

## **D 010 03**

### **EXECUTIVE ORDER**

#### **Authorizing the Hiring of Outside Counsel**

Pursuant to the authority vested in the Office of the Governor of the State of Colorado, and in particular Article IV, Section 2 of the Colorado Constitution, and Section 24-31-101(1)(e) of the Colorado Revised Statutes I, Bill Owens, Governor of the State of Colorado, hereby issue this Executive Order authorizing the Governor, the Secretary of State and any other interested state agency to hire outside counsel.

#### 1. Background and Need

On May 5, 2003, Attorney General Ken Salazar sent a letter to the leaders of the Colorado General Assembly stating that the Office of the Attorney General will not provide legal services to any state agency on matters related to Senate Bill 03-352. "Because I believe the bill undermines the constitutional redistricting framework, I will (1) refuse to defend the State defendants in that action and (2) on behalf of the people of Colorado, I will support the claim that SB 352 is unconstitutional."

On May 9, 2003, plaintiffs Maryanne Keller and Pauline York brought an action in Denver District Court naming Secretary of State Donetta Davidson and the General Assembly as defendants. In their complaint, plaintiffs challenge among other things the constitutionality of Senate Bill 352. On May 16, 2003, the Keller plaintiffs added Governor Bill Owens as a named defendant in their lawsuit.

On May 14, 2003, the Attorney General filed a petition for original jurisdiction with the Colorado Supreme Court seeking to enjoin the Secretary of State from enforcing Senate Bill 352. On May 15, 2003, the Colorado Supreme Court issued an Order and Rule to Show Cause that required the Secretary of State to submit an answer to the Court as to why the Attorney General's petition should not be granted. The Court's order also invited the Governor and "other interested persons" to file briefs with the Court.

Colorado Revised Statutes §24-31-101(1)(e) states, "Whenever the attorney general is unable or has failed or refused to provide legal services to an agency of state government, as determined by the governor if the agency is in the executive branch or by the chief justice if the agency is in the judicial branch, such agency may employ counsel of its own choosing to provide such legal services. Any expense incurred by reason of the employment of counsel pursuant to this paragraph (e) shall be a lawful charge against appropriations for this purpose made by the general assembly to the department of law."

The Attorney General has refused to provide legal services to any state agency on issues pertaining to this matter. This Executive Order authorizes the Governor, the Secretary of State and any other interested state agency to hire outside counsel to defend its interests in this matter.

2. Directive

Based on the facts recited above, I find that the requirements of C.R.S. § 24-31-101(1)(e) are met. I authorize the Office of the Governor, the Secretary of State and any other interested state agency under the executive branch to employ counsel of its own choosing to provide legal services related to the above referenced matter. All expenses occurred thereof shall be charged in accordance with C.R.S. §24-31-101(e) and may be billed back to the May 9, 2003 filing date for Keller v. Davidson et al.

GIVEN under my hand and the  
Executive Seal of the State of  
Colorado, this 21st day of May,  
2003.

Bill Owens  
Governor