

Colorado House Bill 17-1230
Senate Judiciary Committee, 71st General Assembly
 Written Testimony of Tom I. Romero, II
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My name is Tom I. Romero, II and I am an Associate Professor of Law and an Affiliated Faculty member in the Department of History at the University of Denver. I have authored several studies on the legal, political and social history of race relations in Colorado and the American West. It is my studied opinion that House Bill 17-1230 reflects a longstanding commitment of the state of Colorado to resist private and governmental acts of racial and other forms of social discrimination.

Colorado Was Founded in the Crucible of the United States' Most Consequential War Against Racial Discrimination

In my 2006 essay, *Wringing Rights Out of the Mountains: Colorado's Centennial Constitution and Its Ambivalent Promise of Human Rights and Social Equality*,¹ I detail Colorado's pivotal role, first as a territory and then in its quest for statehood, in reconciling the promises of freedom, opportunity and equality in the larger Civil War and subsequent Reconstruction of the United States. Though Colorado was like many states in its oftentimes ambivalent commitment to racial and social justice, its founders nevertheless embedded a commitment against racial, ethnic, and national origin discrimination in its Centennial constitution.

Accepted by the voters of Colorado on July 1, 1876, the state constitution has expressed over time both the boundless promise and deep discord of an age immensely concerned about individual freedom and social equity. The document's Article II contains the most explicit declarations of the basic equality guarantees held by the state's populace. Given the Constitution's creation in the years after the Civil War, it is notable that the Equal Protection Clause of the Fourteenth Amendment and the Fifteenth Amendment to the federal Constitution do not have a counterpart in the state's text. Nonetheless, the Colorado framers were animated by the Populist demand for human and civil rights. The original 1876 constitution thus includes "freedom of election,"² "equality of justice,"³ "due process of law,"⁴ prohibition against slavery,⁵ and "property rights of aliens"⁶ guarantees. In addition and reflecting the importance of including a diverse ethnic as well as religious citizenry, the original constitution explicitly provided that the publication of laws be printed in Spanish and German.⁷

¹ Tom I. Romero, II, *Colorado's Centennial Constitution and the Ambivalent Promise of Human Rights and Social Equality*, 69 ALBANY L. REV. 101 (2006).

² Art. II, s. 5: "All elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

³ Art. II., s. 6: "Courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property, or character; and right and justice should be administered without sale, denial, or delay."

⁴ Art. II, s. 25: "No person shall be deprived of life, liberty or property, without due process of law."

⁵ Art. II., s. 26: There shall never be in this state either slavery or involuntary servitude, except as punishment for crime, whereof the party shall have been duly convicted."

⁶ Art. II, s. 27: "Aliens, who are or may hereafter become bona fide residents of this state, may acquire, inherit, possess, enjoy, and dispose of property, real and personal, as native born citizens."

⁷ Art. XVIII, s. 8: "The General Assembly shall provide for the publication of laws passed at each session thereof; and, until the year 1900, they shall cause to be published in Spanish and German, a sufficient number of copies of said laws to supply that portion of the inhabitants of the State who speak those languages and who may be unable to read and understand the English language."

Governor Ralph Carr Was Not the Only Coloradoan to Reject Racial and Ethnic Discrimination Against a Disfavored Group

To be sure, Colorado's history is replete with examples of racial and ethnic intolerance of the worst kind. From anti-Chinese riots in the late 19th Century to the political ascendancy of the Klu Klux Klan in the 1920s, Coloradoans have reflected the nation's deep rooted racial, ethnic, and religious prejudices. In fact, as I detail in a book chapter in an edited collection on state-responses to immigration, Colorado Governor "Big Ed" Johnson's decision to declare martial law against Mexican immigrants in 1936 embarrassed the state by politicizing racial and ethnic stereotypes of the worst kind.⁸

Nevertheless, as House Bill 17-1230 details, Coloradoans like Governor Ralph Carr during World War II demonstrated courageous leadership in publicly questioning the need and legitimacy for the removal and internment of Japanese Americans and Japanese nationals in the U.S. during World War II. During this period, Colorado contained one of the largest Japanese American populations in the nation as a result of "war relocation." Despite Governor Carr's leadership against racial prejudice, some Coloradans attempted to amend the state constitution to prevent these Japanese newcomers from owning real estate in the state.⁹ In the months leading up to the vote for the amendment, many of Colorado's Japanese Americans found themselves barred from public discussion of the matter. According to one person involved, "I think this a fine example of Fascism...when people are so fearful of facing frank discussion that they invent a device to allow only sympathetic persons in, then they are afraid to face the truth."¹⁰

The proposed amendment, however, was ultimately defeated in the statewide vote.¹¹ One newspaper, recognizing the significance of the defeat, boldly declared: "Colorado Voters are to be congratulated for their wisdom and tolerance in rejecting Amendment No. 3....This amendment... could readily have been a precedent for other and possibly more vicious prejudice legislation. On this basis it was rejected by a substantial majority. It is good to live in a state where *sanity and humanness can still exist* despite the emotions of war!"¹²

⁸ Tom I. Romero, II, *A War to Keep Alien Labor Out of Colorado: The "Mexican Menace" and Colorado's Depression-Era Militarization of Immigration Law and Policy*, in Carissa Hessick and G. Jack Chin, eds. *STRANGE NEIGHBORS: THE ROLE OF STATES IN IMMIGRATION POLICY* (New York University Press, 2014).

