COLORADO SUPREME COURT 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202	FILED IN THE SUPREME COURT APR - 5 2013 OF THE STATE OF COLORADO Christopher T. Ryan, Clerk
COLORADO COURT OF APPEALS Opinion by Judge Graham Case No. 10CA2681	
Summit County District Court Trial Judge: The Honorable W. Terry Ruckriegle Case No. 2009CV143	
Appellant: TOWN OF DILLON, COLORADO v. **Appellee:** YACHT CLUB CONDOMINIUMS HOME OWNERS ASSOCIATION, et al.	**▲COURT USE ONLY ▲**
Attorney for Amicus Curiae: Rachel L. Allen, #37819 COLORADO MUNICIPAL LEAGUE 1144 Sherman Street Denver, CO 80203-2207 Phone: (303) 831-6411 Fax: (303) 860-8175 E-mail: rallen@cml.org	Case No. 12SC104

BRIEF OF THE COLORADO MUNICIPAL LEAGUE AS *AMICUS CURIAE* IN SUPPORT OF THE APPELLANT

CERTIFICATE OF COMPLIANCE

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

1. The brief complies with C.A.R. 28(g).

   Choose one:

   [√] It contains 5,258 words.

   [ ] It does not exceed 30 pages.

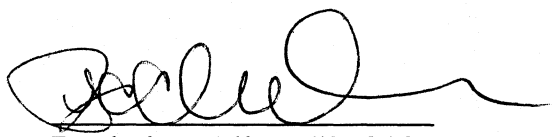
2. The brief complies with C.A.R. 28(k).

   [√] For the party raising the issue:

   It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record, not to an entire document, where the issue was raised and ruled on.

   [√] For the party responding to the issue:

   It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.



Rachel L. Allen, #37819
Attorney for the Colorado Municipal League

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND CONSTITUTIONAL PROVISIONS

COMES NOW the Colorado Municipal League by undersigned counsel and, pursuant to Rule 29, C.A.R., submits this brief as *amicus curiae* in support of Appellant, the Town of Dillon ("the Town").

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Amicus hereby adopts and incorporates by reference the statement of the issues presented for review in the Town's Opening Brief.

STATEMENT OF THE CASE & STANDARD OF REVIEW

Amicus adopts and incorporates by reference the statement of the case in the Town's Opening Brief, as well as the Town's statement regarding the standard of review, which appears on pages 5-19 in the Town's Opening Brief.

SUMMARY OF ARGUMENT

Parking enforcement and public works improvement projects are routine municipal actions. The only exceptional circumstance in the case at bar is that the Dillon Town Board enacted Ordinance Number 04-09 for the particular project at Gold Run Circle and Tenderfoot Street at the request of the Yacht Club Condominiums Home Owners Association ("HOA") and pursuant to the Dillon Town Charter § 3-7. The HOA challenged Town Ordinance 10-09 to enforce parking violations and Ordinance 04-09 to construct an improvement project

because the residents of the Yacht Club Condominiums had become accustomed to illegally parking on the Town's right of way ("ROW") in tandem (two vehicles parked one behind the other). The HOA preferred to use the Town's land for parking rather than comply with changes brought about by the improvement project to repair roads, create drainage, and connect to the Summit County recreation trail.

The Court of Appeals erred when it substituted its judgment for well-established case law holding that municipalities have broad police power to enact ordinances for the health, safety, and welfare of its citizens and that enacting such ordinances is reasonable. If this Court adopts the reasoning of the Court of Appeals, it ratifies an approach to challenging municipal regulation that manipulates the legislative process and upsets the balance of powers between the legislative, judicial, and executive branches of government.

ARGUMENT

I. THE DECISION OF THE COURT OF APPEALS PERMITS THE JUDICIAL BRANCH TO SUBSTITUTE ITS JUDGMENT FOR THAT OF THE LEGISLATIVE BODY, A RESULT AT ODDS WITH COLORADO LAW AND THE DOCTRINE OF SEPARATION OF POWERS.

City Councils and Town Boards customarily enact local law through the introduction and passage of ordinances. State statute grants the municipal ordinance power to governing bodies:

> Municipalities shall have the power to make and publish ordinances not inconsistent with the laws of this state, from time to time, for carrying into effect or discharging the powers and duties conferred by this title which are necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such municipality and the inhabitants thereof not inconsistent with the laws of this state. C.R.S. § 31-15-103.

