IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

ANDY KERR, et al.
Plaintiffs-Appellees,

No. 12-1445

v.

JOHN HICKENLOOPER
Defendant-Appellant.

On Remand from the United States Supreme Court and
On Appeal from the United States District Court for the District of Colorado
The Honorable William J. Martinez
Case No. 11-CV-01350-WJM

AMICI CURIAE BRIEF OF NATIONAL FEDERATION OF INDEPENDENT BUSINESS; TABOR FOUNDATION; AMERICAN LEGISLATIVE EXCHANGE COUNCIL; NATIONAL TAXPAYERS UNION; AMERICANS FOR TAX REFORM; CITIZENS IN CHARGE; HOWARD JARVIS TAXPAYERS ASSOCIATION; CITIZENS FOR LIMITED TAXATION; GOLDWATER INSTITUTE; FREEDOM CENTER OF MISSOURI; CASCADE POLICY INSTITUTE; PELICAN INSTITUTE FOR PUBLIC POLICY; TAX FOUNDATION OF HAWAII; WISCONSIN INSTITUTE FOR LAW & LIBERTY; WASHINGTON POLICY CENTER

Respectfully submitted,

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Interest of *Amici Curiae*

Each of the 15 organizations joining in this *amici* coalition has a profound interest in the questions presented here. The *amici* share a concern that a decision allowing this lawsuit to proceed would invite challenges to taxpayer protections—and other important constitutional restraints—throughout the country. A full statement of interest is set forth in Appendix A.

Summary of Argument

This panel's original decision in *Kerr v. Hickenlooper*, 744 F.3d 1156 (2014) is no longer in effect. The Supreme Court vacated that decision and ordered this Court to try again—this time with unmistakably clear guidance from the High Court's decision in *Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*, 135 S.Ct. 2652, 2658 (2015) ("*Arizona*"). That decision reaffirmed the essential holding in *Veith v. Jublier*, 541 U.S. 267 (2004), that a case cannot proceed forward unless the reviewing court can identify judicially manageable standards. *Arizona*, 135 S.Ct. at 2658.

What is more, in emphasizing the animating principle of the Constitution (*i.e.* the foundational theory that "the citizens are in charge"), *Arizona* made abundantly clear that the Plaintiffs-Appellees (or "TABOR's Opponents") cannot possibly prevail in this litigation. *Id*. at 2674-77. The Court went out of its way to emphasize that ultimate political power rests with the People of each State and that

they act *consistent with republican principles* when making law though direct democratic measures. Since *Arizona* definitively rules out the only potentially viable standards that TABOR's Opponents have suggested, this case must be dismissed as raising a non-justiciable political question.

I. The Supreme Court Vacated this Court's Prior Decision

The listed *amici* were previously alarmed by this panel's decision to allow this lawsuit to proceed. As we argued in our brief supporting the Governor's Petition for *Certiorari*, the decision would invite similar Guarantee Clause challenges to potentially any voter-enacted initiative, taxpayer protection, or state constitutional restraint impeding the prerogatives of elected state legislators.[1] *Amici's* concerns have been put to rest for now, with the Supreme Court's decision to vacate the panel's decision.[2]

[1] Those concerns were echoed in Judge Tymkovich's dissent to the Tenth Circuit's denial of *en banc* review. *Kerr v. Hickenlooper*, 759 F.3d 1186 (10th Cir. 2014) (Tymkovich, J., dissenting).

[2] In light of the Supreme Court's order vacating the panel's decision, the opinion has no binding effect in this case or in any other matter before the Tenth Circuit. *See Franklin Sav. Ass'n v. Office of Thrift Supervision*, 35 F.3d 1466 (10th Cir. 1994); *United States v. Roberts*, 185 F.3d 1125 (10th Cir. 1999). And speaking to *Amici's* broader concerns, the original panel's decision no longer has any persuasive effect whatsoever. *O'Connor v. Donaldson*, 422 U.S. 563, 577, n.12 (1975) ("Of necessity our decision vacating the judgment of the Court of Appeals deprives that court's opinion of precedential effect…").

Nonetheless, if this Court issues a new opinion allowing this case to proceed on the assumption that judicially manageable standards may emerge at trial—this Court would open the door for ideologically motivated litigants to advance a flood of Guarantee Clause challenges throughout the nation. That result can, and should, be avoided. The Supreme Court ordered this panel to reconsider its initial decision in light of its opinion in *Arizona*, 135 S.Ct. at 2652.

