

<p>DISTRICT COURT, LARIMER COUNTY, COLORADO 201 LaPorte Avenue Fort Collins, CO 80521</p>	<p>DATE FILED: June 5, 2018 10:18 AM FILING ID: 8C2BF5141C562 CASE NUMBER: 2018CV149</p>
<p>Plaintiff: ERIC SUTHERLAND, <i>pro se</i></p> <p>v.</p> <p>Defendants: THE CITY OF FORT COLLINS, a home rule municipality in the State of Colorado; STEVE MILLER, in his capacity as the Larimer County Assessor and all successors in this office; IRENE JOSEY, in her capacity as the Larimer County Treasurer and all successors to this office; and</p> <p>Indispensable Parties: THE TIMNATH DEVELOPMENT AUTHORITY, an Urban Renewal Authority; and COMPASS MORTGAGE CORPORATION, an Alabama company doing business in Colorado.</p>	<p>▲ COURT USE ONLY ▲</p>
<p><i>Counsel for The Timnath Development Authority and Compass Mortgage Corporation:</i></p> <p>Eric R. Burris, <i>pro hac vice</i> pending BROWNSTEIN HYATT FARBER SCHRECK, LLP 201 Third Street NW, Suite 1800 Albuquerque, NM 87102 Telephone: 505.244.0770 Email: eburris@bhfs.com</p> <p>Cole J. Woodward, #50199 BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 Seventeenth Street, Suite 2200 Denver, CO 80202-4432 Phone: 303.223.1100 Email: cwoodward@bhfs.com</p> <p><i>Co-Counsel for The Timnath Development Authority:</i></p> <p>Robert G. Rogers, #43578 Casey K. Lekahal, #46531 WHITE BEAR ANKELE TANAKA & WALDRON 2154 E. Commons Ave., Suite 2000 Centennial, CO 80122 Phone: 303.858.1800 Emails: rrogers@wbapc.com; clekahal@wbapc.com</p>	<p>Case Number: 2018CV149</p> <p>Division: 3C</p>
<p align="center">THE TIMNATH DEVELOPMENT AUTHORITY AND COMPASS MORTGAGE CORPORATION'S MOTION FOR INJUNCTIVE RELIEF PURSUANT TO C.R.C.P. 65(g)</p>	

Indispensable Parties The Timnath Development Authority (“TDA”) and Compass Mortgage Corporation (“Compass”) submits the following Motion for Injunctive Relief Pursuant to C.R.C.P. 65(g):

Certificate of Compliance with Rule 121 §1-15(8): The undersigned certifies that he conferred with Plaintiff via telephone and explained the basis for the Motion and the relief requested therein. Plaintiff refused to indicate whether he opposed the Motion.

INTRODUCTION

Plaintiff Sutherland is an anti-tax activist who wants to be a policymaker. He sought public office three times but was not elected. Having failed to obtain a role for himself in local government through the ballot box, Sutherland turned to litigation and threats of litigation as a means of injecting himself and his views into the policymaking process. Since 2014, Sutherland has filed nine complaints against local government entities in the District Court of Larimer County, and threatened to file many more. His filings are replete with incorrect and unsupported characterizations of the law. They are written in arcane faux-legalese, which makes it difficult, and at times impossible, to identify and understand the legal claims and arguments made. Their tone is often abusive towards both the bench and local government officials. On the whole, they evince a failure or refusal to understand the procedural and substantive requirements imposed upon all litigants by the Colorado Rules of Civil Procedure.

More troublingly, Sutherland’s actions are not intended to protect or enforce any substantive legal rights on behalf of himself, or the public. They are intended to interfere with local government entities’ ability to access the funds provisioned to them by voters and deliver services to their constituents, in furtherance of Sutherland’s personal political agenda. They also appear to be intended to raise Sutherland’s personal profile and advance his political aspirations.

To date, Sutherland has targeted two school districts, two cities, a county, and a handful of special districts with vexatious filings. While Sutherland has never succeeded on the merits of any of his legal claims against these entities, he has forced them to waste substantial time and public funds disposing of his vexatious claims.

Sutherland's conduct imposes a substantial burden on Colorado courts and the local government entities that are the targets of his specious litigation, costing the taxpayers he purports to protect millions of dollars. Sutherland is not a member of the bar, and thus is not subject to the forms of discipline that typically deter attorneys from deluging the courts with meritless claims. Therefore, TDA respectfully requests that this Court take reasonable steps to prevent Mr. Sutherland from further burdening the courts by enjoining him from appearing *pro se* or filing in any civil matter before the District Court of Larimer County without the representation of an attorney authorized to practice in the State of Colorado.

