

SUPREME COURT STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	
On Certiorari to the Colorado Court of Appeals Case Number 16CA0564, Judge Fox; Judge Vogt, Jr., Judge Booras City and County of Denver District Court No. 14CV32637, Judge J. Eric Elliff	
Petitioner/Appellee/Defendant: Colorado Oil and Gas Conservation Commission Intervenors/Petitioners/Appellees American Petroleum Institute And Colorado Petroleum Association v. Respondents/Appellants: Xiuhtezcatl Martinez, Itzcuahtli Roske-Martinez, Sonora Brinkley, Aerielle Deering, Trinity Carter, and Emma Bray, minors appearing by and through their legal guardians Tamara Roske, Bindi Brinkley, Eleni Deering, Jasmine Jones, Robin Ruston, And Diana Bray	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Attorneys for <i>Amici Curiae</i> Colorado PTA, Together Against Neighborhood Drilling, Dr. Stephanie Malin, Stacia Ryder, Shirley Smithson, and Ulrike Webster Rudy E. Verner, Atty. Reg. # 34286 Megan Gutwein, Atty. Reg. # 50344 BERG HILL GREENLEAF RUSCITTI LLP 1712 Pearl Street Boulder, CO 80302 Telephone: (303) 402-1600 Fax: (303) 402-1601 Email: rev@bhgrlaw.com; mg@bhgrlaw.com	Case Number: 2017SC297
<p style="text-align: center;">AMICUS CURIAE BRIEF OF COLORADO PTA, TOGETHER AGAINST NEIGHBORHOOD DRILLING, DR. STEPHANIE MALIN, STACIA RYDER, SHIRLEY SMITHSON, AND ULRIKE WEBSTER IN SUPPORT OF THE RESPONDENTS/APPELLANTS</p>	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 29 and C.A.R. 32, including all formatting requirements set forth in these rules.

Specifically the undersigned certifies that the amicus brief complies with the length specified in C.A.R. 29(d). It contains 4,453 words.

I hereby acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and 32.

BERG HILL GREENLEAF & RUSCITTI LLP

Pursuant to C.A.R. 30 (f), the signed original is on file at Berg Hill Greenleaf & Ruscitti LLP

s / Megan Gutwein

Rudy E. Verner
Megan Gutwein

Attorneys for Amici Curiae

TABLE OF CONTENTS

CERTIFICATE OF COMPLIANCE.....	i
TABLE OF AUTHORITIES	iii
INTERESTS OF AMICI.....	1
STATEMENT OF THE CASE.....	6
ARGUMENT	6
I. Oil and gas development in Colorado violates the principles of environmental justice.	7
II. Oil and gas companies in Colorado develop natural resources through a procedurally inequitable process.....	10
A. Coloradans affected by oil and gas development are unable to meaningfully participate in public processes.....	11
B. Schoolchildren lack political power to protect themselves from harms of oil and gas development.....	14
C. Public processes do not provide adequate notice or opportunities to participate.	16
III. Oil and gas development results in environmental racism.	19
IV. Oil and gas development forces Coloradoans to bear the burdens of its negative effects without adequate opportunity for participation.....	20
CONCLUSION	22

TABLE OF AUTHORITIES

Cases

<i>City of Fort Collins v. Colo. Oil and Gas Ass’n</i> 2016 CO 28, 369 P.3d 586 (Colo. 2016)	11
<i>City of Longmont v. Colo. Oil and Gas Ass’n</i> 2016 CO 29, 369 P.3d 573 (Colo. 2016)	11
<i>Martinez v. Colo. Oil and Gas Conservation Comm’n</i> 2017COA37 ¶¶ 19, 25.....	6

Statutes

C.R.S. § 34-60-105, (2017).....	10
C.R.S §§ 34-60-101 to 130, (2016)	6

Other Authorities

Boulder Valley School District, Escuela Bilingue Pioneer Student Demographics, http://www.bvsd.org/elementary/pioneer/Pages/demographics.aspx	22
COGCC, <i>Commission Changes to Public Comment Process</i> (Jan. 22, 2018) https://cogcc.state.co.us/documents/reg/Hearings/Commission%20Changes%20to%20Public%20Comment%20Process_20180122.pdf	14
Colorado General Assembly, HB 18-1289 Vote Summary (May 2, 2018)	18
Colorado General Assembly, HB 18-1352 Vote Summary (May 2, 2018)	18
Colorado PTA, 2017-2018 Colorado PTA Legislative Platform (April 30, 2017), https://copta.org/wp-content/uploads/2017/Legislative_Platform_17-18.pdf	1
Colorado PTA, https://copta.org/mission-values/	1

