SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203 Appeal From: Not an appeal – original action In re: Petitioner: The Board of County Commissioners of Archuleta County, Colorado v. Proposed Respondents: Honorable Jeffrey R. Wilson, Chief Judge Sixth Judicial District and Christopher T Ryan, State Court Administrator	**▲COURT USE ONLY▲**
Todd M. Starr #27641 Archuleta County Attorney PO Box 1507 Pagosa Springs, Colorado 81147 Phone Number: (970) 264-8401 E-mail: tstarr@archuletacounty.org Fax Number: withheld pursuant to rule	Case Number: 2017 SC ____ Division Courtroom
PETITION FOR RULE TO SHOW CAUSE PURSUANT TO C.A.R. 21	

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Petitioner, the Board of County Commissioners of Archuleta County, Colorado (hereinafter "BoCC" or "Board") through the Archuleta County Attorney, Todd M. Starr, respectfully petitions the Court pursuant to C.A.R. 21 for relief directing the 6th Judicial District, its Chief Judge, and the State Court Administrator to return to and resume operations in the space designated by the Board of County Commissioners of Archuleta County, Colorado.

I. IDENTITY OF PETITIONER AND PROPOSED RESPONDENTS

Petitioner is the governing body of Archuleta County, Colorado.

Proposed Respondents are the Chief Judge of the 6th Judicial District and the State Court Administrator. The intention of this lawsuit is not to target either Judge Jeffrey R. Wilson or State Court Administrator Christopher T. Ryan individually, but rather to challenge a policy promulgated by the 6th Judicial District and the office of the State Court Administrator. Accordingly, Judge Wilson and State Court Administrator Ryan shall be referred to as the 6th Judicial District and the Office of the State Court Administrator to the greatest extent possible.

II. IDENTITY OF THE COURT AND THE PROCEEDING BELOW

This original proceeding arises out of the unilateral and scientifically unsupported decision to vacate a safe facility and flee Archuleta County, thereby

depriving the citizens of Archuleta County of access to justice. The decision is memorialized in the issuance of:

> Administrative Order 17-09 dated September 7, 2017, Administrative Order 17-10 dated September 8, 2017, extended by Administrative Order 17-11 dated October 6, 2017; and, Administrative Order 17-17 dated November 22, 2017.

III. THE RULING COMPLAINED OF AND THE RELIEF SOUGHT

Petitioner seeks relief directing the 6th Judicial District and the State Court Administrator to return to operating in the reasonable and adequate temporary space provided by the BoCC within Archuleta County.

IV. REASONS WHY NO OTHER ADEQUATE REMEDY IS AVAILABLE

This Court has previously stated, "It is our responsibility to exercise original jurisdiction where the interests of the state at large are directly involved or where, 'the liberty of its citizens [is] menaced.'"[1] The citizens of Archuleta County currently must travel in excess of 50 to 100 miles across dangerous mountain terrain to access justice. This means a minimum-wage worker must take off at least 2.5 hours of work

[1] *State ex rel Norton v. Board of County Com'rs of Mesa County*, 897 P.2d 788, 791(Colo. 1995): citing *People v. Kenehan*, 55 Colo. 589, 602, 136 P. 1033, 1037 (1913) (quoting *Wheeler v. Northern Colo. Irrigation Co.*, 9 Colo. 248, 253, 11 P. 103, 105 (1886)).

and incur substantial expense just to file a pleading. Because courthouses are maintained in all 64 counties in Colorado, the interests of the state at large are affected. Thus, if a Chief Judge unilaterally can relocate access to the judiciary absent consultation with the executive branch and in complete disregard of ***all scientific evidence***, then all other judicial districts would have the same right. Allowing the judiciary to shirk their responsibility to provide access to justice and convene court outside of the county, in derogation of constitutional and statutory requirements, will significantly impair the citizens' rights to justice and the effectiveness of state government. Because of the implications of a judicial district's usurpation of the authority of another branch of government, this Court should exercise its original jurisdiction over the instant case.

C.A.R. 21 authorizes this Court to exercise original jurisdiction to compel performance by public officials of a plain legal duty. C.R.S. §13-6-303 provides that the County Court shall sit in the county seat, and C.R.S. §13-3-108 (1) places the responsibility for providing courtrooms with the Board of County Commissioners. While a remedy under C.A.R. 21 is "limited in purpose and

availability,"[2] relief may be "sought where the district court is proceeding without or in excess of its jurisdiction."[3]

Here, the 6th Judicial District and the State Court Administrator are acting without or in excess of their jurisdiction by disregarding the Constitution of the State of Colorado and applicable statutes. The instant case is analogous to the mandamus issued in *State ex rel Norton v. Board of County Comm'rs of Mesa County*[4]. Further, "[r]elief in the nature of mandamus is a proper remedy to force compliance with a statute where the language of the statute is mandatory and invests continuing responsibility.[5] The language of C.R.S. §13-3-108(1) meets this test, and, thus, an action in the nature of mandamus is available as a proper means to enforce the statute."[6]

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[2] *People v. District Court*, 868 P.2d 400, 403 (Colo.1994)
[3] *Id.*, (quoting *Halaby, McCrea & Cross v. Hoffman*, 831 P.2d 902, 905 (Colo.1992)); *see Marquez v. District Court in and for the Tenth Judicial Dist.*, 200 Colo. 55, 58, 613 P.2d 1302, 1304 (1980) (prohibition appropriate because violation of speedy trial guarantee deprived court of jurisdiction)." *People v. Williams*, 987 P.2d 232, 234 (Colo. 1999).
[4] *State ex rel Norton*, *Supra.*
[5] *Board of County Commissioners v. Edwards*, 171 Colo. 499, 468 P.2d 857.
[6] *Lawson v. Pueblo Cty.*, 36 Colo. App. 370, 373, 540 P.2d 1136, 1138 (1975) (citation omitted).

V. ISSUES PRESENTED

Whether the 6th Judicial District and the Office of the State Court Administrator exceeded their authority by vacating the Archuleta County Courthouse facilities and transferring all judicial functions outside of Archuleta County.

VI. FACTS PERTAINING TO THE ISSUE PRESENTED

1. The Archuleta County Courthouse is located at 449 San Juan Street, Pagosa Springs, Archuleta County, Colorado (hereinafter, the "Courthouse"). That structure is actually two adjacent buildings which have been combined over the years. It has traditionally housed:

a. The Archuleta County Sheriff;
b. The 6th Judicial District courts, Court Clerk, probation and County Court Judge;
c. The Clerk and Recorder (who still occupies the premises today);
d. The Archuleta County Assessor (who still occupies the premises today); and
e. The Archuleta County Treasurer and Public Trustee (who still occupies the premises today).

