

<p>Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED: April 15, 2022 3:36 PM FILING ID: 2B425A9CD3374 CASE NUMBER: 2022SC135</p>
<p>C.A.R. 50 to the Colorado Court of Appeals, 2021CA2019 District Court, Adams County, 2021CV30611</p>	
<p><b>Petitioners:</b> JAN KULMANN, in her official capacity, and THE CITY OF THORNTON, COLORADO, a Colorado municipal corporation</p> <p>v.</p> <p><b>Respondent:</b> CHERISH SALAZAR, an individual.</p>	<p>▲ COURT USE ONLY ▲</p>
<p><b>Attorneys for <i>Amicus Curiae</i> Colorado Municipal League:</b> Robert D. Sheesley, #47150 Rachel Bender, #46228 1144 Sherman Street Denver, CO 80203-2207 Phone: 303-831-6411 Fax: 303-860-8175 Emails: rsheesley@cml.org; rbender@cml.org</p>	<p>Case No. 2022SC135</p>
<p><b>BRIEF OF <i>AMICUS CURIAE</i>, THE COLORADO MUNICIPAL LEAGUE, IN SUPPORT OF PETITIONERS THE CITY OF THORNTON, COLORADO AND JAN KULMANN</b></p>	

## **CERTIFICATION**

I hereby certify that this brief complies with C.A.R. 28, C.A.R. 29, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

**The amicus brief complies with the applicable word limit set forth in C.A.R. 29(d).**

It contains 4,435 words (does not exceed 4,750 words).

**The brief complies with the content and form requirements set forth in C.A.R. 29.**

**I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and C.A.R. 32.**

*/s/ Robert D. Sheesley*  
Robert D. Sheesley, #47150

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... iv

IDENTITY OF CML AND ITS INTEREST IN THIS CASE ..... 1

SUMMARY OF ARGUMENT ..... 2

ARGUMENT ..... 3

    A. A popularly elected mayoral office is separate and distinct from a  
    councilmember office under Section 11. .... 4

        1. "Mayor" is more than a title. .... 4

        2. Section 11 recognizes the intentional distinctions between offices in the  
        same body in Colorado’s municipal system. .... 8

            a. A summary of Colorado’s distinct municipal structures. .... 9

            b. The popularly elected mayor is sufficiently distinguished in Colorado  
            law to recognize it as a separate office. .... 12

    B. Section 11 does not count partial terms. .... 16

CONCLUSION ..... 20

CERTIFICATE OF SERVICE ..... 21

## TABLE OF AUTHORITIES

### **CASES**

<i>Bickel v. Boulder</i> , 885 P.2d 215 (Colo. 1994).....	16
<i>Bruce v. City of Colo. Springs</i> , 129 P.3d 988 (Colo. 2006).....	3
<i>Carrara Place, Ltd. v. Arapahoe Cnty. Bd. of Equalization</i> , 761 P.2d 197 (Colo. 1988).....	9
<i>Colorado Ass’n of Pub. Employees v. Lamm</i> , 677 P.2d 1350 (Colo. 1984).....	9
<i>In re Interrogatories Relating to the Great Outdoors Colo. Tr. Fund</i> , 913 P.2d 533 (Colo. 1996). ....	9, 18
<i>Lorton v. Jones</i> , 322 P.3d 1051 (Nev. 2014).....	9
<i>People v. Y.D.M.</i> , 593 P.2d 1356 (Colo. 1979). ....	3
<i>Zaner v. City of Brighton</i> , 917 P.2d 280 (Colo. 1996). ....	12

### **CONSTITUTIONAL PROVISIONS**

Colo. Const. art XX .....	10, 12, 20
Colo. Const. art. XVIII, § 11(1).....	passim

### **STATUTES**

C.R.S. § 22-2-105 .....	10
C.R.S. § 22-31-105(3) .....	9
C.R.S. § 23-20-102 .....	10
C.R.S. § 23-30-105 .....	10
C.R.S. § 30-10-307 .....	9