The vacated panel opinion in this case is at odds with the Court's recognition of the democratic principles underlying our constitutional system, and the Court's continued endorsement of the rule that the plaintiff bears the burden of identifying judicially manageable standards. The plain implication is that the Supreme Court saw grave problems with the panel's opinion.[3] In rejecting this Court's reasoning, *Arizona* makes clear this Court cannot simply re-issue its prior opinion. As such, this Court should approach the justiciability question freshly, and should dismiss plaintiffs' claims in light of *Arizona*.

[3] "Where intervening developments, or recent developments that we have reason to believe the court below did not fully consider, reveal a reasonable probability that the decision below rests upon a premise that the lower courts would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome of the litigation, a GRV order is, we believe, potentially appropriate." *Lawrence v. Chater*, 516 U.S.163, 167 (1996). This would suggest the Supreme Court believed the remand in this case should be outcome determinative—which in itself counsels for a reversal of the original decision.

II. The Supreme Court Ordered this Court to Reconsider in Light of its Decision in *Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*

A. The *Arizona* Decision Requires this Court to Identify Judicially Manageable Standards for Assessing Plaintiffs-Appellees' Claims

The Supreme Court's decision in *Arizona* begins with an overt signal that this Court must reconsider its initial decision in light of the essential holding in *Vieth*. The Court made clear that a lawsuit may not proceed to the merits unless the reviewing court has identified judicially manageable standards. *Arizona*, 135 S.Ct. at 2658 (citing *Vieth*, 541 U.S. at 281).These opening remarks were not necessary to resolve the question at hand in that case (*i.e.* interpreting state legislative powers under the Elections Clause of the U.S. Constitution). But, the Court's restatement of *Vieth*–in the very beginning of the opinion—cannot be ignored.[4] It was an endorsement of the Arizona District Court's statement that the Arizona Legislature's lawsuit would have been barred by the political questions doctrine if

[4] The listed *Amici* take issue with the Court's rationale and analytical approach with regard to the merits of the *Arizona* case. Accordingly, their joining in this coalition brief should not be construed as an endorsement of that decision. But this Court must acknowledge the Supreme Court endorsed the view that direct democratic initiatives are entirely consistent with our constitutional system and those republican principles upon which it was founded. The Court's specific decision to re-write the text of the Elections Clause is of little consequence to the matter at hand here. Nonetheless, the decision offers clear guidance to this Court in its opening comments on the political question doctrine, in its reaffirmation that Guarantee Clause claims are presumed non-justiciable, and in its broader observations on the Constitution's theoretical underpinnings. *Arizona*, 135 S.Ct. at 2658, 2673-77.

it had been understood as raising a Guarantee Clause claim. *See Arizona State Legislature v. Arizona Indep. Redistricting Comm'n.*, 997 F.Supp.2d 1047, 1050 (D. Ariz., 2014) ("…arguments [that] arise under the republican guarantee clause of the Constitution … are not justiciable.") (citing *Pacific States Teleph. & Teleg. Co. v. Oregon*, 223 U.S. 118 (1912) ("*Pacific States*")).

In light of the Supreme Court's remand in this case, Justice Ginsburg's otherwise gratuitous discussion of *Vieth* must be understood as clear guidance to this panel on the fundamental question of whether Plaintiffs advanced a justiciable claim here. The majority mentions *Vieth* at the outset to stress the importance of the threshold question with which this Court now wrestles—whether a claim is properly advanced in federal court at all. *Arizona*, 135 S.Ct. at 2658 (affirming that—notwithstanding otherwise grave concerns—a case simply cannot be heard if "the matter [is] nonjusticiable.").

Furthermore, *Arizona* specifically endorses Justice Kennedy's concurrence in *Vieth*, which explained that the burden rests on the plaintiffs to point to workable standards. *Id*. citing *Vieth*, 541 U.S. at 316 (Kennedy, J., concurring). By emphasizing Justice Kennedy's concurrence, the *Arizona* Court eschewed the notion that a court might allow a case to proceed on the assumption that such standards will emerge at trial. This was a tacit repudiation of this Court's prior decision, and a clear mandate for this Court to reverse the District Court—unless

workable standards can be identified *at this juncture*. *See Vieth*, 541 U.S. at 277-78 (plurality opinion) (explaining the Court had previously erred in *Davis v. Bandemer*, 478 U.S. 109 (1986), in assuming—without identifying—the existence of judicially manageable standards for political gerrymandering claims under the Equal Protection Clause); *id*., at 306 (Kennedy, J. concurring in judgment).