Complaint at ¶¶ 1,2, Weld Air and Water v. COGCC, No. 2017CV31315 (Dist. Ct., Denver Cnty., Aug. 3, 2017).	20
Keystone Policy Center, <i>Colorado Oil and Gas Task Force Final Report</i> , 3#(Feb. 2015).....	12
Letter from Boulder County Att’y to COGCC, Re: Crestone CDP Public Meetings (Oct. 10, 2017) https://assets.bouldercounty.org/wp-content/uploads/2017/10/oil-gas-boulder-county-letter-to-cogcc-crestone-cdp-public-meetings-20171010.pdf	18, 19
Lisa McKenzie et. al., <i>Population Size, Growth, and Environmental Justice Near Oil and Gas Wells in Colorado</i> , 50 Env’tl. Sci. & Tech. 11471, 11475 (2016)	11, 12
National PTA, Leadership, https://www.pta.org/home/About-National-Parent-Teacher-Association/PTA-Leadership	1
National PTA, Position Statement – Environmental Health, Remediation, Sustainability, and Climate Change (Amended Nov. 2016), https://www.pta.org/home/advocacy/pta's-positions/Individual-Position-Statements/Position-Statement-Environmental-Health-Remediation-Sustainability-and-Climate-Change	2
Paul Mohai et. al., <i>Air Pollution Around Schools is Linked to Poorer Student Health and Academic Performance</i> , 30 Health Affairs 852, 852 (2011)	7, 10, 14
Paul Mohai, David Pellow, & J. Timmons Roberts, <i>Environmental Justice</i> , 34 Ann. Rev. Env’tl. Res. 405, 407 (2009).....	7, 8, 9, 19
Robert D. Bullard, <i>Environment and Morality: Confronting Environmental Racism in the United States</i> , United Nations Research Institute for Social Development, iii (Oct. 2004)	8

Robert R. Kuehn, <i>A Taxonomy of Environmental Justice</i> , 30 Env'tl. L. Reporter, 10681, 10688 (2000).....	10
Ryan Holifield, <i>Defining Environmental Justice and Environmental Racism</i> , 22 Urban Geography 78, 81 (2001).....	9
State of Colorado Oil and Gas Conservation Commission, Field Inspection Form (April 16, 2014), available at http://165.127.23.127/DownloadDocument.aspx?DocumentId=3323042	16
Stephanie Malin, Stacia Ryder, & Peter Hall, <i>Contested Colorado: Shifting Regulations and Public Responses to Unconventional Oil Production in the Nibrara Shale</i> , in <i>Fractured Communities: Risk, Impacts, and Protest Against Hydraulic Fracking in US Shale Regions</i> 199, 209 (2018).....	12, 13, 16
U.S. EPA, Office of Environmental Justice in Action, https://www.epa.gov/sites/production/files/2017-09/documents/epa_office_of_environmental_justice_factsheet.pdf	9
News Articles	
Bruce Finley, <i>Front Range firefighters gird after oil fires as wells encroach</i> , THE DENVER POST, May 1, 2014	16
<i>Community Confronts Controversial Fracking Operation in Greeley</i> , CBS DENVER, May 13, 2014; <i>Valve failure led to gas leak that forced evacuation of football stadium during game</i> , GREELEY TRIBUNE, April 12, 2018	15
John Tomasic, <i>Lawsuit targets state regulators for approving 24-well project near Greeley-area middle school</i> , COLORADO POLITICS, April 11, 2017.....	15
Kelsey Ray, <i>For State Regulators Considering Drilling Permits, “No” is Off the Table</i> , THE COLORADO INDEPENDENT (June 2, 2017) http://www.coloradoindependent.com/165739/colorado-cogcc-drilling-permits-martinez	13

Marshall Zelinger, <i>Only Some of the Public was Welcome at Public Fracking Meeting in Boulder Co.</i> , KUSA (Oct. 23, 2017).....	18
Oscar Contereas & Mike Iliopoulos, <i>Oil & gas plug site forced to shut down after violation is found near elementary school</i> , THE DENVER CHANNEL, Nov. 11, 2017	14
Tyler Silvy, <i>Sen. Vicki Marble Found Guilty of Ethics Violation in Case Involving Extraction Oil and Gas-Paid Meeting</i> , THE GREELEY TRIBUNE, April 9, 2018; Colorado Senate Republicans, Majority Caucus Chair Vicki Marble (2017). http://www.coloradosenaterepublicans.com/senator_vicki_marble	13

INTERESTS OF AMICI

As demonstrated below, each amicus has an interest in the Court’s resolution of whether the Colorado Oil and Gas Conservation Commission (“COGCC”) must protect the public’s health, safety, and welfare when issuing oil and gas permits.

