No. 14-460

In The
Supreme Court of the United States

JOHN HICKENLOOPER,
GOVERNOR OF COLORADO,
Petitioner,

v.

ANDY KERR, *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

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

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QUESTIONS PRESENTED

Article IV, § 4 of the United States Constitution reads: "The United States shall guarantee to every State in the Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence." The questions presented here are:

(1) Whether a voter enacted initiative, or a state constitutional provision, may violate Article IV, § 4 in restraining or limiting the powers of the State Legislature?

(2) Whether there are any judicially manageable standards for judging when an initiative, or state constitutional provision, goes too far in restraining or limiting the powers of the State Legislature, or for otherwise objectively determining when an Article IV, § 4 violation has occurred?

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

CONSTITUTIONAL PROVISIONS

STATUTES

RULES

OTHER AUTHORITIES

INTEREST OF AMICI CURIAE[1]

Each of the twenty organizations joining in this *amici* coalition has a profound interest in the questions presented here. The *amici* share a concern that the Tenth Circuit's decision invites challenges to taxpayer protections—and other important constitutional restraints—throughout the country. A full statement of interest for each organization is set forth in Appendix A.

SUMMARY OF ARGUMENT

The Tenth Circuit broke new ground in holding Respondents' suit justiciable—notwithstanding the fact that they allege a violation of the Guarantee Clause, U.S. CONST., art. IV, § 4. This is concerning because it opens the door for ideologically motivated litigants to advance Guarantee Clause challenges throughout the nation. The implications can hardly be overstated.

Unless this Court grants *certiorari*, the decision will remain binding authority allowing litigants to advance Guarantee Clause claims against state constitutional provisions, initiatives, and referenda in the six states of the Tenth Circuit,

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[1] Pursuant to this Court's Rule 37.2, all parties have consented to the filing of this brief. Letters evidencing consent have been filed with the Clerk of Court. Pursuant to Rule 37.6, *amici* affirm that no counsel for any party authored this brief in whole or in part and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici*, their members, or their counsel made a monetary contribution to fund the preparation or submission of this brief.

thereby directly threatening the right of self-governance for over 17.5 million Americans.[2] But the implications of the decision extend well beyond the Tenth Circuit. Indeed, the decision stands as persuasive authority *throughout the country*—inviting litigants to challenge constitutional restrictions on their state legislature's tax and spend powers, or conceivably any constitutional provision that offends the litigant's political sensibilities, or which the litigant finds undesirable or cumbersome. The decision also opens the door for challenge to *any* initiative or referenda curbing legislative powers or interfering with the legislature's prerogative to set public policy. This has major implications for entire bodies of state law. As such, c*ertiorari* should be granted because the case presents an issue of exceedingly great importance for the citizens of all fifty states.

But the case also presents a doctrinally important question. *Amici* urge this Court to grant *certiorari* to address the question of justiciability, and specifically to reaffirm the fundamental principle that the plaintiff bears an affirmative burden of identifying textually grounded judicially manageable standards—especially when advancing a novel claim. As with the standing inquiry, the burden of identifying judicially manageable standards must necessarily rest on the party invoking the court's jurisdiction. But here the Tenth Circuit held otherwise. In patent conflict with this Court's essential holding in *Vieth v. Jublier*, 541 U.S.

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[2] *See* U.S. Census Bureau, State & County QuickFacts, *available* at http://quickfacts.census.gov/qfd/index.html# (last visited 11/18/14).

267, 277-78 (2004), the Tenth Circuit presumed the existence of judicially manageable standards. This inappropriately places the burden on the Defendant-Petitioner, Governor Hickenlooper, to prove a complete absence of all possible standards. But a defendant cannot be expected to prove a negative proposition.

ARGUMENT

I. IN HOLDING GUARANTEE CLAUSE CLAIMS PRESUMPTIVELY JUSTICIABLE, THE TENTH CIRCUIT'S DECISION INVITES A TORRENT OF LITIGATION THROUGHOUT THE NATION

A. The Tenth Circuit Held This Guarantee Clause Challenge Justiciable on the Presumption that Judicially Manageable Standards Will Eventually Emerge

Respondents advance a novel claim. They assert that the People of Colorado violated the Guarantee Clause when they amended their State's Constitution through initiative, with enactment of the Colorado Taxpayer Bill of Rights in 1992 (TABOR). Strangely, this act of self-governance is alleged to violate the federal constitutional guarantee that every state shall have a republican form of government.

Yet Respondents have never really explained their theory of the Guarantee Clause, nor why their

claim should not by precluded by *Pacific States v. Oregon*, 223 U.S. 118 (1912). Despite the fact that both the present case and *Pacific States* concerned Guarantee Clause challenges to specific voter initiatives, Respondents insist that their challenge is somehow different than the claim held non-justiciable in *Pacific States*. They maintain that their claim is to be distinguished as a narrow assault on a single voter enacted law, as opposed to an attack on the initiative system more generally. *Kerr v. Hickenlooper*, 744 F.3d 1156 (10th Cir. 2014). But their rationale—as best as it's been explained—could apply with equal force to any initiative or referendum, or for that matter any state constitutional provision.