B. The *Arizona* Decision Rules Out the Only Potential Standard Under which TABOR's Opponents Might Have Prevailed

1. Plaintiffs Bear the Burden of Identifying Judicially Manageable Standards

Amici have previously urged this Court to rule this case non-justiciable, under the political question doctrine, on the ground that there are no judicially manageable standards for its resolution. But, *Arizona's* restatement of *Vieth* makes clear this Court need not endeavor to consider and dismiss all possible standards before so ruling; it is appropriate to assume the case is barred by the political question doctrine unless Plaintiffs-Appellees offer workable standards.[5] *Arizona*, 135 S.Ct. at 2658. Of course this is consistent with the presumptive rule set forth in *Pacific States*, that Guarantee Clause claims are non-justiciable. 233 U.S. at 142-43 (affirming the general rule that it is for the other branches to "decide whether a state government [is republican in form]") (citing *Luther v. Borden*, 48 U.S. 1

[5] Accordingly, it is inappropriate to place the burden on the Governor to prove a complete absence of judicially manageable standards.

(1849)). Indeed, *Arizona* expressly affirms the continued viability of *Pacific States*: "The people's sovereign right to incorporate themselves into a State's lawmaking apparatus, by reserving for themselves the power to adopt laws and to veto measures passed by elected representatives, is one this Court has ranked a nonjusticiable political matter." *Arizona*, 135 S.Ct. at 2660 n.3 (citing *Pacific States*).

Yet, as Justice O'Connor noted in *New York v. United States*, 505 U.S. 144, 184-86 (1992), there is always the possibility, however rare, that an exception exists to the general rule that Guarantee Clause claims are non-justiciable. *See* David A. Carrillo & Stephen M. Duvernay, *The Guarantee Clause and California's Republican Gov't*, 62 UCLA L. REV. DISC. 104, 107 (2014). With regard to that open question, *Arizona* emphasized that the political question doctrine places the burden on the plaintiff to identify workable standards. *Arizona*, 135 S.Ct. at 2658. Under Justice Kennedy's approach in *Vieth*—endorsed by the majority in *Arizona*—it may be inappropriate to say Guarantee Clause claims are categorically non-justiciable.[6] *Id*. At the same time, Justice Kennedy was clear in placing the burden on the party alleging a constitutional violation to point to workable standards for assessing a novel claim. *Vieth*, 541 U.S. at 306 (Kennedy,

[6] For that matter, *Amici* hold out the possibility—and *hope*, to be frank—that workable standards may be found in cases challenging federal encroachments into matters of traditional state concern. *Arizona* leaves open that possibility. *Arizona*, 135 S.Ct. at 2660 n.3.

J., concurring) (agreeing with the majority that dismissal was warranted because the claimants had failed to identify judicially manageable standards, but leaving open the possibility that a litigant might succeed in identifying appropriate standards in in the future).

2. *Arizona* Makes Clear the Animating Principle of Our Constitutional System: The Citizens are in Charge

First and foremost *Arizona's* discussion of *Vieth* stresses that a novel claim may not be assumed justiciable—especially where the plaintiffs failed to advance a theory cogent enough to offer a workable standard for courts to make a reasoned decision (*i.e.* rule(s) derived from the text of the Constitution that would yield logically consistent results, and would not require courts to make the sort of subjective policy judgments that our constitutional system reserves to legislative bodies). *Arizona*, 135 S.Ct. at 2658; *Vieth*, 541 U.S. at 277-78 (emphasizing that "law pronounced by courts must be principled, rational, and based on reasoned distinctions."); *see also* Lawerence H. Tribe, et al., Wash Legal Found., *Too Hot for Courts to Handle: Fuel Temperatures, Global Warming, and the Political Question Doctrine* (2010).[7] As *Amici* have stressed previously, TABOR's

[7] *Available* at http://www.wlf.org/publishing/publication_detail.asp?id=2132 (last visited Jul. 22, 2015) (explaining that a non-justiciable political question is raised where a litigant advances a claim that necessarily requires a court to exercise political judgment—as opposed to an exercise of judicial analysis and application of existing legal standards).

