



and codified as Section 2.3 to Chapter II of the Lafayette City Charter (hereinafter, “Charter Amendment”) passed by a majority of Lafayette’s voters on November 5, 2013.

2. Through the Charter Amendment, the people of Lafayette enacted a “Community Bill of Rights”.

3. The Charter Amendment’s Community Bill of Rights protects the natural, essential, and inalienable rights of the Plaintiffs and all of the people of Lafayette, including the right to self-governance, to clean water, to clean air, to be free from chemical trespass, to peaceful enjoyment of home, and to a sustainable energy future.

4. To further secure the Community Bill of Rights, the people of Lafayette prohibited corporations from engaging in the extraction of gas and oil within the City of Lafayette, with the exception of active and producing wells at the time of the Charter Amendment’s enactment.

5. On December 3, 2013, Defendant Colorado Oil & Gas Association (“COGA”) sued the City of Lafayette, asserting that the Charter Amendment is invalid because state law – the Colorado Oil and Gas Conservation Act, Colo. Rev. Stat. §§ 34-60-102 to 34-60-129, (hereinafter, “Oil and Gas Act”) – preempts it. *See Colorado Oil & Gas Association v. City of Lafayette*, Case No. 2013CV31746, Dist. Ct., Boulder, County, Co. (hereinafter, “COGA Lawsuit”).

6. Through this action, Plaintiffs seek, among other things, to enforce the Charter Amendment’s provisions and to enjoin the Defendants from violating the people of Lafayette’s rights.

### **PARTIES AND CLASS ACTION ALLEGATIONS**

7. Plaintiff Clifton Willmeng is a resident of the City of Lafayette who voted in favor of the Charter Amendment’s adoption. Plaintiff Willmeng was one of the drafters of the Charter Amendment. Plaintiff Willmeng is a homeowner and four year resident of the City of Lafayette.

8. Plaintiff Ann Griffin is a 17 year resident of the City of Lafayette who voted in favor of the Charter Amendment’s adoption.

9. Plaintiffs bring this class action on behalf of all residents of Lafayette who hold and enjoy these rights, and who benefit from the protection of these rights through the Charter Amendment’s prohibition of commercial oil and gas extraction.

10. Defendant State of Colorado, through its General Assembly, is responsible for enacting State laws, and through its Office of Attorney General and the Colorado Department of Law, is responsible for enforcing State laws.

11. Defendant John W. Hickenlooper is the Governor of the State of Colorado, and is required to ensure that all laws of the state are faithfully executed. COLO. CONST. art. IV § 2. As Colorado's Chief Executive, Governor Hickenlooper is the proper defendant to actions to enjoin or invalidate a state statute. *Developmental Pathways v. Ritter*, 178 P.3d 524, 529 (Colo. 2008).

12. Defendant Colorado Oil & Gas Association ("COGA") is a Colorado nonprofit corporation that promotes the expansion of oil and gas supplies, markets, and transportation infrastructure. COGA's members include companies and individuals engaged in the exploration, production, and development of oil and gas in Colorado; companies and individuals who have leasehold interests within or under the City's territorial jurisdiction, and companies and individuals who operate wells within and under the City's territorial jurisdiction.

13. Defendant John Doe Corporation is a member of COGA and is a corporation engaged in, or seeking to engage in, the exploration, production, and development of oil and gas in Lafayette in violation of the Charter Amendment.

14. Plaintiffs, as part of the people of Lafayette, possess the constitutional authority to govern their own municipality.

15. The people of Lafayette's constitutional authority to govern their own municipality is guaranteed by the Declaration of Independence, the United States Constitution, the Colorado Constitution, and the Charter Amendment.

16. Plaintiffs are harmed by COGA's pending action against Lafayette, which seeks to invalidate the Charter Amendment. COGA's lawsuit violates the local, state and federally guaranteed authority of Plaintiffs, both individually and collectively as part of the electorate of the City of Lafayette, to govern the municipality of Lafayette. Plaintiffs are further harmed by COGA's lawsuit because the threat of a court order enjoining enforcement of the Charter Amendment renders Plaintiffs', and all of the people of Lafayette's, rights uncertain.