The closest Respondents have come to explaining their theory is the vague assertion that a Guarantee Clause violation occurs when the citizens of a state adopt an initiative that takes away certain "core" legislative powers. They have never explained *which legislative powers are* so essential to republicanism. Nor have they explained *how far* the citizens must go in imposing restraints on their government before rendering their state 'anti-republican.' *Kerr v. Hickenlooper*, 759 F.3d 1186 (10th Cir. 2014) (Gorsuch, J., dissenting) ("At every stage Governor Hickenlooper has challenged the plaintiffs to identify judicially manageable standards that might empower an Article III court to decide their case."). To be sure, they have yet to offer *any* standard for how a court might objectively say when a Guarantee Clause violation has occurred—much less a standard grounded in the text of the Constitution. "[E]ven today [after three years of

litigation] the plaintiffs profess no more than 'confiden[ce]' that … the district court will someday be able to find some standard for decision." *Id*.

Nonetheless, the Tenth Circuit held that this case was justiciable and that it could proceed on the presumption that judicially manageable standards will eventually emerge at trial. *Kerr*, 744 F.3d at 1178-79. The opinion posits that a district court judge might look to the Federalist Papers, historical dictionaries, and other contemporary documents to shed light on the meaning of the Guarantee Clause. *Id*. Thus, the Tenth Circuit allowed this suit to advance on the "sanguine hope" that a district court judge—looking to historical texts—might find those judicially manageable standards that have so far eluded this Court in the 225 years since ratification of the Constitution. *Kerr*, 759 F.3d at 1194 (Gorsuch, J., dissenting).

B. The Decision Offers Authority for Any Legislator to Initiate a Guarantee Clause Challenge to Tax and Spend Limitations

Respondents allege that TABOR is unconstitutional on the view that the Guarantee Clause denies the voters of Colorado the right to impose restraints on their legislature's powers to tax, spend, and borrow money. Specifically, they contend that such restraints are 'anti-republican' because they inhibit the legislature's ability to effectuate its preferred policies. Of course, such a claim would call into question the validity of any constitutional restriction on a legislature's tax and

spend powers. Yet under the Tenth Circuit's rationale, Guarantee Clause challenges to fiscal restraints are presumptively justiciable. *Kerr*, 744 F.3d at 1179.

As such, the opinion offers persuasive authority for anyone wishing to challenge taxpayer protections. Regardless of whether Respondents are ultimately successful on the merits, the panel's decision invites legal challenges to fiscal restraints throughout the country, which are "ubiquitous" throughout the fifty states. Joshua G. Urquhart, *Disfavored Constitution, Passive Virtues? Linking State Constitutional Fiscal Limiations and Permissive Taxpayer Standing Doctrines*, 81 Fordham L. Rev. 1263, 1267 (2012).

For starters, several states—including Oklahoma in the Tenth Circuit—have adopted constitutional restrictions that were explicitly modeled on TABOR. *See*, *e.g.*, Okla. CONST. art. V, § 33(D) (requiring explicit voter approval for new taxes, in the absence of a supermajority vote in the legislature); Mo. CONST. art. X, § 16 (requiring that all new taxes must be approved by voters); Mich. CONST. art. 9, §§ 25-32 (same). And long before the enactment of TABOR, the citizens of California voted to impose similar fiscal restrictions on their state government. Cal. CONST. art. XIII A, § 3 (requiring a supermajority legislative vote for new or increased taxes). These sort of fiscal restraints are quite common. *See e.g.*, S.D. CONST. art. XI, § 13 (prohibiting new taxes, except upon voter approval, or a super majority vote in both houses); Nev. CONST. art. IV, § 18(2)-(3) (requiring either a supermajority

vote in both houses, or a majority vote with subsequent voter approval); Fla. CONST. art. VII § 1(e) (restricting the legislature's power to exact revenue in excess of a fixed formula, except with a supermajority vote); Ky. CONST. § 171 (requiring voter approval for changes to property tax classifications). All of these taxing restraints are now subject to challenge under the Tenth Circuit's opinion.

Amici are further concerned that litigants will invoke this decision in challenge to constitutional limitations restricting spending levels. For example, Alaska's Constitution severely limits the legislature's ability to raise spending levels in excess of the rate of growth in "population and inflation." Alaska CONST. art. IX, § 16. Likewise, the decision opens the door to challenges against debt limits that hamper a state legislature's ability to fund its preferred projects.

For example, in Florida, the legislature may not finance or refinance capital projects without approval from voters. Fla. CONST. art. VII, § 11(a). Likewise, Louisiana requires voter approval before public debt may be issued, except if the proposal would fund endeavors specifically authorized in the State Constitution. La. CONST. art. VII, § 6(D); *see also* Mich. CONST. art. IX, § 15 (requiring a supermajority approval in both houses and voter approval at the polls); Mont. CONST. art. VIII (prohibiting the legislature from incurring debt without voter approval), § 8; S.C. art. X, § 13(5) (same). Such constitutional restrictions would be subject to challenge by ideologically motivated legislators under the Tenth Circuit's decision.

One might just as well invoke the Tenth Circuit's decision in challenge to restrictions imposing a fixed cap on general obligation debt. *See e.g.*, Ariz. CONST. art. IX § 5 (imposing a cap of $350,000); Ohio CONST. art. VIII, § 1 (capping general obligation shortfall debt at $750,000). Or one might challenge restrictions preventing the legislature from incurring debt beyond a fixed set formula. *See e.g.*, La. CONST. art. VII, § 6(F) (prohibiting any debt that would require service payments in excess of six percent of all general funds).

For that matter, Respondents' vague theory—that restrictions on "core" legislative powers are somehow anti-republican—could be invoked to challenge even balanced budget requirements, which may be found in virtually every state constitution,[3] or to contest a gubernatorial veto of a budget proposal because it constrains the legislature's ability to spend. BUDGET PROCESS IN THE STATES, 29.

