SUPREME COURT, STATE OF COLORADO Court Address: 2 E. 14th Avenue Denver, Colorado 80203	
Colorado Court of Appeals, Case Nos. 2014CA2099 and 2014CA2463, The Honorable Donald W. Marshall, Opinion by Judge J. Jones; Webb and Booras, JJ. Concur	
Arapahoe County District Court Case No. 11CV1076 Honorable Donald W. Marshall	
Petitioners: UMB BANK, N.A.; COLORADO BONDSHARES – a Tax Exempt Fund; MARIN METROPOLITAN DISTRICT, a Colorado Special District. v. **Respondent:** LANDMARK TOWERS ASSOCIATION, INC., a Colorado nonprofit corporation, by EWP-GV, LLC, as receiver for 7677 EAST BERRY AVENUE ASSOCIATES, LP, its Declarant.	▲COURT USE ONLY▲
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BRIEF OF THE SPECIAL DISTRICT ASSOCIATION OF COLORADO AND THE COLORADO MUNICIPAL LEAGUE AS *AMICI CURIAE* IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI BY PETITIONERS UMB BANK, N.A., COLORADO BONDSHARES AND MARIN METROPOLITAN DISTRICT

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 29, C.A.R. 32 and C.A.R. 53, including all formatting requirements set forth in these rules. Specially, the undersigned certifies that:

1. This brief complies with the word limit set forth in C.A.R. 29(d) and C.A.R. 53(a):

It contains 1394 words, which does not exceed 1900 words.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29, C.A.R. 32 or C.A.R. 53.

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

CASES

STATUTES

OTHER AUTHORITIES

INTRODUCTION AND INTERESTS OF AMICI

The Special District Association ("SDA") is a Colorado nonprofit corporation formed in 1975. The SDA's purpose is to preserve and enhance the legal and political environment for the existence and successful operation of the special district form of government, and to assist special districts in operating efficiently and appropriately. SDA's members include 1,597 special districts (958 of which are metropolitan districts) organized under C.R.S. §32-1-101, *et seq.* (2016) ("Title 32" or the "Special District Act"). The Colorado Department of Local Affairs lists 1,482 active metropolitan districts formed under and governed by the Special District Act. *See* Active Local Governments by Type https://dola.colorado.gov/lgis/lgType.jsf;jsessionid%20=cb376b551d17001a83a8d9d44aba (last visited June 10, 2016). Accordingly, SDA represents the interests of approximately 65% of the Title 32 metropolitan districts currently in existence.

The Colorado Municipal League ("CML" and with SDA, the "Amici Parties") was formed in 1923. CML is a non-profit, voluntary association of 267 of the 271 municipalities located throughout the state of Colorado, and its members comprise nearly 99 percent of the total incorporated state population.

The Amici Parties have a genuine interest in the impact on their members of certain determinations that were made by the Court of Appeals in *Landmark*

Towers Ass'n, Inc., *v. UMB Bank, N.A., et al,* April 21, 2016 (Case Nos. 14CA2099 & 14CA2463) (the "Opinion") regarding the Taxpayer's Bill of Rights ("TABOR") election held in connection with the organization of the Marin Metropolitan District (the "District"), and the electors who voted in the TABOR election. The determinations made in the Opinion affect members of both Amici Parties because of the uncertainty as to the validity of TABOR elections held by special districts. Municipalities and special districts have worked in conjunction with each other for decades to provide infrastructure to their overlapping constituencies in an efficient and cost-effective manner. Many of CML's members partner with special districts in this way, and have a direct interest in the continued capacity of special districts to finance, construct, operate and maintain infrastructure for the good of the membership of both the CML and the SDA.

ARGUMENT

A. The Ten-Day Time Limit in C.R.S. §1-11-213(4) Barred the Respondents' Procedural Challenge to the TABOR Election

The Court of Appeals held that the failure of the District organizers to provide a TABOR notice to the 130 Landmark purchase contract holders (the "Landmark Buyers"), whom the court deemed "eligible electors," created a substantive constitutional claim, and therefore Landmark's claims were not subject to the ten-day time limit in C.R.S. §1-11-213(4). Opinion at ¶48. Citing *Cacioppo*

v. Eagle County School Dist. Re-50J, 92 P.3d 453 (Colo. 2004), the court concluded that " . . . a claim relating to a failure to comply with a constitutional requirement, such as a lack of constitutionally required notice, would be substantive and not subject to the statutory constraints." Opinion at ¶47. This is a mischaracterization of *Cacioppo*. This Court held in *Cacioppo* that the claim *was* barred by the ten-day limit in C.R.S. §1-11-213(4) because the claim challenged the accuracy of the form and content of the notice, rather than the substantive issue of whether the school district had the legal or constitutional authority to levy the tax in the first place.