17. Plaintiffs are harmed by the State's adoption and enforcement of the Oil and Gas Act to the extent that it is construed as preempting the people of Lafayette's right to ban commercial oil and gas production. If the Oil and Gas Act is construed as preempting the people's right to ban commercial oil and gas extraction, then Plaintiffs will be unable to enforce the Charter Amendment.

18. Plaintiffs are harmed by John Doe Corporation's actions in violation of the Charter Amendment. Upon information and belief, John Doe Corporation is a corporation engaged in, or seeking to engage in, the exploration, production, and development of oil and gas in Lafayette in violation of the rights and prohibitions of the Charter Amendment.

19. Because the Oil and Gas Act, as interpreted, violates Plaintiffs' state and federal constitutional right to local, community self-government and, as it is likely to be interpreted, threatens to violate Plaintiffs' right to local, community self-government as secured by the Charter Amendment, pursuant to Colorado Rule of Civil Procedure 57(b) and 42 U.S.C. §1983, Plaintiffs are entitled to have the Court determine whether the Oil and Gas Act violates Plaintiffs' right to local, community self-government, and to obtain a declaration of rights, status, or other legal relations thereunder.

20. Plaintiffs' self-governing authority is also possessed by all residents of the City of Lafayette, individually and collectively, and rights secured by the Charter Amendment belong to both Plaintiffs and all residents of the City of Lafayette.

21. Plaintiffs represent individuals who reside in the City of Lafayette.

22. The class, which consists of all individuals who reside in the City of Lafayette, is so numerous that joinder of all members is impracticable.

23. There are questions of law and fact common to the class.

24. The claims of the representative Plaintiffs are typical of the claims of the class.

25. The representative Plaintiffs will fairly and adequately protect the interests of the class.

26. Plaintiffs have retained counsel competent to litigate this class action and who will adequately represent the class.

27. A class action is appropriate in this case for one or more of the following reasons:

a. Prosecution of separate actions by individual members of the class would create a risk of inconsistent adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the Defendants.

b. Adjudications with respect to Plaintiffs would be dispositive of the interests of the other members of the class and would substantially impair or impede their ability to protect their interest.

c. Defendants have acted on grounds generally applicable to the class, which makes final injunctive relief and declaratory relief appropriate with respect to the class as a whole.

d. Questions of law or fact common to the members of the class, which predominate over any questions affecting only individual members, and a

class action is superior to other available methods for the fair and efficient adjudication of the controversy.

28. Questions of law and fact common to the Plaintiff class include:

a. Whether the Oil and Gas Act, as interpreted and as it may be interpreted, violates the people of Lafayette's right of local, community self-government.

b. Whether the Oil and Gas Act, as interpreted and as it may be interpreted, renders the City of Lafayette unable to secure and protect the civil rights of the people of Lafayette.

c. Whether the Oil and Gas Act, as interpreted and as it may be interpreted, violates the people of Lafayette's right to alter their current form of government and to institute a new system of municipal government.

### **JURISDICTION AND VENUE**

29. This Court has subject matter jurisdiction over this action pursuant to Colo. Const. art VI, Sect. 9(1) and because the events complained of occurred in Colorado.

30. This Court has personal jurisdiction over COGA because COGA is a Colorado nonprofit corporation.

31. This Court has personal jurisdiction over Governor Hickenlooper and the State of Colorado.

32. This Court has personal jurisdiction over John Doe Corporation because John Doe Corporation is a corporation doing business in the State of Colorado.

33. Venue is proper in this district. Colo. R. Civ. P. 98(c).

### **LEGAL FRAMEWORK AND FACTUAL ALLEGATIONS**

#### **The Right of Local, Community Self-Government**

34. The right of local, community self-government is secured by the United States Constitution, the Declaration of Independence, the Colorado Constitution, and the Charter Amendment.

#### **Federal Constitutional Guarantee of Local, Community Self-Government**

35. The Declaration of Independence guarantees the authority of the people of Lafayette to govern their own community, and recognizes the peoples' right to alter their government if it fails to recognize that authority or it if fails to secure the peoples' rights.

