COLORADO SUPREME COURT 2 East 14th Avenue Denver, Colorado 80203	
On Certiorari from the Colorado Court of Appeals Case No. 2023CA1908 Opinion by the Honorable Judge Grove, Judges Lum and Freyre, concurring Case No. 2024CV30320 El Paso County District Court The Honorable Eric Bentley Case No. 2023CV31616	
Petitioner: JAIMI J. MOSTELLAR v. **Respondent:** CITY OF COLORADO SPRINGS	**▲COURT USE ONLY▲**
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BRIEF OF *AMICUS CURIAE* COLORADO MUNICIPAL LEAGUE IN SUPPORT OF RESPONDENT CITY OF COLORADO SPRINGS

CERTIFICATION

I hereby certify that this brief complies with C.A.R. 28(a)(2-3), 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 3,570 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/ Rachel Bender
Rachel Bender, #46228

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The Colorado Municipal League ("CML") respectfully submits the following *Amicus Curiae* Brief in Support of Respondent City of Colorado Springs ("Colorado Springs").

IDENTITY OF CML AND ITS INTEREST IN THE CASE

CML, formed in 1923, is a non-profit, voluntary association of 271 of the 273 cities and towns located throughout Colorado, comprising nearly 99 percent of the total incorporated state population. CML's members include all 108 home rule municipalities, 162 of the 164 statutory municipalities, and the lone territorial charter city. This membership includes all municipalities with a population greater than 2,000. CML regularly appears in the courts as an *amicus curiae* to advocate on behalf of the interests of municipalities statewide. CML's members have a strong interest in this case as they regularly receive notices of claim under the Colorado Governmental Immunity Act (CGIA) and will be negatively impacted by a ruling that alters the well-established, strict deadline for filing such a notice with a governmental entity.

CML's participation will provide the Court with a statewide perspective on the importance of preserving the strict 182-day time frame for filing a notice of claim under the CGIA. CML was involved in working on the 1986 legislation that amended the CGIA to clarify that the notice deadline is a strict jurisdictional

requirement that runs from the date of the discovery of an injury. Reversing the decision of the Court of Appeals would undermine the purpose of the strict notice time frame, shifting the burden from claimants to governmental entities and eliminating the certainty provided by the CGIA's long-standing jurisdictional requirements. This Court need not issue a ruling that goes against clear statutory language and decades of case law to remedy a perceived fairness issue.

ARGUMENT

In this case, this Court must decide whether to overturn clear statutory language, well-supported by legislative history, that decades of appellate court decisions have consistently interpreted. Doing so would risk judicial interference into the authority of the legislative branch without a compelling reason to do so. Colorado's General Assembly carefully crafted the provisions of the CGIA to strike the appropriate balance between remedying harm to a private individual and protecting the public interest, which includes public entities serving as good stewards of taxpayer money and providing important public services. This Court should decline to override the will of the legislature based on unfounded assertions of unfairness.

I. A judicial exception to the strict jurisdictional notice of claim filing deadline would contravene clear statutory language, legislative history, and controlling precedent.

C.R.S. § 24-10-109(1) states:

> Any person claiming to have suffered an injury by a public entity or by an employee thereof while in the course of such employment, whether or not by a willful and wanton act or omission, ***shall file a written notice as provided in this section within one hundred eighty-two days after the date of the discovery of the injury***, regardless of whether the person then knew all of the elements of a claim or of a cause of action for such injury. ***Compliance with the provisions of this section shall be a jurisdictional prerequisite*** to any action brought under the provisions of this article, and failure of compliance shall forever bar any such action.

(emphasis added). Based on this plain statutory language, this Court has recognized that the CGIA's requirement to timely file a notice of claim is a "jurisdictional prerequisite to suit under the CGIA, must be strictly applied, and failure to comply with it is an absolute bar to suit." *City & Cnty. of Denver v. Crandall*, 161 P.3d 627, 634 (Colo. 2007) (citing *Trinity Broad. of Denver, Inc. v. City of Westminster*, 848 P.2d 916, 927 (Colo. 1993); *E. Lakewood Sanitation Dist. v. Dist. Court*, 842 P.2d 233, 236 (Colo. 1992)).

