

**DISTRICT COURT, ARCHULETA COUNTY,  
COLORADO**

**Archuleta County District Court  
449 San Juan Street  
Pagosa Springs, Colorado 81147**

DATE FILED: December 28, 2016

**▲ COURT USE ONLY ▲**

**Pat Alley, Dave Brackhahn, Wayne Bryant, Greg Giehl, Cole Graham, Vernon Greenamy, Bill Gottschalk, Sue Gottschalk, Stephen Keno, Tom Kramer, Jeffrey Maehr, Sharon Parker, Tracy Salazar, Dennis Spencer, David West, John and Jane Does, 1-600,**

**Plaintiffs,**

**v.**

**Archuleta County Board of County Commissioner Clifford Lucero; Commissioner Steve Wadley; Commissioner Michael Whiting; Previous Archuleta County Attorney Todd Starr,  
Defendants.**

**Case Number: 16CV4**

Todd M. Starr, Atty. No. 27641  
Archuleta County Attorney  
ROSE WALKER & STARR  
P.O. BOX 5917  
462 Lewis Street  
Pagosa Springs, Colorado 81147  
Phone Number: 970-317-8700  
Fax Number: omitted  
tstarr@rosewalker.com

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Defendants and in for their Motion for Summary Judgment states as follows:

UNDISPUTED FACTS

There is no genuine issue as to the following material facts:

1. "On November 26, 2013 the Plaintiffs chose to bring 11 ballot initiatives petitions... to the Archuleta County Board of County Commissioners for their placement on the ballot for County

citizens to vote on in the November 2013 election cycle.” *Motion to Show Cause, Introduction, 1<sup>st</sup> Paragraph, Pg. 3 of 22.*

2. The alleged initiative petitions were submitted to Archuleta County on November 26, 2013. *Motion to Show Cause, Pg. 9 of 22.*
3. “A ‘work session’ was scheduled for on or about December 12, 2013, but upon preparation and arriving for this meeting, Plaintiffs discovered that the BoCC ... held their customary BoCC meeting, allowing only three minutes for discussion for each attendee...” *Motion To Show Cause, Introduction, 6<sup>th</sup> Paragraph, Pg. 4 of 22.*
4. At no time did the Board of County Commissioners take a vote or other formal action relating to the initiative petitions that are the subject of this action. *Affidavit of Todd M. Starr.*
5. At no time after December 2013 did the initiative petitions which are the subject of this action appear on the BoCC’s agenda. *Affidavit of Todd M. Starr.*
6. After the December 12, 2013 work session, the Plaintiffs realized, “This ... left Plaintiffs' no other option but to prepare and file this complaint...”. *Motion To Show Cause, Introduction, 6th Paragraph, Pg. 4 of 22.*

#### MATTER OF LAW

Based upon the forgoing material facts the Defendants are entitled to a judgment as a matter of law for the following reasons:

##### A. Statute of Limitations

1. The Plaintiffs allege that the Board of County Commissioners action of December 12, 2103 “... left Plaintiffs no other option but to prepare and file this complaint...” *Motion to Show Cause – Archuleta County – Ballot Initiatives; ¶ 2, page 4 of 22.*

2. C.R.S. 13-80-102 (1) provides:

(1) The following civil actions, regardless of the theory upon which suit is brought, or against whom suit is brought, must be commenced within two years after the cause of action accrues, and not thereafter:

...

(h) All actions against any public or governmental entity or any employee of a public or governmental entity, except as otherwise provided in this section or section 13-80-103;

3. Accordingly, Plaintiffs’ claims are barred by the statute of limitations.

B. No County Initiative Process

4. However, even if the court were to disregard the statute of limitations the Plaintiffs' seek to enforce an initiative process at the county level which simply does not exist. Dellinger v. BoCC for County of Teller, 20 P.3d 1234 (Colo. App. 2000) is directly on point.

C. Professional Negligence Claim not proper

5. Further, Defendants claims against Defendant Todd Starr arise out of his service as County Attorney and certain advice he gave the Board of County Commissioners' of Archuleta County.

