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<tr><td>In the Case of:

Chronos Builders, LLC
Petitioner

v.

Department of Labor and Employment,
Division of Family and Medical Leave Insurance
Respondent</td></tr>
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<tr><td colspan="2">BRIEF OF AMICUS CURIAE INDEPENDENCE INSTITUTE IN SUPPORT OF NEITHER PARTY</td></tr>
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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all the requirements of C.A.R. 28, 29, and 32. Specifically, I certify that this Amicus Brief (including headings and footnotes but excluding the caption, table of contents, table of authorities, signature blocks, and certificate of service) contains 4,682 words. Accordingly, this amicus brief does not exceed one-half the 9,500 word limit of the principal brief.

INDEPENDENCE INSTITUTE

By: *S/David B. Kopel*
David B. Kopel

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INTEREST OF AMICI CURIAE

Independence Institute is a 501(c)(3) educational organization. Since its founding in 1985, the Institute has advocated for constitutional rights, including the Taxpayer's Bill of Rights.

SUMMARY OF ARGUMENT

This Court should apply the specific standard of review required by the text of the Colorado Constitution. The Court should clarify that language from previous cases regarding the standard of review under the Taxpayer's Bill of Rights (TABOR) must be interpreted harmoniously with and subordinate to the specific standard required in the Bill of Rights.

This brief takes no position on whether the district court correctly interpreted section (8)(a) of TABOR. The brief simply urges that the constitutionally mandatory standard of review guide this Court's analysis.

ARGUMENT

I. "Its preferred interpretation shall reasonably restrain most the growth of government."

Unlike most sections of the Constitution, TABOR expressly provides the standard of review for its interpretation: "Its preferred interpretation shall reasonably restrain most the growth of government." Colo. Const. art. X, §20(1).

The Reasonably Restrain Clause is the first substantive sentence of TABOR, preceded only by the effective date. Although not all voters read every word of every ballot issue, anyone who read the text at all read the Reasonably Restrain Clause. It is the controlling rule for all that follows.

"The starting post for our construction is the 'ordinary and popular meaning' of the plain language of the constitutional provision." *Markwell v. Cooke*, 2021 CO 17, ¶33, 482 P.3d 422, 429 (citing *Gessler v. Smith*, 2018 CO 48, ¶18, 419 P.3d 964, 969, quoting *Colo. Ethics Watch v. Senate Majority Fund, LLC*, 2012 CO 12, ¶20, 269 P.3d 1248, 1253-54). Courts should follow the "natural and popular meaning usually understood by the people who adopted" constitutional provisions. *Urbish v. Lamm*, 761 P.2d 756, 760 (Colo. 1988).

"In discerning the ordinary and popular meaning of an undefined word in a constitutional provision, we may consult definitions in recognized dictionaries." *Markwell* at ¶33 (citing *Wash. Cnty. Bd. of Equalization v. Petron Dev. Co.*, 109 P.3d 146, 152 (Colo. 2005)). Because usage may change, dictionaries close to the time of enactment are the most persuasive.

The following definitions are from *The New Shorter Oxford English Dictionary* (1993), which reflects usage at the time of TABOR's 1992 adoption:

preferred: The first two definitions are not relevant here ("advanced to high office"; "having a proper claim for payment," as in preferred stock). The third is "Most favoured; desired by preference." 2 *id.* at 2331.

interpretation: "The action of explaining the meaning of something; *spec.* the proper explanation or signification of something." 1 *id.* at 1399.

reasonably: "with good reason, justly." 2 *id.* at 2496. Or as the Court of Appeals wrote: "'Reasonably' is commonly defined to mean 'in a reasonable manner,' Webster's Third New International Dictionary 1892 (2002), and 'reasonable' means '[f]air, proper, or moderate under the circumstances; sensible,' Black's Law Dictionary 1456 (10th ed. 2014)." *Gagne v. Gagne*, 2014 CA 127, ¶30, 338 P.3d 1152, 1160; *see also Oberhamer v. Deep Rock Water Co.*, No. 06-CV-02284-JLK, 2009 WL 1193737 (D. Colo., Apr. 29, 2009) ("reasonably" defined based on *Merriam-Webster Online Dictionary* definition of "reasonable": "being in accordance with reason").

restrain: "1. Hold back or prevent *from* some course of action. ME. 2. Put a check or stop on, repress, keep down; keep in check, under control, or within in bounds; hold in place." 2 NEW SHORTER OXFORD at 2569 (emphasis in original).

growth: "The action, process, or manner of growing; development; increase in size or value." 1 *id.* at 1153.

