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<p>Appeal from Fremont County District Court Hon. Lynette M. Wenner Case No. 2023CV30019</p>	
<p><b>Plaintiff/Appellee:</b> MARISA PALMAS, v. <b>Defendant/Appellee:</b> BRANDON LUCERO,  <b>and</b>  <b>Other Interested Party/Appellant:</b> BOARD OF COUNTY COMMISSIONERS FOR FREMONT COUNTY, COLORADO</p>	
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**BRIEF OF *AMICI CURIAE* COLORADO MUNICIPAL LEAGUE,  
COLORADO INTERGOVERNMENTAL RISK SHARING AGENCY,  
AND COLORADO COUNTIES, INC. IN SUPPORT OF APPELLANT  
BOARD OF COUNTY COMMISSIONERS FOR FREMONT COUNTY,  
COLORADO**

Dated: December 5, 2024

## CERTIFICATION

I hereby certify that this brief complies with C.A.R. 28(a)(2-3), 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 4,585 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/ Rachel Bender* \_\_\_\_\_  
Rachel Bender, #46228

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The Colorado Municipal League (“CML”), Colorado Intergovernmental Risk Sharing Agency (“CIRSA”), and Colorado Counties, Inc. (“CCI”) respectfully submit the following *Amici Curiae* Brief in Support of Appellant Board of County Commissioners for Fremont County, Colorado.

**IDENTITY OF *AMICI CURIAE* AND THEIR INTEREST IN THE CASE**

CML, formed in 1923, is a non-profit, voluntary association of 271 of the 273 cities and towns located throughout the state of Colorado, comprising nearly 99 percent of the total incorporated state population. CML’s members include all 107 home rule municipalities, 163 of the 165 statutory municipalities, and the lone territorial charter city. This membership includes all municipalities with a population greater than 2,000. Since its inception, CML has regularly appeared in the courts as an *amicus curiae* to advocate on behalf of the interests of municipalities statewide. Many of CML’s member municipalities employ peace officers and are often obliged to provide defenses and indemnity for officers.

CIRSA is a Colorado public entity self-insurance pool providing property, liability, and workers’ compensation coverages throughout the State of Colorado. Formed in 1982 by 18 municipalities, CIRSA now serves 291 member municipalities and affiliated legal entities. CIRSA is not an insurance company, but an entity created by intergovernmental agreement of its public entity members as



provided for by C.R.S. § 24-10-115.5. In addition to various coverages and associated risk management services, CIRSA provides its members sample publications, training, and consultation services. Member cities and towns govern CIRSA and support it through financial contributions. The contributions paid by CIRSA's public entity members pay for covered claims against the members and their officers and employees. The contributions are also used to buy certain excess insurance or reinsurance coverage. Whenever peace officers employed by CIRSA members are sued under the Law Enforcement Integrity Act ("LEIA"), CIRSA provides coverage and legal defense for such claims, subject to certain exclusions. Many of CIRSA's members employ peace officers who are subject to the LEIA.

CCI is a Colorado non-profit corporation founded by the state's county commissioners in 1907 to further county government cooperation and efficiency. CCI members include 62 of Colorado's 64 counties. Using discussion and cooperative action, CCI works to solve the many financial, legal administrative, and legislative problems confronting county governments. CCI regularly participates as *amici curiae* in cases before the Colorado courts raising important legal issues for Colorado's counties such as this case. Counties employ peace officers who are subject to LEIA.

The LEIA, passed in 2020's Senate Bill 20-217 ("SB20-217"), enacted comprehensive reforms to law enforcement practices, peace officer certification, and both criminal and civil liability for peace officers. 2020 Colo. Sess. Laws, 445. This brief discusses the legislative history of SB20-217, focusing on the introduction and modification of the indemnification provision in C.R.S. § 13-21-131(4)(a).