6. First, these Plaintiffs are not in privity with Defendant Starr. "In light of this relationship, an attorney's obligation is generally to his or her client and not to a third party." Baker v. Wood, Ris & Hames, Prof'l Corp., 2016 CO 5, ¶ 20, 364 P.3d 872, 877, reh'g denied (Feb. 8, 2016).

7. Secondly, they have failed to comply with Colo. Rev. Stat. Ann. § 13-20-602.

D. Frivolous & Groundless

8. Both C.R.C.P. 11 and C.R.S. § 13-17-102 authorize the imposition of sanctions or attorney's fees if a claim is not well grounded in fact or is not warranted by existing law or a good faith attempt to establish, modify or reverse existing law. This Motion to Show Cause, which isn't even a recognized pleading is just that, Frivolous, groundless, lacking in substantial justification and not well grounded.

WHEREFORE Defendants pray the court enter judgment in favor of the defendants and against the defendants and for their attorney's fees and costs incurred herein and for such other and further relief as the court deems just and equitable.

Respectfully submitted this 27<sup>th</sup> day of December, 2016.

/s/ Todd M. Starr  
**TODD M. STARR**, Atty.

**CERTIFICATE OF SERVICE**

The undersigned herein certifies that on this 27<sup>TH</sup> day of December, 2016 a true and correct copy of the forgoing Motion for Summary Judgment was served on the parties below via ICCES:

NAME / ADDRESS
----------------

Bill Gottschalk  
135 Park Ave., Unit 804  
Pagosa Springs, CO 81147

Sharon Parker  
325 Petitts Cr.  
Pagosa Springs, CO 81147

Cole Graham  
125 Ghost Elk Ct.  
Pagosa Springs, CO 81147

Stephen Keno  
1020 Hurt Dr.  
Pagosa Springs, CO 81147

Dave Brackhahn  
3000 Hwy 84, Unit C  
Pagosa Springs, CO 81147

Sue Gottschalk  
135 Park Avenue, Unit 804  
Pagosa Springs, CO 81147

Dave West  
55 Woodward Dr.  
Pagosa Springs, CO 81147

Tom Kramer  
10900 Highway 84  
Pagosa Springs, CO 81147

Dennis Spencer  
P. O. Box 2877  
Pagosa Springs, CO 81147

Tracy Salazar  
299 Canyon Circle  
Pagosa Springs, CO 81147

Greg Giehl  
P.O. Box 5434  
Pagosa Springs, CO 81147

Vernon D. Greenamyer  
c/o 924 E. Stollsteimer Rd.  
Pagosa Springs, CO 81147

Jeffrey Maehr  
924 E. Stollsteimer Road  
Pagosa Springs, CO 81147

Wayne Bryant  
P. O. Box 3362  
Pagosa Springs, CO 81147

Pat Alley  
P.O. Box 5352  
Pagosa Springs, CO 81147

/s/ Todd M Starr  
\_\_\_\_\_  
**TODD M. STARR**



<p><b>DISTRICT COURT, ARCHULETA COUNTY, COLORADO</b> Archuleta County District Court 449 San Juan Street Pagosa Springs, Colorado 81147</p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p>Pat Alley, Dave Brackhahn, Wayne Bryant, Greg Giehl, Cole Graham, Vernon Greenamyler, Bill Gottschalk, Sue Gottschalk, Stephen Keno, Tom Kramer, Jeffrey Maehr, Sharon Parker, Tracy Salazar, Dennis Spencer, David West, John and Jane Does, 1-600, Plaintiffs, v. Archuleta County Board of County Commissioner Clifford Lucero; Commissioner Steve Wadley; Commissioner Michael Whiting; Previous Archuleta County Attorney Todd Starr, Defendants.</p>	<p style="text-align: center;">Case Number: 16CV4</p>
<p>Todd M. Starr, Atty. No. 27641 Archuleta County Attorney ROSE WALKER &amp; STARR P.O. BOX 5917 462 Lewis Street Pagosa Springs, Colorado 81147 Phone Number: 970-317-8700 Fax Number: omitted tstarr@rosewalker.com</p>	
<p style="text-align: center;"><b>AFFIDAVIT OF TODD M. STARR IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT</b></p>	

