

Alan E. Gentz
18399 CR 30, Sterling, CO 80751
970-522-8806 (H), 303-619-8698 (Cell)
gentzaj@hotmail.com

Thank you Senator Sonnenberg for taking action to correct a situation that has been undermining the conservation community in Colorado for over a decade. Many people have been harmed and I wholeheartedly support your Senate Bill 16-044 addressing contested conservation easement tax credit claims.

I'm Alan Gentz. I appreciate the opportunity to testify about my punishment for donating conservation easements in my community. It's been 10 years of agony so far, and I am still fighting the overreach and unconstitutional actions of the Colorado Dept. of Revenue and Division of Real Estate. I'm also hounded by the Attorney General's Office because they are obligated to defend the unconstitutional actions of Department employees.

I grew up on the land I donated. I spent my childhood with my Dad "custom farming" neighbor's fields which have since been taken out of ag production to become 4 housing subdivisions, Wal Mart, Home Depot, Auto Zone, and Burger King.

In 1989 the subdivision on our west fence line acquired water and sewer service from the City. Their need to cross our property granted us 200 water and sewer taps with appropriated water. Our property was slated for housing development 15 years prior to our donation. In 2008 our punishment began. First, the Dept. of Revenue in an act of ex post facto overreach demanded additional appraisals which were not statutorily allowed at the time of our 2006 and 2007 donations. One appraisal was required, but at our own expense we paid for 5. Those appraisals, which, by statute were to be kept confidential by the DOR as tax payer specific information, were then released by the DOR to the Conservation Easement Oversight Commission (CEOC). The August 31st, 2015 minutes of the CEOC meeting state – and I quote –

“Division of Real Estate Conservation Easement Program Manager Lutz reiterated that, according to statute, the appraisal review process is not within the Commission’s authority”. The release of our confidential information was an ex post facto application of 2008 legislation by the Department of Revenue which was a violation of our 4th amendment right. We were not made aware that we were discussed in a public meeting or that our privacy had been violated.

Next, our tax credits were disallowed based on the revocation of the appraiser’s license. We depended on the Department of Regulatory Agencies and the Division of Real Estate to provide us with qualified, competent appraisers. In a letter of inquiry the Dept. of Real Estate assured us, “Each active licensed appraiser must meet all qualifications in compliance with license law in order to be licensed”. I guess they goofed! The Division of Real Estate failed to protect us as consumers because they failed to provide us with competent appraisal professionals.

Our punishment “ramped up” when HB11-1300 passed in 2012. It seems the good intent of the legislators was to provide relief to donors caught up in the “blanket denials” resulting from the chaos, incompetence, and overreach of the Dept. of Revenue. However, without enough oversight or accountability, the employees of the Dept. of Revenue wrongly interpreted the legislation to mean they could violate the state and federal constitutions by imposing ex post facto law on donors dating back to 2000. It is unconstitutional to pass legislation today and make it retroactive to yesterday – but that is exactly the interpretation the Dept. of Revenue proceeded with and has gotten away with. That is why Senator Sonnenberg’s bill should be passed. Riding roughshod, the Dept. of Revenue required donors to “elect” to sign a new contract which nullified the donor’s original contract and their 4 year statute of limitations. If you refused to give the Dept. of Revenue your signature on their new “election” contract, they informed you that your statute of limitations was extended to 2016.

For us, our statute of limitations was extended an extra 5 years without our consent. For some donors their statute of limitations was extended an extra 12 years – and remember, penalties and interest accrue the entire time. Our original tax credit dollar amount in question was nearly doubled after the Dept. of Revenue extended our statute of limitations and ran penalties and interest.

But, this pales in comparison to the 1.4 million dollar bond the Dept. of Revenue attempted to make us post in order to access the judicial system. We have been told DOR employees enjoy “governmental immunity”. My first amendment right to petition the government for redress of grievances should not be blocked by governmental immunity and that is why this bill needs to be passed.

To rub salt in the wound, we have never received a response from the Dept. of Revenue to our requests for an administrative hearing dating back to 2008. If we had received a response this matter would have been resolved long before the violation of our statute of limitations. In continuing to ignore Citizen’s rights, the Dept. of Revenue is also wasting vast sums of taxpayer resources fighting Citizens who donated to a program benefitting future generations. We get to share in this loss of Colorado resources with every other Citizen of Colorado. We personally have endured 10 years of fruitless meetings with the Dept. of Revenue, countless phone calls, crushing legal fees, devaluation and slander of our family farm and heritage, and devastating stress and hospitalization resulting from the stress.

The following Dept. of Revenue employees: Barbara Brohl, Deborah Van Wyke, Lyle Macdonald, and Andrew Stone are accountable for actions that defy the reasonable performance of their duties. Colorado Revised Statutes 39-21-112, and 18-8-404 and 405 clearly state that extortion, fraud, and failure to perform duties carry penalties ranging from the loss of employment to prison and fines.

Senator Sonnenberg’s bill is the instrument that allows Colorado to do the right thing. Make whole the stewards who trusted in a program

created to preserve our heritage, land, and resources in all of Colorado
– from the prairie to the peaks.

Thank you for your time – And Pass This Bill!