36. The Declaration of Independence re-affirmed four principles of law essential to American governments: first, that people possess certain fundamental civil rights; second, that governments are created to secure those rights; third, that governments owe their existence to, and derive their power exclusively from, the community of people which creates and empowers them; and fourth, that if government becomes destructive of those ends, the people have a right and a duty to alter or abolish that system of government and replace it with one which both recognizes self-governing authority and which protects civil rights.

37. The Declaration of Independence is an organic law of the United States.

38. The Declaration of Independence's four principles are incorporated within the text of the United States Constitution's preamble.

39. The United States Constitution guarantees the people of Lafayette's self-governing authority and their right to a system of government which recognizes that authority, and which protects people's civil rights in each community.

### **State Constitutional Guarantees of Local, Community Self-Government**

40. The Enabling Act for the State of Colorado, approved by President Grant on March 3, 1875, declared: "That the constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, except Indians not taxed, and not be repugnant to the constitution of the United States and the principles of the Declaration of Independence."

41. The Colorado Constitution guarantees the people of Lafayette's authority to govern themselves, and recognizes the people's right to alter or abolish any government that fails to recognize that authority.

42. Article II of the Colorado Constitution contains the Bill of Rights.

43. Section 1 of the Bill of Rights establishes that all political power is vested in and derived from the people; that all government, of right, originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

44. Section 2 of that Bill of Rights establishes that the people have the right "to alter and abolish their constitution and form of government whenever they may deem if necessary to their safety and happiness."

45. Section 3 of the Bill of Rights declares: “all persons have certain natural, essential, and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties.”

46. Section 28 of that Bill of Rights establishes that enumeration of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

47. Article XX, Section 6 of the Colorado Constitution provides that the local, organic law of a home rule city supersedes, within its territorial limits, any state statute in conflict therewith as to local matters, and that the people are assured the full right of local, community self-government and any right or power essential or proper to the full exercise of such right.

### **Local Guarantees of Local, Community Self-Government**

48. The Charter Amendment guarantees the people of Lafayette’s authority to govern themselves within Lafayette and secures civil rights for the people of Lafayette.

49. The people of Lafayette possess the right and duty to alter or abolish their system of municipal government if it fails to recognize the people’s authority to govern themselves, or if it fails to protect the people of Lafayette’s rights.

50. By adopting the Charter Amendment, the people of Lafayette have recognized that their current system of government has both failed to recognize the peoples’ authority to self-govern and has failed to secure the people of Lafayette’s rights.

51. The Charter Amendment reaffirms the right to local, community self-government in the following provisions:

a. Right to Community Self-Government. All residents of the City of Lafayette possess the fundamental and inalienable right to a form of governance where they live which recognizes that all power is inherent in the people, [and] that all free governments are founded on the people’s authority and consent . . .

b. People as Sovereign. The City of Lafayette shall be the governing authority responsible to, and governed by, the residents of the City. Use of the “City of Lafayette” municipal corporation by the sovereign people of the City to make law shall not be construed to limit or surrender the sovereign authority or immunities of the people to a municipal corporation that is subordinate to them in all respects at all times. The people at all times enjoy and retain an unalienable and inalienable right to self-governance in the community where they reside.

52. In addition to re-affirming the people’s authority to govern their own community, the people of Lafayette have recognized certain fundamental rights that they possess, which they require the municipal government to protect.

53. To secure these fundamental rights, the people of Lafayette adopted a Community Bill of Rights which provides:

Section 2.3. . . The rights secured here are not mere privileges; they are obligations justly placed on government and on each member of the community to respect freedoms held individually and collectively by every member of the community. The protection of these rights constitutes the highest and best use of the police powers that this municipality possesses.

c. Right to Clean Water. All residents and ecosystems in the City of Lafayette possess a fundamental and unalienable right to sustainably access, use, consume, and preserve water drawn from natural water cycles that provide water necessary to sustain life—free from toxins, carcinogens, particulates, nucleotides, hydrocarbons and other substances introduced into the environment.

d. Right to Clean Air. All residents and ecosystems in the City of Lafayette possess a fundamental and unalienable right to breathe air untainted by toxins, carcinogens, particulates, nucleotides, hydrocarbons and other substances introduced into the environment.

