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Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	
Appeal from the Larimer County District Court Hon. Juan G. Villaseńor Case No. 2018CV30317	
Appellants: BOARD OF COUNTY COMMISSIONERS OF LARIMER COUNTY and COULSON EXCAVATING COMPANY, INC. v. **Appellees:** THOMPSON AREA AGAINST STROH QUARRY, INC., a Colorado nonprofit corporation, and individuals DANI KORKEGI, GREGORY MARTINO, MONIQUE GRIFFIN, CRISTI BALDINO, VICTORIA GOOD, and ARLENE LIBBY	**▲COURT USE ONLY▲**
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BRIEF OF *AMICUS CURIAE*, COLORADO MUNICIPAL LEAGUE, IN SUPPORT OF APPELLANTS

CERTIFICATION

I hereby certify that this brief complies with C.A.R. 28, 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 4,667 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/ Robert D. Sheesley
Robert D. Sheesley, #47150

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The Colorado Municipal League ("CML") respectfully submits this *Amicus Curiae* Brief in Support of Appellants, Board of County Commissioners of Larimer County, Colorado and Coulson Excavating Company, Inc.

IDENTITY OF CML AND ITS INTEREST IN THIS CASE

CML, formed in 1923, is a non-profit, voluntary association of 270 of the 272 municipalities in the state of Colorado, comprising nearly 99 percent of the total incorporated state population. CML's members include all 104 home rule municipalities, 167 of 169 statutory municipalities, and the lone territorial charter city. This membership includes all municipalities with a population greater than 2,000.

Elected officials serving on municipal governing boards perform diverse functions: legislative and other policy making actions; administrative and supervisory functions; and individual decision-making that is sometimes quasi-judicial in nature. Most commonly, quasi-judicial decisions involve land use and development approvals, as in the instant case, but can include liquor and marijuana licensing, administrative appeals, and personnel decisions.

CML appears as *amicus curiae* solely to address the issue of whether and, if so, the Due Process Clause ever disqualifies a local elected official from a quasi-judicial matter because of lawful campaign contributions. CML previously filed

amicus briefs on this issue in the prior appeal in this case, *Board of County Commissioners of Larimer County v. Thompson Area Against Stroh Quarry, Inc.*, 2019CA1721, and in a similar case recently decided by a division of this Court, *No Laporte Gravel Corp., v. Board of County Commissioners of Larimer County, No. 20CA1207, 2022 WL 67856, (Colo. App., 2022)*.

CML is concerned that mass confusion and inconsistency will result if *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868 (2009) is applied to local quasi-judicial proceedings or if the district court's analysis requiring recusal in the instant case is affirmed. Local elected officials throughout the state will struggle to apply nebulous, ill-defined standards to a routine part of their duties. Officials may simply recuse themselves for fear of a challenge and local bodies may be unable to muster a quorum to even make quasi-judicial decisions.

SUMMARY OF ARGUMENT

CML supports the reversal of the district court's October 13, 2021, opinion and order ("Order") entering final judgment against Appellants. If campaign contributions ever require recusal of a local official from a quasi-judicial proceeding for constitutional reasons, the district court improperly applied a narrow standard that should implicate only rare, exceptional, or extreme cases. Due process is concerned, if at all, with campaign contributions only where they create a constitutionally intolerable risk of bias. The Order erroneously transformed a flexible analysis into a test so ill-defined as to be unusable. Local officials and courts deserve clear guidance that recusal in quasi-judicial proceedings because of campaign contributions is required only in rare circumstances not present here.

In local quasi-judicial proceedings, lawful campaign contributions should never require recusal of a local elected official without some other indicia of bias. Existing safeguards sufficiently protect due process interests in proceedings that are presumed to be conducted impartially. Campaign contributions do create a personal financial stake in the outcome of a quasi-judicial proceeding. Finally, the chilling impact of the Order on protected speech should be avoided, given other existing protections.

ARGUMENT

A. The dilemma this case presents for municipalities.

Consider this common scenario as an example of the challenges that municipalities would encounter if the Order is affirmed. In a community bitterly divided by development, a candidate runs for city council because she could swing the balance of powers and promote slow-growth policies. Currently, a bare majority on the council is perceived to be "in the pocket of developers" and amenable to approving new land development proposals. Our candidate promises to lend a more skeptical eye. She never discusses any specific project, but some are known in the community to be "in the pipeline" and will be reviewed in the coming year. Like-minded citizens and groups rally behind her campaign, offering campaign contributions of money, time, and services to help get her elected.