C.R.S. § 31-1-201 .....	10
C.R.S. § 31-4-101(2) .....	13
C.R.S. §§ 31-4-102(2)-(3) .....	13
C.R.S. § 31-4-105 .....	14
C.R.S. § 31-4-107 .....	13, 14
C.R.S. § 31-4-205 .....	13, 14
C.R.S. § 31-4-207 .....	11, 13, 14
C.R.S. § 31-4-207.5 .....	13
C.R.S. § 31-4-301 .....	13, 14
C.R.S. § 31-4-302 .....	13
C.R.S. § 31-4-304 .....	13
C.R.S. § 31-10-302 .....	14
C.R.S. § 31-15-201 .....	13
C.R.S. § 32-1-902 .....	9
C.R.S. § 32-7-110 .....	9

**OTHER AUTHORITIES**

Colo. Mun. League, Home Rule Cities & Towns: Matrix Of Charters (2016) .....	11
David R. Morgan & Sheilah S. Watson, <i>Policy Leadership in Council-Manager Cities: Comparing Mayor and Manager</i> , 52 Pub. Admin. Rev., Wash., 438 (Sept/Oct 1992). .....	7

Commerce City, Colo., Home Rule Charter § 4.3(e).....	16
Durango, Colo., Home Rule Charter art. II, § 6.....	12
Grand Junction, Colo., Home Rule Charter, § 39.....	12
James H. Svara, <i>Mayoral Leadership in Council-Manager Cities: Preconditions versus Preconceptions</i> , 49 <i>The J. of Pol.</i> , 207, 207-227 (Feb. 1987).....	7
John W. Suthers, <i>The Application of Term Limits to Special District Candidates who are Declared Elected due to Lack of Challengers or Resign Prior to Expiration of their Term</i> , Formal Opinion No. 05-04 1 (August 16, 2005) <a href="https://coag.gov/app/uploads/2019/08/No.-05-4-The-Application-of-Term-Limits-to-Special-District-Candidates-who-are-Declared-Elected-due-to-Lack-of-Challengers-or-Resign-Prior-to-Expiration-of-their-Term.pdf">https://coag.gov/app/uploads/2019/08/No.-05-4-The-Application-of-Term-Limits-to-Special-District-Candidates-who-are-Declared-Elected-due-to-Lack-of-Challengers-or-Resign-Prior-to-Expiration-of-their-Term.pdf</a> .....	19
Ken Salazar, <i>Term Limits Provision Pursuant to Colorado Constitution Art. XVIII, Section 11, Amendment 17</i> , Formal Opinion No. 2000-02, 1 (February 9, 2000), <a href="https://coag.gov/app/uploads/2019/08/No.-00-2-Term-Limits-Provision-Pursuant-to-Colorado-Constitution-Art.-XVIII-Section-11-Amendment-17.pdf">https://coag.gov/app/uploads/2019/08/No.-00-2-Term-Limits-Provision-Pursuant-to-Colorado-Constitution-Art.-XVIII-Section-11-Amendment-17.pdf</a> .....	18
Ken Salazar, <i>Term Limitations Served by Colorado Elected Officials</i> , Formal Opinion No. 2000-05 (July 10, 2000).....	19
Nat'l Civic League, <i>Model City Charter—8<sup>th</sup> ed.</i> (2003) <a href="http://archive.cgr.org/onebataviacharter/docs/National_Civic_League_Model_City_Charter.pdf">http://archive.cgr.org/onebataviacharter/docs/National_Civic_League_Model_City_Charter.pdf</a> .....	6, 7
Nelson Wikstrom, <i>The Mayor as Policy Leader in the Council-Manager Form of Government: A View from the Field</i> , 39 <i>Pub. Admin. Rev.</i> , 270, 274 (May-Jun. 1979).....	8

The Colorado Municipal League (“CML”) respectfully submits this *Amicus Curiae* Brief in Support of Petitioners, the City of Thornton, Colorado and Jan Kulmann.

