COLORADO SUPREME COURT
Colorado State Judicial Building
Two East 14th Avenue
Denver, Colorado 80203

COLORADO COURT OF APPEALS, 2015CA1371
Opinion by Plank, J.; Taubman and Freyre, JJ., concur

BOULDER COUNTY DISTRICT COURT, 2014CV30681
The Honorable Judith L. LaBuda

Petitioners: THE CITY OF BOULDER, COLORADO; THE CITY COUNCIL for the CITY OF BOULDER, COLORADO; SUZANNE JONES, in her official capacity as MAYOR; ANDREW SHOEMAKER, in his official capacity as MAYOR PRO TEM; and MATTHEW APPELBAUM, JAN BURTON, LISA MORZEL, AARON BROCKETT, BOB YATES, SAM WEAVER, and MARY YOUNG, in their official capacities as members of the CITY COUNCIL,

v.

Respondent: PUBLIC SERVICE COMPANY OF COLORADO, a Colorado corporation.

Attorney for Amicus Curiae:

Dianne M. Criswell, #48086
COLORADO MUNICIPAL LEAGUE
1144 Sherman Street
Denver, CO 80203-2207
Phone: 303-831-6411
Fax: 303-860-8175
E-mail: dcriswell@cml.org

▲COURT USE ONLY▲

Case No: 2016SC894

BRIEF OF *AMICUS CURIAE* COLORADO MUNICIPAL LEAGUE IN SUPPORT OF PETITIONER, CITY OF BOULDER

CERTIFICATE OF COMPLIANCE

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

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

☒ It contains 4,137 words (does not exceed 4,750 words).

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

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.

COLORADO MUNICIPAL LEAGUE

/s/ Dianne M. Criswell
Dianne M. Criswell, #48086
1144 Sherman Street
Denver, CO 80203-2207
Phone: 303-831-6411
Fax: 303-860-8175
E-mail: dcriswell@cml.org
Attorney for the Colorado Municipal League

Attorney for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Court Rules

Other Authorities

Constitutional Provisions

The Colorado Municipal League ("CML" or the "League") by undersigned counsel and pursuant to C.A.R. 29, submits this brief as *amicus curiae* in support of the Petitioners, City of Boulder . . . (collectively, the "City").

INTEREST OF AMICUS CURIAE

Formed in 1923, CML is a non-profit, voluntary association of 269 of the 272 municipalities located throughout the State of Colorado (comprising nearly 99 percent of the total incorporated state population), including all 101 home rule municipalities, 168 of the 171 statutory municipalities, and the lone territorial charter town, all municipalities greater than 2,000 in population, and all but three of those having a population of 2,000 or less.

To make the decisions of day-to-day governance, municipalities throughout Colorado rely on the finality of actions made in their legislative and quasi-judicial capacities. *Cherry Hills Resort Dev. Co. v. City of Cherry Hills Village*, 757 P.2d 622, 625 (Colo. 1988). The common understanding of a city council or town board is that these bodies exist to make policy through legislation. However, municipal legislative bodies also function in a quasi-judicial capacity. Some examples of the types of decisions made in a quasi-judicial capacity are identified in Exhibit A**.**

This case is of particular importance to home rule and statutory municipalities statewide because the decision of the Court of Appeals is contrary to established precedent of this Court setting the standards of review for both quasi-

judicial and legislative actions. Further, the Court of Appeals subjects municipal actions to a definition of "finality" that is inconsistent with the actual legislative and quasi-judicial decision making processes engaged in at the local level.

In *Public Service Co. of Colorado v. City of Boulder*, 2016 COA 138 (Colo. App. 2016) (the "Court of Appeals' decision"), the Court of Appeals upset previous standards of review of municipal decisions when it based its ruling solely on the issue of finality and failed to reach a determination of the type of decision being reviewed (quasi-judicial or legislative). As a result, the Court of Appeals' decision creates great uncertainty regarding the application of finality to the review of any municipal decision. This will impair the ability of cities and towns to act effectively in their assigned roles, either as quasi-judges or legislators. It is essential to the business of municipal governments throughout Colorado that courts continue to recognize the distinction between quasi-judicial and legislative decisions, and apply the proper standard, in the course of judicial review of these decisions.