Opponents utterly failed to offer any workable standards in this case.[8] The closest they came is in the open-ended assertion that the People of any given state might violate the Guarantee Clause by utilizing direct democratic measures to exercise certain legislative functions. But, in *Arizona*, the Court went out of its way to foreclose this line of argument in explaining that the People act consistent with republican principles when enacting laws directly. *Arizona*, 135 S.Ct. at 2673 (citing The Federalist No. 43, pp. 272 (C. Rossiter ed. 1961) (J. Madison) ("Whenever the States may choose to substitute other republican forms, they have a right to do so.").

The *Arizona* majority affirms that the People are the ultimate sovereigns in this country. *Id*. at 2674-75 ("[T]he invention of the initiative was in full harmony with the Constitution's conception of the people as the font of governmental power."). And the Court emphasized that, because political power ultimately rests in the People, citizens may utilize direct democratic measures to make law—so long as their enactments do not run afoul of established constitutional limitations on legislative powers. *Id*. This necessarily rules out any potential standard that might assume a violation of the Guarantee Clause should a state become *too*

[8] They have never clearly set forth their theory of the Guarantee Clause beyond the naked assertion that a violation occurred when the citizens of Colorado amended their Constitution to give the people the right to vote on new taxes and tax hikes. *See Kerr*, 759 F.3d 1186 (Gorsuch, J., dissenting) ("[E]ven today [after three years of litigation] the plaintiffs profess no more than 'confiden[ce] that … the district court will someday be able to find some standard for decision.").

democratic.[9] *Id.* At 2675. Indeed, the majority said "it would be perverse to interpret [a constitutional provision] so as to exclude lawmaking by the people…." *Id*.

3. *Arizona* Makes Clear that the People Stand on Equal Footing With Their Elected Representatives When Making Law

In previous filings, TABOR's Opponents suggested that a Guarantee Clause violation may occur where the citizens of a State have imposed restrictions on their legislature's fiscal powers in a manner that inhibits the performance of essential government functions. Of course, this inappropriately assumes that a "republican government" requires an unfettered stream of revenue to carry out those vaguely articulated public functions. Such a posited standard would require a reviewing court to invariably step into a thicket of political questions.[10]

But this Court need not grapple with those questions because the Supreme Court preempted this line of attack in *Arizona*. 135 S.Ct. at 2674-77. In affirming the right of the People to make law, the decision affirmed that citizens stand on

[9] Of course, *Pacific States* ruled out this line of argument a century ago. But to the extent there was any remaining question, *Arizona* settles the issue decisively.

[10] How could a court determine what is an appropriate stream of revenue? And if that determination rests on the idea that a "republican government" must fund certain programs, how can a court determine what programs are required without exercising political judgment? And if we accept the assumption that certain programs must be funded, how can a court determine at what level specific endeavors should be funded, or how funding should be allocated?

equal footing with their elected representatives. *Id*. at 2660. This necessarily means that—in our constitutional system—the People ultimately retain the right to choose what functions their government will serve. *Id*. at 2677 (citing *McCulloch v. Maryland*, 4 Wheat 316 (1819), for the "fundamental premise that all political power flows from the people."). Accordingly, *Arizona* rules out any theory of the Guarantee Clause that would inhibit the right of the People to freely govern themselves. This is because the exercise of self-governance is the essence of republicanism, regardless of the mechanism utilized to express the collective will of the People. *Id*. at 2671 (affirming "the animating principle of our Constitution[,] that the people themselves are the originating source of all the powers of government.").