This jurisdictional bar is referred to as a "non-claim statute," which is distinct from normal statutes of limitations in that they "are not subject to equitable defenses such as waiver, tolling, or estoppel." *Mesa Cnty. Valley Sch. Dist. No 51 v. Kelsey*, 8 P.3d 1200, 1206 (Colo. 2000); *see also Brown v. Walker Commercial,*

Inc., 521 P.3d 1014, 1022 (Colo. 2022). While this has not always been the state of the law regarding CGIA notices, it has been well established since the General Assembly modified the CGIA in 1986. To hold otherwise would be improper judicial legislation that erodes the plain language of the CGIA and undermines important reasons for this strict deadline.

In 1986, the General Assembly enacted House Bill 1196 ("HB1196"), 1986 Colo. Sess. Laws 873, which substantially amended the CGIA, serving both to clean up the statutory scheme and to "address some judicial constructions which weakened the effectiveness of the [CGIA]." Rep. Chuck Berry, Sen. Jim Lee, & Tami Tanoue, *General Assembly amends the Governmental Immunity Act*, COLORADO MUNICIPALITIES, May-June 1986, at 16 [hereinafter COLORADO MUNICIPALITIES], attached as **Exhibit A**. While HB1196 made numerous changes to the CGIA, as relevant here, it sought to rectify two court decisions that "eroded the effectiveness of the [CGIA's] 180-day notice requirement." *Id.* at 23.

First, in *State v. Young*, this Court held that the notice period did not begin to run until there was a reasonable opportunity for the claimant to discover the basic and material facts underlying their claim. 665 P.2d 108, 111 (Colo. 1983). HB1196 remedied this "by providing the 180-day notice period begins to run after the date of discovery of the injury, regardless of whether the claimant then knew all of the

elements of a claim or of a cause of action for the injury." COLORADO MUNICIPALITIES at 23; *see also Reg'l Transp. Dist. v. Lopez*, 916 P.2d 1187, 1193 (Colo. 1996) (explaining the legislature was responding to the court's holding in *State v. Young*, which "undermined the intent of the legislature").

The other decision overridden by the 1986 act was *Nowakowski v. District Court*, in which the Court deemed the notice requirement an affirmative defense rather than a jurisdictional requirement. 664 P.2d 709, 711 (Colo. 1983). HB1196 resulted in the CGIA's clear statutory language, relied upon today, that the notice requirement is a jurisdictional prerequisite and failure to comply forever bars the action. COLORADO MUNICIPALITIES at 23-24; *see also McMahon v. Denver Water Bd.*, 780 P.2d 28, 29 (Colo. App. 1989) (concluding General Assembly's 1986 amendments "intended to make strict compliance with [the notice time frame] provision a jurisdictional requisite for maintaining an action"). This change was intended to "provide certainty and to establish that the liability of government is not unlimited." *Lopez*, 916 P.2d at 1193 (citing *Hearing on H.B. 1196 Before the House State Affairs Committee*, 55th Gen. Assembly, Second Reg. Sess. (Audio Tape 86-8, Feb. 4, 1986 (statement of Representative Charles E. Berry, House sponsor of H.B. 1196)).

Based on this legislative history, it is evident that the courts strayed too far from the intent of the General Assembly when it first enacted the CGIA, requiring the passage of 1986's clarifying amendments. Through HB1196, the legislature clarified that the 182-day time frame for filing a notice of claim under the CGIA is a strict deadline not subject to any equitable considerations, and that it runs from the date of the discovery of the injury, regardless of whether all facts needed to support a claim are known. Any judicially created exception to this clear-cut statute would run counter to the legislatively adopted language, resulting in improper interference by the judicial branch. *See People v. Zapotocky*, 869 P.2d 1234, 1244 (Colo. 1994) (reiterating separation of powers doctrine "imposes on the judiciary . . . a proscription against interfering with the . . . legislative branch[]" and thus, "[c]ourts cannot, under the pretense of deciding a case, assume power vested in . . . the legislative . . . branch.").

