

In Re: Hickenlooper v. Coffman
2015 SA 296

Attorney General's Brief Addressing Jurisdictional Questions

Exhibit K

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AUDIO TRANSCRIPTION
Audio of A Bill for an Act Concerning the Authority of
the Attorney General: House Chambers
SIXTY-FOURTH GENERAL ASSEMBLY
STATE OF COLORADO
Second Regular Session

Tuesday, April 20, 2004
HOUR OF CONVENING: 11:02 a.m.

ORIGINAL

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recording by Teresa Hart, Registered Professional
Reporter and Notary Public.

P R O C E E D I N G S

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3 REPRESENTATIVE HEFLEY: The House
4 Judiciary Committee will come to order. Jennifer,
5 please call the roll.

6 MS. MOE: Representative Boyd.

7 REPRESENTATIVE BOYD: Here.

8 MS. MOE: Carroll.

9 REPRESENTATIVE CARROLL: Here.

10 MS. MOE: Clapp.

11 REPRESENTATIVE CLAPP: Here.

12 MS. MOE: Decker.

13 REPRESENTATIVE DECKER: Here.

14 MS. MOE: Jahn.

15 REPRESENTATIVE JAHN: Here.

16 MS. MOE: Judd.

17 REPRESENTATIVE JUDD: Here.

18 MS. MOE: Lee.

19 REPRESENTATIVE LEE: Here.

20 MS. MOE: McGihon.

21 REPRESENTATIVE MCGIHON: Here.

22 MS. MOE: Stengel.

23 REPRESENTATIVE STENGEL: Here.

24 MS. MOE: Smith.

25 REPRESENTATIVE SMITH: Here.

1 MS. MOE: Madame Chair.

2 REPRESENTATIVE HEFLEY: Here.

3 We do have a quorum. And I just want to
4 say to the committee before we begin that if you'll
5 notice, you had a handout at your place today. Another
6 piece to add for the hearing that we'll be having on
7 Thursday in the old Supreme Court chambers on the
8 impeachment.

9 I hope everyone has had a chance to look
10 through their packet. We've prepared a very in-depth
11 packet for you. And if you have any questions or
12 concerns, please talk to Jeremiah Berry (phonetic) or
13 myself. But the first name certainly might be the best
14 one if you have any major, major concerns on how we're
15 proceeding.

16 Today we have two bills before us. And
17 the first one would be Representative Stengel, Phil,
18 House Bill 1432. And when you're ready, the floor is
19 yours.

20 REPRESENTATIVE STENGEL: Thank you,
21 Madame Chair.

22 I'd like to say I'm happy to bring 1432
23 before you, but in some respects I am and I'm not. As
24 you all know, the office of the attorney general is a
25 constitutionally created office through statutory

1 powers. And those powers are enumerated in 24-31-101.

2 24-31-101 authorizes the AG to appear in
3 appellate court without limits and without being
4 requested to appear. 1432 proposes to limit the
5 statutory authority of the AG to unilaterally appear in
6 any appellate court.

7 But I want to make it clear that 1432
8 does not limit the attorney general's original
9 jurisdiction under the Colorado Constitution,
10 Article 6, Section 3, which deals basically with writs,
11 special writs. And 1432 is not an attempt to restrict
12 that power that the attorney general currently has.

13 What 1432 is attempting to do is discuss
14 the issue of the common law powers that the attorney
15 general has. And with the recent holding, the Supreme
16 Court promoted the idea that the attorney general, as a
17 taxpayer, as an individual taxpayer and as a
18 Constitutional officeholder, that they were entitled to
19 raise the constitutionality of the certain statutes.

20 Common-law powers have historically been
21 granted to the attorney general, and those are
22 contained in 2-4-211. And these common-law powers are
23 derived from English law historically. They've been on
24 the books.

25 And in that decision, Salazar v.

1 Davidson, the Supreme Court said that because the
2 general assembly has not chosen to restrict or
3 enumerate those powers, that the attorney general
4 therefore had virtually unlimited common-law powers.
5 1432 is a response to that holding.

6 Again, I'm not attempting to limit the
7 AG's Constitutional powers. Simply, this is an attempt
8 to discuss the common-law powers that we've granted the
9 attorney general and whether those are really what the
10 general assembly thinks is in the best interest of the
11 state of Colorado.

12 And I call your attention to third-party
13 actions that the attorney general is currently or has
14 in the past intervened in, and that would be Keller v.
15 Davidson.