e. Right to be Free from Chemical Trespass. All residents and ecosystems within the City of Lafayette possess a fundamental and unalienable right to be free from involuntary chemical trespass including toxins, carcinogens, particulates, nucleotides, hydrocarbons and other substances introduced into the environment.

f. Right to Peaceful Enjoyment of Home. Residents of the City of Lafayette possess a fundamental and unalienable right to the peaceful enjoyment of their homes, free from interference, intrusion, nuisances or impediments to access and occupation.

g. Rights of Ecosystems. Ecosystems possess unalienable and fundamental rights to exist and flourish within the City of Lafayette. Residents of the City shall possess legal standing to enforce those rights on behalf of those ecosystems.

h. Right to a Sustainable Energy Future. All residents in the City of Lafayette possess a right to a sustainable, healthy energy future, which includes, but is not limited to, the development, production, and use of energy from renewable, healthy, and sustainable fuel sources, exclusive of fossil and nuclear fuels, and the right to establish local sustainable energy policies to further secure this right.

54. To secure and protect the rights enumerated in the Bill of Rights, the people of Lafayette prohibited commercial oil and gas extraction within the City through the drilling of new wells or through the activation of inactive wells.

55. The people of Lafayette also prohibited any corporation, or any person using a corporation, from hydraulic fracturing, commonly known as “fracking”, and related activities.

56. The Oil and Gas Act has been interpreted to override the peoples’ authority to ban oil and gas extraction within their own communities, and threatens to override the peoples’ authority to enforce the Charter Amendment.

57. The doctrine of preemption, when exercised to override the people’s authority to protect their own health, safety, and welfare, prevents the peoples’ use of their own municipal government to govern themselves, and nullifies the government’s ability to secure and protect the peoples’ rights.

58. The doctrine of corporate “rights” unconstitutionally overrides people’s authority to govern themselves within communities, and exercise of that doctrine prevents the municipality from securing and protecting the people’s civil rights.

59. Rights belong only to living beings, not to property in the form of corporations.

60. The judicial doctrine of mixed local and state concern – applied to determine whether a local enactment is preempted by a state law – misconstrues the Colorado Constitution’s home rule amendment when it is applied to override the people’s constitutionally guaranteed right of local, community self-government.

61. In response to the existence of the doctrine of preemption and corporate “rights”, the people of Lafayette have altered their system of government by adopting the following provisions of the Charter Amendment:

(i) 6. Corporations in violation of the prohibition against gas and oil extraction, or seeking to engage in gas or oil extraction shall not have the rights of “persons” afforded by the United States and Colorado constitutions, nor shall those corporations be afforded the protections of the commerce or contracts clauses within the United States Constitution or corresponding sections of the Colorado Constitution.

(i) 7. Corporations engaged in the extraction of gas or oil shall not possess the authority or power to enforce State or federal preemptive law against the people of the City of Lafayette, or to challenge or overturn municipal ordinances or Charter provisions.

(i) 8. No permit, license, privilege or charter issued by any State or federal agency, Commission or Board to any person or any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, which would violate the prohibitions of this Charter provision or deprive any City resident(s) or ecosystem of any rights, privileges, or immunities secured by this Charter, the Colorado Constitution, the United States Constitution, or other laws, shall be deemed valid within the City of Lafayette.

## **CAUSES OF ACTION**

### **FIRST CLAIM FOR RELIEF**

**(Against Defendants Governor Hickenlooper and State of Colorado)**  
**Violation of the Right of the People of Lafayette to Alter Their System of  
Municipal Government as Secured by the U.S. Constitution**  
**(Pursuant to 42 U.S.C. §1983)**

62. Plaintiffs incorporate by reference, as if fully set forth herein, the allegations contained in paragraphs 1 through 61 of the Complaint.

63. The State of Colorado has adopted the Oil and Gas Act.

64. Colorado courts have interpreted the Oil and Gas Act as nullifying local bans on oil and gas extraction.

65. The Oil and Gas Act, as interpreted, violates the U.S. Constitution by nullifying the people's constitutionally guaranteed authority to govern their own community, and by interfering with the people's ability to protect their health, safety, and welfare through banning oil and gas extraction.

66. The Oil and Gas Act, as interpreted, violates the U.S. Constitution by nullifying the people of Lafayette's constitutionally guaranteed right to alter or abolish their current form of government and to institute a new system of municipal government.

