

<p>COLORADO COURT OF APPEALS  2 East 14th Avenue  Denver, Colorado 80203  720-625-5150</p>	
<p>Appeal from District Court, Denver County  Honorable Judge Edward D. Bronfin  Case No. 2018CV32664</p>	
<p><b>Defendants/Appellants:</b>  APRIL JONES, JO ANN SORENSEN, WILLIAM J. LEONE,  MATT SMITH, in their official capacities, and THE  INDEPENDENT ETHICS COMMISSION, State of Colorado  v.  <b>Plaintiff/Appellee:</b>  MICHAEL DUNAFON, solely in his official capacity as  Mayor of the City of Glendale.</p>	<p><b>▲ COURT USE ONLY ▲</b></p>
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<p><b>BRIEF OF AMICI CURIAE THE COLORADO MUNICIPAL LEAGUE, CITY OF  COLORADO SPRINGS, CITY AND COUNTY OF DENVER, CITY OF CENTRAL,  TOWN OF MOUNTAIN VILLAGE, CITY OF ALAMOSA, CITY OF CENTENNIAL,  TOWN OF AVON, CITY OF ARVADA, CITY OF LOVELAND, CITY OF LONE TREE,  CITY OF CASTLE PINES, AND CITY OF GLENDALE IN SUPPORT OF  PLAINTIFF/APPELLEE MICHAEL DUNAFON</b></p>	

## CERTIFICATE OF COMPLIANCE

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

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

The brief contains 4,395 words (does not exceed 4,750 words).

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

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

*/s/ Tracy M. Lessig*

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Tracy M. Lessig

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Pursuant to C.A.R. 29(b), the Colorado Municipal League (“CML” or “the League”); along with the home rule municipalities the City of Colorado Springs, City and County of Denver, City of Central, Town of Mountain Village, City of Alamosa, City of Centennial, Town of Avon, City of Arvada, City of Loveland, City of Lone Tree, City of Castle Pines, and City Glendale submit this brief as *amici curiae* in support of Plaintiff/Appellee Michael Dunafon, Mayor of the City of Glendale, a home rule municipality (“Mayor Dunafon”).

#### **IDENTITY AND INTEREST OF AMICI CURIAE**

CML was formed in 1923. The League is a non-profit, voluntary association of 270 of the 272 municipalities located throughout the state of Colorado (comprising nearly 99 percent of the total incorporated state population), including all 102 home rule municipalities, 167 of the 169 statutory municipalities, and the lone territorial charter city, all municipalities greater than 2,000 in population, and the vast majority of those having a population of 2,000 or less.

This case is of importance to every one of Colorado’s home rule municipalities, and particularly to those *amici* municipalities that have chosen to adopt or are in the process of adopting ethics regulations in conjunction with their home rule authority. Pursuant to Article XX of the Colorado Constitution, the voters in each of those municipalities approved charters granting to them and their

elected officials the right of local self-government. Via the 2006 adoption of Article XXIX to the Colorado Constitution, state voters confirmed the authority for home rule municipalities to promulgate rules and ordinances regulating the ethical conduct of their municipal officers, and thereby continue to adjudicate ethics complaints at the municipal level rather than at the state level.

Each of the twelve *amici* municipalities—all of which are home rule municipalities—have adopted or are in the process of adopting some form of an ethics code or guidelines and impartial procedures for adjudicating ethics complaints. While each municipality may use different language to describe their ethics standards and procedures, each does so in full compliance with the letter and the spirit of Article XXIX, Section 7. The power of home rule municipalities to “adopt charters, ordinances, or resolutions that address the matters” in Article XXIX echoes the preexisting authority of home rule municipalities to regulate the powers and duties of their own officers, as secured by Article XX, Section 6. The Colorado Constitution, having expressly granted this power to home rule municipalities and their officials, deprives the Independent Ethics Committee (“IEC”) of the ability to contravene, deny or limit the exercise of that authority, if a home rule municipality has adopted ethics standards and procedures of its own.

The decision of the district court in this case rightly recognizes the unquestioned power of municipalities to address ethical standards of conduct in their ordinances. Reversal of the district court's decision by this Court would contravene this power granted to home rule municipalities and would be directly contrary to the plain language of Article XXIX that gives home rule entities the power to address ethics regulations.

The League has been appearing as *amicus* in Colorado's appellate courts for decades, in appeals where a significant decision affecting Colorado local governments is possible. The *amici* will provide the Court with a statewide municipal government perspective on the issues presented in the case at bar.