16 Now, the Supreme Court talked about the
17 ability of the attorney general to intervene when
18 there's a governmental interest at stake. But that's
19 when the attorney general intervenes on behalf of the
20 people against the government's interest, not when it's
21 a third-party claim that the attorney general has
22 intervened in support of that third-party claim.

23 And I think if you'll look at the
24 Colorado Rules of Professional Conduct, they carve out
25 the exception that the attorney general can intervene

1 on behalf of the taxpayers, on behalf of the State, on
2 behalf of Constitutional issues.

3 But I think it's unclear as to whether
4 the attorney general can intervene in third-party
5 actions when it's against his client. I think if
6 you'll read the scope of comments on this rule, I think
7 that area is somewhat unclear.

8 I think House Bill 1432 is an attempt to
9 potentially address some of those common-law privileges
10 that we've granted the attorney general, because I want
11 to call your attention back to what I said previously,
12 the general assembly can limit common-law powers and
13 can limit statutory powers of the attorney general.

14 Madame Chair, with that, this has become
15 a political issue and it's become a campaign issue for
16 a good number of people. And rather than put my
17 colleagues on the spot of having to vote for or against
18 the general assembly, at this point in time, Madame
19 Chair, I would ask that House Bill 1432 be PI'd, and I
20 move that motion.

21 REPRESENTATIVE CARROLL: Second.

22 REPRESENTATIVE HEFLEY: Thank you,
23 Representative Stengel. It's been moved and quickly
24 seconded by Representative Carroll.

25 (Inaudible.)

1 REPRESENTATIVE HEFLEY: However, are
2 there any comments?

3 REPRESENTATIVE STENGEL: I'd like to
4 speak with Representative Carroll later.

5 REPRESENTATIVE HEFLEY: Are there any
6 comments or remarks that the committee would like to
7 make? Representative Smith.

8 REPRESENTATIVE SMITH: Thank you, Madame
9 Chair.

10 And, Representative Stengel, I -- it's
11 probably a wise move at this late juncture in the
12 session for this bill.

13 One comment, though, that you've made
14 with regard to the introduction. And I'm serving on
15 the committee on legal services with Representative Lee
16 and with the chair. I don't know that the Davidson
17 case, the one that's in front of the court, is one I
18 would characterize to only limit the attorney general's
19 powers to common law.

20 I will tell you that in reading the
21 challenge and hearing the Court's response, there
22 might, in fact, be an argument that the attorney
23 general of the state is given additional
24 Constitutional, and in their own light from the
25 Constitutional stature of that office, have some

1 (inaudible).

2 Common law is something that we can
3 simply overturn by statute, which is where I think this
4 bill is directed. But I just want to make a little bit
5 of a distinction. There may, in fact, be powers in the
6 attorney general's office that have been given to him
7 or her based upon the Constitutional nature of the
8 office, and I just want to make that statement for the
9 record.

10 REPRESENTATIVE HEFLEY: Representative
11 Carroll.

12 REPRESENTATIVE CARROLL: Thank you,
13 Madame Chair. Representative Stengel, I didn't quickly
14 second out of any disrespect for you. I feel that my
15 lateness (inaudible). However, I do believe that this
16 piece of legislation probably was the wrong legislation
17 for the wrong time.

18 There probably are some good questions in
19 terms of the Constitutional and common-law authority of
20 the attorney general. However, those questions always
21 have to be held up against the notion -- the idea and
22 the clear notion that the attorney general is a
23 constitutionally-elected official by the people of this
24 state.

25 And as such, the question always has to

1 be raised, Who does the attorney general owe his first
2 allegiance to, the people who elected him to that
3 office or to the general assembly and the other
4 branches of government which he had to protect.

5 I fall down on the side that the attorney
6 general's first responsibility as a constitutionally
7 elected official is to the people of the state; that if
8 he is an elected official, his powers derives first and
9 foremost from the people of the state, and not from the
10 general assembly or the governor or any other body
11 within the state.

12 And as such, it has a responsibility to
13 defend the people of the state against Constitutional
14 infractions whether they be conducted or committed by
15 the general assembly or the executive branch. But I do
16 want to thank you for at least being very thoughtful
17 about this.

18 REPRESENTATIVE HEFLEY: Please make your
19 statements brief. Representative Lee.

20 REPRESENTATIVE LEE: (Inaudible) motion
21 in the committee of a whole (inaudible) 4232.

22 REPRESENTATIVE HEFLEY: You've heard the
23 motion. Is there a second? Representative Clapp has
24 seconded. Representative Lee.