The distinction between quasi-judicial decisions and legislative decisions, and the types of cases that require a limited evidentiary hearing, are all at issue in this case. By finding that both a quasi-judicial decision and a later legislative decision were not final, without any evidentiary hearing, the decision of the Court

of Appeals disregards this Court's careful analysis of the appropriate classification of decisions by legislative bodies so as to apply the appropriate judicial review.

STATEMENT OF THE CASE

The League hereby adopts the Statement of the Case contained in the Opening Brief of the City. Where necessary to refer to the City ordinances at issue, for ease of reference, the August 20, 2013 quasi-judicial decision of Ordinance 7917, will be referred to as "Quasi-Judicial Ordinance." The legislative decision adopted May 6, 2014, as Ordinance 7969, will be referred to as the "Legislative Ordinance."

ARGUMENT

I. Judicial Review of Municipal Decisions

The separation of powers doctrine is reflected in the line of cases on judicial review of decisions by legislative bodies. Case law in this area necessarily maintains the constitutional separation of powers, preventing one branch of government from infringing upon the authority of another branch. Colo. Const. Art. III. To preserve this balance, courts have evaluated legislative actions under the appropriate standard of review in order to avoid substituting the judgment of the judicial branch for that of the legislative branch.

Courts have no subject matter jurisdiction to review a quasi-judicial decision unless the complaint is filed within 28 days of that decision. C.R.C.P. 106(b);

Danielson v. Zoning Bd. Of Adjustment, 807 P.2d 541 (Colo. 1990). The limitations period prescribed by Rule 106(b) is jurisdictional and cannot be tolled or waived. *Slaughter v. Cnty. Court*, 712 P.2d 1105, 1106 (Colo. App. 1985). Even if a complaint was timely filed, the reviewing court is limited to determining whether the decision was arbitrary or capricious based on the record before the legislative body. The standard for review in a Rule 106(a)(4) proceeding is "limited to a determination of whether the body or officer has exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the defendant body or officer." C.R.C.P. 106(a)(4)(I). Abuse of discretion means that the decision under review is not reasonably supported by any competent evidence in the record. *E.g., Ross v. Fire & Police Pension Ass'n*, 713 P.2d 1304, 1308–09 (Colo. 1986). "'No competent evidence' means that the ultimate decision of the administrative body is so devoid of evidentiary support that it can only be explained as an arbitrary and capricious exercise of authority." *Van Sickle v. Boyes*, 797 P.2d 1267, 1272 (Colo. 1990).

The standard of review for a legislative decision is quite different from a quasi-judicial decision. A court reviewing a legislative decision will apply the presumption of constitutionality and will limit its determination to a legal analysis of whether the presumption is overcome or whether the decision is beyond the scope of the authority of the legislative body. The burden of proof is on the party

challenging the ordinance to prove the alleged infirmities beyond a reasonable doubt. *Landmark Land Co., Inc. v. City & Cnty of Denver*, 728 P.2d 1281 (Colo. 1986); *Mosgrove v. Town of Federal Heights*, 543 P.2d 715, 717 (Colo. 1975).

The Court of Appeals never analyzed the City's decisions as to whether they were made in the legislative or quasi-judicial capacities of the City Council; its decision rested solely on its determination of the "finality" of the ordinances, which contradicted the City's findings of finality. The Court of Appeals concluded that it must "first address, as a threshold issue, the finality of the ordinances upon which the application of the time bar in Rule 106(b) depends," then determined "Rule 106 does not apply due to the lack of finality of the ordinances," and concluded "because we find that the ordinance itself was not a final action, we need not reach the issue of whether it was quasi-judicial or quasi-legislative." *Public Service Co. of Colorado*, 2016 COA 138, ¶¶ 10, 20, 21. The Court of Appeals made no other mention of the distinction or any other analysis of the ordinances being challenged. This distinction is especially salient because the time bar of Rule 106(b) applies only to quasi-judicial decisions and to declaratory relief of a legislative decision challenged under C.R.C.P. 57. Further, a plaintiff cannot label a request for judicial review of a quasi-judicial decision as a request for declaratory judgment under Rule 57 in order to avoid the limitations of Rule 106(b). *Danielson*, 807 P.2d at 543. Therefore the request for relief under Rule

57 based solely on alleged issues with the Quasi-Judicial Ordinance must also be dismissed.