### **SUMMARY OF THE ARGUMENT**

The district court determined the plain language of Amendment 41 to the Colorado Constitution, now codified as Article XXIX, provides a carve-out provision for home rule jurisdictions that locally address ethical standards of conduct. Court File ("CF"), pp 558, 562. The district court further found Section 7 of Article XXIX allows home rule entities to pass ethical provisions less stringent than the article. CF, pp 560, 562. Finally, the district court held the IEC lacked jurisdiction over Mayor Dunafon because Glendale had addressed ethical standards



of conduct in its charter and code. CF, p 562. This Court should affirm the reasoning and findings of the district court and reject the arguments of the IEC.

The IEC incorrectly claims that ethics are a matter of statewide concern; that it has authority to determine on a case-by-case basis whether a home rule jurisdiction has meaningfully addressed the matters in Article XXIX by assessing whether the jurisdiction's ethics provisions are meaningful both facially and as applied; and that, unless this Court adopts the IEC's position, ethics in home rule jurisdictions will go unchecked.

The IEC's position demonstrates a fundamental misunderstanding of home rule authority in Colorado and a lack of appreciation for the broad power Article XX grants home rule cities and towns to govern local affairs. The home rule carve-out in Section 7 of Article XXIX did not give home rule entities authority to opt out of the article. Rather, the carve-out recognizes that home rule entities already have the power to regulate ethical standards pursuant to Article XX, Section 6(a). Section 6(a) of Article XX grants home rule entities authority over terms, duties, and conditions of municipal officers and employees. Colo. Const. art. XX, § 6(a). As such, home rule jurisdictions are free to legislate in the area of ethics, whether their standards are more or less stringent than Article XXIX.

The IEC has no power under Article XXIX to analyze the substance or application of each home rule entity's ethics code on a case-by-case basis. If a home rule entity has addressed ethics standards, the Section 7 carve-out applies and the inquiry ends. The IEC's interpretation would leave every Colorado home rule official and employee uncertain as to whether they must comply with their local code or Article XXIX. This is an absurd result.

Finally, the IEC's prediction that, unless this Court agrees with its interpretation of Article XXIX, home rule citizens will have no recourse when ethics "standards are inconsistently or unfairly applied" has no merit. Opening Br. at 35. Colorado Rule of Civil Procedure 106(a)(4) provides the mechanism for citizens to challenge judicial or quasi-judicial decisions of governmental bodies or officials that exceed their jurisdiction or abuse their discretion. Local citizens can also address insufficient ethical standards or inconsistent application of those standards by exercising their right to vote for citizen-initiated charter amendments or ordinances, electing officials that represent local values, and recalling those who do not. These options, not a state body reviewing home rule matters, are consistent with law and principles of representative democracy.

In sum, the IEC's intrusion on home rule authority is *ultra vires* because the IEC has no constitutional authority over home rule jurisdictions that have elected

to govern ethics as a local matter. The district court’s reasoning and conclusions reflect the concept of home rule in Colorado. The district court’s order should be affirmed.

## **ARGUMENT**

### **I. BACKGROUND**

Amendment 41 was passed by the voters in November 2006 and contains the following carve-out for home rule cities and counties:

Any county or municipality may adopt ordinances or charter provisions with respect to ethics matters that are more stringent than any of the provisions contained in this article. *The requirements of this article shall not apply to home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address the matters covered by this article.*

Colo. Const. art. XXIX, § 7 (emphasis added).

Both before and after the passage of Article XXIX, home rule cities and counties operated successfully under local regulations governing standards of conduct for their officials and employees. Then, without authority or need, in December 2016 the IEC issued Position Statement<sup>1</sup> 16-01 (Home Rule Counties

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<sup>1</sup> Nothing in Article XXIX gives the IEC authority to issue position statements. Article XXIX only confers power to the IEC to “hear complaints, issue findings, and assess penalties, and also to issue advisory opinions.” Colo. Const. art. XXIX, § 5(1). The IEC issues advisory opinions when a covered person requests a determination regarding whether their conduct would violate Article XXIX. Colo. Const. art. XXIX, § 5(5).

and Municipalities).<sup>2</sup> CF, pp 260-64. In July 2018, the IEC issued an order asserting jurisdiction over two complaints it received against Mayor Dunafon. CF, pp 296-99. The IEC asserted jurisdiction over Mayor Dunafon because, in its opinion, the Glendale City Council was not sufficiently independent to satisfy the home rule carve-out in Section 7 of Article XXIX. CF, p 298.