The division of the Court of Appeals that heard this case agreed, finding in favor of Colorado Springs. However, one judge's special concurrence perceived policy issues of fairness and suggested that the General Assembly consider statutory modifications to C.R.S. § 24-10-109(1). *Mostellar v. City of Colo. Springs*, 2023 CA 1908, ¶¶ 22-23. Although the CGIA imposes no obligation on a governmental entity to respond to a notice of claim, that concurrence accused the

City of Manitou Springs of some kind of delay that should excuse Petitioner's failure to conduct reasonable diligence. *See id*., ¶¶ 23-25. The concurrence goes on to equate that city's supposed "delay" with this Court's precedent prohibiting misleading plaintiffs about compliance with the notice of claim requirement, as expressed in *Finnie v. Jefferson County School District R-1*, 79 P.3d 1253, 1258 (Colo. 2003). *Mostellar*, ¶¶ 25-26. Aside from the lack of factual allegations to support any suggestion of wrongdoing by the public entities involved in this matter or an endemic problem that necessitates legislative intervention, this unfounded accusation fails to consider a plaintiff's obligations in preparing and filing a notice of claim, a public entity's obligations upon receipt of a notice of claim (or lack thereof), the lack of involvement of Colorado Springs in the interaction between Petitioner and Manitou Springs, and the important governmental purposes served by the strict requirements of C.R.S. § 24-10-109(1).

II. Fairness is best preserved by reaffirming that strict compliance with the time frame for filing a notice of claim is required.

While the CGIA provides limited remedies for those injured by certain acts or omissions of government entities and employees, it has long been recognized as striking an important balance by protecting against excessive fiscal burdens that are ultimately borne by taxpayers and unlimited liability that "could disrupt or make prohibitively expensive the provision of . . . essential public services and

functions." C.R.S. § 24-10-102. In choosing to structure the CGIA in this way, the General Assembly has recognized that in some instances, it is "an inequitable doctrine." *Id.* While embracing the concept that the CGIA is, at times, intentionally inequitable from a plaintiff's perspective, upholding the strict deadline for filing a notice of claim does not undermine notions of fairness as asserted by Petitioner.

A. Plaintiffs appropriately have the burden to satisfy the notice requirements of the CGIA and have reasonable means to do so.

A plaintiff carries the burden "to determine the cause of the injury, to ascertain whether a governmental entity of public employee is the cause, and to notify the governmental entity" within the required time. *Trinity Broad.*, 848 P.2d at 927. This necessarily includes an obligation on the plaintiff to perform due diligence in identifying the public entity or employee responsible for the alleged injury. *See id.* (noting notice period was not delayed until time plaintiff knew Westminster was the source of the injury); *Grossman v. City & Cnty. of Denver*, 878 P.2d 125, 127 (Colo. App. 1994) (holding claimants have "a duty of reasonable diligence to determine the basic and material facts underlying [their] claim").

This Court has recognized, like the General Assembly, that "[a]lthough it can sometimes work inequitable results, the [C]GIA notice requirement is clear and the duty to comply with it falls upon the claimant, not upon the governmental entity." *Jefferson Cnty. Health Servs. Ass'n, Inc. v. Feeney*, 974 P.2d 1001, 1005 (Colo.

1998). There is no affirmative obligation in the CGIA for a government entity to respond to a notice of claim or correct errors in a notice of claim. Accordingly, plaintiffs have the burden to timely provide a notice of claim to the correct entity. Creating an exception like the one sought by Petitioner would improperly and unnecessarily shift that burden to the public entity for several reasons.

In this case, both the Petitioner and the Court of Appeals special concurrence assert, without support, that it was "impossible" for the Petitioner to comply with the CGIA due to Manitou Springs's delay or failure to notify her that it was not the responsible public entity. Although the incident occurred within the boundaries of Manitou Springs, it was incumbent upon Petitioner to investigate and determine the proper governmental entity to receive notice regardless of how obvious the entity at fault seemed to be. Moreover, the presumption of "impossibility" ignores at least three avenues Petitioner had available to investigate and fulfill her burden under the CGIA, instead of simply assuming that Manitou Springs was the responsible public entity.