USE ONLY December 28, 2016

**COMES NOW**, Todd Starr and being first duly sworn upon oath states and deposes as follows:

1. I became Archuleta County Attorney on or about March 29, 2009 and at all times material hereto have served in that capacity.
2. As a County Attorney, my client is the Board of County Commissioners of Archuleta County and it is to that body alone that I owe a professional attorney – client relationship duty to.
3. At no time did the Board of County Commissioners take a vote or other formal action relating to the initiative petitions that are the subject of this action.

4. I caused the staff of the Board of County Commissioners to conduct a search of all meeting agenda since December 2013 and the results of that search confirmed my independent recollection: At no time since December 2013 have the initiative petitions which are the subject of this action appear on a commissioners' meeting agenda.

5. As County Attorney, I do not have the power or authority to deny the initiative petitions which are the subject of this action.

6. I advised my client, the Board of County Commissioners of Archuleta County that the current state of the law in Colorado is that there is no initiative process at the County level for petitioners such as those proffered by the Plaintiffs.

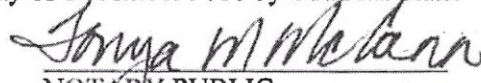
Further Affiant Sayeth Naught.



Todd M. Starr

STATE OF COLORADO            )  
  )  
County of Archuleta            )

Subscribed and sworn to before me on the 27<sup>th</sup> day of December 2016 by Todd M. Starr.

  
NOTARY PUBLIC

**TONYA M MCCANN**  
**NOTARY PUBLIC**  
**STATE OF COLORADO**  
**NOTARY ID 19954016187**  
**My Commission Expires: October 14, 2019**

**DISTRICT COURT, ARCHULETA COUNTY,  
COLORADO**

Archuleta County District Court  
449 San Juan Street  
Pagosa Springs, Colorado 81147

DATE FILED: December 28, 2016

**▲ COURT USE ONLY ▲**

Pat Alley, Dave Brackhahn, Wayne Bryant, Greg Giehl, Cole Graham, Vernon Greenamyre, Bill Gottschalk, Sue Gottschalk, Stephen Keno, Tom Kramer, Jeffrey Maehr, Sharon Parker, Tracy Salazar, Dennis Spencer, David West, John and Jane Does, 1-600,

**Plaintiffs,**

v.

Archuleta County Board of County Commissioner Clifford Lucero; Commissioner Steve Wadley; Commissioner Michael Whiting; Previous Archuleta County Attorney Todd Starr,  
**Defendants.**

**Case Number: 16CV4**

Todd M. Starr, Atty. No. 27641  
Archuleta County Attorney  
ROSE WALKER & STARR  
P.O. BOX 5917  
462 Lewis Street  
Pagosa Springs, Colorado 81147  
Phone Number: 970-317-8700  
Fax Number: omitted  
tstarr@rosewalker.com

**DEFENDANTS' BRIEF IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Defendants and in support of their Motion for Summary Judgment state and allege as follows:

**STATEMENT OF FACTS**



There is no genuine issue as to the material facts which are as follows:

1. “On November 26, 2013 the Plaintiffs chose to bring 11 ballot initiatives petitions... to the Archuleta County Board of County Commissioners for their placement on the ballot for County citizens to vote on in the November 2013 election cycle.” Motion to Show Cause, Introduction, 1<sup>st</sup> Paragraph, Pg. 3 of 22.
2. The alleged initiative petitions were submitted to Archuleta County on November 26, 2013. Motion to Show Cause, Pg. 9 of 22.
3. “A ‘work session’ was scheduled for on or about December 12, 2013, but upon preparation and arriving for this meeting, Plaintiffs discovered that the BoCC ... held their customary BoCC meeting, allowing only three minutes for discussion for each attendee...” Motion To Show Cause, Introduction, 6<sup>th</sup> Paragraph, Pg. 4 of 22.
4. At no time did the Board of County Commissioners take a vote or other formal action relating to the initiative petitions that are the subject of this action. Affidavit of Todd M. Starr.
5. At no time after December 2013 did the initiative petitions which are the subject of this action appear on the BoCC’s agenda. Affidavit of Todd M. Starr.
6. After the December 12, 2013 work session, the Plaintiffs realized, “This ... left Plaintiffs' no other option but to prepare and file this complaint...”. Motion To Show Cause, Introduction, 6th Paragraph, Pg. 4 of 22.

## ARGUMENT

### I. STANDARD OF REVIEW

Under C.R.C.P. 56(c), Summary Judgment must be granted.

“... If the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of any material fact and that the moving party is entitled to judgment as a matter of law.”

The Summary Judgment process enables a Court to determine, based on extrinsic merits of the claims, whether there is any basis to resolve or continue the action, while furthering the prompt and speedy administration of justice. Blain v. Yockey, 117 Colo. 29, 184 P.2d 1015 (1947); Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265, 4 Fed. R. Serv. 3d 1024 (1986); Shaw v. General Motors Corp., 727 P.2d 387, 1 U.C.C. Rep. Serv. 2d 76 (Colo. App. 1986).

Once the moving party shows that there is no genuine issue of fact (i.e., by demonstrating there is an absence of evidence supporting the nonmoving party's case), the burden shifts to the nonmoving party to show that a genuine, triable issue of fact remains. Continental Air Lines, Inc. v. Keenan, 731 P.2d 708, 712 (Colo. 1987). The nonmoving party then bears the burden of showing that a real, not formal, controversy exists. Kaiser Foundation Health Plan of Colorado v. Sharp, 741 P.2d 714, 719 (Colo. 1987).

**II. THERE IS NO INITIATIVE PROCESS AT THE COUNTY LEVEL IN COLORADO AND DEFENDANTS ARE ENTITLED TO JUDGMENT AS A MATTER OF LAW.**

The case of Dellinger v. BoCC for County of Teller, 20 P.3d 1234 (Colo. App. 2000) is directly on point. In Dellinger, a group of citizens distributed a petition and sought to place an issue on the ballot in the county. In upholding the Teller County BoCC's determination not to put the matter to election the Colorado Court of Appeals clearly stated, "...there is no constitutional right of initiative for electors at the county level." Id. at 1238.(Emphasis added).

Article V, Section 1 (2) & (3) of the Colorado Constitution reserve the powers of initiative and referendum to the people of the state. Section 1(9) reserves those powers to electors in every town, city and municipality. There is no comparable section for county electors. The powers of county initiative and referendum must be specifically granted by state law and no such grant is made for the county level. See, BoCC v. County Road Users Ass'n, 11 P.3d 432 (Colo. 2000); Dellinger v. BoCC for County of Teller, 20 P.3d 1234 (Colo. App. 2000). "...[T]here is no constitutional right of initiative for electors at the county level. Dellinger, supra at 1238.

Plaintiffs argue the right to an initiative process flows from C.R.S. 30-11-103.5 entitled, "County Petitions and Referred Measures" which states:

The procedures for placing an issue or question on the ballot by a petition of the electors of a county that is pursuant to statute or the state constitution or that a board of county commissioners may

refer to a vote of the electors pursuant to statute or the state constitution shall, to the extent no such procedures are prescribed by statute, charter, or the state constitution, follow as nearly as practicable the procedures for municipal initiatives and referred measures under part 1 of article 11 of title 31, C.R.S. The county clerk and recorder shall resolve any questions about the applicability of the procedures in part 1 of article 11 of title 31, C.R.S.

They advocate the county process is the same as a city under C.R.S. 31-11-101 et seq. However, this exact argument was raised in Dellinger and the Court concluded that, “In light of our disposition of this issue, we need not address plaintiffs’ contention that the procedures in § 30–11–103.5 would govern their proposed initiative.” Dellinger, supra at 1238.