Our candidate is elected in a close race and soon sits in a quasi-judicial capacity to hear a rezoning application that would create a controversial new commercial development. She acknowledges that she must apply the legal criteria for rezoning and base her decision upon evidence presented at the public hearing. Nevertheless, the applicant demands that the councilmember recuse herself due to

her prejudice against new development, as reflected by her receipt of substantial campaign support from people who would oppose new development.

If the Order is affirmed, how will local elected officials ever be able to confidently determine whether the level and type of support they received in their campaign would require recusal? If case-by-case adjudication over the minute details of campaign support and elections becomes the norm in Colorado, this new theory of mandatory recusal will prove chaotic for parties on all sides of any controversial land use or other quasi-judicial decision.

B. Quasi-judicial due process, if affected by campaign contributions, is concerned only with extraordinary circumstances not present here.

Any determination that *Caperton v. A.T. Massey Coal Company*, 556 U.S. 868 (2009) applies to quasi-judicial proceedings must be coupled with the limitations of the due process inquiry plainly expressed in that decision. *Caperton* sought only to address unconstitutional risks of bias that arise in extraordinary cases. Without conceding that *Caperton* applies, CML contends that the fundamental limitations of the due process analysis discussed in that decision must be applied with rigor and restraint to avoid including conduct that, even if objectionable, would not be

unconstitutional. The Order misapplied *Caperton* and confused due process risks with policy questions reserved to elected bodies.

1. A due process violation based on a probability of bias arises only in rare, extreme, and exceptional circumstances.

In *Caperton*, the United States Supreme Court held that the Due Process Clause, in extreme circumstances, could require recusal based on campaign contributions in judicial elections under certain objective considerations, even without actual bias. *See* 556 U.S. at 886-87. To establish an objective standard, the Court identified three potential boundaries for assessing the circumstances of that case for a due process violation: 1) the relative size of the contributions; 2) the temporal connection between the contribution and the case likely to come before the judge; and 3) the apparent effect on the election's outcome. *Id.* at 885-86. In that case, a litigant's executive helped get an appellate judge elected through a combination of support totaling $3 million ("an extraordinary amount") during the same time that a $50 million judgment against the litigant was subject to appeal. *Id.* at 872-73. The majority found that an average elected judge under such extreme circumstances would be tempted to not provide a fair proceeding. *Id.* at 886-87.

Caperton must be understood and applied considering the clear limitations expressed by the United States Supreme Court as it sought to define a due process violation in the absence of actual bias or a *quid pro quo*. Perhaps because of the

uncertainty of establishing a constitutional violation without actual bias, the Supreme Court went to great lengths to instruct that *Caperton*'s reach should "be confined to rare instances." *See* 556 U.S. at 890. Only a risk of bias that is sufficiently substantial to create actual bias, one that arises in "an extraordinary situation," is a due process concern. *Id.* at 885, 887-88. As the Supreme Court cautioned, "[n]ot every campaign contribution by a litigant or attorney creates a probability of bias that requires a judge's recusal, but this is an exceptional case." *Id*. at 884; *see also No Laporte Gravel Corp.* No. 20CA1207, 2022 WL 67856 at *1 ¶3 (declining to find that due process required recusal from a quasi-judicial proceeding on facts similar to the instant case that were not "so rare, exceptional, or extreme as to rise to the level of a constitutional violation").

Caperton also continued the Supreme Court's refusal to elevate issues of public policy, like judicial disqualification rules, to the level of constitutional concern. *See* 556 U.S. at 876 (citation omitted). The Supreme Court began its discussion of due process in judicial tribunals by reference to a 1927 case that stated, "All questions of judicial qualification may not involve constitutional validity." *Id*. at 891 (quoting *Tumey v. Ohio*, 273 U.S. 510, 523 (1927)). The Supreme Court recognized that the Due Process Clause "only demarks the outer boundaries of judicial disqualifications" and, while legislators could establish more narrow rules,

the Court's holding was limited to matters of constitutional concern. *Id*. at 889 (quoting *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 828 (1986)); *see also City of Manassa v Ruff*, 235 P.3d 1051, 1057 (Colo. 2010) (acknowledging the Due Process Clause establishes a constitutional floor) (citations omitted); *Scott v. City of Englewood*, 672 P.2d 225, 228 (Colo. App. 1983) (finding due process was not implicated despite the court's disapproval of an appearance of impropriety). In fact, the *Caperton* Court relied on policymakers' ability to address concerns that did not involve constitutional questions to staunch a flood of recusal challenges. 556 U.S. at 888.

