

<p><b>COLORADO SUPREME COURT</b>  2 East 14th Avenue  Denver, CO 80203</p>	
<p>On Certiorari to the Colorado Court of Appeals,  2016CA564</p> <p>Opinion by Judge Fox; Judge Vogt, Jr., concurring;  Judge Booras, dissenting</p> <p>District Court, Denver County, 2014CV32637  The Honorable J. Eric Elliff</p>	<p>▲ COURT USE ONLY ▲</p>
<p><b>Petitioner:</b>  Colorado Oil and Gas Conservation Commission,    and</p> <p><b>Intervenors-Petitioners:</b>  American Petroleum Institute and the Colorado  Petroleum Association</p> <p>v.</p> <p><b>Respondents:</b>  Xiuhtezcatl Martinez; Itzcuahtli Roske-Martinez;  Sonora Binkley; Aerielle Deering; Trinity Carter;  Jamirah DuHamel; 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>	<p>Supreme Court Case No.:  2017SC297</p>
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**DECLARATION OF XIUHTEZCATL MARTINEZ IN SUPPORT OF  
RESPONDENTS' MOTION TO VACATE THE DISSENTING OPINION  
OF JUDGE LAURIE BOORAS AND VACATE THIS COURT'S ORDERS  
IN *MARTINEZ*, OR AT A MINIMUM, RECONSIDER AND MODIFY THIS  
COURT'S OPINION IN LIGHT OF THE VACATED DISSENT**

I, Xiuhtezcatl Martinez, hereby declare and if called upon would testify as follows:

1. I am the lead plaintiff on *Martinez v. the Colorado Oil and Gas Conservation Commission*. I am an Indigenous, Mexican American and so is my brother, who is also a plaintiff on this case.
2. I write this declaration on a day we honor the great Dr. Martin Luther King Jr., a man who will be remembered forever as someone who fought for

justice, equality and against the normalization of racism. On this day of honoring a great leader, I reflect on how far we've come as a society, to outlaw forms of institutionalized racism like segregation, but this Court's decision, which validates the dissenting opinion of Judge Laurie Booras, and her judicial misconduct, is a prime example of how far we have to go when it comes to rejecting the normalization of racism and expelling it from our most powerful institutions.

3. I have reviewed the decision in our case from this Court. I have also reviewed a timeline prepared by my attorneys of the events in this case, including the investigation and recommendations regarding Judge Booras. I have also reviewed the Recommendations from three judges to this Court saying that Judge Booras committed judicial misconduct in my case and should be removed from office. I attended every hearing in our case from the district court to the Court of Appeals and then the Supreme Court. I have sat in the front rows watching, listening, and seeking justice from the judges of our state.
4. In considering the motion we are making, I want each of our seven Supreme Court Justices reading this declaration to understand me, and my own struggle for justice, just as the Special Masters listened to Judge Fox in their

investigation of Judge Laurie Booras. I never had an opportunity to be heard in that proceeding because it was behind closed doors.

5. Throughout most of my 18 years of living in Colorado, I have carried an unfaltering will to use all means available to me to pursue justice for my community, my generation, and the planet we share from dangerous climate change, in part caused by fracking, and the other interconnected injustices that are ongoing symptoms of the lack of respect for life. As I studied movements throughout history, I began to see the power there was in applying our citizen energy to the justice system to fully engage in our third branch of government, an essential institution of our democracy, and fight for our rights as the youngest generation. In the struggle to protect my community from the irrefutable harm occurring from the expansion of the oil and gas industry, we have often come up against the corrupting power of money in politics. The situation is worse than politicians doing nothing, or ignoring the concerns of the people. Countless efforts for community action to ban, regulate and address the crisis of fracking have been overturned and made seemingly impossible by politicians fighting directly against their constituents to protect the private interests of fossil fuel companies over the health and safety of our communities. The whole mess constantly challenges

me to question what true leadership means, and of the responsibility I have to fight for those whose voices remain unheard and unrepresented.