25 REPRESENTATIVE LEE: Very good. I think

1 this dialogue and debate is worth continuing. I was a
2 little bit surprised that Representative Stengel
3 (inaudible) indefinitely. I think that this is --
4 regardless if it's an election year or not, I think
5 it's dialogue that needs to be had.

6 I think we too are elected by the people,
7 and these are issues that we are elected to look at
8 when the opportunity comes to us. And I think it's a
9 legitimate argument and dialogue to have, and I think
10 it needs to be continued.

11 REPRESENTATIVE HEFLEY: Any further
12 discussion on the substitute? Representative McGihon.

13 REPRESENTATIVE MCGIHON: Thank you,
14 Madame Chair. I would ask for a no vote on the
15 substitute motion to echo what Representative Smith
16 said and somewhat of what Representative Carroll said.

17 I think that it is not the purview of the
18 general assembly to invade the Constitutional powers of
19 the attorney general; rather, that is up to the people
20 by means of a Constitutional amendment. So I would ask
21 for a no vote.

22 And I would ask for a no vote because
23 Representative Stengel has asked that this be postponed
24 indefinitely. So out of respect for Representative
25 Stengel and his desires, I think a no vote is

1 appropriate.

2 REPRESENTATIVE HEFLEY: Are there any
3 further comments from anyone on the committee? And,
4 Representative Stengel, did you want to say anything or
5 did you want to do that right at the end? You can
6 wait. Representative Smith.

7 REPRESENTATIVE SMITH: Thank you, Madame
8 Chair. The new motion on the table is to move
9 House Bill 1432 to the committee of the whole. First
10 of all, a motion is in order. I just want to make one
11 note that by moving in this manner, we are, in fact,
12 (inaudible) the opportunity to have the testimony in
13 front of us. However, there's no doubt in my mind that
14 the motion will not (inaudible).

15 So in that regard, I want to make
16 comments on the bill. The bill largely focuses on the
17 power of an original proceeding. An original
18 proceeding is an extraordinary power of the Supreme
19 Court. It is something that they have tucked away in
20 the balance provision.

21 The question is: Does the attorney
22 general, in fact, have the right to exercise the
23 discretion for selecting an original proceeding. And I
24 think that is very much in order, and I will be a no
25 vote on the substituted motion.

1 REPRESENTATIVE HEFLEY: Any further
2 comments on the substituted motion? Representative
3 Stengel.

4 REPRESENTATIVE STENGEL: Thank you,
5 Madame Chair. I would ask for a no vote as well. I
6 made some commitments to many members -- or, excuse me,
7 many of the witnesses that I was going to PI the bill.
8 And by moving this bill directly to the floor, that
9 cuts them out of the debate, and that's not exactly the
10 way I like to do business.

11 So I had anticipated a very spirited
12 debate, but because -- and I'd like to back up
13 slightly. I prepared this bill at the very beginning
14 of session, long before any political changes in the
15 world that we see today occurred. And so it was not
16 meant to be aimed at any one particular person or any
17 one particular office.

18 It's, again, my view that the general
19 assembly has lost some of our plenary power through
20 many decisions that have occurred in the past. This
21 bill was an attempt to rein in the common-law
22 privileges that we've granted to the attorney general.

23 And as Representative Smith has very
24 clearly pointed out, this bill did not address the
25 Constitutional powers that the attorney general has,

1 and that is not where I wanted to go.

2 And since now we have a substitute motion
3 on the table that will limit debate on the issue, I
4 don't think that that is probably a very good idea, for
5 the general assembly to proceed in that matter on
6 something that is so important to everyone, the
7 citizens and both -- excuse me, all three branches of
8 government. So I would ask for a no vote, Madame
9 Chair.

10 REPRESENTATIVE HEFLEY: Representative
11 Lee.

12 REPRESENTATIVE LEE: Thank you, Madame
13 Chair. (Inaudible) withdraw their motions and we can
14 have the dialogue. We can have the witnesses and we
15 can have a dialogue. And I'm looking forward to
16 hearing both sides of this issue, and I feel like we're
17 leaving the public out of that.

18 And I think this was brought forward, and
19 I would not have made a motion except for the fact I
20 think that the dialogue needs to happen. And if we
21 can -- instead of just coming in PI, if we can have the
22 dialogue and make the determination, I think then the
23 public is given the opportunity to speak to this issue.

