COLORADO SUPREME COURT Court Address: 2 East Fourteenth Ave. Denver, Colorado 80202 Colorado Court of Appeals Case No. 13CA1249 Denver District Court Case No. 2013 CV 32444 Hon. Herbert L. Stern III, District Court Judge **Petitioners:** FRIENDS OF DENVER PARKS, INC., a Colorado non-profit corporation; and STEVE WALDSTEIN and ZELDA HAWKINS, individuals. v. **Respondents:** CITY & COUNTY OF DENVER, a municipal corporation; and SCHOOL DISTRICT NO. 1 IN THE CITY AND COUNTY OF DENVER, a public entity.	**▲COURT USE ONLY▲** Case No. 2014SC00118
Attorneys for Petitioners: John Case, # 2431 Jessica Schultz # 46292 Benson & Case, LLP 1660 So. Albion Street, Suite 1100 Denver, CO 80222 PH: (303) 757-8300 FAX: (303) 753-0444 Email: case@bensoncase.com; schultz @bensoncase.com	

PETITIONERS' MOTION FOR EMERGENCY INJUNCTION DURING PENDENCY OF PETITION FOR WRIT OF CERTIORARI

Petitioners, through counsel, BENSON & CASE, LLP, pursuant to C.A.R. 8(a) and 27(a), respectfully submit this Motion for Emergency Injunction During Pendency of Petition for Writ of Certiorari. Petitioners request that this Court enter an emergency injunction commanding Respondents School District No. 1 in the City and County of Denver ("DPS") and the City and County of Denver ("City") to immediately halt construction of a school in part of the park known as Hampden Heights North Park ("HHNP") in southeast Denver.

SUMMARY OF ISSUE

This case arises out of an agreement between the City and DPS to trade 10.77 acres of HHNP owned by the City in southeast Denver in exchange for a building at 1330 Fox St. owned by DPS. The location and designated park name "Hampden Heights North Park" are shown in Exhibit 1, which is a section of the Denver Official Map adopted by Ordinance 333, Series of 2010.

Section 2.4.5 of the Denver Charter requires a vote of the people before the city can sell a park or any part of a park. The Court of Appeals ruled that, in order to be protected from sale under the Charter, a Denver park must either (1) have been a park before 1955, or (2) have been designated as a park by ordinance after 1955. The Court held that Petitioners failed to show substantial likelihood of proving either fact by a preponderance of evidence in the trial court, therefore the trial court did not

abuse its discretion in denying a preliminary injunction. (Opinion at 18.)

Since the Court of Appeals published its opinion December 26, 2013, the situation has changed dramatically. First, on February 6, 2014 the City produced documents in discovery that show (1) the property was a park in 1955, and (2) the city unequivocally designated HHNP and all other Denver parks as parks by ordinance when it enacted Ordinance 333, Series of 2010 (the comprehensive zoning code of 2010). Because it is no longer fairly debatable that HHNP is a park, Petitioners seek immediate intervention of this Court to preserve the status quo until trial on the merits May 19.

Second, notwithstanding the filing of a Notice of Lis Pendens by Petitioners, and a jury trial on the merits scheduled for May 19, 2014, DPS took title and possession of the park. DPS began erecting steel and concrete structures on March 3, 2014. The structures are permanent in nature, and it will be expensive and troublesome to remediate if Petitioners prevail at trial.

Unless this Court grants an emergency injunction, millions of dollars of school bond funds will be wasted constructing a building that may have to be removed. The injunction Petitioners seek will not substantially prejudice Respondents because the injunction will interrupt construction for only 80 days until the trial in May. If Respondents win at trial, DPS can resume construction. If Respondents lose at trial,

then the status quo has been preserved, and the public interest will be served by making remediation of the park much less expensive.

PROCEDURAL HISTORY

The trial Court denied Petitioners' Motion for Preliminary Injunction in a written order dated July 5, 2013. (Exhibit 2.) Petitioners filed a Motion for Injunction During the Pendency of Appeal, which the trial court denied on September 19, 2013. (Exhibit 3, 09/19/2013 Transcript of Trial Court Status Conference, P. 28, L. 3-4.) Petitioners applied to the Court of Appeals for an injunction pending appeal, which the Court of Appeals denied in a written order dated October 18, 2013. (Exhibit 4.) The Court of Appeals issued its Opinion on December 26, 2013. (Exhibit 5.)