C. The Decision Invites Challenge to Initiatives and Referenda in 27 States

At least 27 states allow citizens to enact law through direct voter initiatives. Amleto Cattarin, *Hands Off My Taxes! A Comparative Analysis of Direct Democracy and Taxations*, 9 J.L. SOCIETY 136, 173 n. 90 (2009). The citizens of these states—

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[3] NAT'L ASS'N OF STATE BUDGET OFFICERS, BUDGET PROCESSES IN THE STATES, 29 (2008), *available* at http://www.nasbo.org/sites/default/files/BP_2008.pdf (last visited Oct. 7, 2014).

exercising their right of self-governance—have enacted initiatives and referenda on a wide array of issues, all of which impinge upon the prerogatives of their legislatures. Initiatives commonly (1) impose obligations on government[4]; (2) restructure government[5]; (3) limit state interference with local government[6]; (4) impede state action[7]; (5) establish public policy that would otherwise be the prerogative of the legislature[8]; (6) constrain the legislature's

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[4] If it is anti-republican to impair a state legislature's capacity to effectuate its preferred policies, then numerous initiatives imposing obligations and directives on government would be subject to challenge.

[5] *See e.g.*, Cal. Prop. No. 19 (1914) (consolidation of city and county); Or. Measure No. 13 (1930) (creating water and utility districts); Okla. Prop. No. 77 (1914) (making unicameral legislature).

[6] *See e.g.*, Or. Measure No. 15 (1910) (giving cities and towns the exclusive power to regulate liquor); Co. Prop. No. 8 (1912) (granting counties home-rule).

[7] For example, voters in Montana have elected to restrict the use or disposal of radioactive materials, which may well interfere with the legislature's preferred energy policies. *See e.g.*, Mont. Prop. No. 1 80 (1978) (requiring regulation of nuclear facilities).

[8] *See e.g.*, Or. Measure No. 25 (1910) (fish and game regulation); Wash. Measure Initiative No. 1-316 (1975) (making death penalty mandatory for some offenses); Cal. Prop. No. 184 (1994) (stricter sentencing requirements for repeat offenders); Mont. Prop. No. 1-151 (2006) (setting minimum wage); Cal. Prop. 37 (2012) (requiring labeling for certain genetically modified foods).

power to tax, spend and borrow[9]; and (7) prohibit, or place conditions on, the exercise of police powers. All such initiatives would be subject to challenge if a "republican form of government" requires unfettered legislative powers, as Respondents suggest. *See Kerr*, 759 F.3d at 1188 (Tymovich, J., dissenting). Indeed, a legislature cannot effectuate its preferred policies if its hands are tied by voter enacted restraints. Thus, the Tenth Circuit's decision—holding Guarantee Clause claims justiciable—opens the door to lawsuits against conceivably any initiative or referenda. *Kerr*, 744 F.3d at 1179.

In the Twentieth Century alone the citizens of these 27 states enacted more than 800 initiatives,[10] and over the past century these states have developed extensive bodies of law around their voter enacted initiatives. All of these laws are now subject to Guarantee Clause Challenges, since Respondents' theory of republicanism can—at the very least—be invoked to cut down the initiative process or the reforms it has effected. *See Pacific States*, 223 U.S. at 141 ("[Plaintiff's] contention, if held to be sound,

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[9] *See e.g.*, Co. Prop. No. 8 (1972) (prohibiting state from levying taxes and appropriating funds for Olympics); Idaho Prop. No. 1 (1978) (restricting property valuation or tax changes); Nev. Prop. No. 74 (1914) (exempting household goods from taxation); Mont. Prop. No. 1 105 (1986) (limiting property tax rates to 1986 levels); Az. Prop. 204 (1996) (reducing and limiting property taxes; limiting revenues available for schools and other local services); Wash. Measure Initiative No. 1-722 (2000) (declaring null and void tax fee increases adopted without voter approval by state and local government).

[10] *See* Initiative and Referendum Institute, http://www.iandrinstitute.org/statewide_i%26r.htm (last visited Oct. 3, 2014).

would necessarily affect the validity, not only of the particular statute before us, but of every other statute passed in Oregon since the adoption of the initiative and referendum."). Put simply, the Tenth Circuit's decision will result in unbounded litigation.

D. The Decision Invites Ideological Litigants to Challenge Any State Constitutional Restraint on Legislative Powers

Respondents' radical theory of the Guarantee Clause suggests that a republican form of government requires a legislature to be free to pursue its preferred agenda. Under that view, any constitutional restriction—whether voted on by the people or not—would be anti-republican. This would call into question all state constitutional restraints on legislative power. As Judge Tymkovich emphasized in dissent to the Tenth Circuit's decision to deny *en banc* review, partisan legislators might well invoke the Guarantee Clause in challenge to Colorado's recent constitutional amendment legalizing recreational use of marijuana, Colo. CONST., art. XVIII, or the State's constitutional mandate for school funding, Colo. CONST., art. IV, § 17. *Kerr*, 759 F.3d at 1188. Indeed both constitutional provisions restrict legislative powers to set public policy.

The opinion also offers binding authority for litigants who might wish advance a Guarantee Clause challenge in other Tenth Circuit states. For example one might bring a challenge to Article VI § 27 of the Utah Constitution, which prohibits the

state legislature from authorizing "any game of chance, lottery or gift enterprise under any pretense or for any purpose" because this inhibits the legislature's prerogative to legalize gaming. Likewise, one could bring a Guarantee Clause claim in challenge to art. IV, § 22 of the New Mexico Constitution because it authorizes the Governor to veto bills, therein impeding the prerogative of the state legislature to establish law. One might also argue that Kansas lacks a republican government because its Constitution restricts the power of its legislature to change labor policies. *See* Kan. CONST. art. 15, § 12 (making Kansas a "right to work" state).