Affidavit of Bentley Henderson at ¶ 2.

2. On October 1, 2014, at the request of Colorado Judicial Courts and Probation, the firm of A.G.Wassenaar, Inc. issued a letter report. This report is attached hereto, marked as Exhibit A and by this reference incorporated herein. This report indicates A.G. Wassenaar, Inc. was engaged because occupants of the building voiced concern regarding poor air quality and temperature control in the building. This report concludes:

> "In AGW's opinion, this building in its current condition, would not be considered unhealthy, but rather uncomfortable."

Affidavit of Bentley Henderson at ¶ 3.

3. On April 21, 2015, the BoCC committed to the development of new sheriff and court facilities. This commitment is evidenced in the minutes of the April 21, 2015 meeting which is attached hereto, marked as Exhibit B and by this reference incorporated herein. *Affidavit of Bentley Henderson at ¶ 4.*

4. A few days after the BoCC expressed this commitment, the jail portion of the Courthouse was flooded so severely as to cause the closing of the jail and relocation of all inmates to La Plata County. This flooding was the result of work being done to maintain the Courthouse and is the subject of pending litigation styled

as *Archuleta County v. Hart Construction Corporation, et. al.*, Case No. 2017CV002028, La Plata County District Court. *Affidavit of Bentley Henderson at ¶ 5.*

5. In May 2015, the BoCC convened an advisory group of citizens to investigate parcels of land that might be appropriate for a new courthouse facility. *Affidavit of Bentley Henderson at ¶ 6*.

6. Also in 2015, the BoCC engaged the services of an architect to examine what the space needs of a new facility would be. The architectural team of Reynolds Ash & Associates and Reilly Johnson Architects, represented by local architect Brad Ash, was awarded the contract to conduct a comprehensive planning and space need analysis for effectively all county functions with planning horizons to include 2018 through 2038. The 2018 space needs were projected as follows:

a. Sheriff: 14,400 sf
b. Detention: 19,052 sf
c. Courts: 14,500 sf
d. Probation: 2484 sf
e. Clerk: 2597 sf
f. Assessor: 2486 sf
g. Treasurer: 1510 sf
h. Administration: 5314 sf

Affidavit of Bentley Henderson at ¶ 7.

7. In March 2016, the architects presented to the BoCC various options for the courts and County Sheriff, including conceptual drawings and site considerations. *Affidavit of Bentley Henderson at ¶ 8*.

8. In April 2016, the architects made a presentation to the BoCC of site-specific considerations which included the existing elementary school, an "up-town" site including two additional parcels, a remodel of the existing facility, and the Hot Springs parcel. *Affidavit of Bentley Henderson at ¶ 9*.

9. In August 2016, the BoCC evaluated an offer known as the Springs Partners Parcel for a facility for the courts, sheriff detention, and probation which consisted of 55,000 sf and a cost of $26,900,000.00. *Affidavit of Bentley Henderson at ¶ 10*.

10. In September 2016, the BoCC selected the Hot Springs parcel for the courts and probation at an estimated cost of $7,387,600.00. Due to the alleged existence of a restrictive covenant, no specific costs were developed for the sheriff administration and detention facilities. *Affidavit of Bentley Henderson at ¶ 11*.

11. During the months of September through December 2016, the County was engaged in initial financing discussions concerning construction on the Hot Springs parcel. *Affidavit of Bentley Henderson at ¶ 12*.

12. In December 2016, Archuleta County initiated a lawsuit to declare the alleged restrictive covenant on the Hot Springs parcel a nullity and quieting title in the County styled *Board of County Commissioners of Archuleta County, Colorado v. Fairway Land Trust*, Case No. 2016CV30086, Archuleta County District Court. *Affidavit of Bentley Henderson at ¶ 13*.

13. On or about December 14, 2016, HERRON Enterprises USA, INC. issued a report of the Focused Indoor Air Quality Investigation (indoor air quality assessment) of the Archuleta County Courthouse complex. This report is attached hereto, marked as Exhibit C, and by this reference incorporated herein. The report states that the complex's air quality meets all state or national standards for indoor air quality. The report found no indoor air quality anomalies. *Affidavit of Bentley Henderson at ¶ 14*.

14. In March 2017, a local citizen came forward with the offer of a donation of certain property together with the opportunity to purchase an adjoining property. This is referred to as the Harman Park Property. *Affidavit of Bentley Henderson at ¶ 15*.

15. In June 2017, the County, consistent with a request for proposal sent out in April, selected a Financial Advisor and, in July 2017, selected Bond Counsel. *Affidavit of Bentley Henderson at ¶ 16*.

16. In August 2017, the County received a schematic design cost estimate from its architects with an estimated price tag of $18,000,000.00 for 20,306 sf for the detention facility and 11,740 sf for the sheriff's administration. *Affidavit of Bentley Henderson at ¶ 17.*

17. On September 7, 2017, Chief Judge Jeffrey Wilson entered Administrative Order 17-09. This Administrative Order is attached hereto, marked as Exhibit D, and by this reference incorporated herein. At no time was the BoCC or County administration noticed of the intended action nor were they consulted about the action. Further, neither the BoCC nor the County Administrator were provided with a copy of the Administrative Order until the County Attorney requested it months later.

This Order states that the court is taking this action for "very serious environmental health hazards"; however no such hazards were specified and no such hazards had been determined to exist by the BoCC which is the governmental entity charged with determining the safety and adequacy of the building.

At the time this Administrative Order was entered, the Court may have been made aware that three sheriff's deputies were hospitalized and reported the building as the cause of their hospitalization. *Affidavit of Bentley Henderson at ¶ 18*.

18. The next day, September 8, 2017, Chief Judge Jeffrey Wilson entered Administrative Order 17-10. This Administrative Order is attached hereto, marked as Exhibit E, and by this reference incorporated herein. At no time was the BoCC or County administration noticed of the intended action or consulted about the action. Further, neither the BoCC nor the County Administrator were provided with a copy of the Administrative Order until the County Attorney requested it months later.

The reason stated within the Order for its entry was "…credible but not yet scientifically confirmed evidence of noxious substances within the Archuleta County Courthouse that pose a serious threat to the health and safety of the public and court staff…" Nowhere in the Order is the "credible evidence" identified. Additionally, at the time of entry of this Order, the Court was in possession of reports conducted by two different environmental firms finding the building to be safe. Order 17-10 also states that it is issued, "…pursuant to 13-6-307…". *Affidavit of Bentley Henderson at ¶ 19*.