At issue in this case is the Town's proper exercise of its police power to enact ordinances. The U.S. Supreme Court has recognized that the "public safety, public health, morality, peace and quiet, law and order" as some of the "more conspicuous examples of the traditional application of the police power to municipal affairs." Berman v. Parker, 348 U.S. 26, 32, 75 S.Ct. 98, 102 (1954); *see* Noble State Bank v. Haskell, 219 U.S. 104, 111, 31 S.Ct. 186, 188 (1911). Similarly, this Court has held that municipalities have "inherent power to establish reasonable regulations which tend to promote the public health, welfare and safety." City of Colorado Springs v. Grueskin, 422 P.2d 384, 387 (Colo. 1966). Based on these established formulations of law, the Town has the authority arising from its police power to enact ordinances to enforce parking violations on behalf of public safety and to carry out improvement projects on behalf of public convenience.

While the Town has express delegated authority to enact local ordinances, the ordinances must be reasonable under a standard deferential to local legislative action. This Court has held that an ordinance was reasonable when it concerned the health, safety and welfare of citizens, "and, therefore, was for a proper purpose under the police power." United States Disposal Systems v. Northglenn, 567 P.2d 365, 367 (Colo. 1977). Both the Supreme Court of the United States and this Court have stated repeatedly that "The basis of the exercise of the police power is the protection of human life and the protection of public convenience and welfare. Municipal regulations not having a fair relation to these subjects are unreasonable, but when they fairly tend to promote these objects, they are generally sustained." Denver v. D. & R. G. Company, 167 P. 969, 971 (Colo. 1917) (citing Dillon on Municipal Corporations § 1270), *aff'd*, 250 U.S. 241, 39 S.Ct. 450 (1919). The Town reasonably enacted ordinances to enforce parking violations and to enable an improvement project at Tenderfoot Street and Gold Run Circle. Because it was acting for the safety and public convenience of the Town, the Board was acting within the purview of its police power.

Additionally, the Fourteenth Amendment of the United States Constitution places two general restrictions on the lawmaking powers of states and their local governments: 1) All ordinances must, as an initial matter, meet judicially determined baseline standards of reasonableness or fairness to meet the

requirements of providing all citizens with due process of law, and 2) all citizens must be afforded equal protection of the law. This means that a municipality cannot discriminate arbitrarily against one or more groups of people without at least having some kind of "rational" policy basis for doing so.

At the request of the HOA and pursuant to Dillon Town Charter § 3-7, the Board passed the road improvement, drainage modification, and recreational path project as Ordinance 04-09 after passing a resolution. The Town acted in an abundance of caution by passing Ordinance 10-09 to enforce parking violations, and in doing so provided more process than is required for this proceeding. Local authority to regulate or prohibit the parking of vehicles has long existed in the Model Traffic Code codified at C.R.S. § 42-4-111(1)(a). It is undisputed that the HOA was disproportionally impacted by the Town's ordinances because they routinely parked illegally in the Town's ROW. This Court has held that the fact that an ordinance affects different people in different degrees does not invalidate the provision so long as the distinctions have a rational basis. Leadville v. Rood, 600 P.2d 62, 64 (Colo. 1979). Although the HOA was disproportionately affected by the Town's ordinances, disproportionality alone does not invalidate the ordinances.

Whether an ordinance is reasonable, as opposed to being arbitrary or capricious, is ultimately a matter to be resolved by the courts. An ordinance may be ruled invalid because its subject matter is in conflict with the state or federal constitution, or because it attempts to exercise powers not authorized by the state legislature, or because it is in conflict with state laws. Ordinances also must be "reasonable" and must be enacted in accordance with statutory provisions. *See, e.g.*, Moffit v. Pueblo, 133 P. 754, 755 (Colo. 1913). However, generally speaking, the courts have held that governing bodies are presumed to be acting in good faith when they enact ordinances, and the burden of proving an ordinance unreasonable rests with the person challenging the ordinance, and not the municipality. *See* Colorado Postal Telegraph Co. v. Colorado Springs, 158 P. 816, 818 (Colo. 1916). In a conventional case where this standard is applied, the HOA should bear the burden of proving that the Town's ordinance was arbitrary and capricious beyond a reasonable doubt. Bd. of County Comm'rs v. Simmons, 494 P.2d 85, 87 (Colo. 1972).