STANDARD FOR GRANTING INJUNCTION

To obtain an injunction pending appeal, Appellants must demonstrate that: (1) they are likely to succeed on the merits of their underlying complaint; (2) they will be irreparably injured absent a stay; (3) a stay will not substantially injure the other parties to this proceeding; and (4) the public interest favors the injunction. *Romero v. City of Fountain*, 307 P.3d 120, 122 (Colo. App. 2011).

While each factor must be shown, each need not be equally compelling. The standard allows for an injunction to issue where there will be great irreparable

harm, even if the probability of success on the merits is less than "strong." *Id.*

> **"[T]he probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury plaintiff will suffer absent the stay. Simply stated, move of one excuses less of the other.** This relationship, however, is not without limits; the movant is always required to demonstrate more than a mere 'probability' of success on the merits."

Id. at 123 (emphasis added) (quoting *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153-54 (6th Cir. 1991) and citing *Mohammed v. Reno*, 309 F.3d 95, 101 (2d Cir. 2002)).

ARGUMENT

I. PETITIONERS ARE LIKELY TO SUCCEED ON THE MERITS

Charter §2.4.5, as amended in 1996, reads as follows:

> Without the approval of a majority of those registered electors voting in an election held by the City and County of Denver, no **park or portion of any park belonging to the City as of December 31, 1955**, shall be sold or leased at any time, and no **land acquired by the City after December 31, 1955, that is designated a park by ordinance** shall be sold or leased at any time, provided, however, that property in parks may be leased for park purposes to concessionaires, to charitable or nonprofit organizations, or to governmental jurisdictions. All such leases shall require the approval of Council as provided for in Article III of this Charter. No land acquired by the City after December 31, 1955, shall be deemed a park unless specifically designated a park by ordinance.

(Charter §2.4.5 as amended August 19, 1996 [emphasis added].)

The Court of Appeals ruled that the above language protects any park which

(1) existed as of December 31, 1955, or (2) was designated by ordinance after 1955. Petitioners' new evidence shows that HHNP meets both tests.

Charter §2.4.5 was amended most recently on August 19, 1996. Before council voted on the amendment, there was discussion about how parks like HHNP, which were owned before by the City before 1955, became designated parks under the amendment. Susan Barnes-Gelt, a member of the city council who voted at that meeting, has personal knowledge of what council intended:

> On August 19, 1996 I was present and voted at the city council meeting in which council passed a bill to amend Section 2.4.5 of the Denver City Charter. A transcript of that portion of the council meeting is attached to this affidavit as Appendix 1. Before the vote was taken, John Bennett, Staff Director of City Council, read a statement that described the intent of the bill. He said:
>
> > **The amendment confirms that parks used as parks prior to 1955 are designated parks.**
>
> Council members including me were aware at the time of the vote that the city owned numerous parks that had been acquired before 1955 that had never been designated parks by ordinance. When I voted for the amendment, I understood that **any park owned by the City and County of Denver, that was under the management of the Department of Parks and Recreation in 1996, and that had been used as a park before 1955, was confirmed by the amendment as a designated park.** This would include the park known as Hampden Heights North Park ("HHNP") in southeast Denver.

(Exhibit 6, Aff't of Susan Barnes-Gelt, ¶ 2 [emphasis added]; *see also* Appendix 1 to affidavit, which is a transcript of the city council vote August 19, 1996.)

A. Denver citizens used HHNP as a park before 1955.

Attached are affidavits from senior citizens of Denver who used HHNP as a park before 1955. These witnesses with firsthand knowledge testify that the park was always open to public use, and was used continuously without objection from 1938 until 1955. Joan Biggs, who was born in 1926, regularly rode in the park with the Hottentot riding club:

> Horseback riding was extremely popular in Denver when I grew up. When I was 12 or 13 I joined the Hottentot riding club.
>
> The Hottentots started trail rides from our barn at 3rd and Steele St. We rode along Cherry Creek to the Sullivan Dam. There was lots of open space on both sides of Cherry Creek. **Near the Sullivan Dam was a large open field north of the dam where we could gallop the horses and let them jump over fallen trees. We packed a lunch and sometimes ate in the open field.** The trail rides to Sullivan Dam took most of the day. There would be five to ten riders in our group of Hottentots. **We did not have a name for the open field near Sullivan Dam, but we assumed it was a park because it was always open to the public, everybody used it as a park, and nobody asked us to leave.**
>
> **On March 3, 2014 I visited the construction site at E. Girard Ave. and S. Havana St. Based on my own observations, I know that the location of the school construction zone at E. Girard Ave. and S. Havana St. was the same park where I rode horses as a young girl in the 1930's and 1940's, and where I took my students on trail rides from the Flowing J&J in the 1950's and 1960's.**

(Exhibit 7, Aff't of Joan Biggs [emphasis added].)