Indeed, the Tenth Circuit Court has also considered the right to an initiative process at the county level and whether the denial of such an initiative process violated the citizens’ constitutional rights as claimed by the instant Plaintiffs. In Save Palisade Fruitlands v. Todd, 279 F.3d 1204 (2002) after discussing Dellinger, the Tenth Circuit upheld the District Courts granting of summary judgment. Former Chief Judge Tacha opined that the denial of an initiative process in a statutory county such as Archuleta County, does not violate the Equal Protection Clause of the United States Constitution.

### **III. PLAINTIFF’S ACTION IS BARRED BY THE STATUTE OF LIMITATIONS**

C.R.S. 13-80-102 (1) provides:

- (1) The following civil actions, regardless of the theory upon which suit is brought, or against whom suit is brought, must be commenced within two years after the cause of action accrues, and not thereafter:
  - ...
  - (h) All actions against any public or governmental entity or any employee of a public or governmental entity, except as otherwise provided in this section or section 13-80-103;



Colo. Rev. Stat. Ann. § 13-80-102. Plaintiffs seem to complain of actions which occurred or didn't in 2013. For instance, in the "Introduction" to their Complaint, on page three of twenty-two they make reference to acts occurring in November 2013. Further, the allegation contained in the first full paragraph of page nine of twelve seems to allege that the Plaintiffs turned in the initiatives on November 26, 2013 and that is when they expected some action. The death knell to Plaintiffs' Complaint appears on page four of Twenty-Two wherein they allege that the Board of County commissioners action of December 12, 2103 " ... left Plaintiffs no other option but to prepare and file this complaint..." Motion to Show Cause – Archuleta County – Ballot Initiatives; ¶ 2, page 4 of 22. Thus, by their very own words Plaintiffs cause of action accrued on or before December 13, 2013. Accordingly, pursuant to C.R.S. § 13-80-102 their action must have been commenced by December 13, 2015. Plaintiffs pleading is untimely and therefore must be dismissed.

#### **IV. PLAINTIFFS HAVE FAILED TO COMPLY WITH C.R.S. §13-20-602**

“In every action for damages or indemnity based upon the alleged professional negligence of an acupuncturist regulated pursuant to article 29.5 of title 12, C.R.S., or a licensed professional, the plaintiff's or complainant's attorney shall file with the court a certificate of review for each acupuncturist or licensed professional named as a party, as specified in subsection (3) of this section, within sixty days after the service of the complaint, counterclaim, or cross claim against such person unless the court determines that a longer period is necessary for good cause shown.”

Colo. Rev. Stat. Ann. § 13-20-602. As is evident from the designation in the caption, and subsequent filings made by these Plaintiffs, they understand Defendant Starr is a licensed attorney. Since the Plaintiff's claim against Starr would require proof of professional negligence



as a prelude to recovery, regardless of the formal designation of the claim, the statute applies. Martinez v. Badis, 842 P.2d 245, 251 (Colo. 1992).

Here, the court record reflects that the affidavit of service was filed on or about May 12, 2016. More than sixty days have passed and no certificate of review has been filed. “The failure to file a certificate of review in accordance with this section **shall** result in the dismissal of the complaint, counterclaim, or cross claim.” Colo. Rev. Stat. Ann. § 13-20-602(4). (Emphasis added).