II. The Legislative versus the Quasi-Judicial

The importance of distinguishing whether a decision by a city council is legislative or quasi-judicial is necessary, because the standard of review by the court is different for each type of decision. This Court has spent decades establishing the criteria for courts to distinguish between quasi-judicial and legislative decisions. Municipalities rely on those decisions as they draft their laws and make decisions.

The evolution of case law in this area demonstrates the importance of this distinction to municipal governments and their reliance on the courts for consistency in the application of these standards. For example, courts previously interpreted rezoning ordinances as a legislative function. However, this Court changed the approach to judicial review of rezoning actions, recognizing the adjudicatory nature of parties' interests in a zoning amendment and identifying these decisions as quasi-judicial for purposes of judicial review. *Snyder v. Lakewood*, 542 P.2d 371 (Colo. 1975) (overruled on other grounds). In the rezoning context, this Court distinguished general zoning ordinances, which were policy decisions and legislative in nature, from the quasi-judicial decisions of rezoning a particular property after notice and hearing. *Id.* at 424-25. In *Snyder*,

this Court set forth three factors to identify a quasi-judicial decision: (1) a requirement for notice; (2) a public hearing where affected citizens can be heard; and (3) the local body making a decision by applying facts of a specific case to criteria established by law. *Id.* at 374. This Court reiterated that a rezoning decision was quasi-judicial for purposes of judicial review; however, it also determined that rezoning was legislative for the purpose of the people exercising their right to referendum reserved under Colo. Const. art. V, § 1. *Margolis v. District Court*, 638 P.2d 29, 305 (Colo. 1981). Building on these cases, this Court held that a municipal decision on a development plan could be quasi-judicial, even if there was no ordinance or statute requiring a public hearing before the decision, when the underlying process was consistent with the exercise of quasi-judicial authority. *Cherry Hills Resort Dev. Co*., 757 P.2d at 627-28.

This Court continued to develop jurisprudence in this area, when it reinforced that the threshold issue for a review of a city's decision was whether it was acting in a legislative or quasi-judicial capacity for purposes of an action brought under C.R.C.P. 106(a)(4). *U.S. West Communications, Inc. v. City of Longmont*, 924 P.2d 1071, 1083 (Colo. App. 1995), *aff'd*, 948 P.2d 509 (Colo. 1997). In that case, a telecommunications company challenged an ordinance requiring owners of overhead facilities to relocate them underground, seeking a determination that the municipality exceeded its jurisdiction or abused its

discretion. In its evaluation of the nature of the municipal ordinance, this Court noted the factors which the city council cited in its approval of the ordinance that were reflective of public policy choices relating to matters of a permanent or general nature. *Id.*

In emphasizing that it is the nature of the decision that determines whether a decision is quasi-judicial or legislative, this Court concluded that a water board's decision to apply to appropriate an instream flow right for natural preservation was a policy determination, even though the procedures for making the decision required notice and hearing. *Colo. Water Conservation Bd. v. Farmers Water Dev. Co.*, 346 P.3d 52 (Colo. 2015). This Court based its holding on the fact that the water board's decision was not an adjudication of rights, but a prospective policy determination that a water appropriation would preserve environment. *Id*. at 59.

The District Court applied these carefully crafted principles of judicial review in this case, following the proper analysis in its determination that the Quasi-Judicial Ordinance was, indeed, a quasi-judicial decision that satisfied the City's charter criteria and that the ordinance forming the utility itself (the Legislative Ordinance) was a legislative act. *Public Service Co. of Colorado v. City of Boulder*, June 25, 2015 (Case no. 14CV30681). The District Court found that the City Council passed the Quasi-Judicial Ordinance after determining the manner to measure the criteria and whether to accept an expert's report that the

criteria had been met; prerequisites that had no further effect on future actions of the City. *Id*. at 4. With respect to the Legislative Ordinance, the District Court noted "both Boulder and Xcel admit the May 2014 Ordinance 7969 was a legislative act." *Id*. at 5.