2. The district court erroneously lowered the bar for finding a due process violation in quasi-judicial proceedings.

The Order erroneously determined that the Due Process Clause was violated on facts that, by any measure, are not as extreme as those in *Caperton*. Affirming the Order would not support objective outcomes in future cases across the state and would grossly expand the analysis to include matters that simply are not constitutional concerns. A local official could not fairly replicate the district court's analysis to determine whether recusal is required in their proceeding, particularly as the district court relied on questions external to the due process analysis. Such a result would be inconsistent with *Caperton*'s requirement that objective standards

are necessary for consistency "with the imperatives of due process." *See* 556 U.S. at 886.

The district court's perfunctory determination presumes a due process violation without following the Supreme Court's mandate of objectivity.

The district court viewed the $10,000 contribution in the 2016 election as having a "significant and disproportionate influence" on the re-election of a two-term incumbent who had previously defeated his challenger. Order at 17-18. The district court determined that the relative size of the contributions signaled a due process violation because they constituted 18.6% of the candidate's contributions, 17.7% of his expenditures, and half of the challenger's receipts. *Id.* at 7-8, 17-18. These contributions pale in comparison to the contributions in *Caperton*, in which the "exceptional" contributions were 300% the amount expended by the candidate and more than was expended by both candidates. *See* 556 U.S. at 884.

The district court's conclusion that the contributions influenced the election fares no better. While specific causation does not factor into the *Caperton* analysis, the district court found that the incumbent's 10.32% margin of victory somehow reflected a disproportionate impact that impacted the election. Order at 17-18. In *Caperton*, the supposedly rare case, the margin of victory was only 6.6%, despite extreme contributions that tripled the candidate's own expenditures and exceeded

the expenditures of both candidates by $1,000,000. 556 U.S. at 884. While purporting to evaluate the totality of the circumstances, the district court appears not to have considered the advantages of two-term incumbency, the candidate's prior defeat of the challenger, and the outcome of an identical partisan race on the ballot. *See* Order at 17-20; *cf. Caperton*, 556 U.S. at 893-98 (Roberts, C.J., dissenting) (discussing other considerations that will need to be answered to "provide clear, workable guidance for future cases"). This cannot be sustained as an objective evaluation of constitutional concerns.

Beyond the factors identified in *Caperton*, the district court relied on matters of policy that do not rise to the level of constitutional concern. First, the district court found "an objective and reasonable perception of bias" resulting from the donations in the instant case. *Id.* at 19. *Caperton*, however, sought to create an objective standard, as viewed by a reasonable judge, for determining whether an unconstitutional risk of bias existed based on a campaign donation. 556 U.S. at 886. *Caperton* never asked whether the judicial officer would be perceived by others to have a bias and, in fact, discounted the judicial officer's own subjective perceptions. *Id.* at 881-82. A "perception of bias" or an appearance of impropriety extends far beyond *Caperton*'s limited constitutional holding and mandates recusal based on such a factor would not protect the due process rights of any party. *See also Scott*,

672 P.2d at 228 (Colo. App. 1983) (finding that due process was not implicated despite disapproval of official's appearance of impropriety). Similarly, the district court's focus on "important policy considerations" of a later campaign contribution limit reveals how far the Order departed from the appropriate constitutional bounds of the inquiry. Order at 20.

CML recognizes that the due process analysis is necessarily flexible and cannot inflexibly apply universally to all circumstances. *See Hortonville Joint Sch. Dist. No. 1 v. Hortonville Educ. Ass'n*, 426 U.S. 482, 494 (1976); *Whiteside v. Smith*, 67 P.3d 1240, 1248 (Colo. 2003). Given the rarity of finding constitutional violations based on a risk of bias, this flexibility of the Due Process analysis should not be applied in a manner that removes all boundaries and leaves officials without a reference to govern their conduct.

3. The rarity of campaign donations that give rise to an unconstitutional probability of bias must be confirmed to ensure consistent application of the Due Process Clause.

As applied by the district court, the due process analysis endorsed by the Supreme Court in *Caperton* has lost its objectivity entirely. CML encourages this Court to reverse the Order and confirm that due process concerns in quasi-judicial matters arise from campaign donations to local officials, if at all, only in rare and extraordinary circumstances. If *Caperton* is a decision of the "outer boundaries of

judicial disqualifications" based on contributions the Order expands those boundaries to ensnare conduct that the Due Process Clause would not otherwise prohibit. *See* 556 U.S. at 889. The Order's outcome is not intended by *Caperton* or Colorado's precedents.

