

COURT OF APPEALS, STATE OF COLORADO 2 East 14 th Avenue Denver, CO 80203	DATE FILED: February 6, 2015 7:34 PM FILING ID: 2EC843461E00B CASE NUMBER: 2014CA1991 ▲ COURT USE ONLY ▲
District Court, Larimer County, Colorado The Honorable Gregory M. Lammons 201 La Porte Avenue, Suite 100 Fort Collins, Colorado 80521 Case Number: 2013CV31385	Case Number: 2014CA1991
Appellant: CITY OF FORT COLLINS, COLORADO v. Appellee: COLORADO OIL & GAS ASSOCIATION <hr/> <i>Attorneys for Citizens for a Healthy Fort Collins, Sierra Club, and Earthworks ("Measure Proponents")</i> Name: Kevin Lynch (Atty. Reg. #39873) Brad Bartlett (Atty. Reg. #32816) Christopher Brummitt (Student Attorney) LaRona Mondt (Student Attorney) Nicolas Rising (Student Attorney) Address: 2255 E. Evans Avenue, Suite 335 Denver, CO 80208 Phone: 303.871.6140 FAX: 303.871.6847 E-mail: klynch@law.du.edu	
MOTION OF CITIZENS FOR A HEALTHY FORT COLLINS, SIERRA CLUB, AND EARTHWORKS FOR LEAVE TO FILE A BRIEF AS <i>AMICUS CURIAE</i> IN SUPPORT OF THE DEFENDANT-APPELLANT, THE CITY OF FORT COLLINS	

Pursuant to C.A.R. 29, Citizens for A Healthy Fort Collins, Sierra Club, and Earthworks (collectively “Measure Proponents”) respectfully submit this motion for leave to file a brief as *amicus curiae* in support of the Defendant-Appellant, the City of Fort Collins. In support of its motion, Measure Proponents state as follows:

I. INTEREST OF APPLICANTS

Measure Proponents include members of Citizens for a Healthy Fort Collins, the Sierra Club, and Earthworks. Citizens for a Healthy Fort Collins is a non-partisan coalition of citizens who initiated and supported Ballot Measure 2A, the Fort Collins Public Health, Safety and Wellness Act (“the Moratorium”) and were fundamental in its passage. This group of citizens includes people who live in Fort Collins, have children attending school there, and own businesses or other property in Fort Collins. Their interests include protecting their health, safety, welfare, and property values.

Sierra Club is a national nonprofit organization with members dedicated to: exploring, enjoying and protecting the wild places of the earth, practicing and promoting the responsible use of the Earth’s ecosystems and resources, and educating and enlisting humanity to protect and restore the quality of the natural and human environment. Over 800 members of Sierra Club’s Rocky Mountain Chapter reside in Fort Collins. This includes members with oil and

gas wells and facilities on or near their property and members who live near proposed oil and gas wells. Members of both Sierra Club and Citizens for a Healthy Fort Collins initiated and campaigned for the Fracking Moratorium.

Earthworks is a nonprofit organization that runs the Oil and Gas Accountability Project (“OGAP”). OGAP’s mission is to work with tribal, urban, and rural communities to protect their homes and the environment from the devastating impacts of oil and gas development in Colorado. There are 51 members of Earthworks residing in Fort Collins. OGAP members have oil and gas wells and facilities on or near their property. OGAP members work for greater community control over oil and gas development and support measures like the Fracking Moratorium in the advancement of that goal.

Measure Proponents spent their time, money, and energy to ensure protection of their health, safety, and welfare. R. CF, pp. 54, 57, 60, 63. They actively participated in community outreach and education, and as a result, the voters of Fort Collins approved the Fracking Moratorium. *Id.* Measure Proponents attempted to intervene in the district court but were denied intervention. R. CF, pp. 104-06. Measure Proponents appealed the denial of intervention and are awaiting an opinion from the Court of Appeals in case No. 2014CA780.

II. DESIRABILITY OF AMICUS BRIEF

This case is unique in that the Moratorium was created by citizen initiative. This local regulation was not created and passed by City, but by the citizens. As a result, Measure Proponents have access to information that neither party in this case does, such as the concern over the potential harms of fracking which lead to the Moratorium being initiated. Measure Proponents' participation as *amicus curiae* would provide the Court with evidence of the local impacts and interests of citizens closest to the potential harms.

The citizens created and passed the Moratorium, yet their interests are not being represented in its defense. Establishing the local interest is vital in a preemption challenge.

Citizen groups who initiated the regulation at issue have participated in similar cases. *See Colo. Oil & Gas Assoc. v. City of Longmont*, Case No. 2014CA1759, filed January 15, 2015. In fact, in the *Longmont* case, the equivalent parties (the local citizen group, Sierra Club, and Earthworks) were allowed to participate in the case and represent the interests of the citizens who passed the local regulation.

III. The City of Fort Collins consents to our participation as *amicus* in this case.

IV. Pursuant to C.A.R. 29, Measure Proponents are filing this motion contemporaneously with filing the brief.

CONCLUSION

Measure Proponents request that this Court grant its motion for leave to file a brief as *amicus curiae* in support of the Defendant-Appellant, the City of Fort Collins.

DATED this 6th day of February, 2015.

Respectfully submitted,

/s/ Kevin J. Lynch

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CERTIFICATE OF SERVICE

I hereby certify that on this February 6, 2015 a true and correct copy of the above and foregoing **MOTION OF CITIZENS FOR A HEALTHY FORT COLLINS, SIERRA CLUB, AND EARTHWORKS FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE** IN SUPPORT OF THE DEFENDANT-APPELLANT, THE CITY OF FORT COLLINS was served via the Integrated Colorado Courts E-Filing System (ICCES), on:

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