurisdictional Questions

Exhibit J

Second Regular Session
Sixty-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 04-1016.01 Jerry Barry

HOUSE BILL 04-1432

HOUSE SPONSORSHIP

Stengel

SENATE SPONSORSHIP

Dyer

House Committees

Senate Committees

Judiciary

A BILL FOR AN ACT

101 CONCERNING THE AUTHORITY OF THE ATTORNEY GENERAL.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Amends the powers and duties of the attorney general by:

Repealing any common law duties, powers, or authority of the attorney general, except as specifically recognized by law;

Limiting the authority of the attorney general to appear on behalf of the state in appellate courts to cases in which the attorney general or a district attorney appeared on behalf of the state at the trial court and to other cases when required to appear by the governor; and

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

Authorizing the attorney general to file an original proceeding with the Colorado supreme court regardless of whether he or she is directed to do so by the governor only to determine the constitutionality of a state law.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Part 1 of article 31 of title 24, Colorado Revised
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
4 read:

5 **24-31-100.5. Legislative declaration - repeal of common law**
6 **powers, duties, and authority.** (1) THE GENERAL ASSEMBLY HEREBY
7 FINDS AND DECLARES:

8 (a) THE EXTENT OF THE POWERS AND DUTIES OF THE ATTORNEY
9 GENERAL WAS THE PRIMARY SUBJECT OF THE CASE OF *DAVIDSON V.*
10 *SALAZAR*, CASE NO. 03 SA 147.

11 (b) IN *DAVIDSON*, THE ATTORNEY GENERAL ARGUED THAT,
12 PURSUANT TO SECTION 2-4-211, C.R.S., HE HAD CERTAIN COMMON LAW
13 POWERS BECAUSE THOSE POWERS HAD NEVER BEEN REPEALED BY THE
14 GENERAL ASSEMBLY.

15 (c) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT ANY DUTY,
16 POWER, OR AUTHORITY THE ATTORNEY GENERAL MAY HAVE HAD UNDER
17 THE COMMON LAW IS REPEALED, AND THAT THE ATTORNEY GENERAL'S
18 DUTIES, POWERS, AND AUTHORITY ARE LIMITED TO THOSE SPECIFICALLY
19 GRANTED IN STATUTE TO THE ATTORNEY GENERAL BY THE GENERAL
20 ASSEMBLY.

21 (d) IN *DAVIDSON*, THE COLORADO SUPREME COURT HELD THAT,
22 EVEN WITHOUT STATUTORY AUTHORITY, AN ATTORNEY GENERAL MAY FILE
23 AN ORIGINAL PROCEEDING WITH THE COLORADO SUPREME COURT TO

1 DETERMINE THE CONSTITUTIONALITY OF AN ACT.

2 (e) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO LIMIT, TO THE
3 GREATEST EXTENT POSSIBLE, THE AUTHORITY OF THE ATTORNEY GENERAL
4 TO FILE ORIGINAL PROCEEDINGS.

5 (2) EXCEPT AS SPECIFICALLY RECOGNIZED AND REAFFIRMED BY
6 SECTION 24-31-101, ANY DUTY, POWER, OR AUTHORITY GRANTED,
7 IMPOSED, OR OTHERWISE GIVEN TO THE ATTORNEY GENERAL UNDER THE
8 COMMON LAW OF ENGLAND IS HEREBY REPEALED.

9 **SECTION 2.** 24-31-101 (1) (a), Colorado Revised Statutes, is
10 amended to read:

11 **24-31-101. Powers and duties of attorney general.**

12 (1) (a) (I) The attorney general of the state shall:

13 (A) Be the legal counsel and advisor of each department, division,
14 board, bureau, and agency of the state government other than the
15 legislative branch ~~He shall~~ AND attend in person at the seat of government
16 during the session of the general assembly and term of the supreme court;
17 ~~and shall~~

18 (B) Appear for the state and prosecute and defend all actions and
19 proceedings, civil and criminal, in the trial courts in which the state is a
20 party or is interested when required to do so by the governor; and ~~he shall~~

21 (C) Prosecute and defend for the state all causes in the appellate
22 courts ~~in which the state is a party or interested~~ IN WHICH A DISTRICT
23 ATTORNEY APPEARED FOR THE STATE IN A TRIAL COURT OR THE ATTORNEY
24 GENERAL APPEARED FOR THE STATE IN A TRIAL COURT PURSUANT TO
25 SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (I) AND ALL OTHER
26 CAUSES IN THE APPELLATE COURTS WHEN REQUIRED TO DO SO BY THE
27 GOVERNOR.

1 (II) THE ATTORNEY GENERAL MAY FILE AN ORIGINAL PROCEEDING
2 PURSUANT TO SECTION 3 OF ARTICLE VI OF THE STATE CONSTITUTION
3 DIRECTLY WITH THE COLORADO SUPREME COURT TO DETERMINE THE
4 CONSTITUTIONALITY OF A COLORADO LAW, REGARDLESS OF WHETHER HE
5 OR SHE HAS BEEN REQUIRED TO DO SO BY THE GOVERNOR. THE ATTORNEY
6 GENERAL SHALL HAVE NO OTHER AUTHORITY TO FILE AN ORIGINAL
7 PROCEEDING WITH THE COLORADO SUPREME COURT, UNLESS HE OR SHE IS
8 REQUIRED TO DO SO BY THE GOVERNOR.

9 **SECTION 3. Effective date.** This act shall take effect at 12:01
10 a.m. on the day following the expiration of the ninety-day period after
11 final adjournment of the general assembly that is allowed for submitting
12 a referendum petition pursuant to article V, section 1 (3) of the state
13 constitution (August 4, 2004, if adjournment sine die is on May 5, 2004);
14 except that, if a referendum petition is filed against this act or an item,
15 section, or part of this act within such period, then the act, item, section,
16 or part, if approved by the people, shall take effect on the date of the
17 official declaration of the vote thereon by proclamation of the governor.