The brief also provides the Court with a statewide perspective of the absurd and untenable consequences if this Court upholds the District Court's interpretation. The state and local governments employ peace officers and rulings on the scope of government employer indemnification obligations for peace officers impact all those entities. Ultimately, imposing governmental entity liability for peace officers' criminal conduct who are unable to pay corresponding civil judgments, exposes public entities and taxpayers to an unreasonable and unintended liability risk and financial consequences that cannot be effectively insured against.

### **SUMMARY OF ARGUMENT**

This case interprets the indemnity provisions of C.R.S. § 13-21-131(4)(a) for the first time and allows the Court to confirm a public employer is not liable for a peace officer's criminal conduct. The District Court's erroneous statutory interpretation leads to an absurd result that is contrary to legislative intent. The legislative history makes clear the indemnification exception must be read to exclude

all employer liability for criminal misconduct. To find otherwise subjects government to a significant and unpredictable liability risk, uses taxpayer money to subsidize peace officers' criminal conduct, substantially burdens public budgets, and impacts the availability of insurance—consequences the General Assembly never intended.

## ARGUMENT

### **I. The district court erred in its analysis of C.R.S. § 13-21-131(4)(a).**

Regardless of whether the statutory language of C.R.S. § 13-21-131(4)(a) is clear and unambiguous—and *amici* support the arguments of Appellant—*amici* urge this Court to consider the irrational and untenable results arising from the District Court's order. There is a presumption “the General Assembly intends a just and reasonable result” so even though a court “must give effect to the statute’s plain and ordinary meaning, the intention of the legislature will prevail over a literal interpretation of the statute that leads to an absurd result.” *AviComm, Inc. v. Colo. Pub. Utils. Comm’n*, 955 P.2d 1023, 1031 (Colo. 1998). The legislature’s clear intent to avoid making employers liable for a peace officer’s criminal misconduct through C.R.S. § 13-21-131(4)(a) undermines the District Court’s order.

**A. Holding government entities liable for judgments against peace officers convicted of criminal conduct will lead to absurd results.**

Here, the District Court held that because the civil judgment was uncollectible from the peace officer, the government employer was obligated to satisfy the judgment despite the officer's criminal conviction for the underlying conduct. Under this reasoning, an officer with a criminal conviction for the conduct in question, who knows they are judgment-proof, has no motive to defend themselves against a LEIA claim.<sup>1</sup> The government employer, on the other hand, may not be aware of the LEIA claim against the officer unless the plaintiff or officer notifies the employer because LEIA contains no notice requirements, unlike the Colorado Governmental Immunity Act ("CGIA"). *See* C.R.S. § 24-10-110(2) (defense and indemnification obligations under the CGIA inapplicable when employee fails to notify employer of lawsuit to

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<sup>1</sup> It is unclear whether Appellee satisfied her burden to establish a judgment is uncollectible or what showing is required. Here, the peace officer, now residing elsewhere, elected not to participate in the litigation. Upholding the District Court's order incentivizes officers with a criminal conviction to simply ignore LEIA proceedings against them to avoid any financial liability, to the detriment of the government employer and its taxpayers. This same incentive might not be present for an officer who is judgment-proof and has no criminal conviction because there is still a potential risk of other ramifications from a finding of civil liability. *See, e.g.*, C.R.S. § 24-31-904 (mandating termination of employment and peace officer certification revocation if officer is found civilly liable for using excessive force), and *compare with* C.R.S. § 24-31-305(2)(a) (requiring peace officer certification revocation for conviction of a felony or certain misdemeanors). This distinction further reveals the irrationality of the District Court's interpretation.

which employer is not a party). Additionally, the employer would have no knowledge as to whether an officer's financial means are sufficient to satisfy any judgment. In such instances, a plaintiff can simply obtain a default judgment against an officer and then ask the court to issue an order mandating the unwitting employer to pay the judgment.