The Town validly exercised police power to enact reasonable ordinances, and the lower court erred in substituting its judgment. The HOA was able to sidestep the difficulties of a conventional challenge to the Town's ordinances by using an old Supreme Court land use case, Goldblatt v. Hempstead 369 U.S. 590, 82 S.Ct. 987 (1962). Cogent standards of reviewing police power action by local legislative

bodies exist to determine the case at hand, and that is the case law this Court should embrace in its present review.

The decision of the Court of Appeals is also at odds with the separation of powers doctrine. Article III of the Colorado Constitution provides that,

> The powers of the government of this state are divided into three distinct departments,—the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

This provision reflects the explicit and strict separation of powers in our state constitution: The legislative, executive, and judicial branches of government may exercise only their own powers and may not usurp the powers of another co-equal branch of government. Vagneur v. City of Aspen, 295 P.3d 493, 504 (Colo. 2013). Colorado law prohibits any branch of government from assuming the powers of another branch.

This Court has explained that local ordinances are presumed valid and municipalities have abundant authority to enact ordinances without judicial interference:

> A municipal ordinance passed in pursuance of valid authority emanating from the state legislature has the same force and effect, within proper limits, as if passed by the legislature itself. It follows, as a logical sequence, that a city council or board of trustees of an incorporated town, when acting, or proposing to act, in a legislative capacity upon a subject within the scope of

> its powers as conferred by its charter or by the general laws of the state, is entitled to immunity from judicial interference. Lewis v. Denver City Waterworks Co., 34 P. 993, 994 (Colo. 1893). *See also* Phillips v. City of Denver, 34 P. 902, 903 (Colo. 1893).

Furthermore, courts cannot, under the pretense of deciding a valid judicial question, assume powers vested in either the executive or the legislative branches of government. Wimberly v. Ettenberg, 570 P.2d 535, 538 (Colo. 1977). This Court has recognized that "It is a general principle in the governmental system of this country that the judicial department has no direct control over the legislative department. Each department of the state government is independent within its appropriate sphere. Legislative action by the general assembly cannot be coerced or restrained by judicial process." Lewis, 34 P. at 994. *See also* Greenwood Cemetery Land Co. v. Routt, 28 P. 1125, 1137 (Colo. 1892); Phillips 34 P. at 903.

Stated another way, legislative bodies have broad authority to enact laws, and judicial bodies have narrow authority to review those laws. As this Court has held:

> This power of judicial determination is delicate in character, one to be exercised with caution and care, for it may result in disapproval of acts of the legislative department or of actions of the executive department, both co-ordinate branches of government. This care, this caution has been proverbially observed by the courts, lest in their zeal to prevent what they deem unjust, they exceed their judicial authority, assert an unwarranted superiority over their co-ordinate governmental branches and invade the fields of policy preserved to the legislative arm or the realm of administrative discretion lodged in the executive branch. Wimberly, 570 P.2d at 538 (citing Ex-Cell-O Corporation v. City of Chicago, 115 F.2d 627 (7th Cir. 1940)); *see generally* Ass'n of Data Processing Serv. Org's Inc. v.

Camp, 397 U.S. 150 (1970) (discussing the role of judicial review of administrative agency actions).

Therefore, courts should apply proper deference to legislative actions. The United States Supreme Court has long held that "We need not labor the point, long settled, that, where legislative action is within the scope of the police power, fairly debatable questions as to its reasonableness, wisdom, and propriety are not for and determination of courts, but for that of the legislative body on which rests the duty and responsibility of decision." Standard Oil v. Marysville, 279 U.S. 582, 49 S.Ct. 430 (1929); *see also* Zahn v. Board of Public Works, 274 U. S. 325, 328, 47 S. Ct. 594, 595 (1927); Hadacheck v. Sebastian, 239 U. S. 394, 408-412, 413, 414, 36 S. Ct. 143, 144-146 (1915); Euclid v. Ambler Realty Co., 272 U. S. 365, 395, 47 S. Ct. 114, 121 (1926); Laurel Hill Cemetery v. San Francisco, 216 U. S. 358, 365, 30 S. Ct. 301, 302 (1910); Cusack Co. v. City of Chicago, 242 U. S. 526, 530-31, 37 S. Ct. 190, 192 (1917); Price v. Illinois, 238 U.S. 446, 451, 35 S. Ct. 892, 894 (1915).