**V. PLAINTIFFS’ CIVIL ACTION IS FRIVOLOUS, GROUNDLESS AND LACKING SUBSTANTIAL JUSTIFICATION AND DEFENDANTS ARE STATUTORILY ENTITLED TO REASONABLE ATTORNEY FEES**

Both C.R.C.P. 11 and C.R.S. § 13-17-102 authorize the imposition of sanctions or attorney’s fees if a claim is not well grounded in fact or is not warranted by existing law or a good faith attempt to establish, modify or reverse existing law. Reifschneider v. City & County of Denver 917 P.2d 315 (Colo. App. 1995). Here, the Plaintiffs claims are not warranted by existing law; in fact, they are contradictory to existing law. Neither are their claims a good faith attempt to modify or reverse existing law. The Plaintiff’s do not recognize the existing law. In Colorado, a claim is “frivolous,” within meaning of Colorado costs statute, if no rational argument based on evidence or law is presented, and is “groundless” if it is not supported by credible evidence. O’Connor v. Check Rite, Ltd., 973 F.Supp. 1010, 1019 (D.Colo.1997). See also C.R.S. § 13-17-102. A Vexatious claim is one presented to annoy or harass. Plaintiffs’ irrational argument is not based in evidence or law and Plaintiffs cannot provide any credible evidence supporting their claim. Again, Plaintiff’s present no evidence to support their claim resting instead on some alleged inherent right of the people and ignoring the clear findings and holdings of Dellinger, supra.

It is true the imposition of fees pursuant to C.R.S. § 13-17-102 requires more of a showing. Specifically, the statute provides:

No party who is appearing without an attorney shall be assessed attorney fees unless the court finds that the party clearly knew or reasonably should have known that his action or defense, or any part thereof, was substantially frivolous, substantially groundless, or substantially vexatious; except that this subsection (6) shall not apply to situations in which an attorney licensed to practice law in this state is appearing without an attorney, in which case, he shall be held to the standards established for attorneys elsewhere in this article.

Colo. Rev. Stat. Ann. § 13-17-102(6).

In Bockar v. Patterson, 899 P.2d 233 (1994), the Colorado Court of Appeals affirmed the district court's assessment of fees against a pro se litigant where the court made the necessary finding that the pro se party either knew or should have known that his action was substantially vexatious. Defendants request that this Court award reasonable attorney fees to Defendants, based on C.R.S. 13-17-102, for the cost and time dispensed by Defendant to defend against Plaintiffs' frivolous argument that lacks substantial justification.

Here, the pro se plaintiffs have wasted thousands of dollars of taxpayer money because the Archuleta County Board of County Commissioners will not go against the clearly established legal precedent. Regardless of how often the pro se litigants have been advised of Dellinger, supra, regardless of being advised their efforts would be better spent amending the Colorado Constitution to provide for a right of initiative at the county level, these pro se plaintiffs continue to pursue these Defendant's, including the County Attorney who clearly has no vote.

The court should not judge this in a vacuum. It is well known that these individuals either are or regularly associate with a group known as the Archuleta Guard. A group whose members have in the last year months cost the taxpayers in excess of \$75,000 in defending against such baseless actions. Consider the following:

1. This case wherein Plaintiff's implore Defendants to take an illegal action contrary to precedent exactly on point;

2. The Matter of Plaintiff Greg Giehl v. these Defendants that was brought before the Colorado Independent Ethics Commission and where that commission recently determined that despite casting a wide net to try and find an ethical or statutory violation by Defendants (the exact same Defendants in the instant case) the Independent Ethics Commission could find none;

3. The Matter of Giehl v. Madrid currently pending before the Archuleta County District Court – a case where despite the local Board of County Commissioners convening an executive session identical to the process used by the Colorado Independent Ethics Commission Mr. Giehl alleges the County has does not follow the process and seeks to gain access to an executive record; and,

4. The “Arrest Warrant” issued by a “peoples Grand Jury” , directing the arrest of Defendant herein Todd Starr and being circulated by at least some of these pro se plaintiffs; and,

5. The suit naming Defendant herein Clifford Lucero and other Colorado County Commissioners alleging some offshore scheme of some type.

Enough is enough! It is time to make them pay for the costs they are unfairly, unjustly and in plain disregard for the exiting law shifting to innocent taxpayers. The Court should enter an award of attorney's fees in favor of Defendants.