The same issues arise in the context of a settlement because C.R.S. § 13-21-131(4)(a) also requires indemnification for settlements. A judgment-proof officer with a criminal conviction might agree to a plaintiff's monetary settlement demand, knowing the government will ultimately be required to pay the settlement despite the entity's lack of notice, involvement, or consent. This outcome would be a significant departure from Colorado's standards for public employer liability outside of the LEIA. *See* C.R.S. § 24-10-110(1)(b) (requiring public entity's consent for any CGIA settlement it must pay on behalf of a public employee); C.R.S. § 29-5-111 (requiring governing body approval for compromise or settlement of claims within this separate peace officer liability statute). A system removing incentives for peace officers to negotiate reasonable settlements, assert valid defenses, or notify their public employer creates an extremely unbalanced litigation dynamic and subjects governments and taxpayers to unfettered liability.

Even if an employer knows of a LEIA claim against a criminally-convicted officer, the employer still lacks knowledge of whether the officer could satisfy any judgment or settlement. This potential to foist financial responsibility for the officer's criminal conduct on the otherwise unsuspecting employer and its taxpayers places employers in the unreasonable and untenable position of needing to expend significant time and resources to provide a defense for an officer for their criminal conduct. The employer will be forced to take on this burden even if they have disciplined or terminated the officer. The financial burden for government entities is magnified even if the officer ultimately remains solvent enough to satisfy a judgment or settlement because LEIA does not require the officer to reimburse their employer. *Cf.* C.R.S. § 24-10-110(1.5)(a) (requiring court to order employee to reimburse public entity for costs and attorney fees incurred in defense if employee acted outside scope of employment or in a willful and wanton manner for claims under the CGIA).

Upholding the District Court's order creates a Hobson's choice for government employers managing the risk to taxpayer funds. Does it stay out of a LEIA lawsuit against a (likely former) peace officer who engaged in criminal conduct, hoping that the claim is defeated, a judgement or settlement is within its means, or that the officer can pay the judgment? Or does it expend taxpayer resources to decrease or eliminate the officer's liability for the officer's criminal

conduct, to protect the entity if the officer is or becomes judgment proof? Neither option provides the opportunity for government entities to operate as good stewards of public resources. The General Assembly never intended for governments to determine when and how to expend taxpayer money on behalf of criminal officers.

**B. The legislative history of SB20-217 reveals that the General Assembly never intended that a government entity pay a LEIA judgment arising from criminal conduct.**

The liability provisions of SB20-217 can only be understood with reference to the history of the legislation, the context in which the law was passed, and the law's changes to law enforcement liability. Despite the use of the words "indemnify" and "satisfy" in C.R.S. § 13-21-131(4)(a), the legislature clearly understood and intended the law would not expose government employers to liability for a peace officers' criminal misconduct. No construction of SB20-217 can reasonably read this significant provision out of the law.

The circumstances surrounding the passage of SB20-217 supplement the law's limited legislative history. Due to the COVID-19 pandemic, the 2020 legislative session was suspended from March 14 through May 26, and a second regular session ran from May 26 through June 15. Julie Pelegrin, *2020 Legislative Session Adjourns Both Early and Late*, COLORADO LEGISOURCE (June 16, 2020), <https://tinyurl.com/Legisource-2020-session>. Meanwhile, George Floyd's death on

May 25, 2020, sparked protests nationwide, including outside of the Colorado state capitol building, giving rise to the introduction of SB20-217 on June 3, 2020. Jesse Paul, *Law Enforcement Warns of Unintended Consequences with Colorado Democrats' Sweeping Police Accountability Bill*, THE COLORADO SUN (June 4, 2020, 8:45PM), <https://tinyurl.com/Colorado-Sun-June-4>.