4. *Arizona* Affirms the People May Revoke Legislative Powers From their Elected Representatives

Previously, TABOR's Opponents suggested certain legislative powers are nonrevocable—though they offered no constitutionally grounded standard for how a court might determine which legislative powers are immutable under our republican system.[11] But for the same reasons, *Arizona* rules out any suggestion

[11] Without question, a categorical theory of the Guarantee Clause—positing a *per se* violation whenever specific legislative powers are inhibited—would be highly problematic. As we have argued in previous filings, such an approach would render every tax and spend restraint unconstitutional if the Court were to accept the notion that the citizens may not curb their legislature's power to tax and spend. Of course, it is truly difficult to imagine how the founding generation would have

that the citizens of a state may violate the Guarantee Clause when enacting a constitutional restriction inhibiting specific "core" legislative powers. If citizens stand on equal footing with their elected representatives when enacting law through direct democratic measures, then there is no basis for assuming that the legislature retains any power that cannot be curbed through constitutional amendments approved by the People. *Arizona*, 135 S.Ct. at 2674-75 (quoting James Madison, Federalist No. 37, at 223 ("The genius of republican liberty seems to demand … not only that all power should be derived from the people, but that those intrusted with it should be kept in dependence on the people.").

What is more, *Arizona* emphatically reminds this Court that elected representatives serve at the will of the People and are ultimately subordinate. *Id*. Thus elected representatives serving in Colorado's General Assembly have a fiduciary obligation to the People of Colorado; in this sense, there is an agency relationship, in which the People are the "principal" and the institution of the state

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desired such a result given that the Revolutionary War was ignited by popular outrage over newly imposed English taxes. Further, it doesn't make sense to assume that constitutional restraints on a legislature's fiscal powers are somehow anti-republican when the Framers—who were so inspired by republican ideals—included constitutional restrictions on the federal government's power to tax and spend. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 Ct. 2566, 2599 (2012) ("Congress's ability to use its taxing power … is not without limits."). The only acceptable conclusion is that legislative powers may be revoked at the will of the People—for whom government is instituted and serves.

legislature is the "agent."[12] *Arizona* emphasized this point in citing John Locke's Second Treatise on Government, which affirmed the supreme power of the People "to remove or alter" legislative powers:

> For all Power given with trust for the attaining an end, being limited by that end, whenever that end is manifestly neglected, or opposed, the trust must necessarily be forfeited, and the Power devolve into the hands of those that gave it, who may place it anew where they shall think best for their safety and security.

Id. at 2675 (citing Two Treatises of Government § 149, p. 385 (P. Laslett ed. 1964).

With that fundamental precept of republicanism in mind, the handwriting is on the wall in this case. There is no question here. The citizens of Colorado have come nowhere close to overstepping their power to make law. If anything, the enactment of TABOR must be hailed as an exercise of republican government.

[12] *See Chisolm v. Georgia*, 2 U.S. 419 (2 Dall.), 468 (1793) ("The rights of individuals and the justice due to them, are as dear and precious as those of States. Indeed the latter are founded upon the former, and the great end and object of them must be to secure and support the rights of individuals, or else vain is Government."); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) ("[I]n our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people by whom and for whom all government exists and acts."); *see also* Evan Fox-Decent, *The Fiduciary Nature of State Legal Authority*, 31 Queen's L.J. 259, 260-61 (2005).

Conclusion

For the foregoing reasons, this Court should hold that this case is nonjusticiable and should reverse the opinion of the District Court below, with orders to dismiss under the political question doctrine.

Respectfully submitted this 31st day of July, 2015.

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July 31, 2015

FED. R. APP. P. 32(A)(7)(C) CERTIFICATE OF COMPLIANCE

As required by Fed. R. App. P. 32(a)(7)(c), and this Court's Order of July 1, 2015, I certify that this brief is proportionally spaced and contains 3,364 words. I relied on Microsoft Word 2010 to obtain the count.

I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

By: s/Richard A. Westfall

APPENDIX A

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I. Statement of Interest for the National Federation of Independent Business Small Business Legal Center

The National Federation of Independent Business Small Business Legal Center (NFIB Legal Center) is a nonprofit, public interest law firm established to provide legal resources and be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses. The National Federation of Independent Business (NFIB) is the nation's leading small business association, representing members in Washington, D.C., and all 50 state capitals. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the right of its members to own, operate and grow their businesses.

NFIB represents 350,000 member businesses nationwide, and its membership spans the spectrum of business operations, ranging from sole proprietor enterprises to firms with hundreds of employees. While there is no standard definition of a "small business," the typical NFIB member employs 10 people and reports gross sales of about $500,000 a year. The NFIB membership is a reflection of American small business.