19. On September 8, 11, 12 and 13, 2017, the Courthouse was totally closed. The Assessor, Treasurer, and Clerk returned to the building on September 14, 2017. During this time, the County expended $19,000.00 having Herron Enterprises USA, Inc. do what is clearly the most comprehensive testing ever conducted on that property. *Affidavit of Bentley Henderson at ¶ 20*.

20. On September 26, 2017, Chief Judge Wilson and Court Administrator Eric Hogue presented themselves in the County Administrators Office and handed BoCC Chairman Steve Wadley a letter. When Chairman Wadley attempted to inquire of the gentlemen, they refused to engage in any conversation. Rather, Chief Judge Wilson only stated, "Commissioner all I can tell you is it looks like we're headed to litigation". *Affidavit of Steve Wadley at ¶2*.

21. In September 2017, the BoCC passed a resolution placing a 1% sales tax increase on the November 2017 ballot for the purpose of funding the proposed facility. If the ballot issue had passed, the County estimated that it would have additional funds available to address the space needs of the courts. *Affidavit of Bentley Henderson at ¶ 21*.

22. On or about September 26, 2017, the BoCC received a letter from Chief Judge Wilson, a true and correct copy of which is attached hereto as Exhibit Q and by this reference incorporated herein.

First, this letter contains the following admission: "The testing contracted for the county found acceptable air quality. The initial air quality testing conducted on behalf of the judicial department did not find any measureable levels of H_2S…"

Secondly, the letter asserts the Pagosa Springs Fire Department was able to detect the presence of H_2S, "… in or around the building…" There is H_2S in or

around every building in downtown Pagosa Springs. The town is named Pagosa Springs because the world's deepest hot springs is across the river from the County Courthouse. However, at no time has testing demonstrated dangerous levels of H_2S.

This letter was provided to the press and the other elected officials before it was provided to the BoCC or County. *Affidavit of Bentley Henderson at ¶ 22*.

23. On September 29, 2017, Herron Enterprises USA, Inc. issued the Final Comprehensive Report of the Environmental Consultation/Air Quality Investigation conducted at the Archuleta County Courthouse, a true and correct copy of which is attached hereto, marked as Exhibit F, and by this reference incorporated herein.

The "Conclusions and Recommendations" are found at page 10 of 52 of that report and they speak for themselves – detected concentrations are within normal and expected ranges. *Affidavit of Bentley Henderson at ¶ 23*.

24. On October 6, 2017, Chief Judge Wilson entered Administrative Order 17-11. This Administrative Order is attached hereto, marked as Exhibit G, and by this reference incorporated herein. At no time was the BoCC or County Administration noticed of the intended action nor was it consulted about the action. Further, the County was not provided with a copy of the Administrative Order until the County Attorney requested it.

Again, this order was entered contrary to the scientific testing available to the Court at the time. Again, the Court makes the unsupported and extra-jurisdictional conclusion, without hearing and opportunity to be heard, that the building is not safe. *Affidavit of Bentley Henderson at ¶ 24*.

25. On October 13, 2017, the BoCC adopted Resolution Number 2017-52, a true and correct copy of which is attached hereto, marked as Exhibit H, and by this reference incorporated herein. This Resolution was adopted after a public hearing that was noticed. The Proposed Respondents had notice and opportunity to review the proposed resolution prior to the hearing. The Proposed Respondents or their agents (the local court administrator) were personally noticed on several occasions prior to October 13, 2017 that the BoCC would be considering the Courthouse at all future meetings and might take action at those meeting.

In addition, the agenda for that meeting, a true and correct copy of which is attached hereto, marked as Exhibit I, and by this reference incorporated herein, included the statement, "[p]rovided for your consideration is a Resolution that acknowledges the results of the air quality testing done at the Courthouse in September 2017, and formally deeming the facility safe for employees and visitors to the facility." Further, a copy of the proposed Resolution was made available to the Proposed Respondents via posting in advance of the meeting.

In adopting Resolution 2017-52, the BoCC acted in a quasi-judicial manner providing due process. The BoCC provided the Proposed Respondents and others affected by the Resolution an opportunity to be heard and present evidence. The proposed Respondents chose to not participate or present any evidence.

More than 28 days have lapsed since the adoption of Resolution 2017-52, and no action to review the BoCC's action pursuant to C.R.C.P. 106(a)(4) has been filed. *Affidavit of Bentley Henderson at ¶ 25*.

26. On October 24, 2017, the Colorado Department of Public Health (CDPHE) was present in the courthouse and conducting testing. CDPHE was present in the County's building with court staff, including the Court Administrator from Cortez, a local court clerk and A.G Wassenaar, Inc. representative Joe Gifford and Dr. Michael Kosnett.

They had accessed parts of the County building that were not previously designated as Court space without the owner's (BoCC's) permission or consent[7]. It is obvious the Court had arranged this visit and inspection in advance as the judicial department's experts, Mr. Joe Gifford, from Denver, Colorado, and Dr. Kosnett, had the time and opportunity to be present.

[7] In fact, Mr. Gifford was roaming the building unattended.

There are multiple sources for ranges of H_2S detection and response levels. One of those is published by the Occupational Health and Safety Administration as follows:

1,000-2,000 ppm:	Loss of consciousness and possible death
100-1,000 ppm:	Serious respiratory, central nervous, and cardiovascular system effects
150-200 ppm:	Olfactory fatigue (sense of smell is significantly impaired)
100 ppm:	Immediately Dangerous to Life and Health (IDLH concentration)
5-30 ppm:	Moderate irritation of the eyes
5-10 ppm:	Relatively minor metabolic changes in exercising individuals during short-term exposures
Less than 5 ppm:	Metabolic changes observed in exercising individuals, but not clinically significant
5 ppm:	Increase in anxiety symptoms (single exposure)
5 ppm:	Start of the dose-response curve (short-term exposure)
0.032-0.02 ppm:	Olfactory threshold (begin to smell)

Please note this is in parts per million. The CDPHE testing done on October 24, 2017 measured the air quality in parts per billion. A difference of a factor of 1,000. The CDPHE report is attached hereto, marked as Exhibit J, and by this reference incorporated herein.