Here, Landmark's challenge relates to the fact that the Landmark Buyers never received a TABOR notice, which is like the purported misinformation in the TABOR notice in *Cacciopo*: both challenges involve defects in the election procedure. There is no allegation here that the District electors passed an illegal tax (such as a real estate transfer tax, which is prohibited by TABOR) or kept revenues in violation of the TABOR limits – claims that would be substantive in nature. Accordingly, Landmark's challenge to the TABOR election should be barred by C.R.S. §1-11-213(4).

Furthermore, as a matter of policy, it would be impossible to require special district election officials to identify every individual under contract to purchase a

home and to provide them with notice of an upcoming TABOR election. In most cases, the contract to purchase a home is not recorded in the real estate records, and unless there is a mandate that requires contract purchasers to affirmatively identify themselves, district election officials will not know of the existence of all potential electors in a special district election. The Court of Appeals has effectively created an insurmountable duty for election officials, and district election officials are unable to ensure the validity of special district elections.

B. The Misinterpretation of the Plain Language of the Special District Act's Requirements Governing Elector Eligibility Has Upset Over 45 Years of Existing Standards of Practice in Colorado

In 1970, the General Assembly authorized the use of purchase contracts that obligate a purchaser to pay property taxes during the pendency of the contract as a means of creating eligible electors. *See* Section (2) of Part 8, Article 17, Chapter 89 (1970); *see also* C.R.S. §32-1-103(5)(b). The language of Section (2) of Part 8, Article 17, Chapter 89 (1970) is largely identical to that of C.R.S. §32-1-103(5)(b), and together they have been used for over 45 years to qualify electors to vote in local government taxing district elections, including metropolitan district elections. C.R.S. §32-1-808, which governs the circumstances under which electors can be qualified through the use of such purchase contracts, was added in its entirety to the Colorado Revised Statutes in 2006 (coincidentally, the year before the District

was organized), indicating that the General Assembly had recently considered and affirmed the creation of electors in this manner.

A plain reading of C.R.S. §§32-1-103(5)(b) and -808 indicates the General Assembly's clear intent to allow for the creation of electors where none existed before. The qualification of electors through a purchase contract that obligates the purchaser to pay property taxes during the pendency of the contract is a hallmark of the Special District Act. Most purchase contracts, like those held by the Landmark Buyers, only require the payment of prorated taxes at the time of closing. If the Court of Appeals is correct in its conclusion that the Landmark Buyers who were obligated to pay prorated taxes at closing are electors, then there would be no need for the General Assembly to say anything in §32-1-103(5)(b) about the payment of property taxes, since almost all standard purchase contracts provide for the proration of taxes at closing.

Furthermore, the improper determination of the Court of Appeals that the Landmark Buyers *were* eligible electors will create problems for all special districts. Purchase contract holders like the Landmark Buyers are now eligible electors, even if their contracts never close, and in large, established districts like West Metro Fire Protection District or Highlands Ranch Metropolitan District, there could be hundreds of such purchase contract holders at any given time. The

election officials will have no way of knowing who to send TABOR notices to, leaving the validity of TABOR elections open to challenge.

C. The Passage of SB-211 Does Not Eliminate the Need for Judicial Review

In response to the Opinion, Senate Bill 16-211 ("SB16-211") was introduced in the last two weeks of the 2016 legislative session, was passed unopposed and was signed into law on May 18, 2016. The unanimous bi-partisan support for the bill in an election year signifies the gravity of the impact of the Opinion on the Colorado municipal bond market. SB-211 validates past special district elections where electors were qualified pursuant to C.R.S. §32-1-103(5)(b), but does not apply to future special district elections. Going forward, these electors are not considered eligible electors. At the same time, district election officials now have the impossible task of finding individuals who are considered eligible electors because they hold an unrecorded purchase contract obligating them to pay taxes at closing. SB-211 does not address either of these situations, and further judicial action is needed to bring clarity to the elector eligibility question.

CONCLUSION

The uncertainty that clouds the validity of special district elections could impede special districts' ongoing ability to provide much-needed public infrastructure. The burden could shift back to municipalities, who may be less

capable of financing and maintaining such infrastructure. In spite of the passage of SB-211, the inability to qualify electors under C.R.S. §32-1-103(5)(b) and the spectre of electors who cannot readily be identified still loom large. The Amici Parties respectfully request that the Court grant the Petition for Writ of Certiorari to bring resolution to these issues.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief of the Special District Association of Colorado and the Colorado Municipal League as *Amici Curiae* in Support of the Petition for Writ of Certiorari by Petitioners UMB Bank, n.a., Colorado Bondshares and Marin Metropolitan District was filed via ICCES and served electronically, on the 10th day of June, 2016, to:

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