STATEMENT OF RELEVANT BACKGROUND

It is clear that Plaintiff Sutherland has a strong and laudable desire to participate in the civic life of his community. Sutherland ran three unsuccessful campaigns for public office. He ran for mayor of Fort Collins in 2011 and 2013. (Ex. 1, Kevin Duggan, *Fort Collins council candidates tout 'smart' growth*, FORT COLLINS COLORADOAN, Mar. 24, 2013.) Ex. 2, Kevin Duggan, *Ethics complaint filed against Fort Collins City Council members*, FORT COLLINS COLORADOAN, Mar. 22, 2012.) He also ran for a seat on the Larimer County Commission in 2014. (Ex. 3, *2014 general election results*, FORT COLLINS COLORADOAN, Nov. 5, 2014, at 5.)

When Sutherland was unable to convince the voters to place him in public office, he turned to litigation as a means of imposing his policy preferences on local government. Since 2014, Sutherland has filed nine complaints of various stripes in the District Court of Larimer

County. The eight preceding the one before the Court have all been found to be either so technically deficient as to preclude their consideration, or substantively without merit. Undeterred by his lack of success, Sutherland's continued campaign of harassment has compelled local governments to take extreme measures to anticipate and foreclose Sutherland's meritless claims, including filing more, otherwise unnecessary, litigation seeking declaratory relief. Sutherland's quixotic campaign against local government entities continues to waste a tremendous volume of public funds and judicial resources. From a legal perspective, it has accomplished nothing, as is demonstrated by a review of Sutherland's filing history. From a practical standpoint, it has partially achieved Sutherland's apparent goal, which was to harass and burden local government entities and their leaders to prevent or delay implementation of voter-approved policies that Sutherland dislikes.

I. Sutherland filed two meritless complaints against Larimer County, which were both dismissed for failure to post adequate security.

In August of 2014, Sutherland filed a challenge to a ballot question posed to voters by the Board of Commissioners of Larimer County. *Sutherland v. Bd. of County Comm'rs of Larimer County*, 2014CV115, Contest Arising Out of Ballot Question Election Concerning the Form and Content of a Ballot Title. Specifically, Sutherland alleged that the ballot question at issue, which extended a countywide sales tax in order to continue to pay for operations at the Larimer County Jail, was confusing in a number of respects, including that it "suffer[ed] from the inconsistent use of verb tense" *Id.* at ¶ 14. Sutherland filed this action just weeks before the November 2014 election, where he appeared on the ballot as a candidate for the Larimer County Commission. (Ex. 4, Erin Udell, *County dismisses claim of confusing tax extension*, FORT COLLINS COLORADOAN, Aug. 27, 2014.) The District Court of Larimer County declined to exercise jurisdiction over that challenge, because Sutherland failed to post adequate security.

Sutherland v. Bd. of County Comm'rs of Larimer County, 2014CV115, Order Declining Jurisdiction.

In the aftermath of the November 2014 election, Sutherland filed a challenge to contest Larimer County voters' approval of a citizen-initiated ballot question in that year's election. *Sutherland v. Bd. of County Comm'rs of Larimer County*, 2014CV166, Complaint. The ballot question at issue provided funding for construction of a new facility for the Larimer Humane Society. *Id.* at 2. Sutherland alleged that the ballot question was invalid because it directed sales tax revenue to an unconstitutional purpose. *Id.* However, Sutherland's comments to the press reveal that he actually filed the complaint because he felt the Larimer Humane Society was "asking for at least twice what I would consider reasonable." (Ex. 5, Eric Sutherland, *Larimer County helped foster unreasonable tax for shelter*, FORT COLLINS COLORADOAN, Oct. 24, 2014, at § A, Pg. 11.) The District Court ordered Sutherland to post \$10,000 cash bond to pay Larimer County's costs, including attorneys' fees, should Sutherland fail to maintain the contest, in accordance with Colo. Rev. Stat. § 1-11-213(3). *Sutherland v. Bd. of County Comm'rs of Larimer County*, 2014CV166, Order re Security; Second Order re Security. Sutherland failed to satisfy that requirement, and his contest was dismissed with prejudice. *Sutherland v. Bd. of County Comm'rs of Larimer County*, 2014CV166, Order that Security Posted is Insufficient; Order of Dismissal with Prejudice.