The CDPHE readings taken on October 24, 2017 were:

Location	Reading	Equivalent
Ct Clerk's office	9 ppB	.09 ppm
Roof vent above Clerk's	1 ppB	.01 ppm
Vent	3 ppB	.03 ppm
SW Roof Vent	7 ppB	.07 ppm
Outside Frankie's closet	1 ppB	.01 ppm
Hallway in front of Assessor	2 ppB	.02 ppm
Hearing room (old BoCC mtg room)	24 ppB	.24 ppm
Interview room	23 ppB	.23 ppm
Hallway outside Hearing room	17 ppB	.17 ppm
New evidence	24 ppB	.24 ppm
Halls from Sally Port	31 ppB	.31 ppm
Old Jail Outside OB1	24 ppB	.24 ppm
Old Control	28 ppB	.28 ppm
Inmate Hallway	26 ppB	.26 ppm
Mechanical room of Sally Port	7 ppB	.07 ppm
Storage off Sally port	21 ppB	.21 ppm

Affidavit of Bentley Henderson at ¶ 26.

27. On October 31, 2017, Chief Judge Wilson again corresponded to the BoCC including a copy of a report from A.G. Wassenaar, Inc. also dated October 31, 2017. True and correct copies of these documents are attached hereto, marked as Exhibits K and L, respectively, and by this reference incorporated herein.

This report does not conclude that the air quality exceeds any scientific standard. While it does reach the conclusion that the building is "unhealthy", it provides no basis for that conclusion nor what that conclusion means. *Affidavit of Bentley Henderson at ¶ 27*.

28. On November 22, 2017, Chief Judge Wilson entered Administrative Order 17-17, a true and correct copy of which is attached hereto, marked as Exhibit M, and by this reference incorporated herein. This Administrative Order, entered again without notice or opportunity to be heard, extended Administrative Order 17-11. This order is based on a finding contrary to all scientific evidence. *Affidavit of Bentley Henderson at ¶ 28*.

29. On November 3, 2017, County Attorney Todd Starr and County Administrator Bentley Henderson traveled to Durango to meet with Chief Judge Wilson and District Court Administrator Eric Hogue. At that time, they delivered a letter dated November 2, 2017 wherein the BoCC offered to switch space with the Courts. A true and correct copy of this correspondence is attached hereto, marked as Exhibit N, and by this reference incorporated herein. However, by letter dated November 13, 2017 a copy of which is attached hereto marked as Exhibit O and by this reference incorporated herein, the Courts rejected that offer.

It should be noted that, in his rejection letter of November 13, 2017, Chief Judge Wilson was simply wrong about the building. Contrary to the Judge's letter, there are multiple bathrooms, an appropriate space for a jury room and secured office space. Additionally, the Court subsequently acknowledged that, contrary to its representation in the letter, it did in fact have the Herron Enterprises USA, Inc. report.

Also, that letter notes that two employees are medically prohibited from entering the courthouse. However, the BoCC and County are unaware of any doctor's opinion that suggests with a degree of medical certainty that the courthouse has been the cause of any illness.

Moreover, after that meeting, as County Attorney Todd Starr and County Administrator Bentley Henderson were walking back to their vehicle for the return trip to Pagosa Springs, Chief Judge Wilson and Mr. Hogue stopped them on the sidewalk and chastised them for the BoCC having walked through the Courthouse without first receiving their permission. *Affidavit of Bentley Henderson at ¶ 29*.

30. On November 7, 2017, the ballot issue requesting a 1% increase in the sales tax to fund new construction failed by less than 130 votes with over 4,100 votes cast on the measure. *Affidavit of Bentley Henderson at ¶ 30*.

31. Archuleta County adopted its 2018 budget at a special meeting of the BoCC held on December 12, 2017. Public hearings considering the necessary expenditures were held on November 14, 16 and 17, 2017. Archuleta County is statutorily prohibited from spending money that is not appropriated in the annual budget.

As part of the 2018 budget process, the 6th Judicial District, District Attorney (a state agency much like the 6th Judicial District) submitted a budget request for the County to expend monies in procuring space for the District Attorney's office. That request was approved. The Proposed Respondents did not submit any budget request to the County. *Affidavit of Bentley Henderson at ¶ 31*.

32. On December 17, 2017, Chief Judge Wilson provided a copy of a report from their expert witness, Dr. Michael Kosnett. A copy of this correspondence and report is attached hereto and marked as Exhibit P. *Affidavit of Bentley Henderson at ¶ 32*.

33. On December 27, 2017, County Commissioner Ronnie Maez and County Administrator Bentley Henderson met with Chief Judge Wilson and District Court Administrator Eric Hogue at Chief Judge Wilson's office in Durango, La Plata County, Colorado. At this meeting, the Judicial Department representatives were asked to itemize what they would need to done to return to the courthouse. Chief

Judge Wilson delivered the message that nothing could be done to make that building acceptable to them. Eric Hogue commented that even if any of the suggested/recommended improvements were made, they did not believe the improvements would be maintained. *Affidavit of Bentley Henderson at ¶ 33*.

34. The BoCC is more aware than any other entity or state agency such as the courts what efforts have been made to rehabilitate the courthouse. The BoCC is the entity that arranges and pays for improvements. In exercising its statutory authority over the facility and declaring it safe, the Board considered the following expenditures:

Since 2014, Archuleta County expended the following sums on the Courthouse in these general areas:

Heating/AC	$36,319
Electrical	2,260
Plumbing/Geo	11,034
Elevator	14,602
Fire supp/monitoring	10,079
General building	9,271
Roofing	135,861
TOTAL:	$219,426

In fiscal year 2015, the BoCC expend the following sums on the courthouse:

Jan. 2015	$85.00	Court security card readers
	$295.00	Monthly Elevator Service
Feb. 2015	$3,268.00	Heating system repairs
	$85.00	Panic button repair
Mar. 2015	$1,200.00	Jail transfer switch
	$534.00	Jail camera's
	$1,096.00	Fire protection system maint
	$2,558.00	Elevator service call
	$295.00	Monthly Elevator Service
Apr. 2015	$841.00	Elevator service call
	$241.00	Blinds in judge’s chambers
	$670.00	Annual elevator service
	$295.00	Monthly Elevator Service
	$46,238.00	Roof repair (Hart Const)
May 2015	$39.00	Smoke alarm maint
	$1,263.00	Jail camera's
Jun. 2015	$39,426.00	Roof repair (Hart Const)
Jul. 2015	$2,413.00	AC Maint/repair
	$295.00	Monthly Elevator Service
	$16,620.00	Roof repair (Hart Const)
Aug. 2015	$2,322.00	AC Maint/repair
	$295.00	Monthly Elevator Service
	$393.00	Roof repair
Sep. 2015	$217.00	Panic button repair