**IDENTITY OF CML AND ITS INTEREST IN THIS CASE**

CML, formed in 1923, is a non-profit, voluntary association of 270 of the 272 municipalities in the state of Colorado, comprising nearly 99 percent of the total incorporated state population and all municipalities with a population greater than 2,000. CML’s members include all 104 home rule municipalities, 167 of 169 statutory municipalities, and the lone territorial charter city.

CML appears as an *amicus* because this matter reaches far beyond Thornton’s boundaries. This Court’s decision will directly affect the elections and governance of a substantial portion of CML’s membership, particularly those structured like Thornton. This case also affects all municipalities whether or not they follow state or local term limits. An unnecessarily restrictive interpretation of the Colorado Constitution art. XVIII, § 11(1) (“Section 11”) will undermine local voters’ rights to choose their representatives, risk municipalities’ ability to field sufficient candidates to hold elections, create litigious local campaigns, and cause the loss of needed experienced officials. CML seeks to help this Court understand the roles of elected officials and how Section 11 should apply to municipal government structures.

## **SUMMARY OF ARGUMENT**

The office of the popularly elected mayor in the City of Thornton, as in most Colorado municipalities, is a discrete, critical role that is a separate office under Section 11 even though the mayor is part of a governing body. The district court's October 29, 2021 Order ("Order") relied on a narrow, superficial view of Thornton's mayoral office and disregarded meaningful explicit and implicit distinctions in municipal government structures across Colorado that, like Thornton, distinguish the mayoral office. If affirmed, the Order would unfairly deprive municipalities and their voters of dedicated, experienced, and largely uncompensated public servants in a manner that Section 11 does not intend.

The Order properly determined that a partial term, regardless of length or cause, is not a "term in office" under Section 11. An official might not serve the full, defined term because they were appointed following a vacancy or resigned due to personal circumstances. Limiting service based on partial terms or the cause of a partial term would exceed Section 11's plain language and purpose and arbitrarily restrict the rights of public servants and their voters.



## ARGUMENT

Section 11, as applied to municipalities, can respect both voters' intent and the legal distinctions in municipal elected offices. *See Bruce v. City of Colo. Springs*, 129 P.3d 988, 992–93 (Colo. 2006). While this Court may seek to avoid mischief in its interpretation of Section 11, there is no mischief in a municipality operating as it was designed. *See People v. Y.D.M.*, 593 P.2d 1356, 1359 (Colo. 1979). Municipalities like Thornton benefit from having mayors who, from their prior service on a council, know about government operations, key issues, and regional relationships. A mayor with experience is more likely to understand the procedures and soft skills that are essential to municipal leadership.

Artificially constraining officials' service beyond Section 11's explicit language would only serve to reduce the responsiveness and efficiency of government. This Court can adopt a straightforward and harmonious interpretation grounded in Section 11's explicit text and the ordinary understanding of the mayoral office in nearly all municipal governments. To that end, CML supports the preservation of Thornton's system of government and municipal elected officials' lawful opportunities to serve the public.

**A. A popularly elected mayoral office is separate and distinct from a councilmember office under Section 11.**

CML supports reversal of the Order’s holding that Section 11 considers Thornton’s Office of Mayor to be the same as the Office of Councilmember. The Order improperly ignored Section 11’s plain text, erroneously assessed Thornton’s distinct legal structure, and incorrectly elevated the purposes of Section 11 over its text and voter’s intent in adopting it. If affirmed, the ruling would lead to uncertainty among officials as to their eligibility for future office and would improperly rob voters of their choice of candidate and municipalities of experienced public servants. The following simple standard resolves these issues: under Section 11, a popularly elected mayor is a separate office from the other council offices.<sup>1</sup>

**1. “Mayor” is more than a title.**

Even in a council-manager system where the office has limited independent power, “mayor” is more than just a title. Community members in 1994 (and now) would view a mayor as the city’s leader without consideration for any technical limitations on their independence. From running meetings to regional representation to visibility in crisis events, a mayor is often the face of a municipality, speaking for a body and the people of a community. The Order incorrectly took a purely technical

---

<sup>1</sup> CML refers to city councils and town boards as “council” and councilmembers and board members as “councilmembers.”

approach and failed to consider critical mayoral functions that transcend the limits of authority in the council-manager system. The question is not how much power is “enough” for a court to recognize the distinction of the office; that would lead to an uncertain and overly technical application of Section 11.