II. Sutherland filed two challenges over word choice and grammar in Fort Collins ballot questions that were found to be procedurally deficient, and without merit, respectively.

Sutherland has also targeted the City of Fort Collins with frivolous and procedurally deficient litigation in an effort to advance his policy preferences and his political career. In March of 2015, Sutherland filed a challenge to two ballot questions proposed by the City of Fort

Collins. *Sutherland v. City of Fort Collins*, 15CV136, Verified Complaint Under C.R.C.P. 106(a)(4). Both questions asked voters to approve extensions of existing sales taxes, to fund capital improvements and street maintenance within Fort Collins’s city limits. Sutherland alleged that the ballot question was misleading, because it unnecessarily included the phrase “[w]ithout raising additional taxes.” *Id.* at ¶ 5. The District Court dismissed Sutherland’s claims on a motion to dismiss, because he failed to file his complaint prior to the expiration of the applicable five day statute of limitations. *Sutherland v. City of Fort Collins*, 15CV136, Order Regarding Def.’s Mot. to Dismiss, at 3-4.

In August of 2017, Sutherland also contested the language of the City of Fort Collins’s municipal broadband ballot issue, which was nevertheless submitted to voters in the November 2017 election. *Sutherland v. City of Fort Collins*, 17CV219, Pet. for a Contest Concerning the Form and Content of the City of Fort Collins Broadband Authorization Election Ballot Question. Sutherland alleged the language of the ballot question was deficient on five grounds, including because “there is a missing comma.” *Id.* at ¶ 5. As relief, he requested that he be allowed to draft replacement ballot language. *Id.* at 9. After a hearing on the merits of Sutherland’s contest, the court “found no defects in the submission clause” *Sutherland v. City of Fort Collins*, 17CV219, Order re Petition. Unsatisfied by that outcome, Sutherland filed a Motion for Post-Trial Relief alleging that the District Court lacked jurisdiction over the matter altogether, and that counsel for the City of Fort Collins knowingly encouraged the court to improperly exercise its jurisdiction. *Sutherland v. City of Fort Collins*, 17CV219, Mot. for Post-Trial Relief. That motion was also denied. *Sutherland v. City of Fort Collins*, 17CV219, Order Denying Mot. for Post-Trial Relief.

III. Sutherland waged an unsuccessful but harmful crusade to cut off local school districts from voter-approved funding, giving rise to five separate, unnecessary actions.

In August of 2016, Sutherland filed a contest to the language of a ballot question proposed to the voters by Thompson School District R2-J, and scheduled to appear on the November 2016 ballot. *Sutherland v. Thompson School Dist. R2-J*, 2016CV235, A Contest Concerning the Form and Content of an Election Ballot Question. Sutherland alleged that the question's wording was confusing because it was premised on a faulty understanding of Art. X, § 20 of the Colorado Constitution, better known as TABOR. *Id.* at 2. He also alleged that the ballot question violated Colorado's constitutional single subject requirement. *Id.*; *see also* Art. V, § 1, Colo. Const. Finally, he claimed that the ballot question's language was misleading because it did not mention or adequately describe Colorado's tax increment financing (TIF) mechanism, established at Colo. Rev. Stat. § 31-25-107. *Id.* at 2. After expedited briefing the District Court granted Thompson School District's Motion to Dismiss, finding that Sutherland lacked standing, because he did not reside in Thompson School District, and that Sutherland had failed to lodge a sufficient bond to sustain jurisdiction pursuant to Colo. Rev. Stat. § 1-11-202. *Sutherland v. Thompson School Dist. R2-J*, 2016CV235, Order Granting Defendant's Motion to Dismiss. The District Court also gave the Thompson School District leave to set a hearing to determine whether Sutherland's action was groundless and frivolous, entitling the District to its attorneys' fees and costs. *Id.* at 1. The record does not indicate that Thompson School District took up the Court's invitation to seek attorneys' fees from Sutherland.