And the Tenth Circuit's rationale offers persuasive authority for litigants invoking the Guarantee Clause in challenge to state constitutional provisions throughout the rest of the country as well. For that matter, *amici* are particularly concerned that the decision opens the door for a Guarantee Clause challenge to Arizona's Private Property Rights Protection Act (PPRPA), Az. Prop. 207 (2006), which requires the state to compensate landowners for lost property values when new regulations interfere with a landowner's reasonable use and enjoyment of his or her land. *See Sedona Grand, LLC v. City of Sedona*, 270 P.3d 864, 865 (Ariz. App. 2012). Under Respondents' theory—held justiciable in this case—an Arizona legislator might challenge this constitutional provision because it inhibits legislative prerogatives in imposing conditions on the exercise of police powers. Likewise, a municipality in Virginia might seek to challenge the Commonwealth's recently enacted constitutional amendment limiting the use of sovereign eminent

domain powers, on the theory that those constitutional restrictions go too far in limiting legislative prerogatives. VA CONST. Art. I § 11.

And if these sorts of claims are justiciable, advocates of educational reforms could advance a Guarantee Clause claim in challenge to Washington State's Constitution because it has been interpreted as preventing the legislature from spending public funds on charter schools. S*ee League of Women Voters of Washington v. Washington*, No. 13-2-24977-4 SEA (Dec., 2013).[11] For that matter, we might expect a Guarantee Clause challenge to New Jersey's recently adopted constitutional amendment tying "minimum wage" to future increases in inflation. Surely this impedes the capacity of New Jersey's legislature to decide when minimum wage should be raised—and to forestall a raise that legislators might think imprudent. Of course, under the Tenth Circuit's rationale, a Guarantee Clause claim, challenging this voter approved amendment, would be presumed justiciable—as would a challenge to any constitutional provision restraining legislative powers.

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[11] *Available* online at http://ourvoicewashingtonea.org/wp-content/uploads/2013/12/Order-on-Motion-for-Summary-Judgment.pdf (last visited 10/07/14).

II. THE TENTH CIRCUIT'S PRESUMPTION THAT JUDICIALLY MANAGABLE STANDARDS WILL EMERGE STANDS IN CONFLICT WITH THIS COURT'S JURISPRUDENCE

A. The Notion that a Court May Presume a Guarantee Clause Claim to be Justiciable Stands in Tension With this Court's Decision in *Pacific States*

For ninety years, courts interpreted *Pacific States* as holding Guarantee Clause claims to be categorically non-justiciable. *See Colegrove v. Green*, 328 U.S. 549. 556 (1946) (plurality opinion) ("[V]iolation of the great guaranty of a republican form of government in States cannot be challenged in the courts."); *see also* Thomas A. Smith, *The Rule of Law and the States: A New Interpretation of the Guarantee Clause*, 93 Yale L.J. 561 (1984) (explaining the then-prevailing understanding that "the courts have relegated the guarantee clause to the nether world of nonjusticiability."). Indeed, the opinion speaks in rather categorical terms; however, in the wake of *Baker v. Carr*, 369 U.S. 186 (1962), courts and scholars began to question whether there were exceptions. *See Reynolds v. Sims*, 377 U.S. 533, 582 (1964) (stating merely that "some questions raised under the Guaranty Clause are nonjusticiable…"). Of course, *Baker* arguably offered further support for the categorical rule of nonjusticiability in reaffirming that "the Guarantee Clause is not a repository of judicially manageable standards…." *Baker*, 369 U.S. at 223. In any event,

the prevailing presumption of a hard-and-fast categorical rule was not explicitly called into question until 1992 when Justice O'Connor suggested, in *New York v. United States*, that there may be some exception to the general rule. 505 U.S. 144, 184-86 (1992).

"This much is clear: After *New York*, some questions raised under the Guarantee Clause *may* be justiciable under some circumstances." David A. Carrillo & Stephen M. Duvernay, *The Guarantee Clause and California's Republican Government*, 62 UCLA L. Rev. Disc. 104, 107 (2014) (emphasis added). For that matter, the parties to this *amici* coalition may be divided on the question of whether Guarantee Clause claims are categorically non-justiciable, or whether there are some claims that might be justiciable "in the right case." As such, the *amici* urge this Court to take this case in part to bring clarity on this important question. But, assuming that there are exceptions to the general rule, *Pacific States* must at least be understood as establishing a strong presumption that a Guarantee Clause claim will be non-justiciable. *See Pacific States*, 233 U.S. at 142-43 (affirming the general rule that it is for the other branches to "decide whether a state government [is republican in form]") (citing *Luther v. Borden*, 48 U.S. 1 (1849)).

Under that view, a litigant *might* be able to demonstrate that a specific claim is justiciable if he or she can demonstrate that the *precise question presented* is not precluded by the political question doctrine. *Baker*, 369 U.S. at 223. Of course, this requires the litigant to identify judicially

manageable standards. *See Reynolds*, 377 U.S. at 582 (affirming that "in the absence of judicially manageable standards[,]" a Guarantee Clause claim would still be non-justiciable). And the trouble, in this case, is that the Tenth Circuit dispensed with that requirement by employing a presumption that judicially manageable standards will emerge at trial. This runs contrary to the presumptive rule set forth in *Pacific States*.

