

# COVID-19: The Surprise D&I Catalyst

**ALI METZL**  
BROWNSTEIN HYATT  
FARBER SCHRECK

The COVID-19 pandemic has exposed and exacerbated many long-standing cultural fault lines and accelerated other societal transitions that were already underway. Many of the changes wrought by the pandemic are therefore here to stay. It should come as no surprise, then, that the twin health and economic crises of 2020 will also certainly change how diversity and inclusion initiatives shape our workplaces for good – and forever.

The legal industry, like nearly every other industry worldwide, has been impacted over the past several months. As law firms and other legal organizations necessarily look to cut costs and adjust budgets in this diffi-

cult time, extra investments in diversity and inclusion such as affinity group conferences or gatherings, cultural celebrations and bias trainings, just to name a few, appear obvious targets. Likewise, the lack of access to safe, stable childcare and schools has impacted women and single working parents in a particularly stark and notable fashion. The digital divide has similarly been illuminated, and our new, pervasive reliance on reliable internet connectivity threatens to leave many women and diverse groups in the dark.

It would be too easy, however, to allow the COVID-19 pandemic to function as the end point for enhanced diversity and inclusion for our industry. Even to pause our efforts in this context would be disappointing and disastrous for individuals and the collective enterprise. Rather, there is a better

way to frame the pandemic and its impact on diversity and inclusion efforts in our industry. This devastating pandemic, instead, should rightly be understood as the unanticipated catalyst for diversity and inclusion.

The traditional corporate environment has been shattered in the past two months, sending the entire legal industry into a remote landscape. We have been transformed from a world where we were lawyers first and everything else second (if at all) to fluid hybrid roles of lawyer-teacher-care-giver-short order cook-housekeeper and more. Our outside-the-office lives have now been inextricably meshed with our professional lives. We all know the sound of a fussy toddler interrupting a conference call to ask for



ALEXANDRA METZL

CONTINUED ON PAGE 22...



JAY M. TIFTICKJIAN

**TIFTICKJIAN**  
LAW FIRM, P.C.



Author of:  
**Colorado DUI Defense:  
The Law and Practice,  
2nd Edition**

### COLORADO DUI DEFENSE

Recognized in The Best  
Lawyers in America  
2018 - 2020

AV\* Rated

**Barrister's Best / People's  
Choice Best DUI Lawyer**

(303) DUI-5280 | [DUI5280.COM](http://DUI5280.COM)

600 S. CHERRY ST. STE. 1105 | DENVER, CO 80246  
303-991-5896

## Gill & Ledbetter, LLP



### Anne Whalen Gill

Super Lawyer Selectee

5280 Top Lawyer

Barrister's Choice  
"Best Appeals Lawyer"

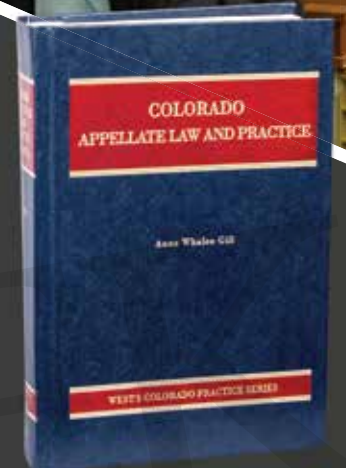
Author, Colorado Appellate  
Law and Practice, 3rd Edition

### H.J. "Jay" Ledbetter

Annual Attorney Ethics  
CLE lecturer

CBA Ethics Policy Committee

CBA Fee Arbitration Committee



(720) 328-2716 | [www.coloradoappeals.com](http://www.coloradoappeals.com)

### SIGNATURE COLLECTION CONTINUED FROM PAGE 6...

reopening of some activities and areas doesn't change his analysis because allowed gatherings are still limited.

"Given the strong culture and history of the initiative and referendum process in Colorado, the injunction sought by the plaintiffs would harm the public interest by negatively impacting citizens' fundamental right to initiative and referendum as provided by the Colorado Constitution," he wrote.