That same month, Sutherland filed a similar action challenging the language of a proposed mill levy override placed on the November 2016 ballot by Poudre School District R-1 ("PSD"). *Sutherland v. Bd. of Ed. of Poudre School Dist. R-1*, 2016CV225, A Contest

Concerning the Form and Content of an Election Ballot Question. That challenge alleged that the ballot question language proposed by PSD misled voters and conflicted with the requirements of TABOR. *Id.* The District Court ruled that the \$50 cash bond posted by Sutherland was insufficient to sustain jurisdiction under Colo. Rev. Stat. § 1-11-203.5(1). *Sutherland v. Bd. of Ed. of Poudre School Dist. R-1*, 2016CV225, Order Declining Jurisdiction. Rather than posting the \$8,000 bond required by order of the District Court, Sutherland filed two additional motions requesting that the court reconsider the sufficiency of his \$50 bond. *Sutherland v. Bd. of Ed. of Poudre School Dist. R-1*, 2016CV225, Mot. to Reconsider Order Declining Jurisdiction; Motion to Deem Bond Sufficient and Vacate Previous Order. Those motions were both denied, and the case was dismissed. *Sutherland v. Bd. of Ed. of Poudre School Dist. R-1*, 2016CV225, Order Dismissing Case. Poudre School District's mill levy increase was approved by voters in the November 2016 election.

Sutherland continued to threaten PSD with additional litigation contesting voters' approval of its mill levy override and a related bond issuance, even after his November ballot title action was dismissed. *Poudre School Dist. R-1 v. Sutherland*, 17CA1178, Op. at ¶ 4. In another instance of Sutherland seeking to impose his policy preferences on local government through litigation, Sutherland stated that he intended to sue PSD because he objected to "higher tax rates so the DDA (Downtown Development Authority) can redo Old Town Square. . . . I would never vote to raise my taxes to do that." (Ex. 6, Sarah Jane Kyle, *Threat of litigation has bond in limbo*, FORT COLLINS COLORADOAN, Dec. 13, 2016 at 2.) Sutherland claimed that the mere threat of litigation would be sufficient to deter investors from participating in PSD bond issuance. *Poudre School Dist. R-1 v. Sutherland*, 17CA1178, Op. at ¶ 35. Indeed, Sutherland's

threats of litigation did force PSD to delay their issuance of bonds and construction of urgently needed facilities upgrades, such as a new elementary school. Ex. 6 at 2.

Unwilling to sustain any further delays to the flow of funds already approved by voters, PSD chose to take drastic and unorthodox steps in an attempt to preclude Sutherland from filing additional challenges. *Id.* On December 9, 2016 PSD simultaneously filed two declaratory actions seeking to establish the lawfulness of the November 2016 elections, naming Sutherland as a party in one of them. *In the Matter of Petition of Poudre School District R-1*, 2016CV31129, Verified Pet. for Judicial Confirmation of Powers and Actions Pursuant to C.R.S. § 11-57-213; *Poudre School District R-1 v. Sutherland*, 2016CV31130, Compl. for Declaratory J. Those actions were subsequently consolidated at PSD's request. *Poudre School District R-1 v. Sutherland*, 2016CV31330, Order Granting Mot. for Consolidation. The District Court set both matters for a hearing on February 23, 2017. After that hearing, the District Court granted summary judgement in favor of PSD and awarded PSD relief on all ten of its claims against Sutherland.

Before PSD could file its actions for declaratory judgement, Sutherland followed through with his threats and filed an action contesting the outcome of the election approving PSD's mill levy override on December 2, 2016. *Sutherland v. Bd. of Ed. of Poudre School Dist. R-1*, 2016CV289, Written Statement of Notice of Intention to Contest an Election Pursuant to C.R.S. 1-11-213(4). In that action, Sutherland alleged that his August 2016 challenge to the ballot question's language was improperly dismissed by the District Court in violation of his due process rights, and that the School District had perpetrated a "fraud brought upon the court." *Id.* at ¶ 5. This action was dismissed by the District Court because Sutherland failed to pay the

required filing fee. *Sutherland v. Bd. of Ed. of Poudre School Dist. R-1*, 2016CV225, Order of Dismissal.