Thus, “Its preferred interpretation shall reasonably restrain most the growth of government,” means: “TABOR’s most favored signification shall with good reason and sensibly keep down increase in the size of government.”

The district court adhered to the constitutional mandate: “Thus, finding that there is only one reasonable interpretation of the scope of the last sentence of Section (8)(a), I need not consider which party’s interpretation would most restrain the growth of government.” Order at 4. As the district court recognized, if there had been *two* reasonable interpretations of section (8)(a), then the district court would have had to prefer the one that most reasonably restrained the growth of government.

This brief takes no position on whether the district court’s reading of section (8)(a) was correct.

II. Precedents.

A. Beyond a reasonable doubt.

The TABOR case *Barber v. Ritter* said, “The presumption of a statute’s constitutionality can be overcome only if it is shown that the enactment is unconstitutional beyond a reasonable doubt.” 196 P.3d 238, 247-48 (Colo. 2008).

As a general standard of constitutional review, beyond a reasonable doubt has been persuasively criticized.[1] Whatever the arguments in favor of beyond a reasonable doubt as a general standard in constitutional law, they are irrelevant to TABOR. While all of the United States Constitution and most of the Colorado Constitution lack specific textual standards for judicial review, TABOR has one. TABOR's Reasonably Restrain Clause is fundamentally different from beyond a reasonable doubt.

Suppose that there are two reasonable interpretations of a particular provision of TABOR. Neither interpretation can be proven incorrect beyond a reasonable doubt—because both interpretations are reasonable. In such a case, TABOR's "preferred interpretation shall reasonably restrain most the growth of government."

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[1] *United Air Lines, Inc. v. City & Cty. of Denver*, 973 P.2d 647, 655-59 (Colo. App. 1998) (Briggs, J., specially concurring). The standard comes from some language in *Ogden v. Saunders* 25 U.S. (12 Wheat.) 213, 270 (1827), but as Judge Briggs pointed out, the Supreme Court abandoned such language long ago. *United Air Lines* at 659.

Moreover, the Court's occasional use of such language was never a formal methodology. The main popularizer of beyond a reasonable doubt in constitutional law was Harvard professor James Bradley Thayer, who disliked judicial review per se, and whose influential article could provide little supporting precedent from federal or state courts. *See* Hugh Spitzer, *"Unconstitutional Beyond A Reasonable Doubt"—A Misleading Mantra that Should Be Gone for Good*, 96 WASH. L. REV. ONLINE art. 5 (2021); James B. Thayer, *The Origin and Scope of the American Doctrine of Constitutional Law*, 7 HARVARD L. REV. 129 (1893).

Yet the beyond a reasonable doubt standard would require a court automatically to rule in favor of the government—to choose the interpretation that will most *increase* the growth of government. That is the opposite of the Constitution's plain text.

Many constitutional cases involve undisputed facts. *United Air Lines*, 973 P.2d at 657-58. However, if a case *did* involve disputed facts, then *Barber* could be applied to require the challengers to prove their facts beyond a reasonable doubt—at least to the extent that challengers in other Bill of Rights cases are held to a similar factual burden. This is the only interpretation of *Barber* that avoids conflict with express constitutional text.

This Court, however, has ventured much further. In *Mesa Cnty. Bd. of Comm'rs v. State*, 203 P.3d 519 (Colo. 2009), this Court reversed a district court decision that had obeyed the Reasonably Restrain Clause. This Court said that *Barber*'s "beyond a reasonable doubt" was the rule of decision, and the constitutional text was not: "[T]he district court did not have the benefit of our recent decision in *Barber v. Ritter* . . . The trial court erroneously held that the relevant test . . . came from the interpretive guideline included in the text of article X, section 20 . . ." *Id.* at 523. In dissent, Justice Eid wrote, "In my view, the presumption of constitutionality cannot be used as a cover to excise article X, section 20 from our Constitution." *Id.* at 539

(Eid, J., dissenting). *See also* Daniel J. Domenico, *The Constitutional Feedback Loop: Why No State Institution Typically Resolves Whether a Law is Constitutional and What, If Anything, Should Be Done About It*, 89 DENVER U. L. REV. 161, 187-88 (2011) (describing disparity between *Mesa County* and the Constitution).