24 REPRESENTATIVE HEFLEY: The one thing
25 that I had been apprised of is that some of the

1 witnesses probably did not come because they knew that
2 the request was going to be to PI. So with that
3 thought in mind, I think it's up to you certainly
4 whether you withdraw or not. But right now the motion
5 is still on the table and I'm ready for action.

6 REPRESENTATIVE LEE: Unless we can have
7 testimony today, I'd retake my motion.

8 REPRESENTATIVE HEFLEY: The motion is on
9 the floor, substitute motion on the table to send the
10 bill to the committee of the whole, and moved and
11 seconded. Please call -- is there any objection?
12 Please call the role.

13 MS. MOE: Representative Boyd.

14 REPRESENTATIVE BOYD: No.

15 MS. MOE: Carroll.

16 REPRESENTATIVE CARROLL: No.

17 MS. MOE: Clapp.

18 REPRESENTATIVE CLAPP: Yes.

19 MS. MOE: Decker.

20 REPRESENTATIVE DECKER: Yes.

21 MS. MOE: Jahn.

22 REPRESENTATIVE JAHN: No.

23 MS. MOE: Judd.

24 REPRESENTATIVE JUDD: No.

25 MS. MOE: Lee.

1 REPRESENTATIVE LEE: Yes.

2 MS. MOE: McGihon.

3 REPRESENTATIVE MCGIHON: No.

4 MS. MOE: Stengel.

5 REPRESENTATIVE STENGEL: No.

6 MS. MOE: Smith.

7 REPRESENTATIVE SMITH: No.

8 MS. MOE: Madame Chair.

9 REPRESENTATIVE HEFLEY: No.

10 That fails three to eight. The -- we're
11 back to the original motion to PI. And I just want to
12 say that in talking with Representative Stengel and
13 with others, I think it was good that you went ahead
14 and brought it forward since you had it prepared and
15 you wanted to make note of it.

16 But I also feel that it is the
17 prerogative of the sponsor, as we move through
18 processes, that they can PI a bill or take the bill off
19 the table if the committee agrees so that it can
20 further rediscuss it at another date and for all kinds
21 of reasons. So I think probably this is an appropriate
22 motion at this time. Please call the role.

23 MS. MOE: Representative Boyd.

24 REPRESENTATIVE BOYD: Yes.

25 MS. MOE: Carroll.

1 REPRESENTATIVE CARROLL: Yes.
2 MS. MOE: Clapp.
3 REPRESENTATIVE CLAPP: No.
4 MS. MOE: Decker.
5 REPRESENTATIVE DECKER: No.
6 MS. MOE: Jahn.
7 REPRESENTATIVE JAHN: Yes.
8 MS. MOE: Judd.
9 REPRESENTATIVE JUDD: Yes.
10 MS. MOE: Lee.
11 REPRESENTATIVE LEE: No.
12 MS. MOE: McGihon.
13 REPRESENTATIVE MCGIHON: Yes.
14 MS. MOE: Stengel.
15 REPRESENTATIVE STENGEL: Yes.
16 MS. MOE: Smith.
17 REPRESENTATIVE SMITH: Yes.
18 MS. MOE: Madame Chair.
19 REPRESENTATIVE HEFLEY: Yes. That count
20 is 8 to 3 to PI. Thank you, Representative Stengel,
21 for --
22 REPRESENTATIVE STENGEL: (Inaudible.)
23 REPRESENTATIVE HEFLEY: -- all your work
24 on it. I'm sure we'll be seeing it again.
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1 (Whereupon, the audio recording was
2 concluded.)
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CERTIFICATE

STATE OF COLORADO)
CITY AND COUNTY OF DENVER) ss.

I, TERESA HART, Registered Professional Reporter and Notary Public for the State of Colorado, do hereby certify that this transcript was taken in shorthand by me from an audio recording and was reduced to typewritten form by computer-aided transcription; that the speakers in this transcript were identified by me to the best of my ability and according to the introductions made; that the foregoing is a true transcript of the proceedings had; that I am not attorney, nor counsel, nor in any way connected with any attorney or counsel for any of the parties to said action or otherwise interested in its event.

IN WITNESS WHEREOF, I have hereunto affixed my hand and notarial seal this 9th day of November, 2015.

My commission expires: January 15, 2016.

Teresa Hart

TERESA HART
Registered Professional Reporter
and Notary Public
CALDERWOOD-MACKELPRANG, INC.