III. Judicial Review of Quasi-Judicial Decisions

If a decision by the governing body or officer is quasi-judicial, judicial review is limited to C.R.C.P. 106(a)(4). The time limitation of 106(b) is absolute, and the court has no jurisdiction to review a quasi-judicial action if a complaint is not filed within that time. *Danielson*, 807 P.2d at 544. The rule limits judicial review to the record that was before the legislative body. The decision of the legislative body can only be overturned if there is no competent evidence in the record to support the decision. *Van Sickle*, 797 P.2d at 1272. Here, the Complaint was filed 10 months after the Quasi-Judicial Ordinance was adopted, well beyond the 28-day limit of Rule 106(b). There was never a record certified by the Plaintiff, so no record was reviewed by the District Court or the Court of Appeals. Yet, the Court of Appeals held that the Quasi-Judicial Ordinance was not final despite the plain language of the ordinance, which included the City's findings that that the conditions had been satisfied with respect to the prerequisites to forming a utility. *Public Service Co. of Colorado v. City of Boulder*, 2016 COA 138, ¶ 22. The Court of Appeals concluded that neither ordinance established a "final utility

plan" to form a utility. *Id*. at ¶13. The Boulder Home Rule Charter provisions, as approved by voters in 2011, had no such requirement; the provisions simply required that the City demonstrate, with expert verification, that it could acquire the electric distribution system and operate the utility within certain metrics set forth in the charter which the Council had determined how to measure by ordinance. Boulder, Colorado, Home Rule Charter § 178(a).

It was error for the Court of Appeals to interpose its own definition of finality upon the deliberations of the City Council. The Council is in charge of the finality of its decisions, and in the case of both the Quasi-Legislative and Legislative Ordinances, the action was final because the ordinances were enacted and effective according to their terms. A reviewing court is not permitted to insert itself within the ordinance adoption process as if it were a member of the legislative body. However, that is exactly what the Court of Appeals has done by opining that there was more work for the City Council to do, and therefore holding that an adopted and effective ordinance, doing a critical portion of the work, all as contemplated by a charter provision – was not enough. The legislative process is of necessity incremental, and naturally there is always more work to be done on any subject. This is no reason to hold that the work previously accomplished is, therefore, not final according to its terms. This is the fundamental error of the Court of Appeals' decision.

From the perspective of municipalities that need certainty in the decisions they make, the difference in the effect of an ordinance being declared invalid or not final, is a distinction without a difference. Either way, the municipality is in limbo for an undefined length of time. Such an outcome, invalidating the exhaustive legislative and quasi-judicial decision processes without a judicial review based on the long-standing principles that preserve the legislative authority, undermines the basic work of municipal government.

IV. Judicial Review of Legislative Decisions

The practical effect of the Court of Appeals' decision is that a municipality's determination as to how it wants to operate and – for home rule cities and towns how to interpret their charters – can be overruled by the judicial branch without following the parameters set by court rules or this Court's precedent. If the Court of Appeals' view of the process is upheld, no municipality can rely on its decisions being final until a judicial review of those decisions has been completed. Seeking a judicial review of all actions made pursuant to a home rule charter or other statutory authority is not practical or efficient. Municipalities must be able to rely on the previous rulings of this Court, which govern the review of quasi-judicial and legislative decisions, in order to do the day-to-day business of local government.

That reliance and certainty is not only necessary for the efficient execution of daily functions by a municipal government, but also to effectuate long-term

planning or to protect residents' property rights. For example, allowing the decision of the Court of Appeals to stand as precedent for all municipalities would mean that basic land use and licensing decisions would not be final until a court says they are. For several of the land use and liquor licensing decisions that municipalities make, vested property rights attach; therefore, under the logic of the Court of Appeals' decision, it would be unclear as to when those rights attach. If they attach at the time of a municipality's final decision, but the court can later unilaterally overturn that decision, then the municipality may be liable for damages, as well as having its decision negated years later. If the vested rights do not attach to a municipal decision until a court makes a determination, there will be expensive and unnecessary litigation for the property holder to protect a property right. The extent of the harmful impacts on municipal decision-making is illustrated by the broad range of such decisions, as shown in Exhibit A.

When reviewing legislative action, a court presumes that the action is valid and does not substitute its policy judgment for that of the decision-making body; that presumption can only be overcome by proof beyond a reasonable doubt. *Landmark Land Co.,* 728 P.2d at 1285. Absent fraud or clear abuse of discretion, the judicial branch should not interfere with legislative actions. *McCray v. City of Boulder*, 439 P.2d 350, 354 (Colo. 1968).