The IEC's actions created uncertainty and confusion for every home rule entity that had legislated in the area of ethics and had for years successfully operated under those local standards. Mayor Dunafon filed a C.R.C.P. Rule 106(a)(4) action in Denver District Court challenging the jurisdictional order of the IEC. The district court held the IEC lacked jurisdiction over Mayor Dunafon because Glendale has adopted ethical standards, which exempts it from Article XXIX. CF, p 562. The district court also concluded Article XXIX does not apply to home rule entities with ethical standards, "irrespective of the stringency of the home rule entity's ethics code." CF, p 559. The district court's order affirmed the understanding of home rule cities and towns for years: if a home rule entity enacts

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<sup>2</sup> The Colorado Municipal League, ethics watch groups, and municipalities filed objections to the IEC's draft Position Statement 16-01. *See* NOTICE: Draft Position Statement Concerning the Implementation of Position Statement 16-01 (Home Rule Cities and Counties), available at <https://www.colorado.gov/pacific/iec/home-rule-implement-ps> (last visited July, 5, 2019).

ethical standards of conduct, Article XXIX does not apply, “whether the ethics code is more, equal, or less stringent than Article XXIX.” *Id.*

## **II. THE DISTRICT COURT CORRECTLY DETERMINED THAT ETHICAL STANDARDS ARE A MATTER OF LOCAL CONCERN.**

### **A. Article XX gives cities and towns broad authority over local affairs.**

The IEC claims ethical standards for government officials and employees are a matter of statewide concern.<sup>3</sup> Citing Section 6 of Article XX, the IEC contends ethics are not a matter of local concern because ethical conduct is not “one of the topics specifically designated an area of local concern.” Opening Br. at 25 n.3. The district court correctly concluded “[i]t would be absurd for this Court . . . to hold that ethical standards for elected officials are a matter of statewide concern in view of the very specific carve-out provision that does not apply to home rule counties and municipalities, provided such a county or municipality has adopted an ethical code.” CF, p 562.

The IEC’s narrow reading of Section 6 is not supported by legal precedent. *See City & Cty. of Denver v. State*, 788 P.2d 764, 770 (Colo. 1990) (noting that Colorado case law has “supported a broad interpretation” of Article XX, Section 6(a)). The IEC lacks respect for the power of home rule in Colorado. When

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<sup>3</sup> Notably, Article XXIX *does not* state that ethics are a matter of statewide concern.

Colorado citizens adopted Article XX over a century ago (1902, amended in 1912 to add Section 6), municipal citizens were granted authority to adopt home rule charters providing for local governance. The home rule amendment granted home rule cities and towns “*every power* theretofore possessed by the legislature to authorize municipalities to function in local and municipal affairs.” *Id.* at 767 (emphasis in original) (internal quotations and citation omitted). A home rule entity’s charter “shall be its organic law and extend to all its local and municipal matters” and “[s]uch charter and the ordinances . . . shall supersede any law of the state in conflict therewith.” Colo. Const. art. XX, § 6. In matters of local concern, “[b]oth the home-rule city and the state may legislate . . . but in the event of a conflict, the home-rule provision prevails over the state provision.” *Ryals v. City of Englewood*, 364 P.3d 900, 905 (Colo. 2016) (internal citation omitted). The Colorado Supreme Court has recognized that “[a]lthough the legislature continues to exercise supreme authority over matters of statewide concern, a home rule city is not inferior to the General Assembly with respect to local and municipal matters.” *Denver*, 788 P.2d at 767.

The terms and conditions under which municipal officers and employees do their jobs, including standards of ethical conduct, are matters of local concern over

which home rule entities have plenary power to govern.<sup>4</sup> Section 6(a) of Article XX grants home rule municipalities the “power to legislate upon, provide, regulate, conduct and control: [t]he creation and terms of municipal officers, agencies and employments; [and] the definition, regulation and alteration of the powers, duties, qualifications and terms or tenure of all municipal officers, agents and employees.”<sup>5</sup> The carve-out for home rule entities in Section 7 of Article XXIX recognizes that ethical standards are a matter of local concern and home rule entities have the prerogative to enact legislation to regulate this local matter.