In his order, McGahey said Polis' executive order suspends technical requirements of the ballot initiative process, rather than substantive requirements. "The methods by which technical requirements of regulatory

statutes are accomplished is likely to be shaped by the COVID-19 pandemic for years to come," he wrote.

In a tweet Wednesday evening, Colorado Concern said the organization "disagree[s] with his conclusion, and will assess our situation and plan our next steps."

During the May 22 hearing, McGahey said he expected whatever order he made to ultimately get appealed to the state Supreme Court.

In an interview May 20, Brownstein shareholder Chris Murray said Title 1, Article 40 doesn't fall within the scope of regulatory statutes the governor has authority to suspend during a disaster emergency, because the law governing signature collection doesn't interfere with Polis's ability to take actions ad-

ressing the health crisis. He added even during the state's stay-at-home orders, people still had interactions with similar levels of contact as with a signature gatherer, such as with grocery store clerks and restaurant workers for takeout.

"We don't think that the requisite for triggering the governor's ability to suspend a statute under the Disaster Emergency Act has been met," Murray said.

He added the executive order may actually work contrary to Polis's possible intent of making sure the coronavirus pandemic doesn't chill grassroots efforts for ballot initiatives. People need to be able to depend on the framework set out by the state Constitution so they can work within it, and Murray said unexpected changes can

actually end up disadvantaging everyday people who want to get issues on a ballot but are not politically well-connected to influence those changes or who don't follow government developments for a living the way lobbyists, attorneys and journalists do.

Shortly after the case was filed, Murray said he believed the judge's granting of an expedited hearing was a signal of the importance of resolving the case quickly.

"Entering a temporary restraining order against the governor of the state, that's a big deal," Murray said last week. "I think he'd prefer to simply say, let's just decide this thing, and then that way there [don't] have to be any preliminary measures." •

—Julia Cardi, [JCardi@circuitmedia.com](mailto:JCardi@circuitmedia.com)

### SEXUAL MISCONDUCT BILL CONTINUED FROM PAGE 10...

misconduct to include all current sexual offenses against children, and "criminal behavior of a sexual nature" which includes requests for sexual favors "accompanied" by threats, violence or coercion.

Further, the bill allows claims from circumstances related to sexual misconduct to be brought against a person or entity that isn't the perpetrator of the sexual misconduct, according to the release.

House Bill 1296 also removes the "provision that a plaintiff who is a victim of a series of sexual assaults does not need to establish which act in the series caused the plaintiff's injuries," according to the site. In addition, the bill also eliminates a restriction in existing law in which a victim who is under disability or in a special relationship with the perpetrator of assault could not bring an action against a deceased or incapacitated defendant.

The bill would be effective for claims arising on or after Jan. 1, 2021, according to the release. However, it "allows for those victims for whom the current statute of limitations has not yet run to bring a claim based on the provisions of this law." The

state constitution was interpreted to guarantee "vested rights" in relation to the statutes of limitations but not to allow the legislature to make "retroactive changes to these limitations," according to the release.

The bill has been in the works for some time, and a similar bill was attempted in 2006, Michaelson Jenet said. That bill was hung up by the "look-back window," which would allow for those whose statute of limitations had run to still have recourse through a window that says the statute of limitations applies, she added.

Under Colorado constitutional law, it is nearly impossible to have a legislative pathway to create a look-back window, Michaelson Jenet said. In order to do that, a court challenge would be required.

"And sometimes, our laws are taken to court, and as a result of the ruling new laws are made, but what has happened in this situation is because of that the statute of limitations wasn't eliminated at a long, long time ago," she said.

So, those whose statutes would have been eliminated have not been, and "our law is written, if your statute has not run out, you are eligible to now try in a civil court," she said.

Opposition has come mainly from two sides, Michaelson Jenet said. One

comes from survivors whose statute of limitations has run out, who want that look-back window, "and say that the bill just isn't good enough without it," she added.

"My heart aches. ... I can empathize with their desire for justice of any sort, and, unfortunately, if we were to continue that particular battle right now, we'd run the risk of what happened ... where we lose the bill basically on its merits," she said, and that in turn would continue the wait for other people whose "clock is ticking."