The Colorado PTA’s mission is to “make every child’s potential a reality by engaging and empowering families and communities to advocate for all children.”¹

The Colorado PTA’s platform includes supporting “[l]aws that protect the health, wellness, and safety of children and youth....”² The Colorado PTA is part of the National PTA, which is comprised of 54 state organizations and over 20,000 local units.³ The National PTA, and by association, the Colorado PTA, takes the position that it is responsible for promoting environmental health and safety, protecting children from adverse effects of climate change, and advocating for laws to protect children from health risks and environmental pollutants and hazards.⁴ The Colorado PTA has an interest in ensuring the health, safety, and

¹ Colorado PTA, <https://copta.org/mission-values/> (last visited May 3, 2018).

² Colorado PTA, 2017-2018 Colorado PTA Legislative Platform (April 30, 2017), https://copta.org/wp-content/uploads/2017/Legislative_Platform_17-18.pdf.

³ National PTA, Leadership, <https://www.pta.org/home/About-National-Parent-Teacher-Association/PTA-Leadership> (last visited May 3, 2018).

⁴ National PTA, Position Statement – Environmental Health, Remediation, Sustainability, and Climate Change (Amended Nov. 2016),

welfare of all children in the state, a population that is particularly vulnerable to the adverse effects of environmental pollution.

Together Against Neighborhood Drilling (“TAND”) is an organization comprised of approximately 80 residents of Lafayette, Colorado who are dedicated to protecting Front Range families, schools, and neighborhoods from the harmful effects of oil and gas development. TAND’s members formed this group in response to plans by Extraction Oil & Gas to drill in their neighborhoods, local open space, and adjacent to their children’s schools. TAND members educate the community about the dangers of oil and gas development, testify at hearings, and work with community leaders to ensure that any permitted development will protect their health, safety, and welfare. The group is primarily comprised of working parents with young children. TAND’s members have found it incredibly difficult to engage meaningfully in the legislative and administrative rule-making processes due to the location and timing of hearings. Often, if a working parent arranges to attend a meeting, the dates are changed.⁵ TAND is working to help

<https://www.pta.org/home/advocacy/pta's-positions/Individual-Position-Statements/Position-Statement-Environmental-Health-Remediation-Sustainability-and-Climate-Change>.

⁵ For instance, one scheduled COGCC hearing has been pushed back at least four times.

time-strapped families engage with the process, including filing this brief, sending postcards to the COGCC, creating easy-to-access online comment forms, implementing a crowd-funded ad campaign to provide information about oil and gas development, and drafting and circulating petitions.

Dr. Stephanie Malin is an Assistant Professor of Sociology at Colorado State University and an Adjunct Assistant Professor with the Colorado School of Public Health, whose research focuses on environmental justice and community-level outcomes of natural resource development. Dr. Malin has conducted research and published papers in peer-reviewed journals related to the environmental justice impacts of the oil and gas industry. Dr. Malin has an interest in ensuring that law and policy accurately reflects her work and the work of her peers in the field of environmental justice.

Stacia Ryder is a PhD candidate at Colorado State University whose research focuses on societal-environmental interactions and how environmental harms and benefits influence people's lives. Ms. Ryder recently co-authored a book chapter that focuses on environmental justice impacts of the oil and gas industry on communities in Colorado. Ms. Ryder has an interest in ensuring that law and policy accurately reflects her work and the work of her peers.

Shirley Smithson is a resident of Greeley, Colorado and has lived in the neighborhood near Bella Romero Academy, a public school, for 36 years. Ms. Smithson also teaches yoga classes from her home. Extraction Oil & Gas obtained a permit to drill within 1,000 feet of the school's playground, and less than one-half mile from Ms. Smithson's home. Ms. Smithson has experienced negative impacts from this development including noise pollution, air pollution, dust, truck traffic, and negative health effects such as persistent coughing and sore throats. Ms. Smithson has also been involved in a lawsuit to stop this drilling and has filed complaints with the COGCC related to permit violations such as Extraction Oil & Gas trucks using Cherry Street and interfering with buses and students. This development interferes with Ms. Smithson's enjoyment of her neighborhood and may also interfere with her business. She can no longer ride her horse in the field where the drilling is taking place despite having the landowner's permission, and her neighborhood is no longer a pleasant place to walk her dog or enjoy the outdoors. Ms. Smithson has an interest in ensuring that any oil and gas development is regulated to protect her, her family's, and her clients' health, safety, and welfare.