The Court of Appeals applied the Goldblatt test to effectively void the ordinances the Town validly enacted because the homeowners had become accustomed to parking on public property and doing otherwise created an inconvenience. Article III of the Colorado Constitution, and several cases from this Court, provides that courts cannot deprive municipalities of powers vested in them when municipalities are acting in their legislative capacity. Enacting

ordinances is typically legislative in nature as demonstrated by Lewis, 34 P. at 994; 1248 (Colo. 1973); Deighton v. City Council of Colorado Springs, 902 P.2d 426, 428 (Colo. App. 1994). The procedure for enacting ordinances has been set forth in considerable detail in Article 16 of Title 31 of the Colorado Revised Statues. The police power delegates broad jurisdiction to municipalities. The role of the court is limited to reviewing whether the municipality has exceeded its jurisdiction or abused its discretion. Therefore, the Town's ordinances should be upheld.

a. THE COURT OF APPEALS ERRED IN APPLYING GOLDBLATT TO VOID THE TOWN'S ORDINANCES.

The economics takings rule that Goldblatt has come to represent, along with cases like Penn Cent. Transp. Co. v. City of New York, 438 U.S. 104, 98 S.Ct. 2646 (1978), is deferential to a local government's ability to regulate private property even when such regulation causes economic harm to the property owner.

> If this ordinance is otherwise a valid exercise of the town's police powers, the fact that it deprives the property of its most beneficial use does not render it unconstitutional. Goldblatt, 369 U.S. at 592-93. *See also* Q.C. Const. Co., Inc. v. Gallo, 649 F.Supp. 1331, 1336-37 (D. R.I. 1986) ("To establish unconstitutional deprivation of property without due process, it is insufficient to show only that regulation deprives landowner of best use of his property or that regulation has caused a severe decrease in value of properties; owner must show that regulation interferes so severely with use of property as to render the property worthless or useless.").

The Court of Appeals erred in twice in applying Goldblatt. First, it used a regulatory takings analysis where the party claiming injury has no legal entitlement

to the property. This is an unconventional—perhaps unprecedented—doctrinal application in the extensive historic United States Supreme Court takings case law.

Secondly, even if this analysis were appropriate, the court failed to recognize several major principles in Goldblatt. It did not accord the Town sufficient legislative deference, as demonstrated in Goldblatt. In Goldblatt, the Court found in favor of the Town of Hempstead even though the regulation completely prohibited the plaintiff from doing business in its sand and gravel pit. Goldblatt, 369 U.S. at 591. In fact, Goldblatt is often been cited to make the point that "debatable questions as to the reasonableness are not for the courts, but for the legislature." *Id.* at 595; *see, e.g.,* Nollan v. California Coastal Com'n, 483 U.S. 825, 845, 107 S.Ct. 3141, 3153 (1987); Bethlehem Evangelical Lutheran Church v. City of Lakewood, 626 P.2d 668, 673 (Colo. 1981); Hearn v. City of Overland Park, 772 P.2d 758, 764-765 (Kan.1989); State v. Mallan, 950 P.2d 178, 190 (Haw. 1998).

Failing to appropriately apply Goldblatt allowed the Court of Appeals to reach an unjust outcome in this case. Courts have applied Goldblatt to assert that "A legislative determination is generally accorded a presumption of constitutionality." Maher v. New Orleans, 516 F.2d 1051, 1059 (5th Cir. 1975); s*ee generally* Goldblatt, 369 U.S. at 590; Village of Euclid, 272 U.S. at 365. Maher appropriately applied the Goldblatt decision to reach a different outcome

than that of the Court of Appeals in the case at bar. The Fifth Circuit Court held in Maher that:

> It is generally accepted that legislative bodies are entrusted with the task of defining the public interest and purpose, and of enacting laws in furtherance of the general good. The Supreme Court has made it clear that, while the police power is not unlimited, its boundaries are both ample and protean. Drawing on the rich and flexible police power, a legislature has the authority to respond to economic and cultural developments cast in a different mold, and to essay new solutions to new problems." *Id.* at 1059.