B. The Tenth Circuit's Holding that Guarantee Clause Claims Should be Allowed to Move Forward in the Absence of Any Identified Judicially Manageable Standards Squarely Conflicts With the Essential Holding in *Vieth v. Jublier*

Some questions are non-justiciable by their very nature. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 165 (1803). For this reason, courts must look to the nature of the question presented to determine justiciability. *Baker*, 369 U.S. at 211-12 (1962). *Baker* offered six considerations relevant in this determination; however, this Court has emphasized the special importance of the second consideration—whether there is "a lack of judicially discoverable and manageable standards…." *Vieth v. Jubelirer* made clear that a case *must* be dismissed unless a reviewing court can identify constitutionally based judicially manageable standards. 541 U.S. 267, 277-78 (2004) (focusing entirely on the second prong of the *Baker* test).

1. The Burden is on the Plaintiff to Identify Judicially Manageable Standards—Not on the Defendant to Prove the Negative Proposition

In *Davis v. Bandemer*, 478 U.S. 109 (1986), this Court held that political gerrymandering claims, under the Equal Protection Clause, were justiciable—despite the fact that the Justices "could not agree upon a standard to adjudicate them." *Vieth*, 541 U.S. at 271-72. As a result, the lower courts were at a loss in trying to figure out what to do with political gerrymandering cases. After nearly two decades, the lower courts were still struggling to "shap[e] the standard that [the] Court was [] unable to enunciate [in *Bandemer*]." *Id.* at 279-81. As such, the *Vieth* Court reexamined, and ultimately repudiated, *Bandemer*.

The crucial error in *Bandemer* was that the Court assumed the justiciability of political gerrymandering cases without endeavoring to identify workable standards. *Id.* at 278. In overruling *Bandemer*, this Court made clear that a case cannot be held justiciable unless the court affirmatively identifies judicially managable standards for resolving its claims. *Id.* at 281 ("Lacking [judicially manageable standards,] we must conclude that political gerrymandering claims are non-justiciable and that *Bandemer* was wrongly decided."). In other words, a case cannot move forward on the assumption that such standards will eventually surface. But the Tenth Circuit flatly ignored this principle in holding Respondents'

Guarantee Clause claim justiciable on the *assumption* that lower courts will be able to fashion a standard in reference to historical texts. *Kerr*, 759 F.3d at 1193 (Tymkovich, J., dissenting) ("[T]he panel's opinion does not expressly find that there are 'judicially manageable standards' for resolving the case; it simply assures the reader that judicially manageable standards *might* emerge at a future stage of litigation.") (emphasis in original).

2. All Nine Justices Agreed That it Was Incumbent Upon the Court to Identify Judicially Manageable Standards Before Allowing a Case to Proceed to the Merits

As a predicate to its ultimate conclusion that political gerrymandering claims are non-justiciable, the majority in *Vieth* held that a case can only be held justiciable if the Court can affirmatively identify judicially manageable standards. *Vieth*, 541 U.S. at 281. After stating this rule as a definitive principle of this Court's political question jurisprudence—explaining that the second prong of the *Baker* test may be dispositive—the majority went on to consider and reject all of the potential standards that the plaintiffs, scholars, and other courts had previously suggested might govern political gerrymandering claims. Importantly, not one of the dissenting justices took issue with this essential holding. *Id.* at 278 (emphasizing the dispositive nature of the second prong in explaining that "law pronounced by the courts must be

principled, rational, and based on reasoned distinctions.").

Though the Court was fractured on the ultimate question of whether there were judicially manageable standards for political gerrymandering claims, there was apparent unanimity on the predicate question of whether a case could proceed in the absence of identified standards. On that point, all nine justices agreed. The dissent did not quibble with the premise that courts need workable standards. Instead, the dissenters simply maintained that they had identified sufficiently workable standards for reviewing political gerrymandering cases. *See Vieth*, 541 U.S. at 317-341 (Stevens, J., dissenting) (arguing that judicially manageable principles were set forth by past precedent); *Id*. at 345-355 (Souter and Ginsberg, JJ., dissenting) (offering a different test); *Id*. at 355-68 (Breyer, J., dissenting) (same).

Only Justice Kennedy's concurring opinion began to quibble with the majority's predicate holding—and only then in so far as the majority applied its rule in a categorical manner. Kennedy departed from the majority only in that he was not willing to assume that political gerrymandering claims are categorically non-justiciable. *Vieth*, 541 U.S. at 306 (Kennedy, J., concurring) ("I would not foreclose all possibility of judicial relief if some limited and precise rationale were found to correct an established violation of the Constitution in some redistricting cases."). He agreed that the plaintiffs had failed to identify a workable standard under their theory of the Equal Protection Clause, and that

no standard had yet emerged for courts to resolve political gerrymandering claims. Yet Kennedy expressed discomfort with the idea of holding political gerrymandering claims categorically non-justiciable because he thought it possible that a plaintiff might identify workable standards in another case. *Id*. at 306-317. Justice Stevens raised a similar line of argument in his dissent. *Id*. at 317-325. Under this approach, there is no need to deem a claim *categorically* non-justiciable, but the burden necessarily rests on the party invoking the Court's jurisdiction to identify judicially manageable standards in the same way that a plaintiff bears the burden of establishing Article III standing when invoking federal jurisdiction.

Notwithstanding Justice Kennedy's nuanced position, all of the justices seemed to agree that a case cannot proceed in a vacuum without discernible and manageable standards to guide the Court. *See e.g*. *Id*. at 343 (Stevens, J., dissenting) (quibbling only with the premise that there are no workable standards). But the Tenth Circuit ignored this essential wisdom in presuming this case justiciable on the "sanguine hope" that judicially manageable standards will eventually surface. *Kerr*, 759 F.3d at 1194 (Gorsuch, J., dissenting). This is the same mistake that the *Bandemer* Court made, only to be explicitly repudiated eighteen years later in *Vieth*.

