SUBJECT: Consideration to participate as amicus curiae related to Amendment 71 brief at the U.S. Court of Appeals for the Tenth Circuit.

SUMMARY: We have received a request, through AGNC, to consider adding our name to an Amicus Brief in the case related to Amendment 71, known as the “Raise the Bar” amendment passed by voters statewide in 2016.

BACKGROUND: In 2016, Colorado voters approved Amendment 71 and it was challenged as being unconstitutional. Amendment 71 changed the citizen initiative process for amending the state constitution, mandating that signature gatherers get signatures from at least 2% of registered voters in each state senate district, of which there are 35. A federal district court judge in Denver partially enjoined Amendment 71 on the grounds that 2% requirement for each senate district violates the U.S. Constitution. The U.S. Court of Appeals for the Tenth Circuit temporarily stayed the district court’s order until the Court of Appeals has an opportunity to address the issue.

DISCUSSION: The Associated Governments of Northwest Colorado (AGNC) has asked its member counties if we want to add our name to the Amicus Brief being prepared by the “Raise the Bar” committee that advocated for Amendment 71. We would not be required to contribute financially. To date, Mesa County and Moffat County has joined this effort.

RECOMMENDATION: The recommendation is that the Board of County Commissioners consider participating, or not, by adding our name to the Amicus Brief.

ACTION REQUIRED: If the BOCC desires to participate in the Amicus Brief by adding our name, they should pass a motion to approve this and provide any appropriate direction to staff.

Attached please see:

1. May 2, 2018 e-mail of request from Bonnie Petersen, AGNC
Kevin Batchelder

From: Bonnie Petersen <bonnie@agnc.org>
Sent: Wednesday, May 02, 2018 5:14 PM
To: andykey87@gmail.com; Cari Hermacinski; Duncan McArthur (gjara.wcca.gad@gmail.com); ghazelton@newcastlecolorado.org; jeff.rector@bc.us; John Justman (john.justman@mesacounty.us); lisalarryhatch@gmail.com; mforeman@ci.craig.co.us; Mike Samson; Ray Beck (rdlegal@bresnan.net); Rose Pugliese (rose.pugliese@mesacounty.us); tim.redmond; tim.redmond@haydencolorado.org
Cc: jcomstock@moffatcounty.net; Kevin Batchelder; Fred Jarman
Subject: FW: Amendment 71 amicus brief

Good Afternoon AGNC Board members – Below is a message from local attorney, Jeff Hurd, who is working to identify supporters for an Amicus Brief in the case related to Amendment 71, known as the “Raise The Bar” amendment passed in 2016. This will be the first year for this constitutional amendment to be applied to the ballot process in Colorado elections and it has been challenged in the courts. Jeff does a good job of outlining the issue in his message. He has asked if AGNC would sign on to the *amicus curiae* (“friend of the court”) document – there would be no charge to AGNC for adding their name to the group supporting the document. I told Jeff I would bring the matter to the AGNC board meeting in May for consideration. In the meantime, Jeff would like to know if any of the AGNC members would like to add their entities individually to the Amicus Brief—again at no charge to the entity. Please let me know if you have an interest in adding your organization’s entity to the brief and I will let Jeff know, or you can contact him yourself using the contact information in the attached message. Also, if you know of any industry or business organizations that should also be contacted to consider adding their name to the brief, please let me know.

Thank you,

Bonnie Petersen
Executive Director

![AGNC Logo](https://example.com/agnc-logo.png)

Northwest Enterprise Zone
P.O. Box 593
Grand Junction, CO 81502
PH: 970-665-1095
Email: bonnie@agnc.org

Bonnie,

It was good speaking with you yesterday. As we discussed, the short version of the request is that AGNC (and any interested individual counties) agree to participate as an *amicus curiae* (“friend of the court”) in a brief to be filed before the U.S. Court of Appeals for the Tenth Circuit. The brief will defend the constitutionality of Amendment 71 (the so-called "raise the bar" amendment), and will argue that the requirement of gathering citizen initiative signatures from throughout the state serves important purposes and should be upheld. Club 20 has already agreed to sign on, and the hope is that a large number of Colorado governmental entities, other entities, and business organizations will also join in the brief as friends of the court. The brief will be primarily drafted by Dan Domenico, the former Solicitor General of Colorado, who is working with the "Raise the Bar" issues committee that advocated for Amendment 71's passage. The briefing deadline is June 6, and Mesa County would not be required to contribute financially.
Here's the longer version of the request: When Colorado voters approved Amendment 71 in 2016, they changed the citizen initiative process for amending the state constitution. Previously one could put a constitutional initiative on the statewide ballot by gathering signatures from enough registered voters to equal at least 5% the votes cast for the office of secretary of state in the previous general election. Amendment 71 added a layer to this requirement, mandating that signature gatherers get signatures from at least 2% of registered voters in each state senate district. Amendment 71 also changed the approval threshold for this kind of constitutional amendment from a simple majority vote to at least 55% of votes cast. Colorado voters adopted Amendment 71 with 56.4% of the vote, agreeing on the importance of "raising the bar" when it comes to amending our constitution and ensuring broad statewide interest in any potential amendment rather than support only in larger population areas.

Earlier this year, a federal district court judge in Denver partially enjoined Amendment 71 on the grounds that the 2% requirement for each senate district violates the U.S. Constitution. (The 55% voting threshold was not enjoined.) Just last month, the U.S. Court of Appeals for the Tenth Circuit temporarily stayed the district court's order until the Court of Appeals has an opportunity to address the issue. This means Amendment 71 is in effect for initiatives that might appear on the November 2018 ballot. As part of the full appeal before the Tenth Circuit, Amendment 71 supporters are hoping to file an amicus curiae brief with the Tenth Circuit in support of the State of Colorado's position that Amendment 71 is constitutional. The amicus brief will hopefully include a large cross-section of governmental entities, business organizations, and other organizations who support Amendment 71. As far as substantive input on the brief is concerned, suggestions about potential arguments are welcome, and the sooner those are provided the better. Given the large number of anticipated amici, however, there will likely be very limited opportunity for input on the final as-filed brief.

Sorry for the length of the email, but this should get your board (and any relevant commissioners) the information they need to make an informed decision. I hope that you will be willing to join in this amicus brief. To that end, please let me know if you have any other questions.

Regards,
Jeff

Jeffrey S. Hurd
Attorney at Law

IRELAND STAPLETON Pryor & Pascoe, PC
P.O. Box 2605
Grand Junction, CO 81502
Direct: (970) 822-1310 | Fax: 970-243-4358
www.irelandstapleton.com

This electronic communication (including attachments) is intended solely for the person or persons to whom it is addressed and may contain confidential and attorney/client privileged information. If you receive this communication in error, (a) you are prohibited from disseminating or copying this communication (including attachments), (b) please notify the sender that you received it in error and (c) delete this communication (including attachments) from your system. Thank you.