To fulfill its role as the voice for small business, the NFIB Legal Center frequently files amicus briefs in cases that will impact small businesses. NFIB Legal Center seeks to file here because this case will impact small business taxpayers in Colorado. But more fundamentally the NFIB Legal Center files out of concern that the Tenth Circuit's decision has opened the door for challenges to taxpayer protections in other states. The NFIB Legal Center has an interest in defending taxpayer protections, and similar state constitutional protections, for small business owners throughout the nation.

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II. Statement of Interest for the TABOR FOUNDATION

TABOR Foundation is an advocacy organization that was created with the express goal of defending the voter enacted Colorado Taxpayer Bill of Rights. The mission of the TABOR Foundation is to develop and distribute educational materials, documenting compliance with the Taxpayer's Bill of Rights, and to provide a clearinghouse for information and analysis about the effectiveness, structure and importance of the Taxpayer Bill of Rights and other tax-limitation measures. Since this case calls into question the constitutionality of the Taxpayer Bill of Rights, TABOR Foundation has a great interest in the issue presented.

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III. Statement of Interest for the American Legislative Exchange Council

The American Legislative Exchange Council (ALEC) is the nation's largest non-partisan individual membership association of state legislators. It has approximately 2,000 members in state legislatures across the United States. ALEC works to advance limited government, free markets and federalism at the state level through a nonpartisan public-private partnership of America's state legislators, members of the private sector and the general public.

ALEC recognizes that the Guarantee Clause safeguards the republican form of government in the states from actions by the federal government or by a state's own government that threaten the rights of citizens to structure their state's government. Further, ALEC acknowledges instances may exist where federal or state action that threatens the integrity of republican government in a given state may give rise to justiciable claims in a court of law. Occasions may arise in which state legislators, sworn to uphold both the federal constitution and their respective state constitutions, are duty-bound to pursue Guarantee Clause claims in order to vindicate the republican form of government in their state. However, absent judicially manageable standards for addressing Guarantee Clause claims, ALEC

has serious concerns that the structural integrity of state governments will be infringed by innumerable lawsuits over constitutional and political questions that legitimately rest with the people of each state. ALEC believes that it would subvert the purpose of the Guarantee Clause, undermine the dual sovereign status of states, and run contrary to U.S. Supreme Court precedent if state governmental structures become challengeable in court absent clear, judicially manageable standards.

ALEC believes that self-imposed measures by states to protect taxpayers do not, by themselves, pose threats to the republican form of government. It is ALEC's view that Colorado's Taxpayers' Bill of Rights does not threaten the rights of citizens to structure their state's government as they best see fit. As a matter of policy, ALEC supports reasonable measures of self-restraint by states regarding taxing and spending decisions.

In ALEC's view, the Court should grant the Petition in this matter because the decision below threatens to entangle the states in litigation over political questions about the composition and arrangement of state governmental powers without clear, judicially manageable standards. The decision below likewise jeopardizes the right of citizens to establish basic taxpayer protections in their respective states.

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IV. Statement of Interest for the National Taxpayers Union

The National Taxpayers Union (NTU) is a nonprofit, nonpartisan membership organization dedicated to protecting the interests of taxpayers through lobbying, public education, and litigation. NTU's 362,000 members and supporters across the nation, approximately 7,000 of whom reside in Colorado, have a direct economic and political interest in this action. NTU and its members have been among the foremost proponents of both the initiative/referendum and procedural tax and expenditure limits, having participated in campaigns for such limits in

more than 15 states since the enactment of California's Proposition 13 in 1978. The organization provided detailed advice and guidance to the drafters of Colorado's Amendment 1 prior to its circulation as a ballot initiative and throughout the campaign to enact the measure. Since that time NTU and its members have participated in opposition efforts to subsequent measures that would modify or weaken the provisions of Amendment 1. NTU has filed amicus briefs pertaining to issues surrounding tax and expenditure limits, and advised attorneys pursuing legal actions in Arkansas, Colorado, Connecticut, Florida, and Montana.

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V. Statement of Interest for the Americans for Tax Reform

Americans for Tax Reform (ATR) is a coalition of individuals, taxpayer groups and businesses concerned with promoting a vibrant economy through tax policy, spending reduction, a balanced budget and restoring accountability to elected officials. We believe in a system in which taxes are simpler, flatter, more visible, and lower than they are today. The government's power to control one's life derives from its power to tax. We believe that power should be minimized. As a supporter of these ideals, ATR opposes any result in this case that would undermine the rights of taxpayers across the fifty states that has been encouraged and facilitated by the respondents.