Ulrike Webster is a resident of Longmont, Colorado and began attending public meetings in response to Crestone Peak Resources' plans to drill over 100 wells near her home. Although Ms. Webster lives within Crestone's Comprehensive Drilling Plan, it was extremely difficult for her to participate in the company's "public" meetings about their plans. Crestone required attendees to present invitations to the first meeting and some people were turned away at the door. Crestone's security attempted to deny entry to Ms. Webster several times because they did not understand her name before finally allowing her into the building. Crestone gave a presentation at the meeting and only allowed a few minutes for questions before abruptly ending the meeting. Ms. Webster had to email Crestone and receive an invite to attend other telephone public meetings. Ms. Webster often experienced technical difficulties during these calls, and when the calls suddenly dropped, there was no number to call back in. Crestone representatives screened questions from participants and either refused to answer some of them or participants, including Ms. Webster, were dropped from the call after describing their question to the representative. According to Ms. Webster, Crestone mailed postcards to people in the area instructing them how to sign up for the phone meetings, but many people did not receive the cards until after the

meetings took place. Ms. Webster has personally experienced procedural difficulties participating in public meetings and has an interest in protecting her and her family's health, safety, and welfare.

STATEMENT OF THE CASE

The Court of Appeals held that the Colorado Oil and Gas Conservation Act (the "Act"), C.R.S. §§ 34-60-101 to 130, (2016) grants the COGCC authority to consider a proposed rule to protect public health and the environment. The court reasoned that the Act requires the COGCC to regulate oil and gas development in a manner consistent with protecting public health, safety, and welfare. *Martinez v. Colo. Oil and Gas Conservation Comm'n*, 2017COA37 ¶¶ 19, 25.

ARGUMENT

As the Court of Appeals correctly held, the COGCC must regulate oil and gas development subject to protecting public health, safety, welfare, and the environment. The COGCC's currently inadequate regulation of oil and gas development endangers public health, safety, and welfare, contrary to the Act and as demonstrated by the impacts to amici. Moreover, oil and gas development in Colorado violates the principles of environmental justice, which the U.S. Environmental Protection Agency defines as:

The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no population, due to policy or economic disempowerment, is forced to bear a disproportionate share of the negative human health or environmental impacts of pollution or environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local and tribal programs and policies.

Paul Mohai, David Pellow, & J. Timmons Roberts, *Environmental Justice*, 34 Ann. Rev. Env'tl. Res. 405, 407 (2009). Oil and gas development in Colorado poses environmental justice problems in two primary ways: (1) it is conducted through a process that lacks procedural equity, and (2) results in environmental racism. Oil and gas development particularly harms children, who are more vulnerable than adults to pollution and have no choice about where they live or attend school. See Paul Mohai et. al., *Air Pollution Around Schools is Linked to Poorer Student Health and Academic Performance*, 30 Health Affairs 852, 852 (2011).

I. Oil and gas development in Colorado violates the principles of environmental justice.

Environmental justice is described as the principle that “all people and communities are entitled to equal protection of environmental and public health laws and regulations.” Mohai, Pellow & Roberts, *supra*, at 407 (internal citations

omitted). Oil and gas development in Colorado implicates two components of environmental justice, environmental racism and procedural injustice. The environmental justice movement began with a focus on environmental racism, but more recent theories also hold that *all* people deserve fair treatment under environmental laws and regulations.