III. UNLESS THIS COURT GRANTS *CERTIORARI* TO DETERMINE WHETHER THERE ARE ANY JUDICIALLY MANAGEABLE STANDARDS GOVERNING GUARANTEE CLAUSE CLAIMS, THE LOWER COURTS WILL STRUGGLE TO FIND A PRINCIPLED BASIS FOR RESOLVING THESE CLAIMS

A. Respondents Have Failed to Identify Judicially Manageable Standards Under Their Theory of the Guarantee Clause

1. Respondents' Theory That Direct Democratic Measures Violate the Guarantee Clause Offers No Constitutionally Grounded Judicially Manageable Standard

Respondents have never clearly set forth their theory of the Guarantee Clause beyond the naked assertion that a violation occurred when the citizens of Colorado amended their Constitution to give the people a right to vote on new taxes and tax hikes. Respondents suggest that a Guarantee Clause violation occurs when a state adopts certain direct democratic measures through the initiative process. But this Court's decision in *Pacific States* was clear in holding that Guarantee Clause suits are precluded by the political question doctrine if they merely challenge the initiative process. *Pacific States*, 223 U.S. at 145.

Thus, recognizing that *Pacific States* squarely precludes a Guarantee Clause challenge to Colorado's entire ballot initiative process, Respondents have sought to frame their claim as a more "narrow" challenge. But even so, they still bear the burden of pointing to judicially manageable standards. *Vieth*, 541 U.S. at 271-72. This is their Achilles heel. They cannot offer *any principled basis*—much less a standard grounded in the text of the Constitution—for determining when a state has become *too democratic*.

2. There Are No Judicially Manageable Standards for Determining When the Citizens Have Gone *Too Far* in Restricting the Legislature's Fiscal Powers

Here Respondents suggest that a violation may occur where the citizens of a state have imposed restrictions on their legislature's fiscal powers in a manner that inhibits the performance of essential government functions. But this assumes that a "republican government" requires an unfettered stream of revenue to carry out those vaguely articulated public functions. And of course, this theory dissolves into a series of political issues if we break-down its assumptions. To begin with, Respondents seem to assume that the Guarantee Clause entails an *unwritten mandate* to preserve an unfettered stream of public revenue for the Legislature.

Even if such a mandate could be inferred, Respondents have failed to offer any judicially manageable standard for a test predicated upon such an assumption. How could a court determine what an appropriate stream of revenue is without setting policy? Moreover, if that determination rests on the idea that a "republican government" must fund certain programs, how can a court determine what programs are required without exercising political judgment? And, if we accept Respondents' assumptions, how can a court determine at what level these endeavors should be funded, or how funding should be allocated?

A judge would be required to address these sticky questions if he or she sought to draw a line in the sand—to say when the citizens have gone *too far* in restricting legislative fiscal powers.[12] But these are pure policy questions beyond the purview of the courts. *See Baker*, 369 U.S. at 223; *see also Vieth*, 541 U.S. at 285 (dismissing a proposed standard because it would "all but evaporate" into a series of unmanageable policy questions if applied by courts.). At best we are faced with a vague and amorphous test that offers no guidance to anyone.

Moreover, there is simply no basis for injecting the Guarantee Clause with modern notions that government must necessarily engage in any

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[12] *See* Lawrence H. Tribe, et al., Wash. Legal Found, *Too Hot for Courts to Handle: Fuel Temperatures, Global Warming, and the Political Question Doctrine* (2010), *available* at http://www.wlf.org/publishing/publication_detail.asp?id=2132 (last visited Oct. 7, 2014) (invoking this same logic).

public endeavor requiring constant revenue.[13] If anything, the guarantee of a republican government ensures the right of the people to choose what functions their government will serve.[14] *See* AKHIL AMAR, AMERICA'S CONSTITUTION, 276-280; *see also* Robert Natelson, *A Republic, Nor a Democracy? Initiative, Referendum, and the Constitution's Guarantee Clause*, 80 Tex. L. Rev. 807, 814 (2002) (explaining that the Guarantee Clause was intended to ensure citizens the right to self-determination through the political process). To be sure, republicanism embodies an ideal that the people should be free to govern themselves, which would necessarily include the prerogative to limit the role of government in their lives. *Pacific States*, 223 U.S. at 146 ("The ultimate power of sovereignty is in the people… if the government is a free one, [the people] must have a right to change their constitution."); *cf.*, *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) ("[I]n our system, while sovereign powers are delegated to

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[13] The notion that a republican government must necessarily fund public programs runs headfirst into historical realities. Moreover, the citizens of the original states imposed restraints on legislative fiscal powers. *E.g.*, Pa. CONST. § 41 (1776) ("Taxes may never be burthens."); Md. CONST., Art. XI (1776) (prohibiting the legislature from including provisions "not immediately relating to" taxes in a money bill); N.J. CONST., Art. XVIII (1776) (limiting the prerogative to tax and spend in support of religious ministries); S.C. CONST. Art. VII (1776); Mass. CONST. Ch. 1, § 3, art. VII (1780) (money bills must originate in the lower house).