B. Bickel.

The path towards the explicitly anti-textual opinions in *Barber* and *Mesa County* began in this Court's first case on TABOR. The opinion was so reluctant to say "Taxpayer's Bill of Rights" or "TABOR" that it instead referred to the ballot issue number, "Amendment 1," over a hundred times, wrote the actual words of the title once, and seven times altered direct quotes to insert a bracketed "[AMENDMENT 1]."

By *ipse dixit*, the Court declared the Reasonably Restrain Clause to mean only: "[W]here multiple interpretations of an Amendment 1 provision are equally supported by the text of that amendment, a court should choose that interpretation which it concludes would create the greatest restraint on the growth of government." *Bickel v. City of Boulder*, 885 P.2d 215, 229 (Colo. 1994).

The *Bickel* dictum, which was repeated in a later case, nullifies constitutional text, as scholars have observed:

> The language of TABOR that "[i]ts preferred interpretation shall reasonably restrain most of the growth of government" has been

> rendered virtually meaningless by the Colorado Supreme Court's statement in *Havens v. Board of County Commissioners of Archuleta County* [924 P.2d 517, 523 (Colo. 1996)]; the court stated that "this principle is applicable only if multiple interpretations are equally supported by the text."

Michael R. Johnson, Scott H. Beck, & H. Lawrence Hoyt, *State Constitutional Tax Limitations: The Colorado and California Experiences*, 35 URB. LAW. 817 (2003).

Unlike the number of points in a football game, constitutional interpretation is not susceptible to precise scoring so that competing interpretations can said to be in an exact tie. Rather, the Reasonably Restrain Clause requires a court to assess whether various interpretations are reasonable; among them, the "preferred interpretation" must be the one that "shall reasonably restrain most of the growth of government."

Some other statements in *Bickel* about the Reasonably Restrain Clause were appropriate. A "mere assertion" by plaintiffs that a given interpretation most reasonably restrains the growth of government is "not dispositive." Instead, plaintiffs "bear the burden" of so "establishing." *Bickel* at 231.

Putting the burden of proving restraint on the challengers is reasonable. Meeting the burden will often be easy. If one interpretation would result in growth of government revenues, and a different interpretation would result in smaller growth,

or no growth, then the second interpretation must be "preferred," according to the Constitution's text.

Consistent with the text, *Bickel* also declared that the Reasonably Restrain Clause would not be applied to lead to an "absurd result," such as an individual being able to "undermine" taxes and debt authorized by the voters "without presenting any evidence." *Id.* As the text says, the standard of review is "*reasonably* restrain." (Emphasis added.)

C. Expediency

Barber declared that TABOR interpretations that would "hinder basic government functions or cripple the government's ability to provide services" shall be avoided. *Barber v. Ritter*, 196 P.3d 238, 248 (Colo. 2008). This language in *Barber* can be read in harmony with the Reasonably Restrain Clause.

The clause applies only to "the *growth* of government." (Emphasis added.) Existing government tax and spending is untouched. The "preferred interpretation" is relevant only when a court must choose between two or more reasonable interpretations, and one of them restrains *growth* more than the others.

However, *Barber* cannot be read to allow for interpretations that would put a judicial thumb on the scales to increase spending or taxation.

1. "Basic" government services

As shown in "defund the police" debates, people disagree about what government services are "basic." The Colorado Constitution definitively answers the question for at least some government services. The Colorado government must create and operate certain state institutions, including public schools and higher education. Arts. VIII, IX. There must be certain executive branch officers who must perform certain duties. Art. IV. There must be a general assembly that must enact certain types of laws. Art. V; DAVID B. KOPEL, COLORADO CONSTITUTIONAL LAW AND HISTORY 37-38 (2d ed. 2022) (the 1876 Constitutional Convention did not want a "do nothing" legislature; instead the Convention mandated that the general assembly "shall" enact legislation on numerous topics). There must be general elections, and, by implication, the resources to conduct those elections. Art. VII. County governments must have certain officers—such as county commissioners, sheriffs, treasurers, attorneys, clerks, and assessors—who must perform certain duties. Art. XIV.

An interpretation of TABOR that would "cripple" any of the above would not be reasonable.