The bill's quick drafting and introduction brought mixed feelings across the political spectrum, with many recognizing the need for some change while also raising concerns this broad and impactful legislation was being rushed. *Id.* Forty-six amendments were considered throughout the legislative process and all but three were adopted. *SB20-217 Enhance Law Enforcement Integrity*, COLORADO GENERAL ASSEMBLY, <https://leg.colorado.gov/bills/sb20-217> (last visited Oct. 24, 2024). Despite the concerns about the bill's speed, the General Assembly passed SB20-217 on June 13, 2020 – ten days after the bill's introduction. *Id.*

SB20-217 created a new civil cause of action to enforce violations of the Colorado Constitution by peace officers. Unlike its federal counterpart – 42 U.S.C. § 1983 (“Section 1983”) – the LEIA permits claims only against the peace officer and not the peace officer's employer. *Compare Dittiro v. Sando*, 520 P.3d 1203, 1209 (Colo. App. 2022) (finding no liability for government entities under C.R.S. § 13-21-131(1)), *with Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978)



(holding government entities can be liable under Section 1983). The LEIA also prohibits the defense of qualified immunity and removes statutory immunities and limitations on liability, damages, and attorney fees. C.R.S. § 13-21-131(2).

Although there is no cause of action against employers under the LEIA, employers are required to indemnify peace officers for some acts. The LEIA's liability provision states:

Notwithstanding any other provision of law, a peace officer's employer shall indemnify its peace officers for any liability incurred by the peace officer and for any judgment or settlement entered against the peace officer for claims arising pursuant to this section; except that, if the peace officer's employer determines on a case-by-case basis that the officer did not act upon a good faith and reasonable belief that the action was lawful, then the peace officer is personally liable and shall not be indemnified by the peace officer's employer for five percent of the judgment or settlement or twenty-five thousand dollars, whichever is less. Notwithstanding any provision of this section to the contrary, if the peace officer's portion of the judgment is uncollectible from the peace officer, the peace officer's employer or insurance shall satisfy the full amount of the judgment or settlement. A public entity does not have to indemnify a peace officer if the peace officer was convicted of a criminal violation for the conduct from which the claim arises unless the peace officer's employer was a causal factor in the violation, through its action or inaction.

C.R.S. § 13-21-131(4)(a).

In the bill as first introduced, this provision included an indemnity requirement and sought to ensure that both the peace officer and the entity's public safety budget were directly liable for part of the judgment:

Notwithstanding any other provision of law, a political subdivision of the state shall indemnify its peace officers for any liability incurred by the employee and for any judgment or settlement entered against the employee for claims arising pursuant to this section; **except that the peace officer is personally liable and shall not be indemnified by a public entity, insurance carrier, or otherwise for five percent or one hundred thousand dollars of the judgment or settlement**, whichever is less. **The political subdivision of the state shall appropriate the first two hundred thousand dollars of the indemnification from the political subdivision's public safety budget**, unless the public safety budget is less than two hundred thousand dollars, in which case at least twenty-five percent of the public safety budget shall be used to indemnify.

S.B. 20-217, 72nd Leg, 2nd Reg. Sess. at 9 (as introduced on June 3, 2020), <https://tinyurl.com/217-Introduced>. (emphasis added).

The provision was first modified in the Senate Finance Committee on June 8, 2020, through Amendment L.016, and then again on second reading the same day, through Amendment L.029, to reduce the scope of peace officer's potential personal liability and to address concerns peace officers would be subjected to personal liability for good faith actions, while retaining indemnity obligations for those actions. S. Comm. of Reference Amendment L.016 to SB20-217: 72nd Leg, 2nd Reg. Sess. (Colo. 2020), <https://tinyurl.com/SB217-L016>; S. Second Reading Amendment L.029 to SB20-217: 72nd Leg, 2nd Reg. Sess. (Colo. 2020), <https://tinyurl.com/SB217-L029>. Amendment L.016 also included the sentence regarding an uncollectible judgment the District Court relied on to find Fremont

County was required to pay the default judgment. The Senate ultimately approved SB20-217 including this language:

Notwithstanding any other provision of law, a **peace officer's employer**—~~political subdivision of the state~~ shall indemnify its peace officers for any liability incurred by the **peace officer employee** and for any judgment or settlement entered against the **peace officer employee** for claims arising pursuant to this section; except that **if the peace officer's employer determines that the officer did not act upon a good faith and reasonable belief that the action was lawful, then** the peace officer is personally liable and shall not be indemnified by **the peace officer's employer**—~~a public entity, insurance carrier, or otherwise~~ for five percent or ~~twenty-five~~**one hundred** thousand dollars of the judgment or settlement, whichever is less. **Notwithstanding any provision of this section to the contrary, if the peace officer's portion of the judgment is uncollectible from the peace officer, the peace officer's employer or insurance shall satisfy the full amount of the judgment or settlement.**~~The political subdivision of the state shall appropriate the first two hundred thousand dollars of the indemnification from the political subdivision's public safety budget, unless the public safety budget is less than two hundred thousand dollars, in which case at least twenty-five percent of the public safety budget shall be used to indemnify.~~

S.B. 20-217, 72nd Leg, 2nd Reg. Sess. at 13-14 (as reengrossed on June 9, 2020), <https://tinyurl.com/217-Reengrossed> (emphasis added). The limited debate on these amendments does not reveal discussion of the new final sentence that included the term “satisfy.”<sup>2</sup>

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<sup>2</sup> *Amici* identified no legislative history assigning meaning to the words “indemnify” and “satisfy.” Given the context of the entire provision and the order of amendments, both words should be understood to impose an obligation on the employer to pay the

Thereafter, in the waning hours of June 10, 2020, after a hearing beginning at 3:00 p.m. with over seven hours of testimony, the House Finance Committee swiftly considered and approved fifteen amendments, including Amendment L.098. Amendment L.098 added the following final sentence to C.R.S. § 13-21-131(4)(a) to remove employer liability for criminal conduct: “A public entity does not have to indemnify a peace officer if the peace officer was convicted of a criminal violation for the conduct from which the claim arises.” H. Comm. of Reference Amendment L.098 to SB20-217: 72nd Leg, 2nd Reg. Sess. (Colo. 2020), <https://tinyurl.com/SB217-L098>; H. Comm. on Fin. Bill Summary for SB20-217, 72nd Leg., 2nd Reg. Session (Colo. 2020), <https://tinyurl.com/finance-hearing-summary>.

Amendment L.098 was significant for several reasons. First, the amendment kept intact a critical aspect of the law existing prior to SB20-217’s passage, despite the legislation’s otherwise sweeping changes. Second, while many amendments were passed without discussion, the purpose and impact of Amendment L.098 was explained in detail by a person involved in the legislative drafting in response to a question:

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settlement or judgment whether reimbursing the peace officer or paying a plaintiff directly.

**Rep. Adrienne Benavidez:** You know often times when there's not indemnification there may be no remedy for the victim in the case unless there's a showing against the agency with regard to lack of training or supervision so *how does this amendment impact that if somebody was held criminally liable?*

**Chair:** Ms. Wallace.

**Rebecca Wallace:** Thank you, Madam Chair. Thank you, Representative Benavidez. It's a very good question that you have. *I think what this amendment does is it recreates the reality that we live in right now, despite the fact that it will leave some victims without justice.* And just so right now, when you bring a civil rights case under federal law here in Colorado, 99% of the time the government entity will indemnify. It does not matter if the actions are willful and wanton. It does not matter if you are shooting somebody in the back who is laying down on the ground. They will indemnify. I know from personal experience, and I also know from the enormous group of civil right lawyers that I worked with in developing some of the thoughts behind this provision. And so, the indemnification provision that exists right now in the law really is just codifying what's already happening but it's hopefully to give some sense of peace to the peace officers. That's the goal of it. *But the one time that we see almost all the time non-indemnification is when the individual, the peace officer, is convicted of a criminal offense.* So I'll give you an example. I worked on a case with Ms. Newman when I was her associate and it was bringing a case against the DOC and a prison guard who had been raping women inside the facility and we did have a settlement with the DOC but the biggest settlement, I mean the biggest verdict, was against the prison guard. And he was also convicted. And the DOC cut him loose for indemnification purposes. *And so, I don't like this amendment, but I understand that there's been a goal to sort of recreate what's available in federal law, excluding qualified immunity here in state law, and not to increase the liability and so this was a compromise amendment but it will leave victims whose when the peace officer has committed a criminal violation, it will leave them without justice.*

