

SUPREME COURT, STATE OF COLORADO  
Case No. 94SA130

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BRIEF OF THE AMICI

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VERN BICKEL, JERALD WESKALNIES, and CHARLES ALLEN WRIGHT, III,  
Plaintiffs-Appellants,

v.

CITY OF BOULDER, BOULDER VALLEY SCHOOL DISTRICT RE-2, and COUNTY OF  
BOULDER,

Defendants-Appellees

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## STATEMENT OF ISSUES

The issues set forth below are the issues set forth in the City of Boulder's and Boulder County's Response Brief. This Brief of the *Amici* will not address each of these issues, but "accepts the issues made and propositions urged by appealing parties." Denver United States National Bank v. People Ex Rel Dunbar, 29 Colo. App. 93, 480 P.2d 849, 851 (1970).

1. Is the applicable standard for review substantial compliance or strict scrutiny?
2. Must Appellants sufficiently plead that the alleged defects in ballot titles and election notices could have affected the election results?
3. Was it improper to include in the same ballot issue a request for authorization of bonds and taxes?
4. Does Colo. Const. Art X, Sec. 20 ("Section 20") prohibit voters from approving a funding mechanism that allows for mill levy increases in years beyond the year immediately following an election at which the voters approved the mechanism?
5. Did Appellants fail to state a claim with regard to all the remaining issues?

## STATEMENT OF THE CASE

Appellants sued the City of Boulder (the "City"), Boulder Valley School District RE-2 (the "School District") and the County of Boulder (the "County") to enforce the provisions of Colo. Const., Art. X, Sec. 20 ("TABOR"). The trial court entered summary judgments against the Appellants on all claims by Orders of December 21, 1993, Rec. 94 SC 65, p. 146 and February 2, 1994, Rec. 94 SA 130, p. 247.

## SUMMARY OF ARGUMENT

As set forth in their Statements of Interest, the Colorado Municipal League ("CML"), Colorado Counties, Inc. ("CCI"), Colorado Association of School Boards ("CASB") and the Special District Association of Colorado ("SDA") (the "Amici") believe that the issues involved in this case are of far-reaching import and will substantially impact the ability of all political subdivisions of the State of Colorado to finance their activities. Currently a number of political subdivisions whose voters approved issuance of bonds at November, 1993 elections are unable to issue bonds because of the uncertainty caused by this litigation. Moreover, future actions of local governments and decisions of local voters will be dependent on the Court's resolution of this case.

It is the Appellants' position that TABOR has eliminated the ability of any district (as defined in TABOR) to issue any general

obligation debt. It is further Appellants' position that the Appellees improperly submitted ballot issues involving bonded debt. Finally, Appellants' argue that alleged technical violations of TABOR invalidate the election regardless of whether the violation is alleged to have altered the outcome of the election.

The Amici believe that TABOR is much more limited in its scope and should not be construed to alter substantively all of Colorado's laws. Instead, should be interpreted to give effect to its overriding purpose -- requiring voter approval of tax increases and other specified actions. TABOR should not be interpreted to produce a procedural mine field of technical "violations" which negate and delay now and in the future the votes and wishes of local citizens. Stated differently, TABOR procedures should not be interpreted strictly or in an overly technical manner so as to invite endless litigation and delay as well as to frustrate the wishes of local voters.

Legal authorities do not require nor support strict compliance and overly technical interpretations of TABOR that negate voter approval. Amici adopt and incorporate herein the legal arguments presented in the response briefs of Appellees, the City of Boulder, Boulder County, and Boulder Valley School District RE-2.

#### **ARGUMENT**

**I. THE DECISION OF THIS COURT WILL AFFECT LOCAL GOVERNMENTS THROUGHOUT THE STATE AND, IF BASED ON TECHNICAL ARGUMENTS ADVOCATED BY APPELLANTS WILL UNDERMINE THE WILL OF LOCAL VOTERS.**

Amici submit that the decision of this Court will have far

reaching impacts for local voters and governments as outlined below.