However, reasonably restraining the *growth* of any of the above does not "hinder" a basic government function, in a constitutional sense. Any government entity can

readily explain how more money would help it do more good. The general assembly could operate better if every member had a fulltime professional staff of a half-dozen or more, as members of Congress do. All state institutions could presumably attract even better employees and serve more people by raising the number of employees and their pay, but nowhere does the Constitution mandate that government services be maximized. This Court said so regarding public school spending, even though the Court acknowledged that more funding would be better. *See Lobato v. State*, 2013 CO 30, 304 P.3d 1132 (2013). Likewise, when it was argued that the constitutionally mandated state institution for the insane should be expanded to greater patient capacity, the Court agreed, but stated "the appeal for relief should go to the Legislature." *Wicks v. City and County of Denver*, 156 P. 1100, 1106 (Colo. 1916).

TABOR allows for a government to grow. All that is required is that the government or initiative proponents explain what new revenues are required and ask for their approval at an election—provided of course that the growth must be compliant with other TABOR rules, such as income tax rate increases not taking effect "before the next tax year." Art. X, §20(8)(a).

TABOR's clear constitutional mechanism for consent to taxation should not be circumvented by judicial interpretation contrary to the plain language of the Reasonably Restrain Clause, including the application of a beyond a reasonable

doubt standard that is in direct conflict with that Clause. Any constraint of the Clause, including its repeal, should come from a vote of the people, not through judicial interpretation.

2. This Court's belated rejection of expediency.

The 1958 decision *City of Canon City v. Merris* addressed the notion that adherence to the Constitution hinders government. For decades, the Court had allowed municipalities to prosecute municipal crimes, including those resulting in jail time, as if they were civil offenses. The apparent violations of Article II, §16 (jury trial in criminal cases) and §18 (double jeopardy, as in state and municipal prosecution for the same act) were excused on the need to protect municipal revenue: "It is needless to say that a judicial recognition of the right to a trial by jury, in all the local offenses above enumerated would seriously impair the usefulness and efficiency of city government." *McInerney v. City of Denver*, 29 P. 516, 519 (Colo. 1892). "[S]ummary procedure in police court cases is countenanced from the standpoint of expediency." *Holland v. McAuliffe*, 286 P.2d 1107, 1109 (1955).

In 1958, this Court stopped countenancing expediency violations of the Bill of Rights. Overruling precedent, the Court required that constitutional rules of due process be enforced in municipal courts. "Expedience may not override the Constitution of Colorado; it should not dethrone rights guaranteed thereunder." *City*

of Canon City v. Merris, 323 P.2d 614, 617 (Colo. 1958). "If, one by one, the rights guaranteed by" "state Constitutions" "can and must, for expediency's sake, be violated, abolished, stricken . . ., we will find ourselves governed by expediency, not laws or Constitutions, and the revolution will have come." *Id.* (quoting *State v. Arregui*, 254 P. 788, 792 (Ida. 1927)).

In 1971 a different part of *Merris* was overruled, while the holding against expediency was affirmed: "Our holding . . . does not affect the salutary holdings of the *Merris* case requiring criminal law safeguards to be observed in municipal prosecutions." *Vela v. People*, 484 P.2d 1204, 1206 (Colo. 1971).

Specially concurring in *Merris*, Justice Moore wrote:

> I deem it to be the duty of this court to breathe life and vitality into the constitutions of the state and the nation, to the end that they shall in a practical way accomplish for the individual the objectives intended by the people who adopted them as the supreme law of the land. I am not interested in mental gymnastics, the purpose of which is to search for some plausible excuse for holding a constitutional provision to be an empty shell when resorted to by one for whose benefit the provision was unquestionably intended.
>
> The danger which threatens our democratic processes does not stem from the actions of appellate courts which give strength, vitality and new life to constitutional provisions. The danger is that all too often courts of last resort fritter away constitutional protections, and little by little destroy the basic freedoms of which we speak so often and which we actually apply too seldom in bringing them within the reach of the citizen.

Merris 323 P.2d at 623-24 (Moore, J., specially concurring). The words apply to all constitutional provisions, and especially to every clause in a Bill of Rights.

III. Overruling precedent

To the extent that language from the cases discussed in Part II cannot be read in harmony with the Reasonably Restrain Clause, such language should be overruled.

Stare decisis does not prevent reevaluating a preexisting rule "[w]here we are convinced that the [rule] was originally erroneous or is no longer sound given changed conditions, and more good than harm will come from departing from it." *L.H.M. Corp., TCD v. Martinez*, 2021 CO 78, ¶24, 499 P.3d 1050, 1056 (2021).

The decision to overrule is "ultimately a matter of discretion for a high court, and when, as here, the bases for a prior holding, whether legal or factual, no longer support that holding, and especially where retreating from that holding would not unfairly upset settled expectations, overturning it is not only merited but is in fact an obligation of the high court." *Vigil v. People*, 2019 CO 105, ¶22, 455 P.3d 332, 338 (2019).