By ignoring the *Caperton's* mandate of objectivity and finding constitutional problems in facts that are far less egregious, the Order elevates any risk of bias to a constitutional level. If the Order is affirmed, the due process analysis will have no boundaries and any campaign contribution or support could be suspect, at least until an appeal is resolved. Counties and municipalities will suffer from a lack of guidance on questions of recusal when a party in interest is connected to campaign donations and other support. Without clear standards comporting with due process precedents, a judicial expectation that local officials make "realistic appraisal of psychological tendencies and human weakness" is unreasonable and guaranteed to sow confusion, require unnecessary recusals, and create more litigation. *See Caperton*, 556 at 883 (quoting *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)).

While CML does not support improper influence on any government proceeding, the mandate for finding a due process violation should remain limited to egregious circumstances to the extent that the constitutional question rests solely on a presumed risk of bias. Until the constitutional threshold is reached, legislative

bodies are best suited to determine when disqualification is appropriate. As the district court noted, Colorado's General Assembly enacted a campaign contribution limit in 2019 that would have prevented this question, but that standard does not retroactively identify a constitutional violation. Order at 20. As a municipal example, the City of Westminster has implemented a recusal requirement based on campaign contributions, among other things, that encompasses quasi-judicial matters. Westminster, Colo., Home Rule Charter §5.12.1 (1996). CML encourages this Court to confirm that, in the absence of a constitutionally intolerable risk of bias, legislative regulation in this arena is more appropriate than the nebulous standard employed in the Order.

C. Campaign contributions to local elected officials should not disqualify them from participating in quasi-judicial proceedings.

This Court can ensure that the Due Process Clause is followed and establish a reliable, easy to follow rule by concluding that *Caperton* has no application at all to campaign contributions in the context of local quasi-judicial proceedings. Because of key differences between local elected officials in quasi-judicial proceedings and the judicial officer discussed in *Caperton*, the requirement of a demonstration of actual bias is a sufficient constitutional safeguard. Moreover, campaign contributions should not be viewed as creating an unconstitutional risk of bias because they do not create a direct, pecuniary, substantial, financial stake in the

outcome of a quasi-judicial proceeding, in Colorado at least. Given this limited personal interest and the nature of local elected offices, a rarely applied, but nebulous and difficult to administer, rule should be avoided because of the inevitable chilling impact on the free speech rights of candidates and contributors.

The *No Laporte Gravel Corp*. division determined, as a matter of first impression, that campaign contributions could disqualify elected officials from serving as decision-makers in quasi-judicial proceedings under the Due Process Clause. No 20CA1207, 2022 WL 67856 at *1 ¶1. The division reached this conclusion because of the similarities between the adjudicatory functions and the general requirement to provide the basic requirements of due process.[1] *Id.* at *8 ¶44. The division concluded, despite not requiring disqualification in that case, that campaign contributions could constitute "a direct, personal, substantial, pecuniary interest" sufficient to trigger a due process analysis. Id. at *10 ¶58. The differences

[1] The mere similarities in adjudicatory functions do not mandate that due process standards apply equally in the judicial and quasi-judicial context. For example, a rezoning decision, which implicates the due process rights of a landowner, is a quasi-judicial matter for purposes of judicial review but is a legislative matter in that it is subject to referendum and initiative provisions of the Colorado Constitution. *Margolis v. Dist. Ct., in & for Arapahoe Cty.*, 638 P.2d 297, 304-05 (Colo. 1981). Although the due process rights of a landowner would be implicated in a referendum on a rezoning decision, the Colorado Supreme Court has discounted those rights and permitted a public campaign and decision by popular vote by unidentified decision-makers as a substitute for an impartial notice and hearing. *See id*.

in the proceedings and officers that conduct them, as well as the nature of contributions in Colorado, merit a different result. CML encourages the Court to reach a conclusion that lawful campaign contributions do not implicate due process.

1. The traditional requirement of actual bias in the quasi-judicial context is sufficient to ensure due process.

To understand why the rule of *Caperton* should not apply to quasi-judicial proceedings like that in the instant case, CML urges the Court to focus on Colorado precedent discussing fairness and due process in cases specifically involving local elected officials. A local elected official is, by definition and design, a member of the public who comes into office representing a point of view and perhaps a political philosophy to represent a broad and diverse variety of interests. Local elected officials, unlike judicial officers who operate in a more defined arena, perform many roles, including the quasi-judicial role implicated here. This reality has resulted in a body of case law establishing a deferential standard that requires a showing of actual bias to establish a due process violation in the quasi-judicial context.