Grover G. Norquist
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VI. Statement of Interest for Citizens in Charge

Citizens in Charge is a 501(c)(4) citizen-powered advocacy organization that works to protect and expand the initiative and referendum process throughout the country. Citizens in Charge actively opposes legislative attempts to impose limits on the initiative and referendum process. Accordingly, this lawsuit is of interest to Citizens in Charge because it challenges the initiative process in Colorado. Further, Citizens in Charge is concerned that the Tenth Circuit's precedent, in this case, may be invoked in future challenges to initiatives and referenda in other states.

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VII. Statement of Interest for the Howard Jarvis Taxpayers Association

The Howard Jarvis Taxpayers Association (HJTA) is a taxpayer advocacy group in California. HJTA has consistently advocated for fiscal discipline and restraints on government's fiscal powers. HJTA files here specifically because the Association is concerned this case may open the door to challenges to voter initiatives in California, specifically challenges to California's constitutional taxing and spending limitations.

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VIII. Statement of Interest for Citizens for Limited Taxation

Citizens for Limited Taxation (CLT) is the voice for Massachusetts Taxpayers. For forty years, CLT and its members have worked to control taxes in Massachusetts. In 1980, CLT successfully pushed for adoption of Prop 2 ½, which caps property tax increases for homeowners, and reduces annual auto excise taxes.

CLT has an interest in preserving this taxpayer protection, and in defending the right of Massachusetts citizens to exercise their state constitutional right to impose restrictions on the state legislature's fiscal powers, as the people may deem appropriate, in the future.

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Marblehead, MA 01945

IX. Statement of Interest for the Goldwater Institute

The Goldwater Institute was established in 1988 to advance the non-partisan public policies of limited government, economic freedom, and individual responsibility. It is a tax exempt educational foundation under Section 501(c)(3) of the Internal Revenue Code. To ensure its independence, the Goldwater Institute neither seeks nor accepts government funds, and no single contributor has provided more than five percent of its annual revenue on an ongoing basis. The Scharf-Norton Center for Constitutional Litigation, a division of the Goldwater Institute, strives to preserve and defend individual liberty by enforcing the features of the Arizona and federal constitutions that directly protect individual rights.

The Institute was a chief proponent of Arizona's Private Property Rights Protection Act ("PPRPA"), A.R.S. § 12-1134 *et seq.*, which was approved by voters in 2006 and guarantees every Arizonan the right to compensation for laws and regulations that restrict the use of their property. The Institute has represented property owners in lawsuits arising under the PPRPA and filed amicus briefs regarding the application of the PPRPA in other cases. *Goodman v. City of Tucson*, C-20081560 (Pima County Super. Ct. Nov. 3, 2009) (represented plaintiff); *Sedona Grand, LLC v. City of Sedona*, No. 82008-0129 (Yavapai County Super. Ct. filed September 5, 2014) (representing plaintiff); *Aspen 528 v. City of Flagstaff*, 2012 WL 6601389 (Ct. App. 2012) (amicus); *Sedona Grand, LLC v. City of Sedona*, 229 Ariz. 37, 270 P.3d 864 (Ct. App. 2012), review denied (Aug. 28, 2012) (amicus).

The Institute also drafted the Right to Try measure, which gives terminally ill patients the right to try investigational medicines that have passed the initial

safety phase of FDA approval but still may be years away from reaching pharmacy shelves. Right to Try has been enacted into law in five states. Most recently and relevantly, voters overwhelmingly approved Right to Try in Arizona, limiting the government's authority to stop access to potentially life-saving drugs.

The Institute is concerned that Plaintiffs' theory in this case—endorsed by the Tenth Circuit—may be invoked to challenge all voter-approved limitations on legislative authority.

Clint Bolick
Christina Sandefur
Goldwater Institute
Scharf-Norton Center for Constitutional Litigation
500 E. Coronado Road
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X. Statement of Interest for the Freedom Center of Missouri

The Freedom Center of Missouri (FCMo) is a non-profit, non-partisan organization dedicated to research and constitutional litigation in five key areas: freedom of expression, economic liberty, property rights, religious liberties and limited government. FCMo files here out of concern that this case creates persuasive authority that could be invoked in challenge to constitutional fiscal restraints in Missouri.