6. In the light of Colorado's failure from both regulatory agencies like the COGCC and state representatives to protect Colorado's citizens from fracking, and recognizing the injustice at hand, I decided to turn to the courts as a pathway to deliver the change we need.
7. In 1967, Dr. King said: "We are now faced with the fact that tomorrow is today. We are confronted with the fierce urgency of now. In this unfolding conundrum of life and history, there 'is' such a thing as being too late. This is no time for apathy or complacency. This is a time for vigorous and positive action." Over 5 years ago I, and other Colorado youth, filed a petition for a rulemaking with the COGCC to use its statutory authority to address the fierce urgency of climate change now and the dangers of the explosive amount of fracking in our state that is fueling the climate crisis and is also fueling localized dangers in our Colorado communities; dangers I have experienced personally and dangers I have been speaking out about for more than a decade. I, and my 6 co-plaintiffs, brought this case to the courts in Colorado to protect our health, our safety, our lives, our communities, and

our environment, and to fight the apathy and complacency of our political leaders and the COGCC.

8. In response to our search for justice, we have been told by this Court that while our reading of the Oil and Gas Conservation Act is not an unreasonable one, our highest court in the state will read the law in a way that protects the oil and gas industry at our expense. While it is very disappointing to see our Supreme Court read this law in such a dangerous way, it is devastating to know that in so doing, all seven Justices on this Court agreed to refer to and rely upon an opinion written by a judge on the Court of Appeals who was racially biased against her colleague who wrote the majority opinion in our case, and was likely racially biased against me and my brother for our indigenous and Latino heritage. In addition to bias against us, that same judge also violated her duty to not discuss our case with third parties before the Court of Appeals ruled on our case, but instead she pre-judged how she would rule and did not allow for any back and forth with the written majority opinion or her dissent to see if she might change her mind. I understand from my attorneys and the recommendations for her removal made to this Court that what she did was illegal and violated her ethical responsibilities as a judge.

9. The hope I'd placed in our justice system makes this that much more disappointing. I can't help but feel robbed by the justice system. To put this much time, energy and hope into this five-year legal battle only to find out that the unanimous decision from my seven Supreme Court Justices to overturn the Court of Appeals decision in our case was based at least partly on a preconceived, unjust dissenting ruling influenced by racial bias is crushing. Ignoring blatant racism and fairness that violates protocol and poses a threat to the integrity of a case this important is an act of racism in itself. The fact that seven Supreme Court justices would continue business as usual even in the light of this alarming misconduct and recommendations for removal of Judge Booras is appalling. The full Court not only seemingly ignored the canons of judicial conduct and the recommendations by three other judges to remove Judge Booras from office, but proceeded to base a critical part of their decision to strike down our case on Judge Booras's flawed, biased and unfair dissent. I feel deeply offended by the lack of action taken by the Supreme Court justices to address the disrespect directed at Judge Fox and the misconduct of Judge Booras in deciding our case that might otherwise have been unanimous. I can't help but wonder how far Judge Booras's prejudice towards Judge Fox extends to myself, my younger

brother and the Latino communities disproportionately affected by oil and gas development. It's painful to think that the color of my skin and the country my father came from damaged my case because of a racist judge not held rightfully accountable.

10. My involvement in this case is also inspired by the disproportionate impacts fracking will have on marginalized communities, especially Latino and immigrant communities. In Colorado, the oil and gas industry is already targeting communities of color with projects like the drill sites moved near Bella Romero Elementary school from a mostly white private school. Bella Romero is 90% students of color. I stand as a young indigenous Mexican American citizen in court and in our streets to fight for those communities who will be most affected by these critical issues when elected officials in power lack the courage to do so.

11. When the highest court in the state validates an opinion that comes from a prejudiced judge, it serves to normalize racism in our institutions. This cannot go unaddressed. I truly hope you consider my concerns and understand that how you deal with this situation will greatly reflect on the Supreme Court's integrity to do what is right, and mend actions needing mending. Our case should be viewed as if Judge Booras never dissented, that

her participation was erased due to her bias, and our case should be considered anew from that moment forward. Nothing else would be just.

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

DATED this 24th day of January, 2019 at New York, New York,

Respectfully submitted,

/s/ Xiuhtezcatl Martinez

Xiuhtezcatl Martinez