67. The Oil and Gas Act, as interpreted, violates the U.S. Constitution by constraining the Lafayette municipal government from securing the people's rights.

68. There is a real and substantial threat that the Oil and Gas Act will be applied to preempt the Charter Amendment's ban on oil and gas extraction in violation of the people of Lafayette's right to local, community self-government as guaranteed by the U.S. Constitution.

69. Because Defendants' actions violate Plaintiffs' individual and collective rights to local, community self-government as secured by the U.S. Constitution, this claim is brought pursuant to 42 U.S.C. §1983.

70. The State and Governor Hickenlooper are state actors, acting with the intent and for the purpose of depriving Plaintiffs, and the persons whose interests they represent, of, among other rights, the rights secured under the U.S. Constitution.

71. Plaintiffs seek declaratory and injunctive relief, costs and attorneys' fees, and other and further relief as the Court deems just and proper.

### **SECOND CLAIM FOR RELIEF**

**(Against Defendants Governor Hickenlooper and State of Colorado)**

**Violation of the Right of the People of Lafayette to Alter Their System of Municipal Government as Secured by the Colorado Constitution**

72. Plaintiffs incorporate by reference, as if fully set forth herein, the allegations contained in paragraphs 1 through 61 of the Complaint.

73. The State of Colorado has adopted the Oil and Gas Act.

74. Colorado courts have interpreted the Oil and Gas Act as nullifying local bans on oil and gas extraction.

75. The Oil and Gas Act, as interpreted, violates the Colorado Constitution by nullifying the people's constitutionally guaranteed authority to govern their own community, and by interfering with the people's ability to protect their health, safety, and welfare through banning oil and gas extraction.

76. The Oil and Gas Act, as interpreted, violates the Colorado Constitution by nullifying the people of Lafayette's constitutionally guaranteed right to alter or abolish their current form of government and to institute a new system of municipal government.

77. The Oil and Gas Act, as interpreted, violates the Colorado Constitution by constraining the Lafayette municipal government from securing the people's rights..

78. There is a real and substantial threat that the Oil and Gas Act will be applied to preempt the Charter Amendment's ban on oil and gas extraction in violation of the people of Lafayette's individual and collective rights to local, community self-government as guaranteed by the Colorado Constitution.

79. Plaintiffs seek declaratory and injunctive relief, costs and attorneys' fees, and other and further relief as the Court deems just and proper.

### **THIRD CLAIM FOR RELIEF**

**(Against Defendants Governor Hickenlooper and State of Colorado)**

**Violation of the Right of the People of Lafayette to Alter Their System of Municipal Government as Secured by the Charter Amendment**

80. Plaintiffs incorporate by reference, as if fully set forth herein, the allegations contained in paragraphs 1 through 61 of the Complaint.

81. The State of Colorado has adopted the Oil and Gas Act.

82. Colorado courts have interpreted the Oil and Gas Act as nullifying local bans on oil and gas extraction.

83. The Oil and Gas Act, as interpreted, violates the Charter Amendment by nullifying the people's constitutionally guaranteed authority to govern their own community, and by interfering with the people's ability to protect their health, safety, and welfare through banning oil and gas extraction.

84. The Oil and Gas Act, as interpreted, violates the Charter Amendment by nullifying the people of Lafayette's constitutionally guaranteed right to alter or abolish their current form of government and to institute a new system of municipal government.

85. The Oil and Gas Act, as interpreted, violates the Charter Amendment by constraining the Lafayette municipal government from securing the people's rights.

86. There is a real and substantial threat that the Oil and Gas Act will be applied to preempt the Charter Amendment's ban on oil and gas extraction in violation of the people of Lafayette's individual and collective rights to local, community self-government as guaranteed by the Charter Amendment.

87. Plaintiffs seek declaratory and injunctive relief, costs and attorneys' fees, and other and further relief as the Court deems just and proper.

**FOURTH CLAIM FOR RELIEF**  
**(Against Defendant COGA)**

**Violation of the Right of the People of Lafayette to Alter Their System of  
Municipal Government as Secured by the U.S. Constitution  
(Pursuant to 42 U.S.C. §1983)**

88. Plaintiffs incorporate by reference, as if fully set forth herein, the allegations contained in paragraphs 1 through 61 of the Complaint.