*Enhance Law Enforcement Integrity: June 10 Hearing on SB20-217 Before the H. Comm. on Fin., 72nd Leg., 2nd Reg. Sess. (Colo. 2020)* (statement of Rep. Adrienne Benavidez, Member, H. Comm. on Fin. and Rebecca Wallace, representing the ACLU of Colorado at 12:39), <https://tinyurl.com/finance-hearing-recording> (emphasis added, vocal disfluencies omitted). The amendment used the term “indemnity,” despite the existing use of the term “satisfy,” but fully understood that there would be circumstances where a judgment or settlement would not be paid. SB20-217 was ultimately approved in this form nine days later.<sup>3</sup>

In her response, Ms. Wallace notes she was part of the group of attorneys who worked on developing this provision, acknowledges this is “just codifying what’s already happening,” and concedes non-indemnification for criminal conduct reflects current law though it will leave some victims “without justice.” This statement, taken in context, makes clear this amendment means a victim will not be compensated in the event a judgment arising from criminal conduct for which the officer is convicted is uncollectible from the officer. Thus, despite the amendment’s use of the term “indemnity” instead of the already-used term “satisfy,” the legislature clearly

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<sup>3</sup> The statute was amended in 2021 to address the “good faith” exception and to provide for indemnity for criminal conduct when “the peace officer's employer was a causal factor in the violation, through its action or inaction.” 2021 Colo. Sess. Laws, 3054 at § 6.

understood Amendment L.098 would give rise to circumstances where a judgment or settlement would not be paid by the public entity.

Other legislative history supports this interpretation. Several legislators, including the prime Senate sponsor Sen. Leroy Garcia, represented the new civil cause of action under the LEIA was largely intended to mirror federal Section 1983 claims while simply removing the qualified immunity defense. *See Enhance Law Enforcement Integrity: June 8 Second Reading on SB20-217 Before the Senate*, 72nd Leg., 2nd Reg. Sess. (Colo. 2020) (statement of Sen. Leroy Garcia at 3:24), <https://coloradochannel.net/watch-meetings/#tab2> (stating the bill revokes qualified immunity); *id.* (statement of Sen. Bob Gardner at 4:19) (discussing sponsors desire to eliminate qualified immunity). As noted in the response to Rep. Benavidez, the state of the law prior to the passage of SB20-217, was Colorado government entities do not indemnify officers in Section 1983 civil rights cases arising out of conduct for which the officer was criminally convicted. Government entities likewise do not satisfy Section 1983 judgments or settlements against officers under such circumstances, nor do they have any obligation to do so. This aligns with the long-standing understanding that it is “contrary to public policy to insure against liability arising directly against the insured from intentional or willful wrongs, including the results and penalties of the insured’s own criminal act.” *Bohrer v. Church Mut. Ins.*

*Co.*, 965 P.2d 1258, 1262 (Colo. 1998) (quoting 7 Lee R. Russ & Thomas F. Segalla, *Couch on Insurance* § 101:22 (3d ed. 1997)).

*Amici* submit that the District Court’s interpretation of C.R.S. § 13-21-131(4)(a) subverts the legislature’s intent by subjecting government entities to unintended financial liability for LEIA claims against criminally convicted peace officers, despite having no such obligation or practice when faced with a parallel federal claim or any other state law claim. The specific testimony on the provision at issue cements that legislative intent – the Colorado General Assembly did not intend to require government entities to pay a LEIA judgment or settlement entered against a peace officer when the officer was criminally convicted for their conduct.