The Court of Appeals failed to respect the broad municipal police power by misapplying the Goldblatt economic takings rule to the instant case. While the Court of Appeals relied upon Goldblatt to effectively overturn the Town's ordinances, Goldblatt's deferential standard should have resulted in upholding the Town's ordinances against this challenge.

b. CITIZENS ARE NOT WITHOUT REMEDIES TO CURE INAPPROPRIATE GOVERNMENT ACTION, AND THE DECISION REACHED BY THE COURT OF APPEALS IS CONTRARY TO THESE SETTLED STATUTORY MECHANISMS.

Amicus does not advocate that Town Boards and City Councils should be permitted to act outside of their authority, and the General Assembly concurs as evidenced by existing statutory claims for citizens deprived of rights and property by government action. The Court of Appeals decision achieves the inapposite

effect by depriving the Town and its citizens of their rights and property under the law.

Citizens have a remedy if the Town Board passes an ordinance with which they take issue because the Colorado Constitution and the Colorado Revised Statutes provide a way to overturn an ordinance through the powers of initiative and referendum. Colorado Constitution art. V, § 1(1); C.R.S. § 31-11-101 *et. seq.* The typical way for citizens to challenge a Board action is by citizens circulating a petition to hold a referendum election. In this instance, the HOA didn't pursue this as a remedy because the Town's Ordinance 04-09 to authorize the Gold Run and Tenderfoot Streets Reconstruction Project is administrative in character and therefore outside the scope of the initiative power reserved to the people under the Colorado Constitution art. V, § 1(1). Vagneur, 295 P.3d at 503. Yet, the effect of the Goldblatt case as applied by the Court of Appeals is substituting judicial judgment for that of the majority of citizens and the Colorado General Assembly to overturn a commonplace municipal action.

The application of the Court of Appeals decision means that the HOA effectively adversely possesses the Town's and its citizens' property. The reason adverse possession exists is to challenge ownership of a parcel of land that one has been occupying openly and continuously for a period of years, but the HOA could not and did not pursue this as a remedy because claims for adverse possession

against governmental entities are precluded by statute. C.R.S. § 38-41-101(2). Despite the fact that an adverse possession claim by the HOA is not permitted, that is in essence the effect of the Court of Appeals decision.

The effect of the Goldblatt case as applied by the Court of Appeals is depriving the Town and its citizens of its property. A deprivation of property might give rise to a takings claim. The method for challenging land that has been taken by a governmental entity is eminent domain. The HOA did not claim a taking because it would have been found insufficient because the HOA has never had any ownership interest in the property the HOA has used for parking. Lipson v. Colorado State Department of Highways, 588 P.2d 390, 391 (Colo. App. 1978); Chicago, Burlington & Quincy R.R. Co., 193 P. 726, 727 (Colo. 1920). Although the HOA has never had an ownership interest in the Town's ROW, the Court of Appeals ruling reverses the eminent domain concept by giving the Town's property to the HOA.

Voter approval is required for the Town to sell or transfer public land by state statute. C.R.S. § 31-15-713. The Town neither had nor expressed an intention to sell or transfer its ROW at Tenderfoot Street and Gold Run Circle. Even if the Town had intended to convey the public ROW to the HOA, they would have been precluded from doing so unless there was an election. In the instant case, there

was neither an election nor any intent for the Town to transfer its interest in its property.

The Colorado General Assembly clearly expressed remedies for overturning ordinances, acquiring title to land one inhabits, enacting a taking, and selling public land. The Legislature didn't intend the consequence reached by the Court of Appeals because there's no statutory remedy for such a situation as experienced by the HOA parking on the Town's ROW.

Courts should apply proper deference to municipal legislative actions, as demonstrated in Goldblatt. The Court of Appeals misapplied this case, and in the process violated the separation of powers doctrine and the plain language of Colorado statute.

II. IF THOSE CHALLENGING A PUBLIC PROJECT ARE PERMITTED TO DERAIL A VALID LEGISLATIVE ACT BY PRESENTING ANOTHER IDEA, THIS PRACTICE COULD BOTTLENECK OR PREVENT THE LOCAL GOVERNMENT FROM ACCOMPLISHING PROJECTS AND ENFORCING AMENDED ORDINANCES.