**A. Impact on School Districts**

Bickel v. Boulder is of critical importance to school districts because it addresses the standard which public entities must follow to be in compliance with the election provisions of TABOR. The implications of this case go far beyond the interests of the parties before the Court. In the November 1993 election, there were four other Colorado school districts which were successful in obtaining voter approval to issue general obligation bonds for capital improvements and which have not been able to issue bonds due to the pendency of litigation.

In addition to the Boulder Valley School District, where the voters approved general obligation bonds in the principal amount of \$89 million, the following districts also received voter approval for general obligation bonds in the following amounts:

Douglas County School District RE-1	\$81,200,000
Eagle County School District RE-50J	\$36,500,000
Garfield School District RE-2	\$ 9,200,000
Roaring Fork School District RE-1	\$37,000,000

The delay in issuance of the general obligation bonds has adversely affected each of these school districts. Since November 1993, interest rates and construction costs have risen and school programs in these districts have suffered due to the inability to

finance their capital needs. Beyond this immediate impact, there also is considerable concern that unless the Court reaffirms the standard of "substantial compliance," as it applies to the election provisions of TABOR, disgruntled taxpayers, who voted with the minority on election day, will be able to delay every future issuance of general obligation bonds and frustrate the will of the majority.

Furthermore, the delay in issuing the general obligation bonds in each of these districts is having a significant financial impact on taxpayers due to increasing interest rates and construction costs. The following information summarizes the estimated impact as of May 11, 1994:

1. **Douglas County School District:** Based on the current interest rates, the additional cost to service the \$81.2 million in approved bonds is approximately \$13 million over the life of the debt issue. Increased borrowing costs may soon prevent the issuance of the bonds within the parameters approved by the voters. The approved maximum interest rate was 6.75%, only five basis points higher than the current level. This district, one of the fastest growing in the nation, desperately needs to begin building the projects it has promised its voters.

2. **Eagle County School District:** Interest rates have increased a full percentage point since November, 1993. This results in an increase in the interest cost of approximately \$3.5 million over 20



years. The district managed to secure an option to purchase one of the only available school sites. Unfortunately, this purchase may be jeopardized if the district is not able to use bond proceeds to exercise its option soon.

**Garfield RE-2 School District:** An increase of over one percentage point in interest rates has already occurred which results in a total cost increase of at least \$980,000 or \$65,000 per year for the Garfield School District. As enrollment in the district continues to rise, schools that were designated to be enlarged with the bond proceeds are experiencing significant negative impacts. Programs have been shuffled into inadequate spaces and computer labs have been eliminated to provide space for additional classrooms. In addition, the stress level among staff is heightened when one teaching space is divided in to two, when workrooms are eliminated and when teachers must travel to different classrooms each hour.

**Roaring Fork RE-1 School District:** The district estimates that the delay will cost the district an additional \$5 million in interest expenses over the life of the bonds. In addition, it is estimated that construction costs have gone up approximately 5%, which further increases the overall cost of the project. Moreover, by delaying construction for a year, the district will be forced to compress the construction schedule and complete the projects as quickly as possible. This will increase costs still further.

## B. Impact on Cities and Towns

The validity of many municipal elections may hang in the balance depending on the Court's decision in this case. Since TABOR's enactment, at least 138 municipal ballot questions have arisen under TABOR. Of these issues, 104 have been adopted by the voters. Of the total number of ballot questions, 28 have been tax questions, 44 have been debt questions, and 66 have been questions exclusively related to revenue and spending authority. Thus far, litigation concerning the wording of the TABOR ballot process is pending against at least three other municipalities<sup>1</sup>, one other county<sup>2</sup>, one other school district<sup>3</sup>, one special district<sup>4</sup>, and the State of Colorado itself<sup>5</sup>. This last case is currently pending in the Court of Appeals.