First, it is incorrect to presume that a popularly elected mayor is not a separate office simply because the mayor must cooperate with or seek permission of a council to take certain actions. As discussed in section A.2, below, almost all of Colorado’s municipal systems are designed to recognize a distinct mayoral office. In a council-manager system, the mayor is necessarily a part of the council and has distinct powers and duties but cannot be the chief executive or administrator because those powers and duties are vested in a professional manager. The limitation of mayoral powers is essential to preserving that system of government but does not mean that the office is the same as that held by the rest of the governing body.

Second, even the limited powers of a mayor are not as insignificant as the Order suggests. The assignment of any powers to a mayor means that such powers are denied to the rest of a council. A ceremonial head of government is the person with whom the public most associates the government. The role of presiding over meetings should not be dismissed summarily; decorum and efficiency are critical to

effectively handling public business. If the mayor were not intended to be a separate position, charters and statutes would not go to such lengths to distinguish the office.

Recognizing the distinct mayoral office is consistent with Section 11's purpose of making "elected officials," not the body, responsive to citizens. The Order incorrectly conceived that Section 11's purpose is not served if a distinct mayoral office is recognized because that "ensures responsiveness from the Mayor only and not the other 8 members of City Council." Order, p.10. The Order fails to consider that individual members of a city council and a mayor can be responsive to the public even if the body does not act. Officials have a significant impact by raising issues for discussion, meeting with community members, and even voting on the losing side of an issue. A mayor can have an even greater impact through their limited powers and leadership role.

Third, the elected mayor, as the leader of the governing body, can guide the body in its policy-making function. As the introduction to the Ninth Edition of the National Civic League's Model City Charter notes: "The mayor is a comprehensive leader who draws on the features of the council-manager form of government to make it even more effective." Beginning in 1964, with the increasingly common popular election of mayors in council-manager systems, the National Civic League first identified a special status for a mayor's policy leadership role in a council-

manager system. Nat'l Civic League, *Model City Charter—8<sup>th</sup> ed.* (2003). The functional distinction of the mayoral office in a council-manager system was recognized thirty years before Section 11's adoption. Many of Colorado's home rule charters were adopted or modified after the National Civic League recognized and accounted for this growing distinction.

Public administration literature contemporaneous with Section 11's adoption and the adoption of many municipal charters recognized the informal but critical leadership role of the mayor in a council-manager government. Mayors can provide "unique types of leadership" and "strongly influence how well a council-manager government performs" beyond the formal powers granted by law and can be "the single most important agent of cooperation in relations among officials." James H. Svara, *Mayoral Leadership in Council-Manager Cities: Preconditions versus Preconceptions*, 49 *The J. of Pol.*, 207, 207, 209, 213 (Feb. 1987). Using informal sources of power, a mayor can serve as a liaison to various constituent groups, policy advocate, tone-setter, and stabilizer of an often-fractious governing system. *Id.* at 215-225; David R. Morgan & Sheilah S. Watson, *Policy Leadership in Council-Manager Cities: Comparing Mayor and Manager*, 52 *Pub. Admin. Rev.*, Wash., 438 (Sept/Oct 1992). Mayors in such systems are the most visible government representative and are the first target for citizen requests, as opposed to the less

known manager. Nelson Wikstrom, *The Mayor as Policy Leader in the Council-Manager Form of Government: A View from the Field*, 39 Pub. Admin. Rev., 270, 274 (May-Jun. 1979) (discussing policy leadership of mayors in Virginia council-manager systems through formal and informal resources of power).

The Order incorrectly assigned weight to a negative, narrow view of the limits on mayoral independence. The mayoral role within a council-manager system should be viewed in its entirety as part of a larger system with many written and unwritten functions. It is not appropriate to leap to the conclusion that these limitations were intended to erase the meaning and expectations of the mayoral office that would have been clear to voters in 1994.