Ethical standards of conduct are encompassed in the authority conferred in Article XX, Section 6(a). The IEC’s claim that every topic must be specifically named in Article XX is absurd and contrary to this provision and to home rule jurisprudence. *See Nat’l Advert. Co. v. Dep’t of Highways of State of Colo.*, 751 P.2d 632, 635 (Colo. 1988) (“[a]lthough ‘zoning’ is not expressly enumerated in Article XX . . . as a specific power of municipal self-government we have nonetheless recognized . . . zoning legislation is a matter of local concern”)

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<sup>4</sup> Article V, Section 35 of the Colorado Constitution prohibits the general assembly from delegating to any special commission the power to perform any municipal function.

<sup>5</sup> The City and County of Denver has authority over the terms, duties and qualifications of local officers pursuant to Section 2 of Article XX.

(internal citation omitted). In addition, courts have found numerous issues within a home rule municipality's power that were not specifically enumerated in Section 6(a). *See Denver*, 788 P.2d at 772 (residency requirements for employees are a matter of local concern); *Schaefer v. City & Cty. of Denver*, 973 P.2d 717, 720 (Colo. App. 1998) (the power to design and implement group health insurance for employees is a matter of local concern). Under Article XX, Section 6(a), home rule entities, not the state, have authority over local ethical standards of conduct if they legislate in this area.

B. *Colorado Springs* supports the district court's decision.

The IEC attempts to distinguish *In Re City of Colorado Springs*, 277 P.3d 937 (Colo. App. 2012), a case relied on by the district court, by claiming elections are undisputedly matters of local concern and ethics are not. Opening Br. at 25, 27. In *Colorado Springs*, the Colorado Court of Appeals construed language identical to Article XXIX, Section 7, which was included in the Fair Campaign Practices Act ("FCPA"):



Any home rule county or municipality may adopt ordinances or charter provisions with respect to its local elections that are more stringent than any of the provisions contained in this act . . . . The requirements of article XXVIII of the state constitution and of this article shall not apply to home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address the matters covered by article XXVIII and this article.

*Colorado Springs*, 277 P.3d at 940.

The Court applied the plain and ordinary meaning of the language in holding the city fell within the exclusion contained in the FCPA because “its Charter and campaign practices ordinance *address those matters.*” *Id.* (emphasis added). The Court determined home rule entities already had the power to regulate elections pursuant to Article XX, Section 6 as a matter of local concern. *See id.* at 939-40. Importantly, the Court cited the campaign finance provisions of the city, but did not conduct an analysis of the *quality* of those provisions. *See id.* at 940.

*Colorado Springs* supports the district court’s analysis and findings in this case. The district court applied the plain and ordinary language of Article XXIX, Section 7 and concluded that the carve-out applies to home rule entities with legislation governing ethical conduct for local officials, regardless of whether the provisions are more or less stringent than Article XXIX. CF, pp 560, 562. The district court’s analysis affirmed the understanding of home rule jurisdictions both before and after the passage of Amendment 41 in 2006.

C. The IEC's position regarding the extent to which an adjudicator must be independent exemplifies its lack of understanding of the governing structure of home rule entities.

The IEC's position on the level of independence needed for adjudication of ethics complaints highlights its misunderstanding of the governing structure of home rule jurisdictions. Section 5(2) of Article XXIX contains a complex structure for appointing members of the IEC, including members appointed by the senate, the house of representatives, the governor, and the chief justice of the supreme court. It would be impossible for cities and towns to match this level of complexity and independence.

Home rule cities and towns are governed by a small number of elected officials with legislative and executive authority over all local matters. Due to this structure, it is often the case that elected officials make decisions on the conduct of each other. In fact, it is not uncommon for *any* legislative body to have procedures in place for the body to censure or remove one of its members in response to a complaint of wrongdoing.<sup>6</sup> *See* Colo. Const. art. V, § 12 (General Assembly has

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<sup>6</sup> For example, Rep. Douglas Bruce was censured by the Colorado House of Representatives in 2008 for kicking a newspaper photographer and Rep. Steve Lebsack was expelled from the Colorado House of Representatives in 2018 after sexual harassment allegations. *See Colorado House Censures Bruce for Kicking Newspaper Photographer*, The Denver Post (Jan. 24, 2008, 7:46 AM) <https://www.denverpost.com/2008/01/24/colorado-house-censures-bruce-for-kicking-newspaper-photographer/>; Brian Eason, *Colorado Rep. Steve Lebsack is*

power to “adopt rules providing punishment of its members . . . for contempt or disorderly behavior in its presence . . . and, with the concurrence of two-thirds, to expel a member”). City councils that use a self-policing model for ethics matters are merely following a time honored tradition that exists in deliberative and legislative bodies at every level of government. There is nothing inherently flawed with this arrangement. Courts have recognized that quasi-judicial decision-makers “are entitled to a ‘presumption of integrity, honesty and impartiality.’” *Whitelaw v. Denver City Council*, 405 P.3d 433, 438 (Colo. App. 2017) (quoting *Soon Yee Scott v. City of Englewood*, 672 P.2d 225, 227 (Colo. App. 1983)). Also, “[a]bsent a personal, financial, or official stake in the outcome evidencing a conflict of interest on the part of the decisionmaker, an adjudicatory hearing is presumed to be impartial.” *Venard v. Dep't of Corr.*, 72 P.3d 446, 449 (Colo. App. 2003).