Furthermore, the author of TABOR, Douglas Bruce, has publicly "guaranteed" a lawsuit against the Scientific and Cultural Facilities District for ballot wording related to the extension of

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<sup>1</sup>Acosta v. Aurora, Arapahoe County District Court, 93CV2467 pending in Court of Appeals, 94CA577; Bruce v. City of Colorado Springs, El Paso County District Court, 93CV55; Campbell v. City of Arvada, Jefferson County District Court, 93CV2190.

<sup>2</sup> Morris v. Adams County, Adams County District Court, 93CV1323.

<sup>3</sup> Bernstein v. Pueblo County School District No. 70, Pueblo County District Court, 93CV623.

<sup>4</sup> Sarner v. Loveland Rural Fire Protection District, Larimer County District Court, 94CV252.

<sup>5</sup> Campbell v. Meyer, Denver District Court, 93CV4343; 93CA1565.

an expiring tax which was recently approved by the Colorado General Assembly (see HB 94-1222, Section 32-13-105 C.R.S.).

Many of the TABOR ballot questions and election notices that have been employed in cities and towns to date would be subject to the same challenges as have been raised by the Appellants in this case. In a broader sense, to the extent that the Court will establish the basic standards under which TABOR election challenges will be judged, every municipal voter who has approved a TABOR question or who may be asked to do so in the future has a stake in the outcome of Bickel v. Boulder.

### **C. Impact on Counties**

The counties of Colorado have a vital interest in the outcome of the issues raised in this litigation. November 2, 1993, was the first election opportunity for county government after enactment of TABOR. Twenty-five of the state's sixty-two counties (excluding the City and County of Denver) placed on their ballots a total of forty-five countywide ballot issues, with forty-three of them related to public finance and TABOR implementation, including tax and mill levy increases, spending authority, debt, revenue retention and other related issues. Colorado voters approved twenty-one of the forty-three questions.

Colorado's sixty-three counties expect a further increase in the number of public finance issues to be placed before county voters in the future. Counties have a major interest in the

Court's response to the questions raised in this litigation insofar as functioning of county government and implementation of the will of the voters is concerned.

**D. Impact on Special Districts**

Eleven Special Districts received voter approval in November's election to issue debt totaling over \$83 million. Due to the issues being litigated in Bickel v. Boulder, none of these Special Districts have been able to issue bonds. Special Districts which have already secured voter approval as well as the many districts which secure voter approval in the future will be affected by the outcome of this case.

**II. LEGAL AUTHORITIES DO NOT REQUIRE NOR SUPPORT STRICT COMPLIANCE AND OVERLY TECHNICAL INTERPRETATIONS OF TABOR WHICH WOULD NEGATE LOCAL VOTER APPROVALS.**

Amici adopt and incorporate herein the legal arguments presented in the response briefs filed by Appellees, the City of Boulder, Boulder County, and the Boulder Valley School District RE-2.

**CONCLUSION**

A decision by this Court will have far reaching impact on school districts, municipalities, counties, and special districts throughout Colorado. Adoption by the Court of the overly technical arguments advanced by Appellants would undermine the desires of

local voters in recent TABOR elections as well as in subsequent elections. Legal authorities neither require nor support Appellants' technical interpretations of TABOR which are simply designed to negate local voter approval.

Respectfully submitted this 24th day of May, 1994.

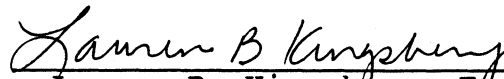
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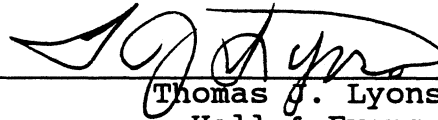
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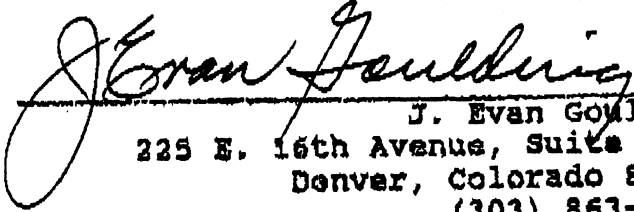
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**CERTIFICATE OF MAILING**

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