There is no allegation in the Complaint that the Legislative Ordinance is unconstitutional or that it is a result of fraud or bad faith. All of the allegations are related to the Quasi-Judicial Ordinance.

V. Determination of "Finality"

The uncertainty for municipalities created by the obfuscation of the legislative and quasi-judicial distinction and appropriate standards of review is exacerbated by the primary and incorrect focus on the issue of finality in the Court of Appeals' decision. One of the main reasons for the jurisdictional time bar of Rule 106(b) is so that affected parties can rely on the decision that has been made. In the case of land use approvals and issuances of liquor licenses, the property owner relies on the municipal decision to get financing for significant improvements to property and to operate the business. A municipality similarly needs assurance of finality to be able to issue debt to finance its projects. When issuing bonds, uncertainty about a municipal decision will severely reduce or eliminate the pool of potential bondholders or increase the cost of financing at the expense of taxpayers. Purchasers of municipal bonds are seeking to invest in projects that are secure investments, not those that could be overturned on the whim of a court substituting its judgment for a municipality's.

Municipalities also make decisions in sequence. For instance, in the land use context, a municipality makes a decision on a site plan for the development of

a particular property, relying on the underlying zoning of that property. If the quasi-judicial decision on the rezoning of the site or the site plan can be overturned at any time, the uncertainty of the reliability of those decisions creates a high risk that it would not be wise for both the property owner and the municipality to proceed with development of a property in reliance on the zoning and site plan.

The jurisprudence of this Court has recognized the need for certainty in order for the legislative branch to take actions absent improper interference. The need for certainty in the processes of municipal decision-making is reflected in the decision of the District Court when it concluded the Quasi-Judicial Ordinance was a final decision, "as it relates to the determination of the conditions precedent." *Public Service Co. of Colorado v. City of Boulder*, June 25, 2015, at 5 (Case no. 14CV30681). The City's Quasi-Judicial Ordinance stated that the Council determined that the prerequisites had been satisfied. Record Ord. 7917, § 2, page 2. In this section, the City was clear that it intended for the Quasi-Judicial Ordinance to be final on the prerequisites to forming a utility as required by its home rule charter.

The decision of the Court of Appeals upsets the precedent upon which municipalities have relied in making decisions that both create legal and practical certainty, as well as preserve the property rights of its citizens. The decision gives no guidance to other municipalities of what they are to do to make their intent

clear, and restores the quagmire of the quasi-judicial/legislative distinction that existed prior to 1975.

The Court of Appeals found that "the ongoing process and assessment required to complete the utility plans" meant that the Quasi-Judicial Ordinance was not final for its determination on the prerequisites to forming a utility. *Public Service Co. of Colorado*, 2016 COA 138, ¶ 14. Such a ruling presumes that municipalities act in a static environment when nothing could be further from reality. It would be irresponsible for a municipality not to continue to evaluate changing circumstances. This Court has recognized that complicated reality:

> Until judicial review is initiated or jurisdiction is divested in some other way, a quasi-judicial body is not necessarily precluded from reconsidering and superseding its own final decision. See *Trujillo v. General Electric Co.*, 621 F.2d 1084, 1086 (10th Cir.1980) ("[T]he power to decide in the first instance carries with it the power to reconsider.").

Citizens for Responsible Growth v. RCI Dev. Partners, Inc., 252 P.3d 1104, 1107 (Colo. 2011).

VI. Evidentiary Hearing Required For Plaintiff to Meet Its Burden to Show Jurisdictional Facts Prior to Granting a Rule 12(b)(1) Motion to Dismiss for Lack of Subject Matter Jurisdiction

If the Court of Appeals had been correct in its analysis of the Quasi-Judicial and Legislative Ordinances, the appropriate remedy would not be vacating the ruling of the District Court, but remanding the case for a *Trinity* hearing to determine if the District Court had subject matter jurisdiction. This is yet another

potential consequence of the Court of Appeals' decision: an adverse impact on the determination of subject matter jurisdiction in governmental immunity cases. In *Trinity Broadcasting, Inc. v. City of Westminster*, 848 P.2d 916 (Colo. 1993), this Court held that the determination of whether the Colorado Governmental Immunity Act applies must be determined pursuant to a limited evidentiary hearing when the municipality files a C.R.C.P. 12(b)(1) motion. The *Trinity* evidentiary hearing protects governmental entities in Colorado, including municipalities, from lengthy litigation of issues over which the court may not have subject matter jurisdiction. However, the Court of Appeals' decision undermines the *Trinity* hearing process by basing its decision on asserted facts in the absence of an evidentiary hearing process.