On December 19, ten days after PSD filed its action for declaratory relief, Sutherland filed yet another complaint contesting the outcome of the November 2018 election in which voters authorized PSD to issue additional bonds. *Sutherland v. Bd. of Ed. of Poudre School Dist. R-1*, 2016CV299, “Written Statement of Notice of Intention to Contest an Election Pursuant to C.R.S. 1-11-213(4).” In that filing, Mr. Sutherland noted that “[t]he 8th district court [sic] has a history of abusing discretion and ignoring law in elections contests.” *Id.* at ¶ 6. He alleged that his due process rights were violated when the District Court required him to post an \$8,000 bond in his earlier challenge to the language of the mill levy increase, and that consequently the election should be invalidated. *Id.* at ¶ 25-47. Sutherland’s contest was brought before the District Court for an expedited trial on January 10, 2017. *Sutherland v. Bd. of Ed. of Poudre School Dist. R-1*, 2016CV299, Order re Election Contest. The District Court found in favor of Poudre School District, holding that Sutherland’s contest was “not a proper election contest pursuant to C.R.S. § 1-11-201, *et seq.*” *Id.* at 4-17. The Court found that Sutherland failed to establish that the alleged due process violation could have affected the outcome of the election. *Id.* at 4. It also held that because Sutherland had the opportunity to appeal the District Court’s ruling in the earlier matter, but failed to do so, he was precluded from subsequently claiming that his due process rights were violated. *Id.* at 7-9. Finally, the Court determined that it lacked the authority to review the propriety of a bond amount established by another court of competent jurisdiction. *Id.* at 9. In short, Sutherland’s complaint lacked basis in both law and fact, and was procedurally deficient in at least three ways.

Still unwilling to relent, Sutherland appealed the District Court’s decision in PSD’s declaratory actions on July 5, 2017, delaying PSD’s bond issuance by additional months. (Ex. 7, Sarah Jane Kyle, *Court battle delays PSD \$375M bond; Activist’s appeal in lawsuit could last for months, pushing back plans to build three new schools*, FORT COLLINS COLORADOAN, July 8, 2017.) On appeal, Sutherland alleged that: (1) there was no actual controversy between himself and PSD (despite the fact that he sued PSD twice regarding the same issue), and thus the District Court lacked jurisdiction over the matter; (2) that the District Court engaged in improper *ex parte* communications with counsel for PSD; (3) that the District Court improperly consolidated the two declaratory actions filed by PSD; and (4) that the District Court erred in granting summary judgement to PSD. *Poudre School Dist. R-1 v. Sutherland*, 17CA1178, Opinion at ¶ 8. The Court of Appeals affirmed the judgement of the District Court in all respects. *Poudre School Dist. R-1 v. Sutherland*, 17CA1178, Opinion at ¶ 41.

Sutherland subsequently petitioned the Colorado Supreme Court to review the Court of Appeals’ decision. *Sutherland v. Poudre School Dist. R-1*, 2018SC221, Petition for Writ of Certiorari at 1. In that petition, he states his intention to file additional claims intended to further delay PSD’s bond issuance in federal court. *Id.* PSD filed their opposition to Sutherland’s Petition on May 11, 2018. *Sutherland v. Poudre School Dist. R-1*, 2018SC221, Opp. to Pet. for Writ of Cert.

To date, PSD has been unable to issue bonds approved by voters pursuant to its November 2016 ballot question as a direct consequence of Sutherland’s vexatious litigation. As counsel for PSD noted in local press coverage of Sutherland’s litigation, “[b]ond underwriters generally require an opinion from counsel that there is no chance anything could happen on appeal that would reverse the judgement. . . . without that advice, the underwriters tell us the

bonds can't be issued at a reasonable rate.” (Ex. 8, Sarah Jane Kyle, *PSD bond legal costs tally more than \$265K*, FORT COLLINS COLORADOAN, July 14, 2017.) As of April 19, 2017, PSD had incurred \$253,573.50 in legal fees as a result of Sutherland's various filings. That total does not reflect the full cost of defending PSD's declaratory judgements from his appeal, and subsequent petition for cert. *See* Ex. 8.

IV. Sutherland filed baseless and defective motions to intervene in four petitions to organize special districts.

On April 24 of this year, Sutherland filed identical motions to intervene in four ongoing matters, challenging the formation of four special districts intended to fund improvements to a key interchange at I-25 and Prospect Road. *In the Matter of SW Prospect I25 Metro. Dist., Nos. 1-7*; 2018CV030269, Mot. to Intervene; *In the Matter of Gateway At Prospect Metro. Dist. Nos. 1-7*; 2018CV30270; Mot. to Intervene; *In the Matter of Rudolph Farms Metro. Dist. Nos. 1-6*; 2018CV030272; Mot. to Intervene; *In the Matter of I-25/Prospect Interchange Metro. Dist. 2018CV030278*, Mot. to Intervene. Sutherland alleged that the petitions to form those special districts were procedurally defective in four ways. Principally, and despite overwhelming precedent to the contrary, Sutherland alleged that it was improper for the petitioners to submit a single petition to form multiple special districts. *Id.* at 3.