	$173.00	Probation office door repair
	$295.00	Monthly Elevator Service
Oct. 2015	$2,604.00	Geothermal system repair
	$2,328.00	Sewer line repair & replacement
	$884.00	Fire alarm system maint.
	$295.00	Monthly Elevator Service
Nov. 2015	$1,958.00	Geothermal system repair
TOTAL	$129,521.00	

In fiscal year 2016, the BoCC expende the following sums on the courthouse:

Mar. 2016	$325.00	AC maintenance and repair
Apr. 2016	$772.00	Elevator service and maint
	$750.00	Fire alarm maintenance
Jun. 2016	$160.00	Elevator service
	$1,275.00	AC maintenance and repair
Jul. 2016	$895.00	Semi-annual elevator service/maint
	$5,318.00	AC maintenance and replacement
Aug. 2016	$5,462.00	AC maintenance and replacement
Nov. 2016	$ 3,804.00	Courthouse plumbing
Dec. 2016	$680.00	Semi-annual elevator service/maint
	$469.00	Heating equip maint
TOTAL	$19,910.00	

In fiscal year 2017, the BoCC expend the following sums on the courthouse:

Mar. 2017	$1,060.00	Circuit breaker replacement
	$170.00	Fire alarm service call
	$192.00	Fire alarm service call
May 2017	$431.00	Panic button repair
	$1,005.00	Annual Elevator service/repair
	$33,184.00	Roof replacement
Jul. 2017	$789.00	AC/heating repair
Sep. 2017	$472.00	AC/heating repair
	$2,151.00	AC/heating repair
	$1,220.00	AC/heating repair
Oct. 2017	$745.00	AC/heating repair
Nov. 2017	$204.00	AC/heating repair
	$680.00	Elevator service/repair
Dec. 2017	$8,857.00	Fire escape replacement
TOTAL	$51,160.00	

Affidavit of Bentley Henderson at ¶ 34.

35. In addition, the BoCC has spent $29,326.00 installing an environmental monitoring system that is professionally monitored from Denver, Colorado. *Affidavit of Bentley Henderson at ¶ 35*.

36. There are a number of worker's compensation cases that have been filed, all in some form or other generally alleging that occupying the courthouse has caused

the claimants' damage. To date, the insurer handling those claims, which has a duty independent of the County, has made its independent investigation and determination and has denied all of those claims. *Affidavit of Bentley Henderson at ¶ 32*.

VII. ARGUMENT AND POINTS OF AUTHORITY ON WHY A RULE TO SHOW CAUSE SHOULD BE ISSUED

A. The Board Of County Commissioners Is Vested With The Statutory Authority For Determining The Adequacy Of Space For The Judiciary, And The Local Judicial District's Administrative Orders Represent An Impermissible Usurpation Of The Executive Branch's Authority. Otherwise Stated, The Orders Represent A Violation Of The Separation Of Powers Doctrine.

"The powers of the government of this state are divided into three distinct departments, --the Legislative, Executive and Judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any power properly belonging to either of the others, except as in this Constitution expressly directed or permitted." [8] Such is the genesis of all arguments based upon the separation of powers doctrine; namely, no one branch of the government may encroach upon the other. It is anchored in the recognition that all three branches of government are designed to further the public

[8] Colo. Const. art. III.

interest, and, hopefully, the resulting structure is harmonious and cooperative. "Thus the departments are distinct from each other, and, so far as any direct control or interference is concerned, are independent of each other. More: they are superior in their respective spheres." [9] Here, the evidence demonstrates that the 6th Judicial District has improperly invaded the province of the BoCC.

C.R.S. §30-11-107(1)(a) provides that the BoCC has the power at any meeting, "[T]o make such orders concerning the property belonging to the county as it deems expedient."[10] Similarly, C.R.S §30-11-107(1)(e) provides that the BoCC. "…have the care of the county property and the management of the business and concerns of the county in all cases where no other provisions are made by law…" [11] Such statutes are part of the basis for the law in Colorado that the legislature has "…placed the duty of providing suitable court facilities in the hands of the county commissioners of each county."[12] It follows, then, that the determination of whether the facility is environmentally safe is also the sole province of the BoCC. The air quality of a county building is within the sphere of the BoCC's operation and the

[9] *Greenwood Cemetery Land Co. v. Routt*, 17 Colo. 156, 162, 28 P. 1125, 1127 (1892).
[10] C.R.S. §30-11-107(1)(a).
[11] C.R.S. §30-11-107(1)(e)
[12] *In re Court Facilities for Routt Cty. ex rel. Bd. of Cty. Comm'rs of Cty. of Routt*, 107 P.3d 981, 984 (Colo. App. 2004).

BoCC must function independently within that sphere. The Proposed Respondents may not agree with the BoCC's determination; however, as in the present case, where the BoCC's determination is supported by scientific evidence, it is clearly not arbitrary and capricious.

While the BoCC recognizes the 6th Judicial district is empowered with certain inherent authority, such authority is not limitless. "An appropriate use of the inherent powers doctrine recognizes the subtle balancing of the three branches of government, which is necessary to further the public interest of a cooperative and harmonious governmental structure."[13] In this Weld County case, the Colorado Supreme Court cited with approval a portion of the language of the North Carolina Supreme Court, which fully stated the principle as:

> "The inherent power of the court must be exercised with as much concern for its potential to usurp the powers of another branch as for the usurpation it is intended to correct. It is a tool to be utilized only where other means to rectify the threat to the judicial branch are unavailable or ineffectual, and

[13] *Bd. of Cty. Comm'rs of Weld Cty. v. Nineteenth Judicial Dist.*, 895 P.2d 545, 548 (Colo. 1995).

> its wielding must be no more forceful or invasive than the exigency of the circumstances requires."[14]

In the case at bar, the BoCC is well aware and has acknowledged that the efficient dispensation of justice within Archuleta County requires the facilities available to the 6th Judicial District within Archuleta County be improved through either new construction or substantial reconstruction. Hence, Chief Judge Wilson's letter of September 26, 2017 was able to acknowledge the BoCC, "… have made serious efforts to construct a new courthouse…" [15]

The crux of the issue here is that the Archuleta County Courthouse satisfies the BoCC's obligation pursuant to C.R.S. §13-3-108(1). The determination of the adequacy of the space is the province of the BoCC and not the judiciary. The 6th Judicial District unilaterally and without consulting the BoCC vacated the Archuleta County Courthouse, "[d]ue to very serious environmental health hazards…"[16] and "[d]ue to credible, but not yet scientifically confirmed evidence of noxious

[14] *Matter of Alamance Cty. Court Facilities*, 329 N.C. 84, 100, 405 S.E.2d 125, 133 (1991).