The second side of opposition come from several organizations who were making sure they were not specifically being targeted, she said. "And we were not, that was not the intent of this bill." Michaelson Jenet mentioned that the Attorney General's Office has been working to get reparations paid for individuals from the Catholic Church "and we agreed to let that program to continue to run."

The Colorado Catholic Council, a group of Catholic bishops who speak on public policy issues, is opposed to the passing of House Bill 1296, according to its website. At the publishing this article, the council did not respond to requests for comment.

While there has been pushback and formal opposition from the Catholic Church, Michaelson Jenet said her

interactions with the church have been respectful. She added she often deals with legislation touching on topics that deal with mental health, sexual assault and children.

Often, there are people who are "passionately" on the flip side of an issue, "I will say that while the church is passionately on the other side of this issue ... they were incredibly respectful."

For Michaelson Jenet, she believes the legacy of the bill, if passed, would be "that victims of sexual assault have stood up and together and fought for many years to change the laws to protect the rights of other victims — even when they couldn't even protect or expand their own rights.

I think that legacy is going to be huge."

She said it is known that it can take long periods of time for young people to come to terms with the face they were assaulted, and find the strength to face their abuser.

"And putting an arbitrary timeline on that does not reflect the processes of social and emotional development and that was a way the system really defended the abuser — and now we will change those tables and we will defend the victim," she said. •

—Avery Martinez, [AMartinez@circuitmedia.com](mailto:AMartinez@circuitmedia.com)

### DIVERSITY & INCLUSION CONTINUED FROM PAGE 14...

a snack, the barking dog demanding to be let out or the alternating sounds of parental cooing with pointed, nuanced legal advice.

This is the symphony of life today and although these sounds have always been there, they were relegated to the background and more often forced out of view. This is a primary reason diverse groups have struggled in the legal industry historically — their unique experiences and voices were not given equal airtime despite all the creative and progressive policies, programs and benefits crafted in good faith and based on compelling data over the past several years.

The quest for an inclusive workplace, by definition, is the process of

creating an environment where any individual or group feels welcomed, respected, supported and valued. An inclusive climate embraces differences and offers respect in the words and actions of the organization so that all of its members are fully engaged and successful. The pandemic has unexpectedly gifted our industry that opportunity.

It is our job now to recognize that gift and harness it for the future. Diversity is fundamentally about seeing and supporting the multiplicity of backgrounds and demands on our time in a way that allows lawyers of all kinds to climb to the top.

If our incessant videoconferencing brings us into the living spaces of our colleagues, we will no longer be able to hide from the diversity of our realities. If we are compelled to ask

and truly hear the answer to the question "how are you?," then our bonds with our colleagues will be deepened and broadened in ways we couldn't have foreseen. If we are forced to see our professional obligations through the lens of others who have different yet valid challenges, then we can form deeper team bonds and provide more nuanced, empathetic, practical legal advice. Cultivating a workplace that openly embraces our myriad experiences, fosters different modes of thought and allows for multiple intelligences is the essence of diversity.

Now that it is no longer taboo to schedule conference calls and Zoom meetings around doctors' appointments, homeschooling responsibilities, other caregiving obligations or simply your mental health space, we can finally proclaim to inhabit inclu-

sive work environments.

Thus, the COVID-19 pandemic presents a once-in-a-lifetime opportunity to transform the way we work, to realign our expectations that life must bend to the dictates of work and redesign our workplaces, policies, benefits and our communication strategies to embrace and celebrate the fluidity of our new roles.

Ultimately, if we seize this unique moment and allow this transformation to wash over our workplaces permanently, then this terrible and tragic pandemic will usher in truly diverse and inclusive workplaces that allow all individuals, including diverse and underrepresented groups, to flourish.

—Ali Metz is a shareholder at Brownstein Hyatt Farber Schreck and founder and chair of Brownstein's Women's Leadership Initiative and Committee on Diversity, Inclusion & Equity.