The Colorado Supreme Court has referenced *Caperton* solely to evaluate the objectivity of an unelected "independent medical examiner" in the context of deciding a worker's compensation claim. *Ruff,* 235 P.3d at 1057. That decision does not consider the prejudicial effects of excessive campaign contributions in quasi-judicial proceedings and is not analogous to the instant case, except to the extent that

it demonstrates the rarity with which a due process violation would be found under the *Caperton* framework. *Id.* Notably, that decision declined to find a due process violation based on "the mere possibility" that the examiner's contract would be negatively affected, "[a]t least in the absence of evidence of past practices or attempts at intimidation . . . ." *Id*. at 1057-58.

CML supports maintaining existing, sufficient protections for due process in quasi-judicial proceedings without injecting ambiguous standards that are prone to inconsistent application. Due process, as regularly and adequately applied in quasi-judicial proceedings, clearly prohibits local elected officials from taking concrete actions demonstrating unconstitutional prejudice in a specific quasi-judicial action pending before the body. This principle was illustrated in *Booth v. Town of Silver Plume,* 474 P.2d 227, 470, 473 (Colo. App. 1970), where: (l) every town board member signed a petition opposing a pending liquor license application, and (2) a council subcommittee submitted an investigatory report recommending denial of the application. The Court of Appeals concluded the "applicant was working against a 'stacked deck' and was denied the fair and impartial hearing to which she was entitled." *Id.* at 474.

Absent such proof of prejudgment and bias, Colorado courts have been reluctant to question the objectivity of local elected officials even when the conduct

involved would not be permitted in the judicial context. *See Johnson v. City of Glendale*, 595 P.2d 701, 702-03 (Colo. App. 1979) (holding receipt of information and prior expressions of opinions, without more, does not demonstrate a quasi-judicial hearing is unfair); *Scott*, 672 P.2d at 228 (holding an appearance of impropriety based on a prior public policy stance connected to an upcoming quasi-judicial proceeding did not disqualify a decision-maker absent a showing of bias).

Instead, courts rely on the presumption of integrity, honesty, and impartiality in favor of those serving in quasi-judicial capacities. *See Best v. La Plata County Planning Commission*, 701 P.2d 91, 96 (Colo. App. 1984) (relying on the presumption to refuse to disqualify a commissioner from a quasi-judicial proceeding on the basis of her prior business relationship a developer's law firm); *Burns v. City & Cty. of Denver*, 759 P.2d 748, 750 (Colo. App. 1988) (relying on the presumption to reject an effort to disqualify a city council from acting on a rezoning because city property was within a boundary that permitted property owners to protest); *see also Caperton*, 556 U.S. at 891-893 (Roberts, C.J., dissenting).

The decision in *Applebaugh v. Board of County Commissioners*, 837 P.2d 304, 309 (Colo. App. 1992) illustrates how a local elected body with diverse roles is allowed, in the absence of a showing of actual bias, to do things a judicial officer could not. In that case, the board acted as both the initiator and final quasi-judicial

decision maker of an action.[2] *Id.* at 308-09. Despite its dual role, the board was not disqualified because the record failed to show that it "was incapable of judging the issue fairly." *Id.* at 309; *cf. Withrow* 421 U.S. at 58 (relying on the presumption of honesty and integrity to decline to find an unconstitutional risk of bias, without more, by the combination of investigative and adjudicative functions in an administrative adjudication); *Whitelaw v. Denver City Council*, 405 P.3d 433, 438 (Colo App. 2017) (requiring actual proof of prejudice and declining to adopt a *per se* rule against *ex parte* contacts for local elected officials as would apply to judicial officers).

2. Campaign contributions in Colorado do not give rise to an unconstitutional risk of bias.

Campaign contributions in Colorado should not be considered to unconstitutionally affect the impartiality of an adjudication because they are not "a direct, personal, substantial, pecuniary interest" or "a personal, financial, or other official stake" in a proceeding. *See Caperton*, 556 U.S. at 875 (quoting *Tumey*, 273 U.S. at 523); *Scott*, 672 P.2d at 228. While a division of this Court held otherwise, CML encourages this Court to conclude that campaign contributions, which are not

[2] The *Caperton* decision relied on precedent that due process could disqualify a judge, even without a pecuniary interest, if the judge had initially determined that an action should be brought. 556 U.S. at 880 (discussing *In re Murchison*, 349 U.S. 133 (1955)).

personal to a Colorado elected official, cannot create a substantial financial stake in the outcome of a quasi-judicial proceeding that would affect neutrality.