The Court of Appeals decision left undisturbed creates an avenue to manipulate the legislative process by submitting alternative methods to do a public project. No matter how much better or worse an alternative it is than the challenged project as commenced by the Board, it will void a lawful ordinance. Public works

projects are a garden-variety municipal action. There's a multitude of ways to complete any one project, not to mention the scores of projects underway in a city or town at any given time. It's the role of the elected officials on the Town Board to set the direction and provide guidance and the Town staff to follow accordingly. City of Leadville v. McDonald, 186 P. 715, 716 (Colo. 1920). Further, the Town Board has discretion over roads, street, sidewalk, and utility projects. U.S. West v. Longmont, 948 P.2d 509, 519 (Colo. 1997); Martinez v. Lakewood, 655 P.2d 1388, 1389 (Colo. App. 1982). The Court of Appeals decision upends this process and upsets this balance of powers.

If this Court follows the Court of Appeals, the precedent will be set that citizens need not conform to the rule of law if they can think of another way to do a public works project. To create an avenue for any property owner affected by a municipal improvement project to overturn the project as designed through the legislative process because that property owner has another notion regarding execution of the improvement project is absurd. The outcome of the Court of Appeals decision operates for the benefit of the few affected property owners and ignores the many residents that would benefit. The Court of Appeals decision in its application potentially subjects municipal improvement projects to judicial, not legislative, analysis.

Governmental entities acquire property for myriad public purposes. Public entities may hold land and allow it to be used for other purposes before the government puts the property to use for its intended public purpose. For example, a municipality may intend for public property to become a road, but the town allows residents to use the land as a hiking trail until the road is built. Another example is that a city may acquire a parcel of land with the intention that an urban renewal authority ("URA") will develop the land, but in the meantime the city allows public transportation customers to park on the land until the URA is formed, funded and ready to complete the development. Cities and towns routinely allow for other uses of public property simply to be a good neighbor. In no way does the municipality intend to waive its ownership interest or create a means for residents, property owners, or other governmental entities to claim ownership, an easement, or any other proprietary interest in the land. The Court of Appeals decision left undisturbed would bring a swift end to governmental entities allowing public land to be used for any reason other than its intended purpose despite what the property's current use may be.

Ordinance 10-09 took a belt and suspenders approach to clarifying that the Dillon Chief of Police has the authority to prohibit parking in the Town's ROW under the police power and the Model Traffic Code. There is no legal limitation on when the Town may exercise its authority to enforce parking, nor is the Town

beholden to enforce the same parking rules forevermore. In fact, municipalities amend their parking rules and regulations as the area develops, as the use of roads change, and as necessary. Nonetheless, in this instance the Court of Appeals indicated that the parking enforcement ordinance was an unconstitutional act. The Court of Appeals decision effectively makes courts the arbiters of when and where cities can prohibit parking.

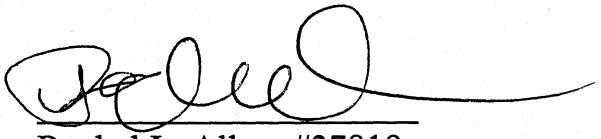
The Court of Appeals decision left undisturbed creates a Pandora's box of unintended consequences for local governing bodies carrying out the job they were elected to do: commencing improvement projects and enacting ordinances to preserve the health, safety and welfare for the betterment of the citizens and community.

CONCLUSION

WHEREFORE, for all of the reasons set forth above, *amicus* respectfully requests that the decision of the Court of Appeals be reversed.

Respectfully submitted this 5th day of April, 2013.

COLORADO MUNICIPAL LEAGUE



Rachel L. Allen, #37819

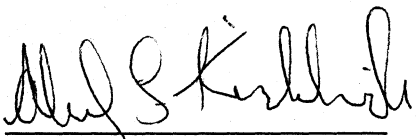
Colorado Municipal League
1144 Sherman Street
Denver, CO 80203
303-831-6411

CERTIFICATE OF SERVICE

I hereby certify that on April 5th, 2013, a true and correct copy of the foregoing was filed with the Court and served via U.S. Mail on the parties named below:

Richard P. Holme
DAVIS GRAHAM & STUBBS LLP
Davis Graham & Stubbs LLP
1550 17th Street, Suite 500
Denver, CO 80202
Richard.holme@dgslaw.com

Edward C. Gassman
GASSMAN LAW FIRM
P.O. Box 2631
Loveland, CO 80539
lawfirm@gassman.us



Abby L. Kirkbride