Petitioners in these matters responded on May 15 by filing motions to strike Sutherland's motions to intervene for failure to pay the applicable filing fee, and for failure to meet the requirements of C.R.C.P. 24 with respect to motions to intervene. *In the Matter of SW Prospect I25 Metro. Dist., Nos. 1-7*; 2018CV030269, Mot. to Strike; *In the Matter of Gateway At Prospect Metro. Dist. Nos. 1-7*; 2018CV30270; Mot. to Strike; *In the Matter of Rudolph Farms Metro. Dist. Nos. 1-6*; 2018CV030272; Mot. to Strike; *In the Matter of I-25/Prospect Interchange Metro. Dist. 2018CV030278*, Mot. to Strike. Petitioners' motions to strike were granted in all

four matters. *In the Matter of SW Prospect I25 Metro. Dist., Nos. 1-7*; 2018CV030269, Order Granting Mot. to Strike; *In the Matter of Gateway At Prospect Metro. Dist. Nos. 1-7*; 2018CV30270; Order re Mot. to Intervene; *In the Matter of Rudolph Farms Metro. Dist. Nos. 1-6*; 2018CV030272; Order re Mot. to Intervene. *In the Matter of I-25/Prospect Interchange Metro. Dist.*, 2018CV030278, Order Denying Mot. to Intervene.

STANDARD OF LAW

District courts are vested with jurisdiction to prevent abuse of judicial process by a *pro se* litigant in the courts of any county in the district. *Bd. of County Com'rs of Morgan County v. Winslow*, 706 P.2d 792, 795 (Colo. 1985). An injunction is at times necessary to prevent abuse of the civil justice system by a *pro se* litigant because “a party acting in his own behalf is not subject to the disciplinary procedures that prevent abuse of the system by attorney. *Id.* (citing *Shotkin v. Kaplan*, 180 P.2d 1021, 1022 (Colo. 1947)). “Mere litigiousness is not grounds for an injunction prohibiting a party from proceeding *pro se*; however, no one has a right to use the judicial process for the purpose of harassing or intimidating his adversaries. *Karr v. Williams*, 50 P.3d 910, 914 (Colo. 2002).

When determining whether to enjoin a party from appearing *pro se*, “the court should consider the seriousness of the abuses in light of our previous cases enjoining *pro se* appearances.” *Winslow*, 706 P.2d at 795. Historically, Colorado courts have enjoined parties from appearing *pro se* where “the enjoined party was using the judicial process not to vindicate his rights, but to harass and intimidate his adversaries by repeatedly filing groundless and vexatious claims against them.” *Karr*, 50 P.3d 910, 914 (Colo. 2002). In instances where “monetary penalties are ineffective and our disciplinary authority cannot curb the litigant’s transgressions because he is not licensed, an injunction is the proper recourse.” *Id.*

ANALYSIS

The Complaint before the Court marks the beginning of another cycle of futile litigation, likely followed by meritless appeals, analogous to the one Sutherland initiated in 2016 challenging PSD's ballot questions. Once again, Sutherland's goal is to prevent a local government entity from funding policies he dislikes. If Sutherland wants to make public policy, he is free to seek public office, as he obviously knows. His efforts to impose his policy preferences on local government entities through vexatious litigation constitute an abuse of the civil justice system. TDA asks this Court to exercise its jurisdiction to enjoin Sutherland from appearing *pro se* in order to end this cycle of abusive litigation.

I. Sutherland's Litigation Conduct Constitutes Abuse of Process under Colorado Law.

Under Colorado law, a claim for abuse of process requires the plaintiff to satisfy three elements, "(1) an ulterior purpose for the use of judicial process; (2) willful action in the use of that process which is not proper in the regular course of the proceedings, that is, use of a legal proceeding in an improper manner; and (3) resulting damage." *Palmer v. Diaz*, 214 P.3d 546, 550 (Colo. App. 2009) (citing *Hewitt v. Rice*, 154 P.3d 408, 414 (Colo.2007); *Moore v. W. Forge Corp.*, 192 P.3d 427, 438 (Colo.App.2007); *Walker v. Van Laningham*, 148 P.3d 391, 394 (Colo.App.2006). Here, Sutherland's litigation conduct satisfies all three elements.