89. Colorado courts have interpreted the Oil and Gas Act as nullifying local bans on oil and gas extraction.

90. The Oil and Gas Act, as interpreted, violates the U.S. Constitution by nullifying the people's constitutionally guaranteed authority to govern their own community, and by interfering with the people's ability to protect their health, safety, and welfare through banning oil and gas extraction.

91. The Oil and Gas Act, as interpreted, violates the U.S. Constitution by nullifying the people of Lafayette's constitutionally guaranteed right to alter or abolish their current form of government and to institute a new system of municipal government.

92. The Oil and Gas Act, as interpreted, violates the U.S. Constitution by constraining the Lafayette municipal government from securing the people's rights.

93. In passing the Charter Amendment, the people of Lafayette exercised their authority to govern themselves as guaranteed by the U.S. Constitution.

94. In the COGA Lawsuit, COGA is attempting to violate Plaintiffs', and the people of Lafayette's, right to local, community self-government as guaranteed by the U.S. Constitution by actively asserting the preemptive authority of the Oil and Gas Act to override Lafayette's ban on commercial oil and gas extraction.

95. In the COGA Lawsuit, COGA is seeking to invalidate the Charter Amendment in violation of the people of Lafayette's authority to alter their system of governance as guaranteed by the U.S. Constitution.

96. The COGA Lawsuit, and subsequent litigation of that case, infringes upon the people of Lafayette's authority to govern themselves, by requiring the people of Lafayette to expend resources to defend their constitutionally-guaranteed right to local, community self-government.

97. Because Defendant's actions violate the Plaintiffs' right to local, community self-government as secured by the U.S. Constitution, this claim is brought pursuant to 42 U.S.C. §1983.

98. COGA is acting under color of state law because it is a corporation chartered by the State and is seeking to assert powers given to it by the State.

99. In attempting to enforce the Oil and Gas Act, COGA is acting under color of state law, with the intent and for the purpose of depriving Plaintiffs, and the persons whose interests they represent, of, among other rights, the rights secured under the U.S. Constitution.

100. There is a real and substantial threat that the Oil and Gas Act will be applied to preempt the Charter Amendment's ban on oil and gas extraction in violation of the people of Lafayette's right to local, community self-government as guaranteed by the U.S. Constitution.

101. Plaintiffs seek declaratory and injunctive relief, costs and attorneys' fees, and other and further relief as the Court deems just and proper.

## **FIFTH CLAIM FOR RELIEF**

### **(Against Defendant COGA)**

#### **Violation of the Right of the People of Lafayette to Alter Their System of Municipal Government as Secured by the Colorado Constitution**

102. Plaintiffs incorporate by reference, as if fully set forth herein, the allegations contained in paragraphs 1 through 61 of the Complaint.

103. Colorado courts have interpreted the Oil and Gas Act as nullifying local bans on oil and gas extraction.

104. The Oil and Gas Act, as interpreted, violates the Colorado Constitution by nullifying the people's constitutionally guaranteed authority to govern their own community, and by interfering with the people's ability to protect their health, safety, and welfare through banning oil and gas extraction.

105. The Oil and Gas Act, as interpreted, violates the Colorado Constitution by nullifying the people of Lafayette's constitutionally guaranteed right to alter or abolish their current form of government and to institute a new system of municipal government.

106. The Oil and Gas Act, as interpreted, violates the Colorado Constitution by constraining the Lafayette municipal government from securing the people's rights.

107. In passing the Charter Amendment, the people of Lafayette exercised their authority to govern themselves as guaranteed by the Colorado Constitution.

108. In the COGA Lawsuit, COGA is attempting to violate Plaintiffs', and the people of Lafayette's, right to local, community self-government as guaranteed by the Colorado Constitution by actively asserting the preemptive authority of the Oil and Gas Act to override Lafayette's ban on commercial oil and gas extraction.

109. In the COGA Lawsuit, COGA is seeking to invalidate the Charter Amendment in violation of the people of Lafayette's authority to alter their system of governance as guaranteed by the Colorado Constitution.