Sandy Dennehy, born in 1939, is the oldest daughter of the late Gerald Phipps, former owner of Phipps Construction and the Denver Broncos. Mrs. Dennehy remembers riding, playing, and picnicking in HHNP between 1946 and 1955:

> Horseback riding was an extremely popular outdoor activity in Denver. When we went on trail rides along Cherry Creek, I saw numerous people riding horses, riding bicycles, walking, and playing where we rode. **Sometimes there would be as many as twenty people in a group on horseback. There was a large open area northwest of the Sullivan Dam where we liked to ride horses, have picnics, and play games. Recently I visited this open area where I used to ride and see other people riding.** Part of the open area had been turned into a construction zone for what I have been told will be a new school. I could see piles of dirt in the park where I rode horses and played with my friends in the years 1946-1955. **Based on my own observations, I am certain that the location of the school construction zone was used as a park before 1955.**

(Exhibit 8, Aff't of Sandra Dennehy [emphasis added].)

Carolyn Gallagher's family moved to Denver in 1953, when she was eleven years old. Her mother, father, and sister owned horses and competed in equestrian events. Ms. Gallagher rented horses at a stable near the family home at S. Dahlia St. and E. Florida Ave. She liked to ride in the parkland along Cherry Creek:

> Before 1955 I rode in the parkland along Cherry Creek. The bridle paths followed the banks of Cherry Creek all the way to the spillway from Cherry Creek Dam. We rode horses along the bridle paths as far as the spillway. The hayrides came there too. There were usually many people using this park area for

> horseback riding, walking, picnicking, and children playing in the field and the creek. Recently in 2014 I walked along the bicycle trail next to Cherry Creek near Havana and Girard. I saw a construction zone, with a fence, earth moving equipment, and piles of dirt in the park where I rode horses and played with my friends 1953-1955. **Based on my own observations, I am certain that the location of the school construction zone was used as a park before 1955**.

(Exhibit 9, Aff't of Carolyn Gallagher [emphasis added].)

Dave Norden started riding horses in HHNP in 1954, when he was seven years old:

> I went on trail rides with people from Flowing J&J to Cherry Creek Recreation Area. We swam and our horses swam in the reservoir. **There was a large open area northwest of Cherry Creek Dam where people galloped horses, played rodeo, played tag on horses, and stopped to rest and talk.**
> **We always understood that the city of Denver owned the land and was going to preserve it as a park and wildlife area.**
>
> **Based on my own observations, I know that the location of the school construction zone now located at E. Girard Ave. and S. Havana St. was used as a park before and after 1955.**

(Exhibit 10, Aff't of Dave Norden [emphasis added].) It is clear from the foregoing affidavits that citizens used HHNP as a park before 1955. As we will demonstrate below, use of HHNP as a park is what the City intended for its citizens when it acquired the property in 1936.

B. The City acquired HHNP in 1936 for parks and recreation purposes, as well as for flood control.

On August 3, 1933 the Castlewood Dam in Douglas County collapsed. A wall of water rushed along Cherry Creek all the way to downtown Denver, destroying everything in its path. (Exhibit 7, Aff't of Joan Biggs ¶ 2.) In the three years after the flood, city officials allocated money to purchase land bordering Cherry Creek. The parcels were acquired both for flood control purposes, and to provide Denver citizens with places for recreation in the parks and parkways along Cherry Creek. Since the late 1860's, Denver citizens rode horses and recreated along the popular bridle paths that flanked Cherry Creek. The bridle paths went from the Denver Country Club stables at University and Speer Blvd. all the way to Twenty Mile House in Parker. (Exhibit 11, Testimony of historian Charles Bonniwell at June 13, 2013 preliminary injunction hearing, pp. 279-282.)