**2. Section 11 recognizes the intentional distinctions between offices in the same body in Colorado’s municipal system.**

By adopting Section 11, voters applied term limits in municipal governance structures that existed for decades before 1994. These structures, like Thornton’s, intentionally distinguish the mayoral office from the rest of a governing body. Section 11’s focus on counting terms “in office” of “officials” with certain government types and its silence as to service on the governing body means that voters intended to respect these traditional distinctions. To the extent this Court perceives an intent by Section 11’s proponents to lump together all offices within a governing body regardless of how the body was intended to function, the proponents

did not adequately express that intent and it should not govern this Court's construction. See *In re Interrogatories Relating to the Great Outdoors Colo. Tr. Fund*, 913 P.2d 533, 540 (Colo. 1996); cf. *Lorton v. Jones*, 322 P.3d 1051, 1054–55 (Nev. 2014) (discussing term limits applied expressly to a “local governing body” in Nevada’s constitution). The plain language of the Constitution is controlling and any amendment must be construed in light of existing law when it was adopted. See *Carrara Place, Ltd. v. Arapahoe Cnty. Bd. of Equalization*, 761 P.2d 197, 202 (Colo. 1988); *Colorado Ass’n of Pub. Employees v. Lamm*, 677 P.2d 1350, 1353 (Colo. 1984). While there may be some ambiguity in the phrase “office,” the proper solution is to consider the concept of “office” in the context of the government in which it exists, not to refer to a plainly different term limit law from another state.

**a. A summary of Colorado’s distinct municipal structures.**

Municipalities are unique among Colorado’s local governments and deserve unique consideration under Section 11. No other government covered by Section 11 distinguishes between the offices comprising their governing bodies. Instead, the members of those governing bodies are elected at-large or from districts and the chairperson is selected by the board from among its members. See C.R.S. § 30-10-307 (county commissions); C.R.S. § 22-31-105(3) (school boards); C.R.S. § 32-1-902 (special districts); C.R.S. § 32-7-110(1) and (4) (regional service authorities);

C.R.S. § 22-2-105 (state board of education); C.R.S. § 23-30-105 (state university system); *see, e.g.*, C.R.S. § 23-20-102 (University of Colorado board of regents). There is no separation as to term of office and no board member, commissioner, or regent has special powers beyond procedural matters. There is no concept of “mayor.” For them, Section 11 applies to each member equally.

As background, Colorado’s municipalities can be classified as statutory cities or towns, territorial charter cities, or home rule cities or towns that have locally determined their structures pursuant to the authority granted in Article XX of the Colorado Constitution. *See* C.R.S. § 31-1-201. Home rule jurisdictions have “all other powers necessary, requisite or proper for the government and administration of its local and municipal matters, including power to legislate upon, provide, regulate, conduct and control” the creation of municipal officers and their powers, duties, qualifications, and terms. Colo. Const. art. XX, § 6(a) (“Article XX”). There are 104 home rule cities or towns, one territorial charter city (Georgetown), eleven statutory cities, nine of which use a mayor-council and two of which use council-manager system, and 156 statutory towns that use a mayor-trustee system. The mayor in most of these governments is popularly elected, is part of the governing body, and has powers and functions like Thornton’s mayor, albeit with some differences.



The council-manager system dominates among home rule municipalities like Thornton. Of the 104 home rule municipalities, about seventy-nine appear to be council-manager governments. *See* Colo. Muni. League, *Home Rule Cities & Towns: Matrix of Charters*, 1-2 (2016). The mayoral office is often explicitly empowered or limited much like Thornton's. *See id.* at 4-43. Three home rule cities (Denver, Colorado Springs, and Pueblo) use a "strong mayor" system in which the mayor operates independently as the city's executive while the council has limited, primarily legislative powers. The rest use structures (like a mayor-council-manager structure) that assign some additional independent power to the mayoral office; the mayor stays part of the legislative body and may rely heavily on an administrator who functions like a manager.