**II. Holding government entities civilly liable for the criminal conduct of a peace officer will unreasonably subject them to uninsurable claims.**

If this Court were to narrow the LEIA’s indemnification exception beyond the General Assembly’s intent, government entities must pay for LEIA claims that are likely uninsurable. Government entity law enforcement liability and general liability policies insure government entities against claims for injury or loss arising from law enforcement activities, which typically include coverage for LEIA claims. While coverage commonly extends to law enforcement activities resulting in a violation of civil rights, “to the extent this new exposure arises from a criminal conviction, it falls within [the] long-standing and common insurance exclusion for liability arising



from criminal acts.” Sam Light, *CIRSA’s Law Enforcement Coverage Explained*, CIRSA, 2, <https://tinyurl.com/CIRSA-LEIA-coverage> (last visited Dec. 2, 2024). Therefore, if the obligation for a local government to pay a judgment or settlement against a judgment-proof officer is broadened to require the government to pay even when an officer has been criminally convicted for the underlying conduct, local governments face liability for uninsurable claims.

Moreover, much like the elimination of the qualified immunity defense has contributed to significant cost increases for law enforcement liability (LEL) coverage,<sup>4</sup> if public employers face liability for peace officers’ criminal misconduct, it will result in further negative impacts on the availability and costs of LEL insurance and reinsurance/excess insurance, irrespective of the common “criminal acts” exclusion. In CML’s 2024 State of Our Cities & Towns Report, based on survey data from municipalities throughout Colorado, municipalities reported that law enforcement-related lawsuits are the most common type of lawsuit faced, yet LEL coverage is already one of the most challenging lines of coverage to access. *2024 State of Our Cities & Towns Report*, COLORADO MUNICIPAL LEAGUE,

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<sup>4</sup> See, e.g., Kenneth S. Abraham, *Police Liability Insurance After Repeal of Qualified Immunity, and Before*, 56 Tort Trial & Insurance Practice Law Journal 31, 39 (2021) (“[A] nearly-universal reaction to the present uncertainty in the market, and to future uncertainty if qualified immunity is repealed has been and will be to increase premiums.”).

<https://tinyurl.com/SOOCAT2024> (last visited Nov. 7, 2024). Additionally, even if a municipality obtains coverage, municipalities have seen the greatest increase in insurance premiums for LEL coverage over the past three years compared to other lines of insurance. *Id.*

Regardless of whether an insurance policy excludes coverage for LEIA claims, a government must still make payment somehow. However, unlike the CGIA, C.R.S. § 24-10-113(3), there is no mechanism provided for an entity to levy a tax to pay the judgment if unable to pay. This obligation may result in a significant expenditure of public funds to satisfy LEIA claims against a peace officer who engaged in a criminal act, impairing the ability to use those taxpayer dollars on other vital government functions. Because of the substantial liability increase without the safeguard of insurance coverage, imposing significant financial burdens on government budgets and operations, CML, CIRSA, and CCI urge this Court to reject the District Court's erroneous expansion of the indemnification obligations under C.R.S. § 13-21-131(4)(a).

## **CONCLUSION**

The LEIA's indemnification provisions were intentionally drafted to provide assurances plaintiffs would receive financial compensation in most, but not all, cases where a settlement or judgment was entered against a peace officer. As with similar

federal claims, the statute was never meant to expose government entities to unprecedented, limitless liability for the unsanctioned criminal acts of peace officers, crippling the ability to manage risk and safeguard taxpayer-funded government budgets. Accordingly, CML, CIRSA, and CCI respectfully request this Court reject the District Court's interpretation of C.R.S. § 13-21-131(4)(a) and hold public entities in Colorado are not obligated to pay for uncollectible judgments or settlements against peace officers criminally convicted for their conduct underlying the LEIA claim.

Dated December 5, 2024.

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## CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2024, I filed the foregoing **BRIEF OF AMICI CURIAE COLORADO MUNICIPAL LEAGUE COLORADO INTERGOVERNMENTAL RISK SHARING AGENCY, AND COLORADO COUNTIES, INC. IN SUPPORT OF APPELLANT BOARD OF COUNTY COMMISSIONERS FOR FREMONT COUNTY, COLORADO** via Colorado Courts E-Filing, which will send a true and correct copy to the following:

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