C. In 1955 the City recognized HHNP as parkland outside the city limits.

When the city acquired HHNP in 1936, it was located in Arapahoe County. (Exhibit 12, 1936 Deed.) The parcel was shaped like an inverted triangle, with the horizontal base of the triangle being the north boundary, and the point of the triangle the southern tip. Cherry Creek meandered through the east side of the parcel, leaving a large open field on the west that was popular for horseback riding and picnics. The large open field on the west side of

HHNP is where DPS is now pouring concrete and steel. (*See* Exhibits 7-10.)

In 1955 the city authorized CDOT to construct S. Havana St. along the east boundary of the property. The city granted CDOT an easement over approximately 10 acres. The easement was subject to rights of reversion and use by the City. If CDOT abandoned or stopped using the road, title reverted to the City. (Exhibit 13, Deed of Easement, p. 3, ¶ 1).) Furthermore, the City was allowed to use the land conveyed for any purpose not inconsistent with the easement. (*Id* at p. 3, ¶ 3). Thus, Denver citizens could continue to ride horses and recreate on any part of the land conveyed which CDOT did not use for its road. Because the City reserved for itself and its citizens rights of reversion and use, the easement deed was not a sale or lease of parkland that was prohibited by the Charter.

The stated purpose of the 1955 easement was to build a road system that would connect Denver parks that lay outside the city limits, including HHNP, with the City:

> That to improve, and aid in the construction and maintenance of, public roads outside the limits of the City and County of Denver, **for the purpose of establishing and improving the system of roads connecting the City and County of Denver and its parks and parkways outside such limits,** the Manager of Improvements and Parks, with the approval of the Mayor, shall have power and he is hereby authorized to grant and convey to the Department of Highways of the State of Colorado, for the location, relocation, construction, reconstruction, improvement and maintenance of a portion of State Highway No. 70 rights of

> way over, along, upon, and across the following described portions, tracts, or parcels of real property.

(Exhibit 14, Ordinance 296 Series of 1955 [emphasis added].) The boldfaced clause shows that the City recognized that HHNP was a park. Because the park lay outside the city limits, the City authorized an easement for a road to connect HHNP with the City and County of Denver for the benefit of its citizens.

D. HHNP is a "park used as a park before 1955." Therefore, HHNP is entitled to the protection of Charter §2.4.5 and may not be sold without a vote of the people.

Municipal charter provisions are interpreted pursuant to the same rules of construction applicable to statutes. *E.g., Leggett & Platt, Inc. v. Ostrom*, 251 P.3d 1135, 1141 (Colo. App. 2010). Statutes are generally construed solely in accordance with the plain and ordinary meaning of their terms. *Board of Comm'rs of County of Boulder v. Hygiene Fire Protection Dist.*, 221 P.3d 1063, 1066 (Colo. 2009). However, "[i]n the face of statutory silence, questions of interpretation are governed by legislative intent." *Williams v. White Mountain Constr. Co.*, 749 P.2d 423, 429 (Colo. 1988). Determining legislative intent in the face of statutory silence necessarily involves consideration of legislative history. *See, e.g., Robbins v. People*, 107 P.3d 384, 389 (Colo. 2005) (considering testimony presented to the House and Senate Judiciary Committees in deciding legislative intent on an issue as to which the statute under consideration was silent).

Charter § 2.4.5 is silent on how parks managed by the Department of Parks and Recreation ("DPR") in 1996, which were owned by the city before 1955, became designated or considered parks. That being true, legislative history becomes relevant to the point of being outcome determinative. The legislative history of the 1996 amendment to § 2.4.5 establishes conclusively that city council members who voted for the amendment construed its language as follows:

> **The amendment confirms that parks used as parks prior to 1955 are designated parks.**

(Exhibit 6, Aff't of Susan Barnes-Gelt ¶ 2, and Appendix 1 thereto.)

Susan Barnes-Gelt and the other council members understood that any park owned by the City, which was under the management of the Department of Parks and Recreation in 1996, and that had been used as a park before 1955, was confirmed by the amendment as a designated park. That included HHNP. *Id.*

Petitioners' evidence before the trial court showed that HHNP was a pre-1955 park that was managed by DPR at the time of the 1996 Charter amendment. DPR began managing the park immediately after Denver annexed it within the city limits in 1965. The City's 1967 Master Land Use Plan showed HHNP as a park. In 1976 employees of the Planning Department told University of Denver professor David Longbrake, Ph.D. that HHNP was a park and would remain a park in perpetuity. Relying on this statement, Dr. Longbrake purchased his home adjacent to HHNP.