The district court's analysis conflates campaign contribution with gifts that policymakers view as tending to corrupt or unduly influence an elected official. Colorado's Fair Campaign Practices Act extensively regulates campaign contributions. C.R.S. §§ 1-45-101–1-45-118; *see also* Colo. Const. art. XXVIII. That law does not permit such contributions to go directly to the individual; they must flow to an account maintained by a regulated "candidate committee." *See* Colo. Const art. XXVIII, §§ 3(9) and 2(3). Campaign funds cannot be siphoned off for personal use by the candidate. The FCPA strictly limits the way unexpended campaign contributions may be spent, and explicitly states: "Except as authorized by §1-45-103.7(6.5), C.R.S. [providing for campaign-related dependent care expenses] in no event shall contributions to a candidate committee be used for personal purposes not reasonably related to supporting the election of a candidate." C.R.S.§1-45-106(1)(a)(II).

Similarly, state and local ethics laws ban or regulate "gifts" to elected officials but distinguish campaign contributions. The strict gift law adopted by Colorado voters Amendment 41 to the Colorado Constitution (2006) exempts campaign contributions. Colo. Const. art. XXIX, §3. State ethics statutes predating

Amendment 41 made the same distinction. *See* C.R.S. § 24-18-1094(3). Many municipal ethics codes similarly except campaign contributions from their gift laws. *See, e.g.*, Denver Revised Municipal Code Section 2-60.

Just as an executive appointment to a judicial office does not create an inherent risk of bias in cases involving the executive, a campaign contribution is not personal to a candidate and should not be presumed to create an unconstitutional risk of bias in a quasi-judicial role.

3. The nebulous test used by the district court would overreach into protected First Amendment speech.

A concluding hypothetical illustrates this final issue. Imagine that Colorado citizens initiated a state constitutional amendment posing the following question: "Shall the Colorado Constitution be amended to prohibit any local elected official from taking any quasi-judicial action affecting any person who recently made a substantial or disproportionate campaign contribution that resulted in the official's election?" Such a measure would surely be declared overbroad, void for vagueness, and violative of the First Amendment.

The Colorado Supreme Court faced a similar issue in *Dallman v. Ritter*, 225 P.3d 610, 627-28 (Colo. 2010), striking down Amendment 54 (2008) that would have broadly prohibited sole-source government contractors from making campaign contributions and political candidates from receiving such contributions, all in the

name of rooting out corruption and undue influence. Repudiating the amendment on First Amendment and other constitutional grounds, the Colorado Supreme Court observed:

> A contribution limit must "not undermine to any material degree the potential for robust and effective discussion of candidates and campaign issues by individual citizens, associations, the institutional press, candidates, and political parties." Subsequent cases have clarified that courts should examine the effect that the restriction will have on the party ultimately using the money for political speech.

225 P.3d at 624 (quoting *Buckley v. Valeo*, 424 U.S. 1, 29 (1976))

If this Court agrees that campaign contributions can require recusal, a nebulous, unspecified, *de facto* "contribution limit" will be imposed on contributors and candidates. Violation of that uncertain limit would force the candidate, once elected, to recuse themself from important quasi-judicial decisions. The *No Laporte Gravel Corp.* division dismissed this concern, citing an apparent need to yield to constitutional due process concerns. No. 20CA1207, 2022 WL 67856. CML respectfully submits that it is likely that campaign supporters and candidates, or even their opponents and their supporters, will be inhibited if the district court's application of *Caperton* to quasi-judicial proceedings is affirmed. This risk of chilling protected speech should not be easily dismissed where the due process concern arises solely from a presumed risk of bias resulting from that same speech.

CONCLUSION

For the reasons set forth in this Brief, CML supports a clear determination that *Caperton v. A.T. Massey Coal Company*, 556 U.S. 868 (2009) applies, if at all, in rare, extreme, or exceptional circumstances not present here. CML urges this Court to reverse the Order as it pertains to the application of *Caperton* to quasi-judicial proceedings conducted by local elected officials.

DATED January 28, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on this January 28, 2022, a true and correct copy of the foregoing **BRIEF OF AMICUS CURIAE, COLORADO MUNICIPAL LEAGUE, IN SUPPORT OF THE APPELLANTS** was served via Colorado Courts E-Filing to the following:

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