The trend in Colorado home rule municipalities with a council-manager form of government is to switch to a popularly elected mayor who remains part of the governing body. Littleton and Boulder amended their charters to do so in 2020. All statutory cities chose to directly elect their mayor after being given the option to do so in 1989. *See* C.R.S. § 31-4-207. Councilmembers may be elected at-large, from wards (as in Thornton), or some combination thereof. These home rule cities tend to preserve the council-manager structure but, like Thornton, assign powers and duties to the mayor that are not shared by councilmembers. Significantly, only eighteen

home rule municipalities continue the older practice of the council selecting a mayor or president from among its own members to a limited term. *See, e.g.*, Durango, Colo., Home Rule Charter art. II, § 6; Grand Junction, Colo., Home Rule Charter § 39.

**b. The popularly elected mayor is sufficiently distinguished in Colorado law to recognize it as a separate office.**

As Thornton argues, several factors distinguish the mayoral office, but the Order erroneously tried to weigh whether those powers were distinct enough to merit separate treatment under Section 11. Section 11 must be interpreted in a way that recognizes municipal structures without requiring a technical analysis of express mayoral powers in any given municipality. Narrow and technical constructions of initiated amendments should be avoided if they contravene the intent of the electorate. *See Zaner v. City of Brighton*, 917 P.2d 280, 283 (Colo. 1996). Further, any construction of Section 11 must avoid conflict with the authority of home rule jurisdictions under Article XX to define their municipal offices. *See id.* (citations omitted). Even though Section 11 expressly applies to home rule jurisdictions, there is no evidence that voters intended to modify the offices of home rule jurisdictions or disregard the commonly understood distinction of the mayoral office. This Court need not question whether the powers of a mayor are sufficiently distinct because the popular election of a mayor by itself distinguishes that office under Section 11.

Distinctions in the powers, terms, and role of the mayor in statutory municipalities support this contention and are mirrored, to varying degrees, in home rule charters across the state. Like Thornton's charter, state law defines and empowers mayoral and council offices separately. *See* C.R.S. § 31-4-101(2) (cities); C.R.S. § 31-4-102(2) to (3) (same); C.R.S. § 31-4-205(1) (manager cities); C.R.S. § 31-4-207 to -207.5 (same); C.R.S. § 31-4-301 (towns); C.R.S. § 31-4-302 (same). The mayor is always considered part of the council in statutory municipalities. *See* C.R.S. § 31-4-102(3) (cities); C.R.S. § 31-4-207.5 (cities with manager); C.R.S. § 31-4-301 (towns); C.R.S. § 31-4-302 (same). The council, or governing body, is vested with general powers and authority unless otherwise specified. *See, e.g.,* C.R.S. § 31-15-201 (council administrative authority).

Mayoral authority, including voting, veto, and executive powers, can be adjusted in statutory cities and towns (unless a manager form has been adopted), just as they may be in home rule jurisdictions. *See* C.R.S. § 31-4-102(2) to (3) (cities); C.R.S. § 31-4-207.5 (manager cities); C.R.S. § 31-4-302 (towns). Mayors in statutory cities and towns may have more powers than in council-manager systems, including the ability to direct appointed officers, even though the mayor is part of the council. *Compare* C.R.S. § 31-4-107(2) (cities), C.R.S. § 31-4-207.5 (manager cities), *and* C.R.S. § 31-4-304 (towns). Section 11 cannot be applied consistently if

its application requires measurement of the powers of an office that can be changed easily.

Similarly, the terms of office for each office are set at two years but can be changed to four years for the mayor, council, or both. *See* C.R.S. § 31-4-107(3) (cities); C.R.S. 31-4-205 (manager cities); C.R.S. § 31-4-207(2) to (3) (same); C.R.S. § 31-4-301 (towns). Thus, by statute, a mayor may have a two-year term while a council or board member has a four-year term, or vice versa. Section 11's different methods of counting two-year terms and four-year terms exposes the intent to keep the distinction of the mayoral office. Section 11, by counting such terms differently, acknowledges that the offices would be treated differently. Section 11 also has no mechanism for accounting for a period of service if the term of an office is changed.