For the next 36 years, Dr. Longbrake witnessed city employees maintaining and improving HHNP. They picked up trash, mowed the grass, reseeded native grasses, and built bridges and bicycle trails. In 1979, Mayor McNichols sent a letter to a homeowner stating that HHNP was "dedicated park land." The city posted a sign announcing park rules in HHNP (no motor vehicles, no alcohol, park hours 5 a.m. to 11 p.m.) (See Exhibit 15, Testimony of David Longbrake at preliminary injunction hearing, June 12, 2013.)

Although the City left HHNP in its natural state, people – especially children – preferred this open environment to groomed parks where grass is planted and mowed. (*See* Exhibit 16, Aff't of Amy Laugesen [stating that "There was a well groomed park in the neighborhood; however, we preferred creatively exploring/playing in this natural park."].)

Respondents' pretense that HHNP is not a park is a modern re-enactment of Hans Christian Anderson's fable "The Emperor's New Clothes." In that story, a delusional king parades naked in front of his subjects after his advisors convince him that he is wearing a beautiful suit. Here, the mayor and public officials have publicly paraded for 18 months the misrepresentation that HHNP is not a park, while every citizen in southeast Denver sees through the falsehood. Jim Kellner, the former superintendent of the Southeast Denver Parks District, managed HHNP throughout

his career. Mr. Kellner testifies:

> **The entire time that I worked for DPR, Southeast District, I understood that HHNP was a city park.** It was on the list of parks that I was responsible for managing and preserving for future generations. In my opinion, **based on my direct personal knowledge of the park's status for thirty years, the claim that HHNP is not a park and that it can be sold without a vote of the people is incorrect.**

(Exhibit 17, Affidavit of Jim Kellner, ¶ 6 [emphasis added].)

The Respondents did not fool Mr. Kellner, the people of Denver, or the press. The Democratic Party of Denver, the Republican Party of Denver, and the Green Party of Denver all have adopted formal resolutions publicly condemning the actions of the mayor, clerk and recorder, city council, and DPS. No fewer than 35 articles published in Denver media have suggested that city officials should comply with Charter §2.4.5 and allow Denver citizens to vote before taking parkland for a government building. The dazzling ability of the Respondents to persuade the lower courts may be due in part to the powerful political influence of the mayor and DPS, but is certainly also due to the conduct of the City, which waited until February 6, 2014 to produce the legislative history of Charter §2.4.5. The documents were in its archives the entire time this litigation has been pending since May 29, 2013. The City produced the documents because it was required to comply with Petitioners' formal discovery requests. The City's nondisclosure of obviously

relevant information is troubling because, throughout this litigation and appellate process, the City and DPS have argued that the courts must give deference to the city's interpretation of §2.4.5. The City never informed the courts that the 1996 legislative history contradicts the Respondents' interpretation.

The Court of Appeals ruled that it must "defer to the city's interpretation" of §2.4.5 (Opinion at 21). If it is the law of the case that courts must "defer to the city's interpretation" of §2.4.5, then the courts should use the interpretation placed on the amendment by the framers who drafted and approved it in 1996, namely that "parks used as parks prior to 1955 are designated parks." HHNP clearly meets this factual test. Susan Barnes-Gelt and the city council believed that by enacting the Charter amendment in 1996, they were protecting from sale not only HHNP, but also all of the other pre-1955 parks that were managed by DPR. (Exhibit 6, ¶ 2 and 12.)

Without knowing the legislative history of §2.4.5, the lower courts adopted the City's interpretation of what §2.4.5 means, and ignored the reality that HHNP has been used as a park by the citizens of Denver since 1936. Given the clear proof that HHNP is and always was a park, it is appropriate and necessary for this Court to intervene on an emergency basis to stop the destruction of this beautiful natural area.

E. Ordinance 333, Series of 2010, confirmed that HHNP and all other pre-1955 parks shown on the Official Map are designated parks.

On June 25, 2010 the City enacted Ordinance 333 that created the comprehensive new zoning code. It states in pertinent part: "All land located within the City and County of Denver shown on the Official Map as being zoned to a zone district in the Denver Zoning Code is hereby **rezoned as designated on the Official Map**." (Exhibit 6, Appendix 1.)