First, some of the problematic language examined in Part II is plainly erroneous, because its effect is to replace the rule adopted in the Constitution by an opposite or different rule.

Second, most of the problematic language was *ipse dixit*, supported neither by reasoning nor by citation to authority. The Court was continuing the wrong path first cut by *Bickel*. As noted in Part II.B., *Bickel* was so hostile to the "Taxpayer's Bill of Rights" that it repeatedly expurgated the words from direct quotes.

Bickel rejected the argument that TABOR "creates" a new "fundamental right." *Bickel* at 225. Notwithstanding TABOR's title, *Bickel* declared that there were no "rights" involved:

> The provisions of the amendment are worded, however, not as creating "rights" vested in Colorado's taxpayers but as imposing limitations on the spending and taxing powers of state and local government. For example, the "preferred interpretation" of Amendment 1 is that which "reasonably restrain[s] most the growth of government."

Id. Similarly, TABOR created new rules for tax and debt elections. *Id.* "Finally, Amendment 1's provisions regulating state and local spending and revenue also are phrased in terms of the obligations imposed on state and local government and not in terms of vesting any new rights in the citizens of Colorado." *Id.* "Thus, Amendment 1's requirement of electoral approval is not a *grant* of new powers or rights to the people, but is more properly viewed as a *limitation* on the power of the people's elected representatives." *Id.* at 226 (emphasis in original).

The mental gymnastics are implausible. Every step of the analysis could be applied to article II, §11, of the original Bill of Rights:

> No ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges, franchises or immunities, shall be passed by the general assembly.

Art. II, §11. Many other provisions of the original Bill of Rights do not declare the existence of a "right." They simply impose "limitations on the power of the people's elected representatives" and on those who carry out the laws of our elected representatives.

Section 7 limits the search and seizure laws that may be enacted, and how government officers may conduct searches and seizures. Section 8 controls enactment of laws about indictments or informations. Section 9 creates no "right" to commit treason, felony, or suicide, but it does create limitations on how the people's elected representatives may penalize such acts. Similarly, section 12, prohibiting in most cases imprisonment for debt, does not create a "right" to default on debt.

Section 25 ("No person shall be deprived of life, liberty or property, without due process of law.") did not create the rights of life, liberty or property. Instead, section 25 imposes "limitations on the power of the people's elected representatives" to deprive persons of life, liberty, or property.

Property rights are not created by constitutions; they precede society. "All persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring,

possessing and protecting property; and of seeking and obtaining their safety and happiness." Art. II, §3.

Bills of rights prevent governments from abusing the rights that government was created to protect. So the takings sections of Article II do not declare any new "rights," and they do impose "limitations on the power of the people's elected representatives." Private property may not be taken for private use, with specific exceptions. Art. II, §14. When private property is taken for public use (or specific private uses), just compensation must be paid, and must be ascertained according to certain procedures. Art. II, §15. The owner's property rights already being in existence, "the proprietary rights of the owners" shall not be "divested" until the compensation "be paid to the owner." *Id.*

TABOR is structurally the same as all the above clauses. TABOR does not purport to create a "right" of Coloradans to the fruits of their labor. The rights "of acquiring, possessing and protecting property" have always been "natural, essential and inalienable rights." TABOR simply adds specific procedures for how private property may be taken and used via taxation, just as sections 14 and 15 add specific procedures for how property may be taken and used via eminent domain.

Thus, *Bickel*'s statement that the Taxpayer's Bill of Rights is not a bill of rights was erroneous. Applied to Colorado's original Bill of Rights, *Bickel* would prove

that at least seven sections do not qualify as "rights." The 1876 Colorado Convention and ratifying public might have considered such mental gymnastics absurd.

This Court's announcement that it will obey the Reasonably Restrain Clause would do much more good than harm, as will be described in Part IV.

IV. History and Policy.

It is well known that our republican form of government is under broad attack, in Colorado and around the world. Across the political spectrum, many people have lost confidence in the institutions of our government. Sometimes accurately, many feel that institutions of government act based on their will, and not according to the rule of law. Thus, faith in the rule of law itself is undermined. Decisions by courts that follow the rule of law—even when those decisions might not follow the policy preferences of a given judge—inspire confidence in the rule of law.