[15] Exhibit Q at Page 1, ¶ 2nd, 2nd sentence.
[16] Exhibit D

substances…"[17]. The issue today is that all of the science - the court's, the BoCC's and the independent report of the CDPHE - evidences that there is no noxious substance and no serious environmental health hazard. Consequently, the BoCC adopted Resolution 2017-52.

There is no science that supports the Respondents' continued assertion that the courthouse is unsafe. There is no causal connection that has been established between the allegations of illness and the courthouse. Consequently, the basis upon which the Administrative Orders were granted is without merit. All of the science defies the local court's conclusion. Consider the following numerous tests all of which scientifically cleared the building:

Date	Tester	Procured by	Did the science find a violation of any standard?
Oct. 1, 2014	A.G. Wassenaar	6th Judicial	No
Dec. 14, 2016	Herron	BoCC	No
Sept. 29, 2017	Herron	BoCC	No
Oct. 31, 2017	A.G. Wassenaar	6th Judicial	No
Nov. 27, 2017	Colorado Dept. Health	County Sheriff	No

There is no reason why the judicial system is depriving the citizens of Archuleta County from access to justice except for their unsupported fears and desire

[17] Exhibit E

for modern space – a desire which the BoCC recognizes and is continuing to endeavor to fulfill. However, the Board does not want to waste $100,000 or more on rental charges, moving costs, and upgrades when there is a perfectly suitable space available. The Board is exercising its discretion in acting in a financial prudent manner with the taxpayer's funds.

As argued above, the inherent powers of the court are not without limitation. Here, Petitioner believes that there is a clear and unauthorized usurpation of the BoCC province. Nonetheless, even if this Court believes that the 6th Judicial District has the inherent power to vacate the courthouse, it still fails. This Court can take judicial notice of the fact that Archuleta County is a county with extremely limited financial resources. The use of its inherent powers must be tempered by the financial needs of the entire community and the problems of the legislative branch in funding them.[18]

"Moreover, a court may exercise its inherent powers only when established methods for procuring necessary funds have failed and the court has determined that

[18] *Pena v. Dist. Court of Second Judicial Dist. In & For City & Cty. of Denver*, 681 P.2d 953 (Colo. 1984); *State ex rel. Judges of Toledo Mun. Court v. Mayor of Toledo*, 2008-Ohio-5914, ¶ 13, 179 Ohio App. 3d 270, 901 N.E.2d 321.

the assistance necessary for the effective performance of judicial functions cannot be obtained by any other means."[19] Here, neither of the two prerequisites to the court's use of its inherent powers is present.

First, there is no showing that the "established methods for procuring necessary funds have failed." The BoCC has expressed its intent to go to the voters again in November 2018 to seek a tax increase to fund new facilities. Moreover, the 6th Judicial District opted not to pursue the established method. The State of Colorado regularly receives funding requests from Archuleta County. For example, the County funds the 6th Judicial District Attorney's Office. This arm of the state is aware that if it wants space that it submits a budget request and goes through the budget process like every other recipient of taxpayer funds appropriated by the County. However, the 6th Judicial District, despite being aware of the statutory scheme, chose not to submit a budget request and follow the established county process. Instead, it chose to act outside of the statutory and regulatory law. Secondly, even if their failure to exhaust the established methods is miraculously excused, the court never made any finding that the assistance necessary cannot be

[19] *Pena*, supra. at 957.

obtained by any other means. In fact, no finding concerning these two conditions precedent to the exercise of its inherent powers was ever made.

Petitioner urges this Court to adopt and apply the reasoning in *Manry v. Gleaton*, 164 Ga. 402 (1927) and recognize that the BoCC has broad discretion which should not be disturbed by the courts unless it is clear and manifest that the BoCC is abusing the discretion vested in it by statute. In *Manry*, the county, contrary to law, had no courthouse facility at all, as the commissioners had declined a donation which was admittedly sufficient to construct a courthouse and bring the county into compliance with the statute. The Georgia statute being construed in *Manry* is quite similar to the statute in question in the present case. However, in *Manry* the board determined it was unwise, bad judgment and a waste to accept the gift for a number of reasons. Similarly, here, the BoCC determined that it is unwise to spend hundreds of thousands of taxpayer dollars in disregard of the science and act in response to unproven allegations in workers compensation cases when those funds would be better spent on erecting the more permanent facilities needed by the County. The Georgia Supreme Court makes and cites with approval many sound, well-reasoned principles that should be applied to the case at bar, including:

> "The necessities of the various counties in regard to these matters are to be determined by the peculiar conditions surrounding each county; and therefore the sound judgment of the county authorities in each case must be relied upon to provide the public with proper buildings on the one hand, and to protect the taxpayer from useless and unnecessary burdens in regard to such matters on the other …The discretion vested in the county authorities must be from the nature of the case a broad one, and therefore the reviewing power of the judge of the superior court must be exercised with caution, and no interference had unless it is clear and manifest that the county authorities are abusing the discretion vested in them by law"[20]

[20] *Manry v. Gleaton*, 164 Ga. 402, 138 S.E. 777, 779 (1927) (citation omitted).

The *Manry* court also cites with approval the statement:

> "Equally clear is it that the court correctly held that the board of county commissioners was vested with discretionary power with respect to deciding whether or not the erection of a new courthouse was a present and urgent public necessity, and, if so, upon what site it should be built."[21]

And also stated that the county board

> "…must be relied upon to provide the public with proper buildings on the one hand, and to protect the taxpayer from useless and unnecessary burdens in regard to such matters on the other."[22]

Here, the Archuleta County Courthouse has never been found to violate any recognized air safety levels, and the BoCC has caused a monitoring system to be installed to ensure the continued safety of their property.[23] Based on all of the

[21] Id. at 779, citing, *Anderson v Newton*, 123 GA 512, 521, 51 S.E. 508, 512.
[22] Id. at 780 citing, *Dyer v Martin,* 132 GA 445, 450, 64 S.E. 475, 477.
[23] *Affidavit of Bentley Henderson at ¶ 35*

information available to it, the BoCC has made reasonable decisions with respect to the occupancy of the Courthouse. Accordingly, the 6th Judicial District has no basis to challenge such decisions.