First, individuals can submit record requests under the Colorado Open Records Act, codified at C.R.S. §§ 24-72-200.1 to -206, to obtain the information needed to comply with the notice requirements of the CGIA, including information

about the entity responsible for the location of the injury.[1] In this case, Petitioner could have submitted a CORA request to Manitou Springs seeking documentation evidencing the entity responsible for the bus stop sign. As the special concurrence noted, the agreement between Colorado Springs and Manitou Springs was just a few months old and readily available to Petitioner through a search of either city's records. *Mostellar*, ¶ 25. Such a step is prudent to confirm the proper entity to provide notice, especially given the regular and commonplace use of intergovernmental agreements (IGAs). *See, e.g.,* C.R.S. § 29-1-201 (encouraging governments to contract with other governments); C.R.S. § 29-1-206 (authorizing agreements for reciprocal law enforcement services); C.R.S. § 29-1-206.5 (permitting agreements for other government entities to provide emergency services); C.R.S. § 29-20-105(2) (sanctioning local government IGAs for comprehensive plans). This is particularly true for public transportation infrastructure, as was at issue in this case, given that Title 43, Article 4, Part 6 is fully dedicated to regional transportation authority law and C.R.S. § 43-4-603 discusses the process for creation of regional transportation authorities through

[1] Plaintiff also could have informally contacted Manitou Springs to inquire about the entity responsible for the bus stop sign. Public entities often respond voluntary to certain inquiries of that nature.

IGAs. By taking this simple step to investigate, Petitioner could have timely determined that Colorado Springs was the proper entity to receive notice.

Second, Petitioner could have issued a notice of claim to multiple public entities that conceivably could have some responsibility. This is a standard practice that many attorneys follow when anticipating claims against government entities, even when there is no suggestion that more than one entity was involved. That action would have been prudent in this case where the alleged injury occurred in one jurisdiction, adjacent to a state highway, and in connection with a transit stop. The circumstances reasonably indicate that multiple entities may have been involved.

Third, Petitioner could have quickly filed her lawsuit and engaged in discovery for purposes of resolving issues of immunity. *See* C.R.S. § 24-10-108 (authorizing "discovery necessary to decide the issue of sovereign immunity); *Finnie,* 79 P.3d at 1260-61 (reiterating need to allow latitude in discovering evidence for immunity purposes). While this requires quicker action on the part of a plaintiff rather than waiting out the statute of limitations, this prudent step would both require a response from Manitou Springs and allow for discovery. *See* C.R.C.P. 26 (setting forth discovery provisions regarding disclosures, requests for production of documents, interrogatories, and depositions). Instead of availing

herself of this opportunity to protect her interests, especially when she apparently received no satisfactory pre-suit response from Manitou Springs, Petitioner filed this case two days shy of the two-year statute of limitations.

This Court should view skeptically the claim of "impossibility" of compliance with the CGIA's notice requirement and decline Petitioner's errant policy arguments that would create new burdens to the public entity beyond what is required by statute. This is particularly true when the so-called "impossibility" of determining the proper entity to receive notice is borne of a plaintiff's own assumptions and inaction. Moreover, shifting some part of the burden to comply with the CGIA's notice requirements from the plaintiff to the defendant would disrupt the well-established balance and force public entities to assist plaintiffs in the steps necessary to sue the public entity itself. A plaintiff's failure to conduct necessary and reasonable diligence does not create a 'trap for the unwary," *Feeney*, 974 P.2d at 1003, and a public entity should not be forced to carry the plaintiff's burden.

B. Excusing untimely notices of claim or mandating a government response would harm important governmental interests.

"The notice requirements of section 24–10–109 are designed to permit a public entity to conduct a prompt investigation of the claim and thereby remedy a dangerous condition, to make adequate fiscal arrangements to meet any potential

liability, and to prepare a defense to the claim." *Woodsmall v. Reg'l Transp. Dist.*, 800 P.2d 63, 68 (Colo. 1990). The special concurrence faults Manitou Springs for allegedly not conducting a "prompt investigation." *Mostellar*, ¶ 25. However, while the CGIA's notice requirements permit a public entity to conduct a prompt investigation and allow a public entity to respond to a notice, there is neither an obligation to do so nor an obligation to share the results of any such investigation with the plaintiff.