Section 9.3.2 of the new zoning code states in pertinent part:

> To carry out the provisions of this code, the following Zone Districts have been established in the Open Space Context and are applied to property as set forth on the Official Map.
>
> **Open Space Context**
> OS-A Open Space Public Parks District
>
> **9.3.2.1 Purpose**
> The following paragraphs explain the general purpose and intent of the individual Zone Districts.
>
> **A. Open Space Public Parks District (OS-A)**
> The OS-A district is intended to protect and preserve public parks owned, operated or leased by the City and managed by the City's Department of Parks and Recreation ("DPR") for park purposes.

(See Exhibit 6, Appendix 5 [underlining added].)

Exhibit 1 is the section of the Official Map that shows HHNP. The park is colored in green, labeled "OS-A" (Open Space Public Parks). The Official Map has a pop-up "balloon" of information that identifies Ordinance 333, Series of 2010, as the ordinance that officially designated

HHNP as a park. (See Exhibit 1).[1] Thus, the zoning ordinance of 2010 officially designated HHNP as park property owned by the city, managed by the Department of Parks and Recreation, with the express intent "to protect and preserve" the park. That is a designation of HHNP as a park by ordinance.

Susan Barnes-Gelt served on the Denver New Zoning Task Force from 2005-2010. She testifies:

> As a member of the Denver New Zoning Code Task Force, **I understood that all parks shown on the Official Map were designated parks protected by section 2.4.5 of the Charter.** My understanding was that the parks shown on the Official Map, including HHNP, were to be protected and preserved by the city, managed by DPR, and could not be sold without a vote of the people.

(Exhibit 6, ¶ 7 [emphasis added].)

In summary, it is clear from all of the evidence that HHNP is a designated park. The City acquired the parkland in 1936 to provide recreation along Cherry Creek for Denver citizens. People used the park openly and without objection from 1936 to 1955. The Charter amendment August 19, 1996 confirmed that

[1] In arguing to the trial court that HHNP was never "designated" as a park, the City Attorney offered the following explanation for the name "Hampden Heights North Park" appearing on the City's Official Map: "We believe that's on a Google map that's been overlaid with some City information." The trial court seemed to accept this incredible statement. (Exhibit 18, partial transcript of hearing June 28, 2013, P. 331, L. 6-7).

HHNP and the other parks used as parks before 1955 were designated parks. Ordinance 333, Series of 2010, and the Official Map, Exhibit 1, show that HHNP is a designated park. Only when the mayor realized he could save $4 Million if he traded part of HHNP for a building did the City begin denying that HHNP was a park. The City's transfer of title to DPS was an *ultra vires* act that violated §2.4.5 of the Charter. Petitioners have demonstrated to this Court a substantial likelihood that they will prevail at trial on the merits.

II. PETITIONERS WILL SUFFER IRREPARABLE HARM UNLESS THE COURT ENTERS AN EMERGENCY INJUNCTION.

The first irreparable harm suffered by the Petitioners is the destruction of the HHNP natural area with bulldozers, steel and concrete. The second irreparable harm is, after the school is built, even if the Petitioners prevail at trial on the merits, the lower courts and voters may view the construction as *fait accompli* and be reluctant to sanction the tearing down of a new school despite the fact that the land transfer and subsequent construction was unlawful in the first place.

III. A STAY WILL NOT SUBSTANTIALLY INJURE THE RESPONDENTS, AND IS IN THE PUBLIC INTEREST.

DPS is pouring roughly forty thousand dollars per day into labor and materials on HHNP that, if Petitioners prevail, must be remediated. Waiting to resume construction a mere 80 days until trial is not a serious impediment to the

Respondents. An 80 day postponement will save approximately $3.2 Million of bond money until trial on the merits. On the other hand, the longer that construction continues, the harder it becomes to remediate the property. Thus, an emergency stay pending trial on the merits is in the public interest.

CONCLUSION

Having established the four *Romero* factors, Petitioners respectfully request that this Court enter an emergency injunction that halts all construction work on HHNP pending disposition of the Petition for Writ of Certiorari, and in the event certiorari is granted, continuing until the conclusion of trial on the merits.

Respectfully submitted March 6, 2014.

BENSON & CASE, LLP

/s/ John Case

John Case, #2431
Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2014 I served and filed the foregoing **PETITIONERS' MOTION FOR EMERGENCY INJUNCTION DURING PENDENCY OF PETITION FOR WRIT OF CERTIORARI** as follows:

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