Regarding the Colorado Constitution, the judicial role is to obey it:

> The amendment of the constitution is an exertion of the sovereign power of the people of the state to give to their expressed will the force of a law supreme over every person and every thing in the state, so long as it does not conflict with the Constitution of the United States. The rule so established bears down and supplants all other laws and rules that are inconsistent with it. In determining rights controlled by it, we therefore have only to ascertain what it means and give it full effect, so long as it encounters no opposition in the higher law of the federal Constitution.

In re Interrogatories Propounded by the Senate, 452 P.2d 382, 384 (1969) (quoting *Gillespie v. Lightfoot*, 127 S.W. 799, 801 (Tex. 1910).

A. The Colorado Constitution is the supreme act of the sovereign people.

In Colorado, "All political power is vested in and derived from the people; all government, of right, originates from the people, is founded upon their will only, and is instituted solely for the good of the whole." Colo. Const. art. I, §1. "The people of this state have the sole and exclusive right of governing themselves." Art. II, §2; *cf. New York Times Co. v. Sullivan*, 376 U.S. 254, 274-75 (1964) (James Madison's "premise was that the Constitution created a form of government under which 'The people, not the government, possess the absolute sovereignty.'").

Whether or not a constitution exists, "All persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness." Art. II, §3. Among those essential and inalienable rights is consent to taxation. In the Anglo-American understanding of "law," a government that taxes without consent undermines its legitimacy. The principle is as old as the Magna Carta. Magna Carta, arts. 12, 14 (England 1215) (requiring consent to taxation by the king's council, the body that later became Parliament). Violation of the principle caused the American

Revolution. In Colorado, the people provide their consent to taxation via Article X, including by their amendments thereto, including TABOR.

"The constitution is the supreme law of the state, solemnly adopted by the people, which must be observed by all departments of government; and if any of its provisions seemingly impose too great a limitation, they must be remedied by amendment, and cannot be obviated by the enactment of laws in conflict with them." *In re Senate Bill No. 9*, 56 P. 173, 174 (Colo. 1899) (per curiam). "It is elemental law that the Colorado Constitution establishes the supreme law of the State of Colorado." *People v. Cox*, 2021 COA 68, ¶18, 493 P.3d 914, 916-17, (2021) (citing *In re Senate Bill No. 9*).

"The presumption is, that the people in exercising their supreme power, did not do a vain act, but effected a definite purpose." *In re Interrogatories Propounded by the Senate*, 452 P.2d at 384 (1969) (quoting *People ex rel. Williams Engineering & Contracting Co. v. Metz*, 85 N.E. 1070, 1073 (N.Y. 1908); *People ex rel. Carlson v. City Council of City & County of Denver*, 153 P. 690, 693 (Colo. 1915) (same)).

B. The Judicial Branch, which was created by the Constitution, has no power to nullify parts of the Constitution.

All entities of Colorado government are artificial creations of the people, created pursuant to the Constitution, and having no power other than to act in subordination to the Constitution. As the United States Supreme Court said of the United States

government, "The United States is entirely a creation of the Constitution. Its power and authority have no other source. It can only act in accordance with the limits prescribed by the Constitution." *Reid v. Covert*, 354 U.S. 1. 5-6 (1957) (Black, J., plurality op.).

Although courts often create legal standards, "When there does exist a controlling legal standard, however, a court may not disregard that standard in favor of some other legal rule." *Borer v. Lewis*, 91 P.3d 375, 379 (Colo. 2004) (quoting *Buckmiller v. Safeway Stores, Inc.*, 727 P.2d 1112, 1115-16 (Colo.1986)). While a court may have discretion, "it must exercise that discretion within the framework of, rather than in disregard of, the controlling legal norms." *Id.*

The Reasonably Restrain Clause is the supreme law of Colorado and it governs the Supreme Court of Colorado. Judicial statements that purport to replace the Reasonably Restrain Clause with a contrary rule are acts of power and not of law.

CONCLUSION

This Court should decide this case according to the text of the Constitution.

RESPECTFULLY SUBMITTED this 9th day of March, 2022.

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Pursuant to C.R.C.P. 121 §1-26(9), a printed copy of this electronically filed document with original signatures is being maintained at the Independence Institute and is available for inspection by other parties or the Court upon request.

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of March, 2022, I electronically filed the foregoing **AMICUS BRIEF OF THE INDEPENDENCE INSTITUTE IN SUPPORT OF NEITHER PARTY and the related MOTION FOR LEAVE TO FILE** with the Clerk of the Court using ICCES, which will send electronic notification of such filing to the following:

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