Environmental racism is defined as a public policy or industry practice that disadvantages people based on race, and often benefits corporations while shifting costs to minority populations. See Robert D. Bullard, *Environment and Morality: Confronting Environmental Racism in the United States*, United Nations Research Institute for Social Development, iii (Oct. 2004). This phenomenon is well-documented. Numerous studies conclude that minority and low-income communities suffer disproportionate impacts due to air, water, and soil pollution from industrial activities, including oil and gas development. See Mohai, Pellow & Roberts, *supra*, at 406

Environmental racism reached the public eye in 1982 when civil rights activists stopped North Carolina from dumping 120 million pounds of contaminated soil in the county with the highest African American population. *Id.* In response to growing concerns related to environmental justice, in 1992 the

federal government created the Office of Environmental Justice within the Environmental Protection Agency to address the needs of vulnerable populations by decreasing environmental burdens on disproportionately affected communities. U.S. EPA, Office of Environmental Justice in Action, https://www.epa.gov/sites/production/files/2017-09/documents/epa_office_of_environmental_justice_factsheet.pdf. Shortly thereafter, President Bill Clinton issued Executive Order 12898, directing all federal agencies to take environmental justice into account in rulemaking. See Mohai, Pellow & Roberts, *supra*, at 410. Now, environmental justice seeks to involve and treat fairly all people in developing and enforcing environmental regulations. *Id.* at 407.

The concept of procedural justice focuses on citizens' access to decision-making processes that affect their environment. See Ryan Holifield, *Defining Environmental Justice and Environmental Racism*, 22 Urban Geography 78, 81 (2001). Procedural justice requires "inclusiveness, representation, parity, and communication," as well as ensuring that minority and low-income communities have access to information. See Robert R. Kuehn, *A Taxonomy of Environmental Justice*, 30 Env'tl. L. Reporter, 10681, 10688 (2000). Local residents who oppose

development that threatens environmental harm often complain of lack of notice, inconvenient meeting times and places, and inaccessible public documents. *Id.* at 10691. As demonstrated by amici, Colorado residents experience these problems with oil and gas development.

Additionally, both of these concepts directly affect schools. Evidence shows that public schools may be disproportionately located in areas with high levels of air pollution, which correlates with poor student attendance and performance. See Mohai et al., *supra*, at 857-858. Children, have little say in where they attend school or where their schools are located. Additionally, evidence shows that poor and minority children disproportionately suffer harm from pollution. *Id.* at 858.

II. Oil and gas companies in Colorado develop natural resources through a procedurally inequitable process.

The COGCC regulates oil and gas development in Colorado. *See* C.R.S. § 34-60-105, (2017). By law, local governments are prohibited from regulating development in any significant way to protect public health, safety, and welfare, leaving the COGCC as the only safeguard. *See City of Longmont v. Colo. Oil and Gas Ass’n*, 2016 CO 29, 369 P.3d 573 (Colo. 2016); *City of Fort Collins v. Colo. Oil and Gas Ass’n*, 2016 CO 28, 369 P.3d 586 (Colo. 2016). Thus, residents’ only meaningful avenue to ensure protection of their health, safety, and welfare is

through legislation, the COGCC, or public meetings held by oil and gas companies. Unfortunately, this process is rife with procedural inequity.

A. Coloradans affected by oil and gas development are unable to meaningfully participate in public processes.

As of 2012, more than 378,000 Coloradans lived within one mile of an oil or gas well that was drilled after 2000. See Lisa McKenzie et. al., *Population Size, Growth, and Environmental Justice Near Oil and Gas Wells in Colorado*, 50 *Envtl. Sci. & Tech.* 11471, 11475 (2016). The COGCC has established mandatory setbacks for oil and gas wells from residential structures of 500 feet, but these setbacks allow for exceptions, do not apply to homes that were constructed after an oil or gas facility was approved, do not address the health impacts of air pollution, and were promulgated before peer reviewed scientific studies evaluating the effectiveness of such setbacks were available. *Id.* at 11471-11472. Studies show that people living near oil and gas development suffer from numerous health hazards including nosebleeds, dizziness, headaches, rashes, respiratory illness, asthma, and adverse birth outcomes. *Id.* at 11472. Residents near oil and gas development generally own just the surface estate, and lack decision-making power over the mineral estate beneath their homes. *Id.* Those who benefit most from oil and gas extraction (companies and mineral owners) typically do not live

near the oil and gas facility and do not bear the burden of the associated health, safety, and welfare risks. *Id.* at 11477.

