

February 21, 2016

To: 1st Judicial District Judge Christie Bachmeyer  
Jefferson County District Court, Colorado  
Division 2  
100 Jefferson County Parkway  
Golden, CO 80401

From: Citizens for an Inclusive Wheat Ridge (CFIWR)  
Richard Matthews, Agent  
4465 Kipling St., #103  
Wheat Ridge, CO 80033  
303-424-7763

RE: **Amendment** to Original Filing on Case # 2016CV30040

***Amicus curiae's* brief for case # 2016CV30040**

1. This clause (in bold) is found in the U.S. Constitution:

***No...ex post facto Law shall be passed. ARTICLE I, SECTION 9, CLAUSE 3***

2. Quadrant's (Complainant) lawsuit, Count 2, purports that the retroactive wording, or ex post facto, of Ballot Question 300 (Tax Increment Financing (TIF) Reform) is unconstitutional.
3. Count 2 of the Complainant's lawsuit is unfounded and incorrect. The Clause refers to governmental bodies (Congress, State Legislatures, City Councils, etc...) passing retroactive, or ex post facto, criminal or civil laws. The Clause does not refer to the electorate (voters) anywhere in the Clause. The voters of Wheat Ridge have superior rights to amend the Wheat Ridge City Charter as a Home Rule City.
4. Additionally, the passage of TIF Reform has NOT criminally or civilly punished or denied the Complainant. The voters did not say "NO" to the Complainant with regards to their development project. The voters, with the passage of TIF Reform, added another milestone to the TIF process which requires a vote of the people on TIFs over \$2.M.
5. ***As generally understood, a law that is ex post facto—literally, after the fact—is one that criminally punishes conduct that was lawful when it was done. It is an aspect of the fundamental maxim, nulla poena sine lege: there can be no punishment without law—in this case, without preexisting law. Despite the fact that the prohibition against such laws had worked its way into English law (as celebrated by Sir William Blackstone), Parliament had, nonetheless, claimed the right to enact ex post facto laws in the form of bills of attainder against unpopular groups and persons. In addition, prior to the Constitutional***

*Convention, some states themselves had passed ex post facto laws. (The prohibition of ex post facto state laws is found in Article I, Section 10, Clause 1.) Source: <http://www.heritage.org/constitution/#!/articles/1/essays/63/ex-post-facto>*

6. **Justice Samuel Chase defined ex post facto laws as: 1st. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action. 2d. Every law that aggravates a crime, or makes it greater than it was, when committed. 3d. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. 4th. Every law that alters the legal rules of evidence, and receives less, or different testimony, than the law required at the time of the commission of the offence, in order to convict the offender. All these, and similar laws, are manifestly unjust and oppressive. Source: <http://www.heritage.org/constitution/#!/articles/1/essays/63/ex-post-facto>**
7. AGAIN: Count 2 of the Complainant's lawsuit is unfounded and incorrect. The Clause refers to governmental bodies (Congress, State Legislatures, City Councils, etc...) passing retroactive, or ex post facto, criminal or civil laws. The Clause does not refer to the electorate (voters) anywhere in the Clause. The voters of Wheat Ridge have superior rights to amend the Wheat Ridge City Charter as a Home Rule City
8. CFIWR ask, begs, implores, and beseeches the court to rule in favor of the City of Wheat Ridge and the Wheat Ridge voters on Counts 1 and 2.