



## **The Good Fight: Lessons in Appellate Advocacy**

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Court appearances can be infrequent occurrences for many municipal attorneys, and appellate practice even more rare. Attorneys who appeared before the Colorado Supreme Court in matters of significance for municipalities will share insights into their approaches and strategies to appellate briefing and advocacy and lessons they learned from oral argument.

### **[City of Longmont v. Colorado Oil & Gas Association](#)**

Certiorari review before judgment under C.A.R. 50 (granted September 21, 2015)

Argued: December 9, 2015

Decided: May 2, 2016

Author: Justice Gabriel

Issue on appeal:

Whether home-rule cities are preempted from promulgating local land-use regulations that prohibit the use of hydraulic fracturing in oil and gas operations and the storage of such waste products within city limits when the Colorado Oil and Gas Conservation Commission regulates hydraulic fracturing within the state.

Background and summary of decision:

An oil and gas association challenged a citizen-initiated charter amendment in the City of Longmont that prohibited hydraulic fracturing in the city. The Supreme Court affirmed the trial court's summary judgment ruling that the Oil and Gas Conservation Act preempted the home rule charter provision on a matter of mixed state and local concern because the charter was in operational conflict with state law.

**Hobbs v. City of Salida**

Certiorari review under C.A.R. 49 (granted September 30, 2024)

Argued: May 15, 2025

Decided: September 8, 2025

Author: Justice Hood

Issue on appeal:

Whether under subsection 25-12-103(11) the City may excuse violations of statewide noise limits set in Colorado's Noise Abatement Act by permitting for-profit entities to exceed the limits when holding “cultural, entertainment, athletic, or patriotic events” on private property, or are such permits invalid under the Act.

Background and summary of decision:

Colorado’s Noise Abatement Act, CRS 25-12-101 to -110, sets statewide decibel limits based on location and time and allows local governments to regulate noise in a way that is not less restrictive than state law. The law also includes an exemption for “the use of property by this state, any political subdivision of this state, or any other entity not organized for profit, including, but not limited to, nonprofit corporations, or any of their lessees, licensees, or permittees, for the purpose of promoting, producing, or holding cultural, entertainment, athletic, or patriotic events, including, but not limited to, concerts, music festivals, and fireworks displays.” C.R.S. § 25-12-103(11). The Colorado Supreme Court held that the exemption did not permit a local government to issue local amplified sound permits that were less restrictive than state law. The Court held that the exception was ambiguous and only extended to the use of property by “lessees, licensees, and permittees” when associated with the primary entity’s use of property for a qualifying purpose.

**MetroPCS California, LLC v. City of Lakewood**

Review under C.R.S. § 13-4-102(1)(b)

Argued: June 24, 2025

Decided: September 8, 2025

Author: Justice Gabriel

Issues on appeal:

- 1) Whether the District Court erred in declaring Lakewood, Colorado’s 1996 and 2015 business and occupation tax Ordinances unconstitutional “beyond a reasonable doubt” under the Taxpayer’s Bill of Rights (“TABOR”) because they allegedly were “new taxes,” even though:

A. These Ordinances did not enact a new charge but merely clarified the application of a 55-year-old telecommunications business and occupation tax; and

B. The Plaintiff, MetroPCS California, LLC, did not establish the subsequent revenue increases were not incidental to the Ordinances' stated primary purposes and de minimis to Lakewood's overall revenues and annual budgets?

- 2) Whether the District Court erred in finding the Ordinances enacted new taxes instead of tax policy changes, which could not violate TABOR because Lakewood's voters waived revenue limits when they chose to debruce?
- 3) Reframed by appellee: Whether the district court correctly ruled that each of the Ordinances created a "new tax" subject to TABOR's advance voter approval requirement, and that neither satisfied *TABOR Foundation's* exclusion from "new taxes" for tax increases that are both incidental and de minimis?
- 4) Cross-appeal:
  - a. Whether, as independent or additional grounds for affirming the district court's ruling, the 1996 Ordinance produced revenue increases that were not de minimis?
  - b. Whether, in addition to violating TABOR by enacting "new taxes" without advance voter approval, the Ordinances violated TABOR by enacting "tax rate increases" without advance voter approval?

#### Background and summary of decision:

In 1969, the City of Lakewood enacted a business and occupations tax on utility companies based on their occupation and business of maintaining a telephone exchange and lines connected and supplying local exchange telephone service to city inhabitants. In 1996 and again in 2015, the city amended its tax ordinance without voter approval to cover provision of newer forms of telecommunications services. The Colorado Supreme Court held that the amendments were "new taxes" under TABOR and invalid without voter approval because they expanded the scope of the original tax from a limited class of providers and specific service to all persons and all forms of telecommunications services. The Court also held that revenue changes were not excused as "incidental" to non-revenue purposes because revenue increases were obvious outcomes that were known to the city at the time. The court did not rule as to whether the revenue change was de minimis or whether the amendments were a "tax rate increase" or "tax policy change."