Those impacted by oil and gas development lack a voice in making decisions that will ultimately affect their health and welfare. For instance, in 2014, Governor Hickenlooper appointed an Oil and Gas Task Force to examine the issues surrounding oil and gas development and recommend policy and legislative changes. See Keystone Policy Center, *Colorado Oil and Gas Task Force Final Report*, 3#(Feb. 2015). Only three residents impacted by development were on the governor's task force comprised of 21 people, at least six of whom represented industry. See McKenzie, *supra*, at 11477-11478; Keystone Policy Center, *supra*, at 4. The task force proposed forty recommendations, but only nine were approved because the task force required a two-thirds majority to approve a recommendation. See Stephanie Malin, Stacia Ryder, & Peter Hall, *Contested Colorado: Shifting Regulations and Public Responses to Unconventional Oil Production in the Nibrara Shale*, in *Fractured Communities: Risk, Impacts, and Protest Against Hydraulic Fracking in US Shale Regions* 199, 209 (2018). Industry representatives successfully blocked most of the recommendations. *Id.* Those affected by oil and gas development may have been represented on the task

force, but they lacked the power to influence the lax regulations ultimately proposed.

Even when Coloradoans are able to overcome procedural hurdles and attend a legislative or COGCC hearing, their voices may fall on deaf ears or not be heard at all. For example, at least one member of the Senate Agriculture, Natural Resources, & Energy Committee and the Senate State, Veterans, & Military Affairs Committee, which often consider bills related to oil and gas development, was recently cited for ethics violations for accepting benefits from Extraction Oil and Gas. See Tyler Silvy, *Sen. Vicki Marble Found Guilty of Ethics Violation in Case Involving Extraction Oil and Gas-Paid Meeting*, THE GREELEY TRIBUNE, April 9, 2018; Colorado Senate Republicans, Majority Caucus Chair Vicki Marble (2017). http://www.coloradosenaterepublicans.com/senator_vicki_marble. The COGCC, which is notoriously pro-development⁶, recently changed its rules about public comments to limit total time for comments to two hours, each person's time to two minutes, and require commenters to sign up prior to the hearing. COGCC,

⁶ The COGCC has never ultimately denied a drilling permit. See Kelsey Ray, *For State Regulators Considering Drilling Permits, "No" is Off the Table*, THE COLORADO INDEPENDENT (June 2, 2017) <http://www.coloradoindependent.com/165739/colorado-cogcc-drilling-permits-martinez> (citing oral arguments in this case and a May 2014 deposition taken in *City of Longmont*).

Commission Changes to Public Comment Process (Jan. 22, 2018)

https://cogcc.state.co.us/documents/reg/Hearings/Commission%20Changes%20to%20Public%20Comment%20Process_20180122.pdf. These processes provide little meaningful opportunity for Colorado citizens to be included in decisions that will significantly impact their quality of life.

B. Schoolchildren lack political power to protect themselves from harms of oil and gas development.

School children are particularly subject to the hazards of oil and gas development. See Mohai, *supra*, at 852. They are also politically impotent. For instance, in 2017, Aspen Ridge Preparatory School in Erie, Colorado suffered from volatile organic compounds polluting the school and playground from a well. Crestone Peak Resources was venting gas from open tanks only 25 yards from Aspen Ridge's playground during a well-plugging operation. See Oscar Contereas & Mike Iliopoulos, *Oil & gas plug site forced to shut down after violation is found near elementary school*, THE DENVER CHANNEL, Nov. 11, 2017. According to the Notice of Alleged Violation, after an odor complaint, "COGCC Staff also observed venting from open top tanks located on the west side of the Location approximately 25 yards from the playground of Aspen Ridge Preparatory School, the absence of temporary walls on the west side of the location, children playing in

the playground and watching the rig crew's operation, and [] ("VOCs") visibly drifting toward the children on the playground." COGCC, Notice of Alleged Violation – Issued Oct. 25, 2017. While the company took measures to remedy the situation, it is unclear how long the harmful gases and noxious fumes affected the school, or how long the VOCs were "visibly drifting toward the children."

Also in 2017, an equipment failure and gas leak forced the football stadium at Northridge High School in Greeley to evacuate. This fracking operation was constructed only several hundred feet from the school's track. See *Community Confronts Controversial Fracking Operation in Greeley*, CBS DENVER, May 13, 2014; *Valve failure led to gas leak that forced evacuation of football stadium during game*, GREELEY TRIBUNE, April 12, 2018. Extraction Oil & Gas recently secured a permit to drill 24 new wells 1,350 feet from the Bella Romero school building and less than 500 feet from the playground in Greeley, Colorado. See John Tomasic, *Lawsuit targets state regulators for approving 24-well project near Greeley-area middle school*, COLORADO POLITICS, April 11, 2017.