What the Petitioner and Court of Appeals special concurrence fail to appreciate is that Colorado Springs – the defendant in this lawsuit – had no role in how Manitou Springs choose to investigate and respond to the notice of claim and should not be punished for any perceived shortcoming by Manitou Springs. If this Court were to create an exception for this type of scenario, an unaware municipality like Colorado Springs loses all the benefits of a timely notice of claim through no fault of their own. This means that Colorado Springs had no ability to timely correct the problem, could not timely preserve evidence, and had a very limited runway to plan for the logistics and funding of a defense. This Court has recognized the harm that results from a late notice of claim:

> It is easy to see the prejudice caused to a public entity like RTD by a late notice of claim given more than 180 days after an accident. Evidence may be lost making it difficult for RTD to assess the merits of the claim

> and to prepare its defense. Expedient notification also enables a public entity to remedy a potentially dangerous situation promptly.

Lopez, 916 P.2d at 1194 (internal citations omitted). This contravenes notions of fairness as it relates to Colorado Springs.

Additionally, despite suggestions to the contrary, it is wrong to assume that a public entity would engage in manipulation or gamesmanship in these types of cases. Manitou Springs likely had nothing to gain by "hiding" the fact that they are not the responsible entity. There are non-nefarious reasons at play that a public entity might not notify a claimant of their error in naming the wrong public entity or employee.

First, public entities vary greatly in their staffing and resources and, as a result, may have very different policies or practices as to how they review and respond to notices of claim. While some large municipalities may have a department that is tasked with handling various types of legal claims or matters, other municipalities may have an entire staff of three people. As previously mentioned, public entities have no obligation to do anything in response to a notice of claim. Forcing public entities to investigate and respond to every notice of claim in some manner could be difficult to impossible for some entities due to their limited staff or resources. Such a mandate would be costly even for larger public

entities given that they would have to dedicate time and resources to investigate all notices of claim, many of which never materialize into actual lawsuits.

Second, public entities often receive notices of claim in cases where they are clearly not at fault. Notices of claim are easy to send, and it is common for attorneys to over-include public entities to avoid missing a potential defendant. Public entities should not be mandated to expend resources to respond to claimants who choose to over-notify public entities or employees who may be responsible for potential claims.

Aside from the resource challenges that would be present, imposing a broad new mandate on public entities to investigate and respond to a claimant regarding all notices of claim would be unprecedented and would risk putting public entities in the position of making a perceived admission. This response, like a requirement to notify a claimant that they have erred and another public entity is at fault, serves to benefit the claimant. However, the CGIA's timely notice requirement is not intended to confer a benefit to the claimant; rather, it is intended to confer a benefit to the public entity by providing it with the opportunity to prepare and address any issues or needs internally in whatever manner it deems appropriate. Holding otherwise serves to disrupt this well-defined division, upend the CGIA's clear-cut jurisdictional requirement that a notice of claim be filed with the property public

entity within 182 days, and would be a slippery slope to further erosion of the notice requirements of the CGIA.

CONCLUSION

This Court has long recognized that the statutory language enacted by the Colorado General Assembly requires a plaintiff to submit a notice of claim to the proper governmental entity within 182 days under the CGIA and that *any* failure to do so forever bars the claim. CML respectfully requests that this Court affirm this well-established legal precedent and decline to create a first-of-its-kind exception to a jurisdictional requirement that would undermine the plain statutory language of the CGIA, disrupt the careful balance intended by the legislature in passing the CGIA, and weaken a plaintiff's obligation to perform due diligence based on skewed notions of fairness.

Dated this August 15, 2025.

By: /s/ *Rachel Bender*
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CERTIFICATE OF SERVICE

I hereby certify that on this August 15, 2025, I filed the foregoing **BRIEF OF *AMICUS CURIAE* COLORADO MUNICIPAL LEAGUE IN SUPPORT OF RESPONDENT CITY OF COLORADO SPRINGS** via Colorado Courts E-Filing, which will send a true and correct copy to the following:

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