[14] *See* Mass. CONST. Part the First, art. VII (1780) ("[T]he people alone have an incontestable, unalienable, and indefeasible right to institute government, and to reform, alter, or totally change the same when their protection, safety, prosperity, and happiness require it.").

the agencies of government, sovereignty itself remains with the people by whom and for whom all government exists and acts."). Accordingly, there is no reason to assume that a "republican government" requires the state legislature to retain unfettered tax and spend powers. And there is even less reason to assume that a court might find a constitutionally grounded standard for saying when the citizens have gone *too far* in constraining public revenues.

3. There Are No Judicially Manageable Standards for Identifying Those Legislative Powers That Respondents Assume to be Non-Revocable

Alternatively, Respondents' theory might be understood to suggest that there is a Guarantee Clause violation—as a categorical matter—whenever the citizens enact a constitutional restriction inhibiting specific "core" legislative powers. Indeed, they suggest that certain legislative powers are non-revocable. *Kerr*, 759 F.3d at 1188-89 (Tymkovich J., dissenting). Yet, there are no constitutionally grounded standards governing the question of what legislative powers are non-revocable. *Id*. at 1193-96 (Gorsuch J., dissenting). And because a court seeking to answer that question would invariably step into the realm of political philosophy—any posited standard must be rejected as judicially unmanageable.

Moreover, a categorical theory of the Guarantee Clause—positing a *per se* violation whenever specific legislative powers are inhibited—

would be highly problematic. As discussed *supra*, this would render every tax and spend restraint unconstitutional. And of course, it is difficult to imagine the founding generation desiring such a result given that the Revolutionary War was ignited by popular outrage over newly imposed English taxes on the colonies. Moreover, it doesn't make sense to assume that constitutional restraints on a legislature's fiscal powers are somehow anti-republican when the Framers—who were so inspired by republican ideals—included constitutional restrictions on the federal government's power to tax and spend.[15]

B. Courts May Search in Vain for Judicially Manageable Standards

It is difficult to say what might happen if this case is remanded to the district court without guidance. But if there are no judicially manageable standards governing Respondents' claim, the proceeding may prove to be a spectacle. Attempting to decide a case without governing standards is more difficult than playing tennis without a net or court. It would be theater of the absurd.

The Tenth Circuit expressed confidence that the District Court will eventually enunciate standards. But it may be that the lower court has been tasked with finding a standard that does not exist. Like Captain Cook's fruitless search for the Northwest Passage—through the fjords of Alaska—

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[15] *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2599 (2012) ("Congress's ability to use its taxing power … is not without limits.").

the search for judicially manageable standards may be in vain. In the same way that the lower courts languished for 18 years in the wake of *Bandemer*, trying—*without success*—to develop workable standards for political gerrymandering claims, many lower courts will unquestionably struggle in molding a standard for assessing Guarantee Clause challenges to state constitutional provisions, initiatives, or referenda in the coming years.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of *certiorari*.

Respectfully submitted,

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APPENDIX A

APPENDIX TABLE OF CONTENTS

Page

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

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

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

To fulfill its role as the voice for small business, the NFIB Legal Center frequently files amicus briefs in cases that will impact small businesses. NFIB Legal Center seeks to file here because this case will impact small business taxpayers in Colorado. But more fundamentally the

NFIB Legal Center files out of concern that the Tenth Circuit's decision has opened the door for challenges to taxpayer protections in other states. The NFIB Legal Center has an interest in defending taxpayer protections, and similar state constitutional protections, for small business owners throughout the nation.

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II. Statement of the TABOR Foundation

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

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III. Statement of the American Legislative Exchange Council

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

ALEC recognizes that the Guarantee Clause safeguards the republican form of government in the states from actions by the federal government or by a state's own government that threaten the rights of citizens to structure their state's government. Further, ALEC acknowledges instances may exist where federal or state action that threatens the integrity of republican government in a given state may give rise to justiciable claims in a court of law. Occasions may arise in which state legislators, sworn to uphold both the federal constitution and their respective state constitutions, are duty-bound to pursue Guarantee Clause claims in order to vindicate the republican form of government in their state. However, absent judicially manageable standards for addressing Guarantee Clause claims, ALEC has serious concerns that the structural integrity of state governments will be infringed by innumerable lawsuits over constitutional and political questions that legitimately rest with the people of each state. ALEC believes that it would

subvert the purpose of the Guarantee Clause, undermine the dual sovereign status of states, and run contrary to U.S. Supreme Court precedent if state governmental structures become challengeable in court absent clear, judicially manageable standards.

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

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

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IV. Statement of the National Taxpayers Union

The National Taxpayers Union (NTU) is a nonprofit, nonpartisan membership organization dedicated to protecting the interests of taxpayers through lobbying, public education, and litigation. NTU's 362,000 members and supporters across the nation, approximately 7,000 of whom reside in Colorado, have a direct economic and political interest in this action. NTU and its members have been among the foremost proponents of both the initiative/referendum and procedural tax and expenditure limits, having participated in campaigns for such limits in more than 15 states since the enactment of California's Proposition 13 in 1978. The organization provided detailed advice and guidance to the drafters of Colorado's Amendment 1 prior to its circulation as a ballot initiative and throughout the campaign to enact the measure. Since that time NTU and its members have participated in opposition efforts to subsequent measures that would modify or weaken the provisions of Amendment 1. NTU has filed amicus briefs pertaining to issues surrounding tax and expenditure limits, and advised attorneys pursuing legal actions in Arkansas, Colorado, Connecticut, Florida, and Montana.