By itself, the existence a separately elected mayoral office shows that voters did not intend to treat that office the same as other council or board offices for term limits purposes. Typically, the mayor is elected at-large while council seats are elected from wards, at-large, or a combination thereof. *See* C.R.S. § 31-4-105 (cities); C.R.S. § 31-4-205 (manager cities); C.R.S. § 31-4-207 (same); C.R.S. § 31-4-301 (towns). At-large offices, like the mayor, require a greater number of signatures on a nominating petition to even run for office. *See* C.R.S. § 31-10-302(2).

If a two-term councilmember seeks a mayoral office, their old councilmember office is open for election and opportunities for public service are created. The mayoral candidate would face the judgment of the entire electorate and not just a subset in a ward, meaning they must be responsive to a broader group of citizens. If elected, that candidate would bring fresh ideas to the distinct mayoral office and the municipality would not lose the benefit of an experienced servant. The new mayor would also be subject to term limits in that office. Nothing in these outcomes inhibits Section 11's purpose.

Any concern for career politicians in the municipal realm is overstated. First, the terms of Section 11 permit officials to run for other offices, but, like a mayor, that candidate would likely face a new electorate. Second, municipal elected office is hardly a lucrative endeavor. Most municipal elected officials receive little compensation for their efforts and are not salaried like many other elected officials. They spend dozens of hours a month in public meetings, preparation, serving on subcommittees, boards, or commissions, attending community events, and meeting with citizens. A mayor is likely to do more and may receive some added compensation. For all this work, most may expect a stipend ranging from a few hundred dollars to, in some cases, approximately one thousand dollars per month.

A decision affirming the Order on this issue will lead to absurd results in municipalities of all sizes and types across Colorado, contrary to this Court's standard for reviewing constitutional amendments. *See Bickel v. Boulder*, 885 P.2d 215, 229 (Colo. 1994). Candidates may choose to not run for office believing they are term-limited or may face legal challenges that distract them from key local issues that voters want addressed. Sitting officials may be challenged in the middle of their terms. Some municipalities, particularly small towns, may not be able to field enough candidates to conduct an election at all. Only some local term limits explicitly separate the mayoral office. *See, e.g., Commerce City, Colo., Home Rule Charter § 4.3(e)* ("The mayor shall, for purposes of term limits, be considered a position separate and apart from other members of the city council with no person serving more than two (2) terms in either position."). Those that do not may be thrown into question.

While voters intended to broadly restrict public service, there is no evidence that voters intended to erase the distinctions that define their systems of municipal government. For these reasons, Section 11 needs no further inquiry to recognize the distinct office of a popularly elected mayor.

**B. Section 11 does not count partial terms.**

The Order correctly determined that Section 11 counted a period of service only if the full term was served. Section 11 offers no basis for applying limits based on partial terms caused by legitimate resignations, as other constitutional provisions do, and provides no standards to measure how a period of service should be counted. To hold otherwise would violate the rules of construction of initiated constitutional amendments and would unfairly restrict opportunities for public service and the rights of voters to choose their representatives.

First, as this Court recognized in framing the question on appeal, there is no need to address the fictional, rogue candidate because the partial term here was caused by a “legitimate” reason. Kulmann resigned because Thornton’s voters elected her to a different office. Municipal officials may leave office for many personal or legal reasons, like illness, family needs, a new job that requires their full attention, a move from the municipality, or a military deployment. Officials are recalled from office or resign in protest. Officials serve a partial term by filling a vacancy created by one of these resignations. In any of those situations, Section 11 should limit neither the former official who did not complete a full, legally defined term from seeking re-election nor voters from choosing a qualified candidate. There is no need to manufacture a standard and there is no abuse to be prevented.

Second, the text and purpose of Section 11 do not support a judicially created partial-term rule. Section 11 counts terms in office, not the election to office or the length of a term served. Section 11 only references the length of a term, as defined by law, in determining whether two or three consecutive terms are allowed. Section 11 certainly does not provide any basis by which to judge why a complete term was not served. Blue Book references to other term limits in the Colorado Constitution that do address partial terms should not govern this Court's construction because the proponents failed to adequately express any intent to count partial terms. *See In re Interrogatories*, 913 P.2d at 540. Instead, the proponents simply chose to restrict an official's ability "to serve more than" two or, in some cases, three "terms in office."