David E. Roland
Freedom Center of Missouri
14779 Audrain Road 815
Mexico, MO 65265

XI. Statement of Interest for the Cascade Policy Institute

Amicus curiae Cascade Policy Institute is a twenty three year old non-partisan, non-profit public policy research organization based in Oregon dedicated to promoting individual liberty, personal responsibility and economic opportunity. It has a long-standing interest in preserving direct citizen participation in our representative republic; especially protection of the citizen initiative and referendum system pioneered by Oregon in 1902 which became known nationwide as The Oregon System.

Steve Buckstein
Cascade Policy Institute
4850 SW Scholls Ferry Road, Suite 103
Portland, OR 97225

XII. Statement of Interest for the Pelican Institute for Public Policy

The Pelican Institute for Public Policy is a nonpartisan research and educational organization, and the leading voice for free markets in Louisiana. The Institute's mission is to conduct scholarly research and analysis that advances sound policies based on free enterprise, individual liberty, and constitutionally limited government. Because the Institute advanced free market principles of limited government, the institute has an interest in defending Louisiana State Constitutional protections that impose substantive restrains on legislative powers.

Kevin P. Kane
Pelican Institute for Public Policy
643 Magazine Street, Suite 301
New Orleans, LA 70130

XIII. Statement of Interest for the Tax Foundation of Hawaii

The Tax Foundation of Hawaii is a 60-year-old nonpartisan research organization whose mission is to promote and encourage efficiency and economy in Hawaii governments through unbiased, non-political studies and surveys of a factual nature, making available and disseminating such information and data by

publications, reports, talks, the radio and television. One of the Foundation's guiding principles is that the mandate in the Hawaii Constitution, limiting general fund expenditures, should be respected. This case has implications as to the validity of that mandate as well as the balanced budget requirement and debt obligation provisions of the Hawaii Constitution.

Tom Yamachika
Tax Foundation of Hawaii
126 Queen Street, Suite 304
Honolulu, HI 96813

XIV. Statement of Interest for the Wisconsin Institute for Law & Liberty

The Wisconsin Institute for Law & Liberty (WILL) is a public interest law firm dedicated to advancing the public interest in government limited to its proper constitutional bounds, free markets, individual liberty, and a robust civil society. Founded in June of 2011, WILL has represented individuals and organizations seeking to, among many other things, limit interference by the federal government in the internal administration of state government.

Amicus believes that the Tenth Circuit's decision below threatens the integrity of the constitutions of all 50 states, including its home state of Wisconsin. Every state imposes limitations of some kind on the powers possessed by its legislature. Those limitations often place the voters in a position of final authority on certain measures such as tax increases and constitutional amendments. Citizens should have the right to limit their own governments in this manner, but the Tenth Circuit's decision, finding the Plaintiff's claims justiciable, subjects such limitations to a whole plethora of challenges never seen before. Without a manageable judicial standard for Guarantee Clause challenges, an uncountable number of litigants will likely step forward to take a spin at the roulette wheel.

Thomas C. Kamenick
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XV. Statement of Interest for the Washington Policy Center

The Washington Policy Center (WPC) is an independent, non-profit, think tank that promotes sound public policy based on free-market solutions. Headquartered in Seattle with satellite offices and full-time staff in Olympia and Eastern Washington, WPC publishes studies, sponsors events and conferences and educates citizens on the vital public policy issues facing Washingtonians. Washington Policy Center has long championed legislative fiscal discipline reforms such as taxpayer protections like TABOR, balanced budget requirements, and debt restrictions to help improve the fiscal health and sustainability of Washington's budget. WPC is also a strong defender of the people's right of initiative and referendum and believes the declaration of Article 1, Section 1 of the State's Constitution could be adversely impacted by this case: "All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights."

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Certificate of Service

I certify the service of this brief on July 31, 2015 by electronic case filing upon all parties, as follows:

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Virus scan certification: the digital form of this pleading submitted to the Court was scanned for viruses using Symantec Endpoint Protection software, version 12.0.1001.95 (most recent virus definition created on July 31, 2015), and according to the program, the document is virus free.

ECF Submission: undersigned certifies that this ECF submission is an exact duplicate of the seven hard copies delivered to the clerk's officer pursuant to 10th Cir. R. 31.5.

s/Bethany S. Lillis