The unique make-up and issues facing different home rule cities and towns require diverse approaches to local matters. As such, home rule jurisdictions have addressed the adjudication of ethics complaints in a variety of ways. None of them mirror the make-up of the IEC. Yet, all of them are permissible under Article XX and Article XXIX. For example, Denver has a five-member Board of Ethics

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*Expelled Following Harassment Complaints*, The Denver Post (Mar. 2, 2018, 8:51 AM), <https://www.denverpost.com/2018/03/02/steve-lebsock-expulsion-vote-results/>.

appointed by the mayor and city council. § 2-53(b), (c), D.R.M.C. Colorado Springs has an Independent Ethics Commission appointed by its city council with jurisdiction to investigate and make recommendations to city council on complaints involving elected officials, administrative officers, judges, and members of boards and commissions. Colorado Springs City Code §§ 1.3.103(A)(B), § 1.3.102. Ethics complaints against employees, independent contractors, and volunteers are handled by the executive branch. *Id.* at § 1.3.102. In Central City, the Board of Ethics is comprised of the mayor and all members of city council. City of Central Municipal Code §§ 2-4-110(b), (d). The Avon Town Council has authority over ethics complaints in Avon. Municipal Code of the Town of Avon § 2.30.140(a).

The diversity of home rule ethics codes highlights the underlying purpose behind Article XX: to give home rule cities and towns the ability to govern based on their particular make-up and uniqueness without interference from the state.

D. The *Gessler* decision is inapplicable to this case.

The IEC's reliance on *Gessler v. Smith*, 419 P.3d 964, 970 (Colo. 2018), to support its position that home rule jurisdictions cannot adopt ethics provisions that conflict with Article XXIX misconstrues the language of *Gessler*. Opening Br. at 26. The IEC claims the *Gessler* Court's brief summary of Article XXIX provisions

not at issue and not relevant to the matter before it is somehow dicta for the proposition that counties and municipalities can only adopt non-conflicting ethics codes. *Id.* The sentence in *Gessler* is merely a summary of the first sentence of Section 7, which allows statutory counties and municipalities to adopt more stringent ethics provisions. The Court did not address the second sentence, which completely exempts home rule entities that have locally addressed ethical standards of conduct.

### **III. THE IEC’S INTERPRETATION OF ARTICLE XXIX LEADS TO AN UNWORKABLE AND ABSURD RESULT.**

The IEC’s Position Statement 16-01 contemplates that, after the IEC receives a complaint against a home rule official or employee from a jurisdiction with its own ethics code, it analyzes the local ethics provisions and determines whether they meaningfully address the matters in Article XXIX.<sup>7</sup> CF, pp 262-64. If not, the IEC will exercise jurisdiction against the home rule official or employee and the provisions of Article XXIX will retroactively apply to that individual.

The IEC’s interpretation of Section 7 leads to an absurd and unworkable result. Courts must construe constitutional provisions in order to “avoid an unreasonable interpretation or one that produces an absurd result.” *Patterson Recall Comm., Inc.*

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<sup>7</sup> IEC Position Statement 16-01 sets forth an eight-factor test, which essentially requires home rule entities to mirror the provisions of Article XXIX.

*v. Patterson*, 209 P.3d 1210, 1215 (Colo. App. 2009). Under the IEC’s framework, home rule officials and employees have no ability to determine whether to follow their local ethics code or Article XXIX because, at some point in the future, the IEC may determine that, in its opinion, the local code does not *meaningfully* address the matters in Article XXIX. This result is contrary to the plain meaning and clear intent of the drafters and voters of Amendment 41.