In 2014, students and teachers in Legacy Elementary School in Frederick, Colorado were forced to shelter in place due to a fire at an oil tank approximately 1,800 feet from the school. Bruce Finley, *Front Range firefighters gird after oil*

fires as wells encroach, THE DENVER POST, May 1, 2014. *see also* State of Colorado Oil and Gas Conservation Commission, Field Inspection Form (April 16, 2014), available at <http://165.127.23.127/DownloadDocument.aspx?DocumentId=3323042>. These incidents present just a few examples of the health and safety hazards caused by oil and gas facilities that directly affected schools.

C. Public processes do not provide adequate notice or opportunities to participate.

The only real opportunity for Coloradoans impacted by oil and gas development to participate in the decisions that will affect their health, safety, and welfare is to attend public meetings and hearings. These processes, however, lack procedural equity. According to one resident living near a wellpad, at a public meeting with industry representatives, all of the speakers “were immediately marginalized and universally ignored when discussing health issues.” See Malin, Ryder & Hall, *supra*, at 25. When concerned residents are fortunate enough to have an opportunity to speak, their voices are often not meaningfully included in the decision-making process.

Legislative hearings on important bills are frequently held at inopportune times and with inadequate public notice. Many directly impacted people are

prohibited from attending hearings in downtown Denver due to work, school schedules, and family obligations. TAND members who can testify at hearings are forced to bring their young children, often disrupting their sleep, eating, or school schedules. As one example, on May 2, 2018, the Senate State, Veterans, & Military Affairs Committee heard testimony on HB 18-1352 (increasing setbacks of oil and gas facilities to 1,000 feet from school property lines), and HB 18-1289 (exempting school districts from forced pooling rules). As these bills were introduced in the Senate and assigned to committee on May 1, the hearing notice could have only been posted on the legislature's website for one day or less. One TAND member's representative contacted her on May 2 notifying her of the hearing, and she only received this notice because she had testified at previous hearings. She was able to testify by abandoning her schedule and taking her 3-year-old and 5-year-old children. The committee voted to postpone both bills indefinitely, with the 18-1352 vote taking place at 7:14 p.m., and the 18-1289 vote at 8:16 p.m. Colorado General Assembly, HB 18-1352 Vote Summary (May 2, 2018); Colorado General Assembly, HB 18-1289 Vote Summary (May 2, 2018).⁷

⁷ Sen. Vicki Marble, the senator who was fined for ethics violations for receiving benefits from an oil and gas company (see above), is a member of this committee and voted to postpone both the bills. *Id.*

Most average Coloradoans who are harmed by oil and gas development cannot forgo work, school, family, and other obligations to attend a hearing in Denver with six hours' notice. Those who can participate, often with young children in tow, find that their pleas to the state legislature and the only agency that is allowed to protect them fall on deaf ears, perhaps due to the political power of the oil and gas industry.

Oil and gas companies must obtain public input prior to drilling, but efforts to engage the public are wholly inadequate. For example, on October 18, 2017, Crestone Oil and Gas held a purportedly public meeting related to a development in eastern Boulder County. See Marshall Zelinger, *Only Some of the Public was Welcome at Public Fracking Meeting in Boulder Co.*, KUSA (Oct. 23, 2017); *see also* Letter from Boulder County Att'y to COGCC, Re: Crestone CDP Public Meetings (Oct. 10, 2017) <https://assets.bouldercounty.org/wp-content/uploads/2017/10/oil-gas-boulder-county-letter-to-cogcc-crestone-cdp-public-meetings-20171010.pdf>. The company only allowed people in with invitations, however, and attempted to refuse entry to residents who would be directly impacted. *Id.* It also attempted to block state representatives from attending, and failed to notify Boulder County, which is a landowner of some of

the proposed drilling sites. *Id.* Crestone later held other “public” meetings by telephone, during which participants experienced poor connections or were disconnected, and Crestone pre-screened all of the questions. These examples demonstrate that Coloradans who bear the health risks and other burdens of oil and gas development are unable to effectively participate in the decision-making processes that affect their health and well-being.

III. Oil and gas development results in environmental racism.

Multiple studies show that hazardous facilities choose to move into neighborhoods with largely poor or minority populations. See Mohai, Pellow & Roberts, *supra*, at 413. Affluent residents can relocate when negative effects of oil and gas development become too burdensome. *Id.* at 414. Lower income or marginalized populations do not have this option, however. Research shows that communities with higher education levels and income and fewer people of color are more capable of resisting oil and gas development in their neighborhoods. *Id.* at 414-415.