B. Resolution 2017-52 Represents A Quasi-Judicial Act Of The BoCC. As Such It Is Binding Upon Both The 6th Judicial District And The State Court Administrator And Proposed Respondents Can Not Collaterally Attack That Determination Now By Any Other Means.

Resolution Number 2017-52 was adopted by the BoCC after a noticed public hearing and by the BoCC sitting in a quasi-judicial role. "…[T]he essence of quasi-judicial action lies not so much in the specific characteristics of the decision-making body as in the nature of the decision itself and the process by which that decision is reached."[24] Here, the BoCC published notice as required by the Colorado Open Meetings Act, opened the floor to receive evidence pro or con regarding the Resolution, and applied nationally recognized standards for air quality in determining the facility to be safe. In considering how to characterize a board's action, our Supreme Court has stated:

[24] *Churchill v. Univ. of Colorado at Boulder*, 293 P.3d 16, 26 (Colo. App. 2010), aff'd on other grounds, 2012 CO 54, 285 P.3d 986

> "In order to support a finding that the action of a municipal legislative body is quasi-judicial, all of the following factors must exist: (1) a state or local law requiring that the body give adequate notice to the community before acting; (2) a state or local law requiring that the body conduct a public hearing, pursuant to notice, at which time concerned citizens must be given an opportunity to be heard and present evidence; and (3) a state or local law requiring the body to make a determination by applying the facts of a specific case to certain criteria established by law."[25]

Here, the first prong of the *Snyder* test is satisfied because the BoCC's action was taken pursuant to C.R.S. §§30-11-104(1)(a), 13-3-108(1) or 13-6-304. Further,

[25] *Snyder v. City of Lakewood*, 189 Colo. 421, 425, 542 P.2d 371, 374 (1975), overruled by *Margolis v. Dist. Court, In & For Arapahoe Cty.*, 638 P.2d 297 (Colo. 1981)

any action taken by the BoCC pursuant to these statutes is required to be noticed by the Colorado Sunshine Act of 1972.[26]

This conclusion is further supported by the holding in *City & Cty. of Denver v. Eggert*[27]. In *Eggert* the district court had ruled that the action of the Arapahoe County Board of County Commissioners in adopting a resolution was quasi-legislative and therefore not subject to review under C.R.C.P. 106(a)(4). The Colorado Supreme Court reversed the lower court, reasoning:

> "In addition, the action taken by the Commissioners, however characterized, was of a quasi-judicial rather than legislative nature. Quasi-legislative action is prospective in nature, is of general application, and requires the balancing of questions of judgment and discretion. *Cottrell v. City and County of Denver, Colo., 636 P.2d 703 (1981)*. Quasi-judicial action decides rights and liabilities based upon past or present facts. See

[26] C.R.S. § 24-6-101 et. Seq.

[27] *City & Cty. of Denver v. Eggert*, 647 P.2d 216 (Colo. 1982)

> *Talbott Farms, Inc. v. Board of County Commissioners*, 43 Colo.App. 131, 602 P.2d 886 (1979). Legislative facts "do not usually concern the immediate parties." 2 K. Davis, Administrative Law Treatise s 12:3 at 413 (2d ed. 1979). Legislative facts involve empirical observations and "need not be developed through evidentiary hearings…"[28]

Here, the action of the BoCC decided the rights and liabilities based upon present facts and the scientific testing results and concerned the "immediate parties".

Thus, the analysis turns to one of sufficiency of notice. The evidence establishes the 6th Judicial District and State Court Administrator were informed on several occasions that the BoCC would be considering the Courthouse at all future meetings and might take action concerning the Courthouse. In addition, the published notice was consistent with the Colorado Sunshine Act, was provided to the 6th Judicial District, and included the statement, "Provided for your consideration is a Resolution that acknowledges the results of the air quality testing done at the Courthouse in September 2017, and formally deeming the facility safe for employees

[28] *City & Cty. of Denver v. Eggert*, Supra. at 222.

and visitors to the facility."[29] Further, a copy of the proposed Resolution was made available to the Respondents in advance as it was posted on the County website. To rule on the adequacy of such notice, this Court will find *Town of Marble v. Darien* instructive. In *Town of Marble*, our Supreme Court determined:

> "Thus, the notice sufficiently informed the public of the nature of the business to be considered. Under *Benson*, a notice need not precisely set forth every single item to be considered at a meeting. 195 Colo. at 384, 578 P.2d at 653. Such a requirement would violate a central teaching of *Benson*—that public bodies be permitted to conduct business "in a reasonable manner," *id*.—because it would prohibit them from addressing any item not specifically listed on the notice even though the item is reasonably related to a listed item. Thus, a notice is sufficient as long as the items actually considered at the meeting are reasonably related to the subject

[29] Exhibit H

> matter indicated by the notice, which occurred in this case."[30]

Further, as is required of any quasi-judicial action, the same guarantees as those required by the due process clause of the United States Constitution's Fourteenth Amendment would have been afforded to the Respondents had they chosen to appear and present evidence in contradiction of the science received by the BoCC.

> "The essence of procedural due process is fundamental fairness. This embodies adequate advance notice and an opportunity to be heard prior to state action resulting in deprivation of a significant property interest." *Mountain States Telephone and Telegraph Company v. Department of Labor and Employment*, 184 Colo. 334, 338, 520 P.2d 586, 588 (1974). See *Hide-A-Way Massage*

[30] *Town of Marble v. Darien*, 181 P.3d 1148, 1153 (Colo. 2008)

Parlor, Inc. v. Board of County Commissioners, 198 Colo. 175, 597 P.2d 564, 566 (1979)."[31]

Again, the BoCC provided these Respondents much more than the "essence" of due process, they were provided actual due process. They were personally advised that the Board would be considering and acting on issues related to the Courthouse, they were given access to the agenda of this meeting which included a draft of the proposed Resolution, and they were afforded an opportunity to appear and present evidence. However, the Respondents chose not to participate. Such choice is fatal to the Respondents' position and supplies a basis for this Court issuing the mandate sought by Petitioner.

The determination of the BoCC action as being quasi-judicial is critical for one reason – it limits the relief available to the Respondents. That is, if the Respondents disagree with the BoCC's determinations as set forth in Resolution 2017-52, namely:

> "The testing conducted and the subsequent results demonstrate very clearly that the Archuleta County

[31] *City & Cty. of Denver v. Eggert*, Supra. at 224.

Courthouse presents no hazard to those working in the facility or those visiting on a periodic basis.

There is no reason that all portions of the facility cannot be fully occupied with the exception of the already permanently vacated jail/detention facility.