In addition to the statutory basis for an award of fees the Court may also turn to the Colorado Rules of Civil Procedure. It is well settled in Colorado that:

C.R.C.P. 11 imposes the following independent duties on an attorney or a litigant who signs a pleading: (1) before a pleading is filed, there must be a reasonable inquiry into the facts and the law;



(2) based on this investigation, the signer must reasonably believe that the pleading is well grounded in fact; (3) the legal theory asserted in the pleading must be based on existing legal principles or a good faith argument for the modification of existing law; and (4) the pleading must not be filed for the purpose of causing delay, harassment, or an increase in the cost of litigation.

Stearns Mgmt. Co. v. Missouri River Servs., Inc., 70 P.3d 629, 632–33 (Colo. App. 2003). Plaintiffs’ Motion to Show Cause, whatever that is, a) displays on its face a lack of inquiry into the facts and the law, b) asserts an argument contrary to the existing law c) instead of making a good faith argument to modify the existing law drones on about a higher law and d) is clearly filed to harass as it names the individuals, Whiting, Lucero and Wadley and not their office the Board of County Commissioners and includes attorney Starr who had no privity with Plaintiffs and no vote to deny or approve the relief they requested.

### CONCLUSION

WHEREFORE, Defendants pray the court Deny the Plaintiffs’ Motion for Summary Judgment and grant Defendants’ Motion for Summary Judgment and enter judgment in favor of Defendants and against Plaintiffs, for Defendants attorney’s fees incurred herein together with their costs and for such other and further relief as the court deems just and equitable.

Respectfully submitted this 27<sup>th</sup> day of December, 2016.

/s/ Todd M. Starr  
\_\_\_\_\_  
**TODD M. STARR**, Atty.



**CERTIFICATE OF SERVICE**

The undersigned herein certifies that on this 27<sup>TH</sup> day of December, 2016 a true and correct copy of the forgoing *Defendants' Brief In Support Of Motion For Summary Judgment* was served on the parties below via ICCES:

<b>NAME / ADDRESS</b>
-----------------------

Bill Gottschalk  
135 Park Ave., Unit 804  
Pagosa Springs, CO 81147

Sharon Parker  
325 Petitts Cr.  
Pagosa Springs, CO 81147

Cole Graham  
125 Ghost Elk Ct.  
Pagosa Springs, CO 81147

Stephen Keno  
1020 Hurt Dr.  
Pagosa Springs, CO 81147

Dave Brackhahn  
3000 Hwy 84, Unit C  
Pagosa Springs, CO 81147

Sue Gottschalk  
135 Park Avenue, Unit 804  
Pagosa Springs, CO 81147

Dave West  
55 Woodward Dr.  
Pagosa Springs, CO 81147

Tom Kramer  
10900 Highway 84  
Pagosa Springs, CO 81147

Dennis Spencer  
P. O. Box 2877  
Pagosa Springs, CO 81147

Tracy Salazar  
299 Canyon Circle  
Pagosa Springs, CO 81147

Greg Giehl  
P.O. Box 5434  
Pagosa Springs, CO 81147

Vernon D. Greenamyer  
c/o 924 E. Stollsteimer Rd.  
Pagosa Springs, CO 81147

Jeffrey Maehr  
924 E. Stollsteimer Road  
Pagosa Springs, CO 81147

Wayne Bryant  
P. O. Box 3362  
Pagosa Springs, CO 81147

Pat Alley  
P.O. Box 5352  
Pagosa Springs, CO 81147

/s/ Todd M Starr  
\_\_\_\_\_  
**TODD M. STARR**

<b>DISTRICT COURT, ARCHULETA COUNTY,          COLORADO</b> Archuleta County District Court 449 San Juan Street Pagosa Springs, Colorado 81147	DATE FILED: December 28, 2016  <b>▲ COURT USE ONLY ▲</b>
Pat Alley, Dave Brackhahn, Wayne Bryant, Greg Giehl, Cole Graham, Vernon Greenamyer, Bill Gottschalk, Sue Gottschalk, Stephen Keno, Tom Kramer, Jeffrey Maehr, Sharon Parker, Tracy Salazar, Dennis Spencer, David West, John and Jane Does, 1-600, <b>Plaintiffs,</b> v. Archuleta County Board of County Commissioner Clifford Lucero; Commissioner Steve Wadley; Commissioner Michael Whiting; Previous Archuleta County Attorney Todd Starr, <b>Defendants.</b>	<b>Case Number: 16CV4</b>
<b>Order re: Summary Judgment</b>	