Where the court is deprived of jurisdiction if time requirements are not met, the court must decide the issue pursuant to C.R.C.P. 12(b)(1) and an evidentiary hearing is required if there are facts in dispute. *Id.* The standard of review for a Rule 12(b)(1) motion is different than that of a 12(b)(5) motion:

> Under Rule 12(b)(1), the court is "free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." ... In contrast, because a Rule 12(b)(5) motion "results in a determination on the merits at an early stage of plaintiff's case, the plaintiff is afforded the safeguard of having all its allegations taken as true and all inferences favorable to plaintiff will be drawn." quoting *Boyle v. Governor's Veterans Outreach & Assistance Center*, 925 F.2d 71, 74 (3d Cir.1991) (citations omitted).

Id. at 925; *see also City & Cty. of Denver v. Crandall*, 161 P.3d 627, 632 (Colo. 2007). Courts do not simply accept the complaining party's version of events to determine subject matter jurisdiction on a 12(b)(1) motion; the trial court must have a hearing to determine the factual issues. *Martinez v. Estate of Bleck*, 379 P.3d 315, 317 (Colo. 2016); see also *Trinity*, 848 P.2d at 924–25; *Finnie v. Jefferson Cty. Sch. Dist. R–1*, 79 P.3d 1253, 1259 (Colo. 2003). In contrast, the Court of Appeals in the case at hand relied on the complaining party's allegations of fact on which to base the Court's conclusion that the ordinances were not final. *Public Service Co. of Colorado*, 2016 COA 138, ¶¶ 10, 13, 15, 16, and 17. Allowing that the Court of Appeals' decision to stand will expose municipalities to significant litigation, particularly related to claims for which the municipality has governmental immunity.

CONCLUSION

The Court of Appeals determined that the two ordinances adopted by the Boulder City Council were not final. In doing so, it substituted its judgment for that of the legislative body. It entered an erroneous ruling on finality which prevented it from properly determining whether the decisions were legislative or quasi-judicial and then applying the appropriate standard of review, and failed to remand the case. We urge this Court to reverse the Court of Appeals and reinstate

the decision of the District Court to uphold this Court's carefully developed precedent on judicial review of legislative decisions.

Respectfully submitted this 29th day of September, 2017.

/s/ Dianne M. Criswell
Dianne M. Criswell, #48086
Attorney for the Colorado Municipal League

EXHIBIT A

Representative municipalities and their common quasi-judicial actions, and the types of proceedings for which *Trinity* hearings may be held.

Municipality	Quasi-Judicial Action	*Trinity* Hearing
Wheat Ridge	Liquor Licenses Marijuana Licenses Board of Zoning Adjustment/Variances Land Use: Rezoning Land Use: Site Plan Land Use: Subdivision Plat	
Arvada	Liquor Licenses Revocation/Denial of Licenses/Permits Board of Zoning Adjustment/Variances Improvement Districts Land Use: Rezoning Land Use: Site Plan Land Use: Subdivision Plat	Application of governmental immunity
Windsor	Historic Preservation/Landmarks Land Use: Rezoning Land Use: Site Plan Land Use: Subdivision Plat	
Ouray	Liquor Licenses Board of Zoning Adjustment/Variances Land Use: Rezoning Land Use: Site Plan Land Use: Subdivision Plat	
Lake City	Liquor Licenses Board of Zoning Adjustment/Variances Land Use: Rezoning Land Use: Site Plan Land Use: Subdivision Plat	
Olathe	Liquor Licenses Board of Zoning Adjustment/Variances Land Use: Rezoning Land Use: Site Plan Land Use: Subdivision Plat	
Rico	Liquor Licenses Board of Zoning Adjustment/Variances Land Use: Rezoning Land Use: Site Plan Land Use: Subdivision Plat	
Greenwood Village	Liquor Licenses Revocation/Denial of Licenses/Permits Board of Zoning Adjustment/Variances	