Even more absurd is the IEC’s position in its July 2018 jurisdictional order involving Mayor Dunafon. *See* CF, pp 297-98. The IEC did not merely determine whether Glendale’s ethics provisions were sufficient for the Article XXIX carve-out to apply to Glendale. Rather, the IEC judged whether the local provisions *as applied* in Mayor Dunafon’s case were sufficient to exclude *him* from Article XXIX.<sup>8</sup> The IEC determined the Glendale City Council was not an independent body as applied to Mayor Dunafon, although it “would be a sufficiently independent body to adjudicate complaints against most covered individuals in Glendale.” CF, p 298. As a result, it concluded Mayor Dunafon (but no other Glendale official) is subject to all the provisions of Article XXIX, including gift provisions that significantly differ from Glendale’s charter and code. The drafters

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<sup>8</sup> In its Position Statement, the IEC invites home rule entities to ask for a letter ruling regarding whether their local ethics provisions are sufficient under the IEC’s eight-factor test. CF, p 261 n.2. However, the IEC’s as applied case-by-case approach in Mayor Dunafon’s case renders a letter ruling meaningless.

and voters of Amendment 41 could not have intended this result. Home rule jurisdictions cannot function under such an absurd interpretation of Article XXIX and with the threat of, essentially, *ad hoc*, decisions by the IEC.

**IV. THE IEC ERRONEOUSLY CLAIMS THERE WILL BE NO REGULATION OF ETHICS IN HOME RULE JURISDICTIONS IF THE COURT REJECTS ITS INTERPRETATION OF ARTICLE XXIX.**

The IEC contends if the Court affirms the district court’s decision “a majority of state residents will be denied an impartial decision maker to hear their ethics complaints against local public officials and employees.” Opening Br. at 34-35. The IEC also states that affirming the district court’s decision “leaves complainants without any guarantee of the adoption and application of minimal standards of conduct in a home rule jurisdiction, and without any recourse if such standards are inconsistently or unfairly applied.” *Id.* at 35. The IEC’s prediction that, without its oversight, ethics in home rule jurisdictions will be a free-for-all ignores long-standing rules applicable to judicial and quasi-judicial governmental action and fails to recognize the underlying principles of a representative democracy.

A fundamental flaw in the IEC’s position is that it presumes it has a continuing role in home rule jurisdictions that have adopted their own ethical standards of conduct. The IEC believes it has a review or appellate role in home rule ethics

matters. It does not. The Section 7 carve-out does not allow individuals unhappy with the result of a local ethics adjudication another bite at the apple with the IEC.

Rule 106 of the Colorado Rules of Civil Procedure, not the IEC, is the proper avenue for review of judicial or quasi-judicial decisions of local officials. C.R.C.P. Rule 106(a)(4). A district court, not the IEC, has jurisdiction to decide whether governmental bodies or officers have exceeded their jurisdiction or abused their discretion. *Id.* Rule 106, not the IEC, is the correct path to challenge biased or impartial decisions by governmental bodies or officers. *See Venard*, 72 P.3d at 449.

The IEC's position also ignores the power of the electorate to vote. If home rule citizens are dissatisfied with local ethics codes or believe such codes are not applied impartially, they can pass charter amendments or ordinances with more robust ethical standards and/or elect different individuals to govern. Sufficient safeguards already exist to address wrongdoing in home rule jurisdictions. The IEC has no role in a local matter addressed by officials elected to office by local citizens.



## CONCLUSION

Regulation of the standards of conduct over local officials and employees is a matter of local concern. Home rule authority is no small matter. Article XX grants strong home rule municipal authority to legislate, regulate, and control the duties of elected officials and employees. Nothing in Article XXIX undermines this authority. The electorate of Colorado has long-recognized the value of local control over local matters. It is in the purview of the citizens of home rule entities, not a state commission, to determine whether local ethics provisions adequately address local concerns and values within the context of the particular community.

The decision of the district court should be affirmed.

Respectfully submitted this 10th day of July, 2019.

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## CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of July, 2019, I electronically filed a true and correct copy of the foregoing **BRIEF OF AMICI CURIAE THE COLORADO MUNICIPAL LEAGUE, CITY OF COLORADO SPRINGS, CITY AND COUNTY OF DENVER, CITY OF CENTRAL, TOWN OF MOUNTAIN VILLAGE, CITY OF ALAMOSA, CITY OF CENTENNIAL, TOWN OF AVON, CITY OF ARVADA, CITY OF LOVELAND, CITY OF LONE TREE, CITY OF CASTLE PINES, AND CITY OF GLENDALE IN SUPPORT OF PLAINTIFF/APPELLEE MICHAEL DUNAFON** with the Clerk of the Court through *Colorado Courts E-Filing* system which will send notification of this filing to the following:

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