"The essence of the tort of abuse of process is the use of a legal proceeding primarily to accomplish a purpose that the proceeding was not designed to achieve." *Walker v. Van Laningham*, 148 P.3d 391, 394 (Colo.App. 2006). Sutherland's ulterior purpose for the use of judicial process in this instance is political. He plainly stated his intention to interfere with TDA's ability to borrow in telephone exchanges with representatives of Compass Bank. He seeks to prevent local governments from implementing policies he dislikes, and he continues to

use vexatious and frivolous litigation as the means to accomplish that political goal. Sutherland is entitled to advocate on behalf of policies he prefers; indeed that entitlement is constitutionally guaranteed. *See* U.S. Const. amend. I. However, the courts are not the proper venue for that advocacy. Courts exist to vindicate rights, remedy injuries, and enforce obligations. *See* U.S. Const. Art. III, § 2; *Marbury v. Madison*, 5 U.S. 137 (1803); *Bd. of Cty. Comm'rs v. Park Cty. Sportsmen's Ranch, LLP*, 45 P.3d 693, 698 (Colo. 2002); *Three Bells Ranch Assocs. v. Cache La Poudre Water Users Ass'n*, 758 P.2d 164,168 (Colo. 1988). Contrary to the beliefs of some, courts are not policymaking bodies. Sutherland's attempt to use the court system to impose his policy preferences upon local governments is an ulterior purpose for the use of judicial process that satisfies the first element of the tort of abuse of process.

Similarly, Sutherland's conduct represents a willful and improper use of legal process that satisfies the second element of the tort of abuse of process. In *Walker*, the Colorado Court of Appeals upheld a trial court's dismissal of an abuse of process claim, where the defendants had filed multiple complaints against their neighbors, the plaintiffs, regarding the defendants' barking dogs, pursuant to a Teller County ordinance. 148 P.3d at 394. The reviewing court found that "filing complaints about barking dogs and cruelty to animals under the Ordinance, in the manner prescribed by those ordinances, is not an improper use of process." *Id.* at 395. Those facts contrast with the ones presented here, where Sutherland seeks to use a declaratory judgement action to delay or prevent implementation of policies enacted by the duly elected representatives of the Town of Timnath and TDA, because he happens to disagree with such policies. He does not seek to enforce any cognizable rights on behalf of himself or the general public. Instead, he has seized upon a perceived procedural error as an opportunity to interfere with the workings of local government and raise his personal profile within the community. This

improper use of legal process satisfies the second element of the tort of abuse of process under Colorado law.

TDA has suffered, and will continue to suffer, damages as a consequence of Sutherland's abuse of legal process. As in Sutherland's campaign against PSD, the true goal of this action is to prevent TDA from accessing a debt facility that would otherwise be available to it. TDA intends to utilize a \$20M loan from Compass Bank to fund seven major improvements to transportation infrastructure within its jurisdiction. Ex. 9, TDA Projects 2018-05-07 at 1-3. These improvements will enhance both public safety and property values in the area, in furtherance of the goals of the UR plan to eliminate and prevent blighted conditions. As Sutherland is aware, TDA cannot close on the Compass Bank loan while litigation challenging TDA's authorization of that loan is pending. If TDA is unable to close on the Compass Bank loan prior to August 1, 2018, the interest rate on that loan could substantially increase. TDA estimates that a 1% increase in interest rates would increase the cost of the planned improvements will increase by approximately \$1.5M. Ex. 10 at 2, TDA Loan Debt Service Schedule showing 1% increase. Significant delays will cause TDA to be unable to fund construction of all of its planned improvements, resulting in continuing harm to public safety, and impairing the rehabilitation and economic vitality of property located within the TDA. These harms satisfy the third and final element of the tort of abuse of process under Colorado law.

II. Sutherland's Litigation Conduct Is Similar to Abusive Conduct Enjoined by Colorado Courts in the Past in both Volume and Purpose.

When considering whether to enjoin a party from proceeding *pro se*, Colorado courts compare that party's abuses with those of *pro se* litigants enjoined by the courts in the past. Sutherland's abuse of the civil justice system is equal to or greater in magnitude than the abuses

wrought by individuals enjoined from proceeding *pro se* as civil claimants in past cases.