⁹ The amendment would have eliminated Art. II, s. 27 from the state constitution. This article provided that "Aliens, who are or may hereafter become bona fide residents of this state, may acquire, inherit, possess, enjoy, and dispose of property, real and personal, as native born citizens." See *Anti-Japanese Petition Filed With 8,000 Names to Spare*, DENVER POST, March 7, 1944.

¹⁰ *Three American-Born Japs Barred from Meeting for Amendment 3*, ROCKY MOUNTAIN NEWS (Denver), November 3, 1944.

¹¹ The City and County of Denver reflected very well the ambivalence regarding social equality and human rights in the state. While 72,652 Denverites voted in favor of the measure while 62,279 were against. At the same time, Denver voters overwhelmingly supported a state constitutional amendment that allowed women to serve on juries. *The Vote in Denver*, ROCKY MOUNTAIN NEWS (Denver), November 9, 1944. The amendment to allow women to serve on juries substituted the word "persons" in place of "men" in Art. II, s. 23 of the state constitution.

¹² "Tolerance in Colorado," ROCKY MOUNTAIN NEWS (Denver), November 10, 1944 (emphasis mine).

Colorado's Post-World War II Legal History Demonstrates a Commitment to Resist Acts of Racial Discrimination

After World War II, Colorado legislators and jurists continued to battle against many of the worst forms of racial malice and discrimination. In 1951, Colorado legislators passed the first Fair Employment Practice Act.¹³ The bill created what became the Anti-Discrimination Commission. In 1957, the Colorado state legislature dramatically expanded the powers of the commission by giving the institution jurisdiction over private employers. That same year, Colorado state legislators successfully repealed Colorado's territorial days anti-miscegenation statute.¹⁴ The repeal signaled in the words of Governor Stephen McNichols "a better climate in human relations in Colorado."¹⁵ In 1959, Colorado became the first state in the nation to enact a fair housing law that covered privately financed housing.¹⁶

In 1962, the Colorado Supreme Court examined the constitutionality of the state's fair housing law. Examining the authority of the state to act, Justice Otto Moore unambiguously endorsed the ability of the state's legislature to pass one of the most far reaching equal housing law's in the nation.¹⁷ In supporting the housing legislation, Justice Moore declared that the Court had "no hesitancy in stating that there are fundamental and inherent rights with which all humans are endowed even though no specific mention is made of them in either the national or state constitutions."¹⁸ Of particular importance for Justice Moore was the enhanced authority Congress originally extended to Colorado in the 1875 Enabling Act.¹⁹ Such authority, according to Justice Moore, "was careful to require that the state constitution shall 'make no distinction in civil or political rights on account of race or color'."²⁰ This gave, in the Court's estimation, the state legislature the ability to pass legislation that battled acts of racial and other forms of discrimination.

Conclusion

These are only a handful of examples demonstrating the various ways that Coloradoans have resisted racial and other forms of discrimination. House Bill 17-1230 is consistent with a longer history of Coloradoans, especially its political representatives, to speak out against discrimination, intolerance, and bigotry and politically safeguard our most vulnerable neighbors.

¹³ Colorado Legislature, *House Journal* (1951).

¹⁴ Colorado Legislature, *House Journal* (1957); 35 C.S.A. c. 107. s. 2; re-codified in 1953 as 53 C.S.A. c. 90-1-2.

¹⁵ Denver Commission on Human Relations, *Changing the Climate of Denver in Intergroup Relations: Fourth Annual Report* (1957), 23.

¹⁶ *Id.*, 155; Joint Memorandum from Paul Hartman and Theodore Leskes from the American Jewish Committee and the Anti-Defamation League of B'nai B'rith regarding the Colorado Fair Housing Law, April 22, 1959, ADL Collection, Box 13, FF 11.

¹⁷ Colorado Fair Housing Act of 1959, CRS, Ch. 148, Sec. 6(12). On the expansiveness of this act, see James A. Atkins, *HUMAN RELATIONS IN COLORADO: A HISTORICAL RECORD* 155 (1969)

¹⁸ *Colorado Anti-Discrimination Commission v. Case*, 380 P.2d 34, 39 (Colo. 1962.)

¹⁹ See Act of Mar. 2, 1875.

²⁰ 380 P.2d at 40.