Recent roofing structure, roof covering, HVAC, and electrical upgrades have greatly enhanced the quality and serviceability of the facility.

"Imminent closure" of the facility is not now nor has it ever been under consideration by the Board of County Commissioners in their fiduciary capacity as the stewards of all county facilities.

Effective October 31, 2017, the Archuleta County Board of County Commissioners will not support any direct or ancillary expenses associated with any alternative occupancy by any function,

department, or any historically customary user of the courthouse."[32]

Then, the Proposed Respondents' remedy would have been to file an action for review of the BoCC's findings and determinations under C.R.C.P. 106(a)(4). Pursuant to the language of that Rule, the Respondents' would have had to file for review of the BoCC's action within twenty-eight (28) days or before November 10, 2017. They did not. Consequently, the determination of the BoCC stands. Accordingly, the 6th Judicial District and the State Court Administrator have facilities that have been deemed safe and adequate available to them in Archuleta County and are failing to occupy that facility in derogation of the law of the State of Colorado. The citizens of Archuleta County, Colorado are entitled to have their courts back and this Court should issue a mandate requiring the return of judicial services to Archuleta County forthwith.

C. The Administrative Orders Entered By The Local Chief Judge Amount To An Order Regarding Venue And Clearly Comes Within The Purview Of C.R.C.P. 121 As They Effect The Procedural Rights Of Litigants Before The Court And Such Rule Was Not Complied With.

[32] Exhibit H

C.R.C.P. 121 provides:

> **"(a) Repeal of local rules.** All District Court local rules, including local procedures and standing orders having the effect of local rules, enacted before April 1, 1988 are hereby repealed.
>
> **(b) Authority to enact local rules on matters which are strictly local.** Each court by action of a majority of its judges may from time to time propose local rules and amendments of local rules not inconsistent with the Colorado Rules of Civil Procedure or Practice Standards set forth in C.R.C.P. 121(c), nor inconsistent with any directive of the Supreme Court. A proposed rule or amendment shall not be effective until approved by the Supreme Court. No local procedure shall be effective unless adopted as a local rule in accordance with this Section (b) of C.R.C.P. 121. To obtain approval, three copies of any proposed local rule or amendment of a local rule shall be

> submitted to the Supreme Court through the office of the State Court Administrator. Reasonable uniformity of local rules is required. Numbering and format of any proposed local rule or amendment of a local rule shall be as prescribed by the Supreme Court. The Supreme Court's approval of a local rule or local procedure shall not preclude review of that rule or procedure under the law or circumstances of a particular case."[33]

"…Rule 121 contemplates Supreme Court approval only for standing orders which affect the procedural rights of litigants before the court."[34] Therefore, if the Administrative Orders issued by the Chief Judge affect the procedural rights of litigants, they required the approval of the Supreme Court; if they did not affect procedural rights, they are not subject to attack for the lack of Supreme Court approval.

[33] C.R.C.P. 121
[34] *People ex rel. Sullivan v. Swihart,* 897 P.2d 822, 825 (Colo. 1995)

"Orders regarding venue requirements clearly come within the purview of Rule 121, as they affect the procedural rights of litigants before the court."[35] Here, Administrative Order 17-09, 17-10 and the subsequent extending orders clearly affected venue and the procedural rights of litigants. These rights were effected in the following ways:

i. A litigant's statutory right to have a trial held in Archuleta County was without notice and opportunity to be heard and contrary to the scientific evidence cut off with the stroke of a pen;

ii. The citizens of Archuleta County must now travel between 50 and 100 miles to file a pleading or obtain a copy of any pleading - a trip which requires that they traverse dangerous mountain terrain; and

iii. It will be more expensive to convene a jury trial. If Archuleta County citizens are used for the jury then there will be costs involved in transporting the jurors, which will substantially increase the litigation costs. If an Archuleta County jury pool is not used then

[35] *Id*. at 825.

instead of causes being heard by their peers they will be heard by citizens of another county.[36]

A procedural statute, rule or order is one which relates "…to remedies or modes of procedure to enforce such rights or liabilities."[37] Thus, it has been held that, "[a] rule is procedural rather than substantive if it regulates "only the manner of determining the defendant's culpability."[38] The Administrative Order is clearly procedural; it dramatically affects the manner in which rights are enforced by setting the place of filing documents and hearing cases to enforce litigants' substantive rights to outside of the County. It is hard to think of an order with a more chilling effect on the mode of procedure to enforce ones rights. It replaces justice for all with justice for those who can afford to travel.

It also changes the place of trials. It endeavors to override this Supreme Court's adoption of C.R.C.P 98 in one fell swoop. If C.R.C.P. 98 is truly a rule of civil procedure then an administrative order changing venue, without regard for

[36] Admittedly, undersigned counsel is not aware of any jury trials which have actually been held but they will need to be and at that time the prejudice to the litigants of Archuleta County will be complete.

[37] *Smith v. Putnam*, 250 F. Supp. 1017, 1018 (D. Colo. 1965)

[38] *Edwards v. People*, 129 P.3d 977, 984 (Colo. 2006) (citation omitted).

existing rules and statutes, is correctly characterized as a local rule and should have followed the procedures set forth in C.R.C.P. 121 and been approved by the Colorado Supreme Court.

Generally, a motion to change venue must be supported by evidence.[39]Here as the table above shows, all of the evidence available demonstrates that there is no scientific basis to cease operating in the existing facilities while new facilities are procured. Accordingly, a procedural order overriding C.R.C.P. 98 was entered without evidence and based solely on assumptions that have been disproved.

VIII. TYPE OF RELIEF SOUGHT

Petitioner seeks relief in the form of mandamus directing the judicial district and staff to reoccupy the premises provided by the BoCC at 449 San Juan Street, Pagosa Springs, Colorado 81147.

IX. NAMES AND ADDRESSES OF THE PARTIES AND THEIR ATTORNEYS IN THE PROCEEDINGS BELOW

There were no proceedings below. Petitioner's Attorney is the County Attorney whose information is provided within the case caption above. The

[39] *Tillery v. Dist. Court In & For Fifth Judicial Dist., Summit Cty.*, 692 P.2d 1079, (Colo. 1984)

Respondents are likely to be represented by an as of yet unnamed representative from the Colorado Attorney General's office.

WHEREFORE, the Petitioner respectfully requests that this Court issue a Rule to Show Cause, directed to the proposed Respondents to show cause why the relief sought by the Petition should not be granted.

Dated this 21st day of February, 2018

/s/ Todd M. Starr
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