The Attorney General's Formal Opinion No. 2000-02 correctly recognized Section 11's specific omission of language to address that issue, despite mirroring other language from prior term limits initiatives. Ken Salazar, *Term Limits Provision Pursuant to Colorado Constitution Art. XVIII, Section 11, Amendment 17*, Formal Opinion No. 2000-02, 1, 10 (February 9, 2000), (discussing partial term served following appointment to office). Two later Attorney General opinions, however, focused excessively on their perception of Section 11's purpose to manufacture an answer. Instead of relying on the plain language of Section 11 and recognizing that voters did not intend to address partial terms, those opinions improperly created an



artificial standard that reaches unfair and unintended outcomes that do not reflect the reality of municipal offices. *See* Ken Salazar, *Term Limitations Served by Colorado Elected Officials*, Formal Opinion No. 2000-05 (July 10, 2000); John W. Suthers, *The Application of Term Limits to Special District Candidates who are Declared Elected due to Lack of Challengers or Resign Prior to Expiration of their Term*, Formal Opinion No. 05-04 (August 16, 2005).

Contrary to the Attorney General's conclusion in Formal Opinion No. 2005-04, a resignation rarely, if ever, would undermine Section 11's purpose. *See* Formal Opinion No. 05-04 1, 5. Any resignation creates an opportunity for public service and any suggestion of abuse is a smokescreen to justify an unsubstantiated construction of Section 11. Moreover, someone who resigns from office but chooses to run again is directly accountable to the electorate; they have no entitlement to office and election is never guaranteed. Finally, career politicians, if such a thing exists in a municipal government, would be unlikely to voluntarily resign their office. Voters surely did not intend to penalize themselves by prohibiting the continued service of an official whose term was cut short for legitimate reasons.

In the absence of a constitutional mandate, local voters should decide whether the reason that a candidate served a partial term is acceptable or not. Any other solution would be entirely manufactured and deprive local governments of the

service of qualified and experienced public servants who want to dedicate their time to the service of their communities. This impact would be especially unfair in smaller towns that have difficulty fielding enough candidates for elections. While some local term limits explicitly address partial term limits, many do not; a novel interpretation of Section 11 would undermine the intent of those systems and undermine home rule authority to define the terms of municipal offices. Section 11 needs no assistance and should be applied as written and in harmony with Article XX.

### **CONCLUSION**

CML requests that this Court decide both questions in favor of the City of Thornton and Jan Kulmann. Section 11 should recognize the distinct office of a popularly elected mayor, even in a council-manager system. Artificial measures to address partial terms are unnecessary and were not intended by voters. These interpretations are supported by Section 11 text and purpose and preserve municipal institutions and local voters' expectations.

**DATED** April 15, 2022.

By: /s/ Robert D. Sheesley  
Robert D. Sheesley, #47150  
Rachel Bender, #46228  
1144 Sherman Street  
Denver, CO 80203-2207

Attorneys for *Amicus Curiae*  
Colorado Municipal League

**CERTIFICATE OF SERVICE**

I hereby certify that on this April 15, 2022, a true and correct copy of the foregoing **BRIEF OF AMICUS CURIAE, THE COLORADO MUNICIPAL LEAGUE, IN SUPPORT OF PETITIONERS THE CITY OF THORNTON, COLORADO AND JAN KULMANN** was served via Colorado Courts E-Filing to the following:

Josh A. Marks  
Rudy E. Verner  
Berg Hill Greenleaf Ruscitti LLP  
1712 Pearl Street  
Boulder, CO 80302  
jam@bhgrlaw.com  
rev@bhgrlaw.com

Robert A. McGuire  
1624 Market Street, Suite 226  
Denver, CO 80202  
ram@lawram.com

By: /s/ Robert D. Sheesley  
Robert D. Sheesley, #47150  
General Counsel  
Colorado Municipal League