	Improvement Districts Land Use: Rezoning Land Use: Site Plan Land Use: Subdivision Plat Land Use: Denial/Revocation of Permit Land Use: Call-Up on Land Use Decision Land Use: Expiration of Permit Conditions Land Use: Conditions on Approval of Green Building Requirements Admin. Code Violation: Sign Removal Admin. Code Violation: Removal of Public Nuisance	
Pueblo	Liquor Licenses Marijuana Licenses Revocation/Denial of Licenses/Permits Board of Zoning Adjustment/Variances Improvement Districts Historic Preservation/Landmarks Land Use: Rezoning	
Avon	Liquor Licenses Revocation/Denial of Licenses/Permits Board of Zoning Adjustment/Variances Land Use: Rezoning Land Use: Site Plan Land Use: Subdivision Plat Land Use: Denial/Revocation of Permit Land Use Call-Up on Land Use Decision Land Use: Expiration of Permit Conditions Collections: Tax Refund Claim Denial	
Town of Minturn	Liquor Licenses Marijuana Licenses Board of Zoning Adjustment/Variances Land Use: Rezoning Land Use: Site Plan Land Use: Subdivision Plat Land Use: Denial/Revocation of Permit Land Use Call-Up on Land Use Decision Utilities: Shutting Off Water Service	
Town of Silt	Liquor Licenses Marijuana Licenses Board of Zoning Adjustment/Variances Land Use: Rezoning Land Use: Site Plan Land Use: Subdivision Plat Land Use: Denial/Revocation of Permit Land Use Call-Up on Land Use Decision	

	Utilities: Shutting Off Water Service	
Brush	Liquor Licenses Board of Zoning Adjustment/Variances Land Use: Rezoning Land Use: Site Plan Land Use: Subdivision Plat Admin. Code Violation: Sign Removal Admin. Code Violation: Removal of Public Nuisance	
Denver	Liquor Licenses Marijuana Licenses Revocation/Denial of Licenses/Permits Board of Zoning Adjustment/Variances Historic Preservation/Landmarks Land Use: Rezoning Admin. Code Violation: Forfeiture of Animal Election Complaints Utilities: Customer Bill Dispute Utilities: Industrial Discharge Violations Collections: Enforcement of Judgment or Lien as a Tax	Application of governmental immunity
New Castle	Liquor Licenses Marijuana Licenses Board of Zoning Adjustment/Variances Land Use: Rezoning Land Use: Subdivision Plat Utilities: Shutting Off Water Service	Application of governmental immunity
Delta	Liquor Licenses Marijuana Licenses Board of Zoning Adjustment/Variances Land Use: Rezoning Land Use: Subdivision Plat Utilities: Shutting Off Water Service	Application of governmental immunity
De Beque	Liquor Licenses Marijuana Licenses Board of Zoning Adjustment/Variances Land Use: Rezoning Land Use: Subdivision Plat Utilities: Shutting Off Water Service	Application of governmental immunity

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of September, 2017, a true and correct copy of the foregoing **BRIEF OF THE COLORADO MUNICIPAL LEAGUE AS *AMICUS CURIAE* IN SUPPORT OF THE PETITIONER** was served via ICCES on the following individuals:

Attorneys for Respondents, *Public Service Company of Colorado*:	Attorneys for Petitioner, *City of Boulder*:
John R. Sperber, #22073 Matthew D. Clark, #44704 FAEGRE BAKER DANIELS LLP 1470 Walnut Street, Suite 300 Denver, CO 80302 Phone: 303-447-7700 Jack.Sperber@faegrebd.com Matthew.Clark@faegrebd.com	Thomas A. Carr, #42170 David J. Gehr, #20336 Kathleen E. Haddock, #16011 BOULDER CITY ATTORNEY'S OFFICE P.O. Box 791 Boulder, CO 80306 Phone: 303-441-3020 carrt@bouldercolorado.gov Marcy G. Glenn, #12018 HOLLAND & HART LLC 555 17th Street, Suite 3200 Denver, CO 80201 Phone: 303-295-8000 mglenn@hollandhart.com James Birch (Special Counsel), #15899 HAMRE, RODRIGUEZ, OSTRANDER & DINGESS, 3600 S. Yosemite Street, Suite 500 Denver, CO 80237 Phone: 303-779-0200 pooljim@hrodlaw.com

/s/Dianne M. Criswell