110. The COGA Lawsuit, and subsequent litigation of that case, infringes upon the people of Lafayette's authority to govern themselves, by requiring the people of Lafayette to expend resources to defend their constitutionally-guaranteed right to local, community self-government.

111. COGA is acting under color of state law because it is a corporation chartered by the State and is seeking to assert powers given to it by the State.

112. In attempting to enforce the Oil and Gas Act, COGA is acting under color of state law, with the intent and for the purpose of depriving Plaintiffs, and the persons

whose interests they represent, of, among other rights, the rights secured under the Colorado Constitution.

113. There is a real and substantial threat that the Oil and Gas Act will be applied to preempt the Charter Amendment's ban on oil and gas extraction in violation of the people of Lafayette's right to local, community self-government as guaranteed by the Colorado Constitution.

114. Plaintiffs seek declaratory and injunctive relief, costs and attorneys' fees, and other and further relief as the Court deems just and proper.

**SIXTH CLAIM FOR RELIEF**  
**(Against Defendant COGA)**

**Violation of the Right of the People of Lafayette to Alter Their System of  
Municipal Government as Secured by the Charter Amendment**

115. Plaintiffs incorporate by reference, as if fully set forth herein, the allegations contained in paragraphs 1 through 61 of the Complaint.

116. Colorado courts have interpreted the Oil and Gas Act as nullifying local bans on oil and gas extraction.

117. The Oil and Gas Act, as interpreted, violates the Charter Amendment by nullifying the people's constitutionally guaranteed authority to govern their own community, and by interfering with the people's ability to protect their health, safety, and welfare through banning oil and gas extraction.

118. The Oil and Gas Act, as interpreted, violates the Charter Amendment by nullifying the people of Lafayette's constitutionally guaranteed right to alter or abolish their current form of government and to institute a new system of municipal government.

119. The Oil and Gas Act, as interpreted, violates the Charter Amendment by constraining the Lafayette municipal government from securing the people's rights.

120. In passing the Charter Amendment, the people of Lafayette exercised their constitutionally guaranteed authority to govern themselves.

121. In the COGA Lawsuit, COGA is attempting to violate Plaintiffs', and the people of Lafayette's, right to local, community self-government as guaranteed by the Charter Amendment by actively asserting the preemptive authority of the Oil and Gas Act to override Lafayette's ban on commercial oil and gas extraction.

122. In the COGA Lawsuit, COGA is seeking to invalidate the Charter Amendment in violation of the people of Lafayette's authority to alter their system of governance as guaranteed by the Charter Amendment.

123. The COGA Lawsuit, and subsequent litigation of that case, infringes upon the people of Lafayette’s authority to govern themselves, by requiring the people of Lafayette to expend resources to defend their constitutionally-guaranteed right to local, community self-government.

124. There is a real and substantial threat that the Oil and Gas Act will be applied to preempt the Charter Amendment’s ban on oil and gas extraction in violation of the people of Lafayette’s right to local, community self-government as guaranteed by the Charter Amendment.

125. Plaintiffs seek declaratory and injunctive relief, costs and attorneys’ fees, and other and further relief as the Court deems just and proper.

**SEVENTH CLAIM FOR RELIEF**  
**(Against COGA)**  
**Violation of § i(7) of the Charter Amendment**

126. Plaintiffs incorporate by reference, as if fully set forth herein, the allegations contained in paragraphs 1 through 61 of the Complaint.

127. COGA brought the COGA Lawsuit on behalf of companies and individuals engaged in the exploration, production, and development of oil and gas in Colorado; companies and individuals who have leasehold interests within or under the City’s territorial jurisdiction, and companies and individuals who operate wells within and under the City’s territorial jurisdiction.

128. Section i(7) of the Charter Amendment provides: “Corporations engaged in the extraction of gas or oil shall not possess the authority or power to enforce State or federal preemptive law against the people of the City of Lafayette, or to challenge or overturn municipal ordinances or Charter provisions.”

129. COGA’s lawsuit on behalf of corporations engaged in the extraction of gas and oil violates § i(7) of the Charter Amendment.

130. For this Claim, Plaintiffs seek declaratory and injunctive relief, costs and attorneys’ fees, and other and further relief as the Court deems just and proper.