The example of Bella Romero Academy in Greeley, Colorado clearly demonstrates this phenomenon. In this case, the COGCC approved Extraction Oil & Gas’ plan to site 24 wells south of Bella Romero within 500 feet of the school

yard. Complaint at ¶¶ 1,2, Weld Air and Water v. COGCC, No. 2017CV31315 (Dist. Ct., Denver Cnty., Aug. 3, 2017). Students at Bella Romero are 89.5% Latino or Hispanic, African American, or other people of color, and 87% are eligible for free or reduced lunch. *Id.* at ¶ 3. Extraction Oil & Gas originally applied to drill near Frontier Academy Elementary School in Greeley, which is 73.6% white. *Id.* Extraction Oil & Gas claimed that the Frontier site was not ideal because of its proximity to the school and playground, but the site is actually closer to the playground at Bella Romero. *Id.* at 4.

IV. Oil and gas development forces Coloradoans to bear the burdens of its negative effects without adequate opportunity for participation.

Even if a resident has the means to move away from encroaching oil and gas facilities, they should not have to. Ms. Smithson purchased her home 36 years ago because she wanted to live in that neighborhood. It was a pleasant area to ride her horses, walk her dog, and start a small business in her home. Ms. Smithson bears the burdens of the noise, dust, noxious odors, air pollution, truck traffic, and negative health effects, but has little to no say in the decision-making process and experiences minimal benefits from the development. Ms. Smithson has attempted to engage in the public process by providing comments to the COGCC,

participating in litigation, and other available avenues, but is still suffering from the impacts of oil and gas development.

Multiple TAND members also purchased their homes because they wanted to live in a diverse, affordable community in Lafayette, Colorado near Escuela Bilingue Pioneer and Boulder County open space. The neighborhood is full of young families of different ethnic and socio-economic backgrounds. These residents enjoy the open space and spend time outdoors playing with their children, walking their dogs, jogging, and viewing wildlife. Kids ride up and down the streets on their bikes and trikes in what one TAND member describes as “an adorable biker gang.” A trail connects the neighborhood to county open space, and many residents use this open space to take their kids to school, walk their dogs, and arrange play dates for kids and pets. Some residents also live here because of Escuela Bilingue Pioneer, which is the nearby bilingual school with a largely minority and low income student population. Boulder Valley School District, Escuela Bilingue Pioneer Student Demographics, <http://www.bvsd.org/elementary/pioneer/Pages/demographics.aspx>. TAND members have built a close, strong community, and now are faced with the impossible choice of either staying and suffering the health and quality of life

impacts of nearby drilling, or leaving, knowing that most other nearby options are unaffordable given skyrocketing housing prices in Colorado. Many members of TAND truly value Escuela Bilingue Pioneer and would loathe uprooting their children and depriving them of a safe, friendly neighborhood and high quality bilingual education. Even if amici or other Coloradoans have the means to relocate, they should not be forced to leave their homes because of extremely negative health and welfare effects caused by oil and gas development over which they have no decision-making power.

CONCLUSION

Amici provide unique perspectives on the realistic effects of living near oil and gas development, the procedural roadblocks in participating in applicable public processes, and how environmental justice principles affect Colorado citizens. Amici request that this court uphold the decision of the Colorado Court of Appeals, and require the Colorado Oil and Gas Conservation Commission, which is charged with protecting public health, safety, welfare, and the environment when regulating oil and gas development, to comply with its statutory mandate.

Respectfully submitted this 25th day of May, 2018.

BERG HILL GREENLEAF RUSCITTI LLP

[Pursuant to C.A.R. 30 (f), the signed original is on file at Berg Hill Greenleaf Ruscitti LLP]

s/ Megan Gutwein

Rudy E. Verner
Megan Gutwein
Attorneys for Amici

CERTIFICATE OF SERVICE

I certify that on May 25, 2018, a true and correct copy of the foregoing ***AMICUS CURIAE* BRIEF OF COLORADO PTA, TOGETHER AGAINST NEIGHBORHOOD DRILLING, DR. STEPHANIE MALIN, STACIA RYDER, SHIRLEY SMITHSON, AND ULRIKE WEBSTER IN SUPPORT OF THE RESPONDENTS/APPELLANTS** was filed and served electronically by Colorado Courts E-Filing or by Colorado Court E-Filing via United States mail, postage prepaid to all attorneys of record.

Jacqui Frey

Jacqui Frey, Legal Assistant