Sutherland's tally of nine meritless filings over a four-year period is similar in volume to the litigation activity of parties that have been enjoined from proceeding *pro se* in the past. More importantly, Sutherland's campaign of futile litigation is analogous to the litigation conduct enjoined by Colorado courts in that its primary goal was to harass and burden its targets, and not to enforce any substantive legal rights.

For example, in *Karr v. Williams*, the enjoined party filed ten state actions over a period of nine years. 50 P.3d at 911. The purpose of his litigation was to harass witnesses and victims of his past criminal activities. *Id.*

In *Board of County Com'rs of Boulder County v. Baraday*, the enjoined party filed seven complaints in a three-year period. 594 P.2d 1057, 1058 (Colo. 1979). The true purpose of that litigant's complaints was to harass his ex-wife, who at one time had the litigant detained for psychiatric observation against his will. *Id.*

In *Winslow*, the Colorado Supreme Court upheld a district court's injunction of a *pro se* litigant who, at that time, had filed seven complaints over a period of three years. 594 P.2d at 1058. The litigant in *Winslow* sued twenty-six defendants, including many of the judges assigned to preside over his cases, accusing them in "conclusory and highly-charged emotional language, of acting in concert to deprive him of certain property and freedoms." *Id.*

In *Board of County Com'rs of Weld County v. Howard*, a disbarred attorney was enjoined from appearing *pro se* after he filed nineteen frivolous actions over a period of 12 years. 640 P.2d 1128, 1129 (Colo. 1982). While his allegations were varied, his vexatious complaints all arose from disputes with local government officials. *Id.*

In *People v. Spencer* a party was enjoined from proceeding *pro se* where he filed eleven complaints that the Colorado Supreme Court described as “replete with form and lacking in substance. They are a pile of papers evidencing strong emotion but no legal merit.” 524 P.2d 1084, 1084 (Colo. 1974). The complaints ranged in form from a quiet title action to a suit against the State of Colorado for malicious prosecution; but all arose from a dispute between neighbors over irrigation water. *Id.* at 1085. The court noted that “[n]ot one of these Pro se lawsuits has been drawn to successful conclusion” *Id.* at 1087.

III. Sutherland’s Litigation Conduct is At Least as Harmful as Conduct Enjoined by Colorado Courts in the Past, and that Harm is Widely Dispersed.

The harm wrought by Sutherland’s four-year campaign of vexatious litigation is at least as great as the harm caused by the parties enjoined by Colorado courts in the cases described above. Sutherland’s cryptic filings feature many procedurally improper motions and counter motions, and requests for reconsideration that served no purpose other than to burden the District Court. Sutherland has repeatedly demonstrated that he is unwilling to post the security necessary to offset the public costs of his frivolous complaints, so those costs fall squarely on the taxpayers that Sutherland claims to protect. *See Sutherland v. Bd. of County Comm’rs of Larimer County*, 2014CV115, “Order Declining Jurisdiction”; *Sutherland v. Bd. of County Comm’rs of Larimer County*, 2014CV166, “Order re Security”; “Second Order re Security.”

The harm arising from Sutherland’s vexatious litigation is multiplied and dispersed by the fact that his litigation targets local government entities. Sutherland has had absolutely no success on the merits of his claims, but he has nevertheless successfully prevented PSD from accessing bond funding approved by the voters for nearly two years. This injury is born by students, teachers, taxpayers, and local government officials. In that sense, Sutherland’s litigation conduct harms far more people than the campaigns for individual retribution that were

enjoined by Colorado courts in *Karr* and *Baraday*. See *Karr*, 50 P.3d at 911; *Baraday*, 594 P.2d at 1058.

PRAYER FOR RELIEF

Sutherland's spurious *pro se* litigation has placed an unsustainable burden on local governments in Larimer County, and the District Court. Consequently, TDA requests that this court enjoin Sutherland from appearing or filing as a *pro se* claimant in this action, or any other matter before a Larimer County Court. TDA requests that all matters where Sutherland is named as a *pro se* claimant be held in abeyance for fourteen days to give Sutherland the opportunity to obtain the services of a licensed attorney. Should Sutherland fail to obtain the services of a licensed attorney in that time, TDA requests that all matters where Sutherland is named as a *pro se* claimant be dismissed with prejudice.

DATED this 5th day of June, 2018.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

*Original signature on file at offices of Brownstein Hyatt Farber Schreck
pursuant to C.R.C.P. 121 § 1-26*

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