**EIGHTH CLAIM FOR RELIEF**  
**(Against John Doe Corporation)**  
**Violation of the Charter Amendment**

131. Plaintiffs incorporate by reference, as if fully set forth herein, the allegations contained in paragraphs 1 through 61 of the Complaint.

132. Upon information and belief, John Doe Corporation is engaged in, or is seeking to engage in, oil and gas extraction in violation of § i(1-4) of the Charter Amendment.

133. John Doe Corporation's unlawful extraction of oil and gas within the City of Lafayette violates the Plaintiffs' rights secured by the Charter Amendment's Community Bill of Rights.

134. Upon information and belief, John Doe Corporation has a permit, license, privilege or charter issued by a State or federal agency, Commission or Board to operate wells, or engage in natural gas and oil exploration, in the City of Lafayette in violation of the Charter Amendment's prohibitions against oil and gas extraction.

135. John Doe Corporation's permit, license, privilege or charter violates the right of Plaintiffs and the people of Lafayette to local, community self-government, and under § i(8), is invalid.

136. For this Claim, Plaintiffs seek declaratory and injunctive relief, costs and attorneys' fees, and other and further relief as the Court deems just and proper.

### **PRAYER FOR RELIEF**

Wherefore, Plaintiffs, individually and on behalf of those persons whose interests they represent, pray for judgment as follows:

1. For a judicial determination and declaration that:
  - a. The Oil and Gas Act, as applied to preempt local laws enacted pursuant to the authority of the people to govern themselves to strengthen protections for peoples' health, safety, and welfare, is unconstitutional and in violation of the Charter Amendment, because it violates the people of Lafayette's right to local, community self-government.
  - b. The Oil and Gas Act, if applied to preempt the Charter Amendment, violates the people of Lafayette's authority to govern themselves within their own municipality, as guaranteed by the Colorado Constitution, federal law, and the Charter Amendment.
  - c. The Oil and Gas Act, if applied to preempt the Charter Amendment, unconstitutionally constrains the City of Lafayette from securing and protecting the rights of the people of Lafayette.
  - d. COGA's Lawsuit is an attempt to enforce the Oil and Gas Act in violation of the people of Lafayette's right to local, community self-government, as reaffirmed by the Colorado Constitution, federal law, and the Charter Amendment.

- e. COGA's Lawsuit on behalf of corporations engaged, or seeking to engage, in the extraction of oil and gas in violation of the Charter Amendment, violates § i(7) of the Charter Amendment.
  - f. Under § i(6) of the Charter Amendment, John Doe Corporation does not have, within the City of Lafayette, the rights of "persons" afforded by the U.S. and Colorado Constitutions.
  - g. Under § i(6) of the Charter Amendment, John Doe Corporation does not possess, within the City of Lafayette, the protections afforded by the commerce and contracts clauses of the U.S. and Colorado constitutions.
  - h. John Doe Corporation's permit, license, privilege or charter violates Plaintiffs' right to local, community self-government, and under § i(8) of the Charter Amendment, is invalid within the City of Lafayette.
2. For a preliminary and permanent injunction:
    - a. Enjoining the Defendants from attempting to enforce the Oil and Gas Act against the Plaintiffs and the people of the City of Lafayette to invalidate the Charter Amendment;
    - b. Dismissing the COGA Lawsuit; and
    - c. Enjoining any future enforcement of the preemptive provisions of the Oil and Gas Act against the Charter Amendment adopted by the people of Lafayette.
  3. For all costs of litigation, including without limitation, expert and attorney's fees, pursuant to Section 10 of the Charter Amendment and the Civil Rights Act of 1871, 42 U.S.C. §1988.
  4. For such other relief as this Court deems just and proper.

Plaintiffs request trial by jury on all issues so triable.

Dated: June 10, 2014

Respectfully submitted,

/s/ Elizabeth A. Comeaux

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1663 Steele St #901

Denver, CO 80206

*Attorney for Plaintiffs*

Clifton Willmeng and Ann Griffin,

*individually and on behalf of all persons*

*similarly situated*

*Pursuant to C.R.C.P. 121 § 1-26, a duly signed copy is on file at the office of Elizabeth A. Comeaux, Attorney at Law.*