THIS COMES before the Court on the Motion for Summary Judgment filed by Defendants. The court, being fully advised in the premises finds as follows:

1. According to the Plaintiffs' Motion to Show Cause – Archuleta County – Ballot Initiatives; ¶ 2, page 4 of 22 apparently, the Board of County Commissioners of Archuleta County took some action on December 12, 2103 which "... left Plaintiffs no other option but to prepare and file this complaint..."
2. Therefore, the Court finds the Plaintiff's cause of action accrued on or before December 12, 2013.
3. C.R.S. 13-80-102 (1) provides:

---

**Order re: Summary Judgment**

(1) The following civil actions, regardless of the theory upon which suit is brought, or against whom suit is brought, must be commenced within two years after the cause of action accrues, and not thereafter:

...

(h) All actions against any public or governmental entity or any employee of a public or governmental entity, except as otherwise provided in this section or section 13-80-103;

4. Accordingly, pursuant to C.R.S. § 13-80-102 their action must have been commenced by December 13, 2015. Plaintiffs pleading is untimely and therefore must be dismissed.
5. Although this court may not agree with the law; although it makes sense that there should be an initiative process at the County level the fact is these Defendants acted within the law and the Plaintiffs are complaining that Defendants did not violate the law.
6. There is no initiative process at the County level and Defendants are correct that this case is controlled by Dellinger v. BoCC for County of Teller, 20 P.3d 1234 (Colo. App. 2000).
7. Further, Plaintiffs have failed to comply with Colo. Rev. Stat. Ann. § 13-20-602. And the complaint should be dismissed as against Mr. Starr because of this deficiency.
8. Under C.R.C.P. 56(c), Summary Judgment must be granted.

“... If the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of any material fact and that the moving party is entitled to judgment as a matter of law.”

9. Based on the forgoing, the pleadings show there is no genuine issue as to a material fact and Defendants are entitled to judgment as a matter of law.
10. Both C.R.C.P. 11 and C.R.S. § 13-17-102 authorize the imposition of sanctions or attorney's fees if a claim is not well grounded in fact or is not warranted by existing law or a good faith attempt to establish, modify or reverse existing law. Reifschneider v. City & County of Denver 917 P.2d 315 (Colo. App. 1995).
11. Plaintiffs do not argue that the existing law be modified or overturned, in fact, their pleadings fail to acknowledge the existing law. In fact, they complain because these Defendants followed the law.
12. Plaintiff's present no evidence to support their claim resting instead on some alleged inherent right of the people and ignoring the clear findings and holdings of Dellinger, supra.
13. This court finds the pro se party either knew or should have known that his action was substantially vexatious and consequently an award of fees is appropriate under C.R.S. § 13-17-102.
14. The court further finds that there is a basis for an award of fees under C.R.C.P. 11 as Plaintiffs' Motion to Show Cause, a) displays on its face a lack of inquiry into the facts and the law, b) asserts an argument contrary to the existing law c) instead of making a good faith argument to modify the existing law drones on about a higher law and d) is clearly filed to harass as it names the individuals, Whiting, Lucero and Wadley and not their office the Board of County Commissioners and includes attorney Starr who had no privity with Plaintiffs and



no vote to deny or approve the relief they requested.

**IT IS THEREFOIRE ORDERED ADJUDGED AND DECREED**, that the Defendants Motion for Summary Judgment is **GRANTED**.

**IT IS FRURTHER ORDEED ADJUDGED AND DECREED** that Defendants be given twenty-one (21) days from the date hereof to file a bill of costs and Affidavit of Attorney's Fees.

Done this \_\_\_ day of December, 2016

**BY THE COURT:**

\_\_\_\_\_