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V. Statement of Americans for Tax Reform

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

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VI. Statement of Citizens in Charge

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

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VII. Statement of the Howard Jarvis Taxpayers Association

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

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VIII. Statement of Citizens for Limited Taxation

Citizens for Limited Taxation (CLT) is the voice for Massachusetts Taxpayers. For forty years, CLT and its members have worked to control taxes in Massachusetts. In 1980, CLT successfully pushed for adoption of Prop 2 ½, which caps property tax increases for homeowners, and reduces annual auto excise taxes. CLT has an interest in preserving this taxpayer protection, and in defending the right of Massachusetts citizens to exercise their state constitutional right to impose restrictions on the state legislature's fiscal powers, as the people may deem appropriate, in the future.

Barbara Anderson
Citizens for Limited Taxation
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IX. Statement of the Goldwater Institute

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

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

Sedona, 229 Ariz. 37, 270 P.3d 864 (Ct. App. 2012), review denied (Aug. 28, 2012) (amicus).

The Institute also drafted the Right to Try measure, which gives terminally ill patients the right to try investigational medicines that have passed the initial safety phase of FDA approval but still may be years away from reaching pharmacy shelves. Right to Try has been enacted into law in five states. Most recently and relevantly, voters overwhelmingly approved Right to Try in Arizona, limiting the government's authority to stop access to potentially life-saving drugs.

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

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X. Statement of the Oklahoma Council of Public Affairs

Oklahoma Council of Public Affairs (OCPA) promotes the principles of free enterprise and limited government. Consistent with our purpose and mission, OCPA endorses any states' efforts to educate individuals about policies, which have the force and effect of law, that could have the effect of limiting these ideals.

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XI. Statement of the Freedom Center of Missouri

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

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XII. Statement of the Mackinac Center for Public Policy

Founded in 1987, the Mackinac Center for Public Policy is a Michigan-based nonprofit, nonpartisan research and educational institute that advances policies fostering free markets, limited government, personal responsibility, and respect for private property. The Mackinac Center assists policy makers, scholars, business people, the media and the public by providing objective analysis of Michigan issues. The goal of all Center reports, commentaries and educational programs is to equip Michigan citizens and other decision makers to better evaluate policy options. The instant case concerns the Mackinac Center as it has promoted similar policies within the State of Michigan.

Patrick Wright
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XIII. Statement of the Cascade Policy Institute

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

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XIV. Statement of the Pelican Institute for Public Policy

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

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XV. Statement of the Civitas Institute

The Civitas Institute works to advance liberty and prosperity in North Carolina by promoting the principles of limited government, personal responsibility and civic engagement. The mission of the Civitas Institute is to facilitate the implementation of conservative policy solutions to improve the lives of all North Carolinians. Of central concern to this mission, Civitas believes in empowering citizens, and that legislative powers come from the consent of the governed. As such, Civitas is concerned that this case may set a dangerous precedent. Specifically, Civitas shares the concern of the other *amici* that this case might unleash untold numbers of lawsuits, which might erode the power of citizens—including North Carolinians.

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XVI. Statement of the Utah Taxpayers Association

The Utah Taxpayers Association (UTA) is a non-profit 501(c)(4) organization that works to limit state and local taxes, making Utah an attractive place to live and do business. Founded in 1922, the Utah Taxpayers Association successfully enhances efficient, economical government and fair and equitable taxation in the state of Utah.

UTA advocates on behalf of the taxpayers of Utah in three basic ways. First, UTA strives to ensure that taxes are low and fair. UTA uses the term "fair" to suggest that the tax code shouldn't be picking winners and losers – all taxpayers should be treated the same. Second, UTA wants to make sure the education system (the largest recipient of Utah taxes) is preparing our children to succeed in a 21st century economy. Third, UTA works to keep government out of the business of business.

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XVII. Statement of the Tax Foundation of Hawaii

The Tax Foundation of Hawaii is a 60-year-old nonpartisan research organization whose mission is to promote and encourage efficiency and economy in Hawaii governments through unbiased, non-political studies and surveys of a factual nature, making available and disseminating such information and data by publications, reports, talks, the radio and television. One of the Foundation's guiding principles is that the mandate in the Hawaii Constitution, limiting general fund expenditures, should be respected. This case has implications as to the validity of that mandate as well as the balanced budget requirement and debt obligation provisions of the Hawaii Constitution.

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XVIII. Statement of the Wisconsin Institute for Law & Liberty

The Wisconsin Institute for Law & Liberty (WILL) is a public interest law firm dedicated to advancing the public interest in government limited to its proper constitutional bounds, free markets, individual liberty, and a robust civil society. Founded in June of 2011, WILL has represented individuals and organizations seeking to, among many other things, limit interference by the federal government in the internal administration of state government. Amicus believes that the Tenth Circuit's decision below threatens the integrity of the constitutions of all 50 states, including its home state of Wisconsin. Every state imposes limitations of some kind on the powers possessed by its legislature. Those limitations often place the voters in a position of final authority on certain measures such as tax increases and constitutional amendments. Citizens should have the right to limit their own governments in this manner, but the Tenth Circuit's decision, finding the Plaintiff's claims justiciable, subjects such limitations to a whole plethora of challenges never seen before. Without a manageable judicial standard for Guarantee Clause challenges, an uncountable number of litigants will likely step forward to take a spin at the roulette wheel.

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XIX. Statement of the Washington Policy Center

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

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XX. Statement of the American Tax Reduction Movement

The American Tax Reduction Movement (ATRM) was created by Howard Jarvis in 1978 to develop and promote public policies advocating the reduction of property taxes throughout the United States. ATRM's goals are to educate the public and to support similar state groups on subjects useful to the individual and beneficial to the community, with a particular emphasis on the benefits of property tax reduction. ATRM has been involved with education and support of tax reduction proposals in several states.

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