

RESOLUTION 59-2023

A RESOLUTION APPROVING A LEGAL ENGAGEMENT AGREEMENT WITH ADVANCE COLORADO CONCERNING LEGAL REPRESENTATION TO CHALLENGE COLORADO SENATE BILL 23-303

WHEREAS, the Board of County Commissioners opposes Senate Bill 23-303, which was adopted by the Colorado General Assembly on the last day of the 2023 legislative session with almost no opportunity for review or public comment and after Republican lawmakers exited the session in protest;

WHEREAS, Senate Bill 23-303 has legal flaws and the legislation will negatively impact Washington County and its citizens; and

WHEREAS, the Board of County Commissioners, therefore desires to engage the public interest law firm of Advance Colorado to represent the County and the Commissioners in their official capacity to challenge Senate Bill 23-303.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, COLORADO:

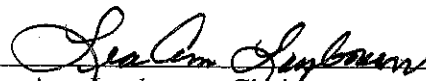
Section 1. The Engagement Agreement with Advance Colorado, attached hereto as **Exhibit A**, is hereby approved.

Section 2. If any section, paragraph, clause, or provision of this resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this resolution.

Section 3. This resolution shall be in full force and effect upon its passage and approval.

APPROVED this 23rd day of May, 2023.

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, COLORADO



Lea Ann Laybourn, Chair




Kent Vance, Commissioner



Gisele Jefferson, Commissioner





Annie Kuntz, Clerk and Recorder

May 12, 2023

Dear Commissioners:

On behalf of Advance Colorado, I am pleased to offer legal representation to you regarding the General Assembly's recent passage of SB 23-303. Specifically, we are offering to file a complaint and litigate behalf of you, your county, and other elected officials, arguing that proposed ballot title is deficient, and the bill contains multiple subjects in violation of the Colorado Constitution.

Advance Colorado is a non-profit organization that pursues cases to advance liberty and responsible governance in Colorado. Because we are a nonprofit, public-interest law firm, our representation will be provided to you free of charge. Nonetheless, there are several important items upon which we need agreement before handling this matter. Please read all of these items carefully, and feel free to ask any questions you may have.

First, *our representation shall be limited to the matter stated above*. This letter is not an offer to represent you or anyone else in regards to any other matter. Furthermore, although my present intent is to represent you through completion of the case, we may terminate representation for good cause at any time, subject to applicable ethical rules.

Second, Advance reserves the right to associate with other attorneys and/or law firms to the extent necessary to carry out the representation described in this letter. You acknowledge and agree that we are authorized to share confidential information with attorneys and/or law firms that we may associate with or seek advice from for purposes of representing you in this litigation. If such attorneys charge for their services, we will bear the responsibility of paying their fees.

Third, *your cooperation is vital*. Ordinarily, public-interest litigation does not entail significant burdens on clients. However, the nature of this case means we may require your assistance in various ways: for example, by providing documents and information, giving depositions or affidavits, or testifying in court. We will make every effort to minimize these burdens, but by accepting this agreement, you agree to provide us with assistance as needed.

Fourth, our confidential communications are only protected by the attorney-client privilege so long as they are not divulged to third parties. I ask that you take steps to safeguard the confidentiality of our communications and, in particular, that you not forward or disclose our communications to others. Also, we will be using email and may use other forms of electronic communication (such as voicemail or texting) in the ordinary course of our work for you. Advance will take reasonable steps to ensure the integrity and confidentiality of our electronic communications, and we expect you to do the same. Nonetheless, these forms of communication involve some level of risk that they will be compromised by unauthorized access or by

inadvertent disclosure to unauthorized persons, and these risks cannot be completely avoided. By signing this letter, you acknowledge that you understand these risks and authorize us to communicate with you electronically.

Fifth, *most of our communications with you may be through a conduit*. Given the large number of commissioners seeking our representation in this matter, it may not always be feasible to communicate information to you directly. Thus, you agree that we may provide generally applicable information to and receive generally applicable information from County Attorney _____, whom we understand has taken the lead in arranging legal representation for your group of commissioners, and whom we understand has been generally authorized to speak on behalf of the group. Given the limited scope of this representation and the unity of interests on this specific issue of law, we believe this is an appropriate way to approach these logistical issues. Nonetheless, by insisting on this term, we do not intend to limit your ability to contact us.

Sixth, *it is unlikely but possible that our public-interest objectives may diverge from your personal interests*. If we perceive that this may occur, we will tell you. At any time, you are free to retain separate legal counsel at your own expense to advise you about any possible conflicts or any other matter (including the terms of this agreement).

Seventh, we will seek reasonable attorneys' fees and costs from opposing parties in the event of a successful outcome and if such recovery is authorized by law. My legal representation is provided pro bono—i.e., at no cost to the client. Advance will bear its own attorneys' fees and costs, as well as miscellaneous expenses—such as filing fees, brief formatting and preparation, etc.—to prepare and litigate the issues present in this case. In the event there are fees or costs assessed against the plaintiffs in this matter, Advance also agrees to cover any fees and costs. However, by accepting this offer, you are promising that all costs and fees awarded in this matter for services rendered by Advance attorneys or litigation support personnel, if any, will be provided to Advance to assist in recouping its expenses and time spent on your behalf. Advance is relying on this promise in furnishing the services and incurring the costs contemplated by this agreement.

And, finally, *we believe that publicity is important both to your case and to our public-interest mission*. By signing this letter, you authorize us to disclose nonconfidential information regarding this matter. If you are contacted by the media regarding this case, you may refer such inquiries to Advance.

If this agreement is acceptable to you, please sign and return one copy and retain another for your records. We very much look forward to working with you.

Sincerely,

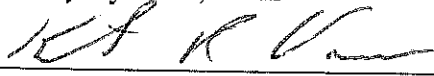
Suzanne Taheri
Advance Colorado

We have read this letter and agree to its terms.


WASHINGTON COUNTY, COLORADO



Lea Ann Laybourn, Chair



Kent Vance, Commissioner



Gisele Jefferson, Commissioner

5.23.2023 Date