SUPREME COURT OF THE STATE OF COLORADO 101 West Colfax Ave., Suite 800 Denver, CO 80202 On Certiorari to the Colorado Court of Appeals Court of Appeals Case No. 10CA2559, 08CV9799 JOHN HICKENLOOPER, in his official capacity as Governor of the State of Colorado; and THE STATE OF COLORADO, Petitioners, v. FREEDOM FROM RELIGION FOUNDATION, INC.; MIKE SMITH; DAVID HABECKER; TIMOTHY G. BAILEY; and JEFF BAYSINGER, Respondents.	**▲ COURT USE ONLY ▲**
ATTORNEYS FOR RESPONDENTS: Daniele W. Bonifazi, Atty. No. 30645 John H. Inderwish, Atty. No. 10222 INDERWISH & BONIFAZI, P.C. 12150 East Briarwood Avenue, Suite 200 Centennial, CO 80112 Telephone: (720) 208-0111 Fax: (720) 208-0130 E-mail: dbonifazi@i-blaw.com E-mail: jhi@i-blaw.com Richard L. Bolton, Esq. BOARDMAN & CLARK LLP 1 South Pinckney Street, 4th Floor P. O. Box 927 Madison, WI 53701-0927 Telephone: (608) 257-9521 Fax: (608) 283-1709 E-mail: rbolton@boardmanclark.com	Case Number: 12SC442
RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE COLORADO SUPREME COURT	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 53(a).

Choose one:

√ It contains 3,529 words.
____ It does not exceed 12 pages.

INDERWISH & BONIFAZI, P.C.

Daniele W. Bonifazi, Esq.
John H. Inderwish, Esq.
Attorneys for Respondents

TABLE OF CONTENTS

RESPONSE TO PETITION FOR WRIT OF CERTIORARI 1

SUMMARY OF ARGUMENTS 1

ARGUMENT 2

I. THE COURT OF APPEALS CORRECTLY APPLIED THIS COURT'S RECOGNIZED TAXPAYER-CITIZEN STANDING PRINCIPLES. *2*

A. Taxpayer-Citizens Have Standing Under this Court's Precedents to Challenge Government Violations of Self-Executing Provisions of the Colorado Constitution, such as the Religious Preference Clause. 2

B. The Court of Appeals Correctly Applied the Supreme Court's Requirements for Taxpayer-Citizen Standing. 6

C. The Court of Appeals' Standing Analysis and Conclusions do not Warrant Supreme Court Review. 9

II. THE COURT OF APPEALS UNREMARKABLY CONCLUDED THAT GOVERNMENT SPEECH PROMOTING A DAY OF PRAYER APPEARS TO ENDORSE RELIGION -- THAT IS THE OBJECTIVE OF SUCH SPEECH. *10*

III. SPECIAL INTEREST PRAYER PROCLAMATIONS ARE NOT ANALOGOUS TO LEGISLATIVE INVOCATIONS. *15*

CONCLUSION 17

CERTIFICATE OF SERVICE 18

TABLE OF AUTHORITIES

Cases

Colorado State Civil Service Employees Association 448 P.2nd at 627 5

Ainscough v. Owens, 98 P.3rd 851,853(Colo. 2004) 3

Ainscough, 90 P.3rd at 857 5

Allegheny County v. ACLU, 492 U.S. 573, 603 n. 52 (1989), ... 17

also *Dodge v. Department of Social Services of the State of Colorado*, 600 P.2nd 70, 71-72 (1979). 6

Barber v. Ritter, 196 P. 3rd 238, 247 (Colo. 2008), ... 7

Barber v. Ritter, 196 P.3rd 238, 246 (Colo. 2008). (Petitioners' Appendix at 21.) 8

Boulder Valley School District RE-2 v. Colorado State Board of Education 217 P.3rd 918, 924 (Colo. App. 2009) 6

Conrad v. City and County of Denver, 656 P.2nd 662, 668 (Colo. 1983). 7

Colorado State Civil Service Employees Association v. Love, 448 P.2nd 624,627 (Colo. 1968), ... 4

Crawford v. Denver, 398 P.2nd 627, 632-33 (Colo. 1965). 5

Hotaling v. Hickenlooper, 275 P.3rd 723, 727 n.4 (Colo. App. 2011) 3

Howard v. Boulder, 290 P.2nd 237 (Colo. 1955) 4

Howard v. City of Boulder, 290 P.2nd 237, 238 (Colo. 1955) 3

Marsh v. Chambers, 463 U.S. 783, 792 (1983) 16

Nicholl v. E-470 Public Highway Authority, 896 P.2nd 859, 866 (Colo. 1995). 6

See American Atheists, Inc. v. Duncan, 637 Fed. 3rd 1095 (10th Cir. 2010) 15

Wimberly v. Ettenberg 570 P.2nd 535, 538 (Colo. 1977). (Petitioners' Appendix at 20-21.) 8

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

The Petition for Certiorari should be denied. Review is not warranted because the decision of the Court of Appeals is not in conflict with applicable Supreme Court decisions, nor did the Court depart from accepted and usual judicial proceedings so as to call for the exercise of the Supreme Court's power of mandamus supervision.

SUMMARY OF ARGUMENTS

The Court of Appeals correctly identified and applied this Court's requirements for taxpayer-citizen standing in cases involving alleged violations of the Colorado Constitution. Standing exists to challenge alleged violations of the self-executing Preference Clause of the Colorado Constitution. Taxpayer-citizens who are non-believers in Colorado have a legally protected and enforceable interest in having a government that does not promote or endorse religion. Exposure to Proclamations of a statewide Day of Prayer is anticipated and unavoidable by these Colorado taxpayer-citizens, causing constitutionally significant injuries.

The official Proclamations of a Colorado Day of Prayer are not merely ceremonial references to religion. Although the Respondents claim to issue such official Proclamations on demand, and without much thought, the Proclamations constitute official government speech endorsing a blatantly evangelical event.

That is the undisputed reason why the National Day of Prayer Task Force requests official Day of Prayer Proclamations, in order to benefit from the credibility and prestige of a high elected official. The Respondents, moreover, do not just report upcoming events as an announcement service, the Governor declares an official statewide Day of Prayer with an annual biblical theme and reference. Unlike legislative invocations, the Respondents are not solemnizing a civil event; the Respondents are declaring, endorsing and promoting a patently religious event.

ARGUMENT

I. THE COURT OF APPEALS CORRECTLY APPLIED THIS COURT'S RECOGNIZED TAXPAYER-CITIZEN STANDING PRINCIPLES.

A. Taxpayer-Citizens Have Standing Under this Court's Precedents to Challenge Government Violations of Self-Executing Provisions of the Colorado Constitution, such as the Religious Preference Clause.

Petitioners' unpersuasively complain that the Court of Appeals went beyond Supreme Court precedent to find a fiscal nexus to the Governor's alleged unconstitutional endorsements of religion. The Petitioners admit that the Supreme Court has never required such a nexus--and they do not contend that the Respondents failed to satisfy this Court's traditional standing requirements. The Petitioners, in fact, do not seriously dispute at all that standing exists in the present case based on the established tests applied by this Court.

Taxpayer-citizens of Colorado have standing to raise constitutional issues of "great public concern." This is particularly true where constitutional violations might otherwise go unaddressed, as in this case. "If a taxpayer and citizen of the community be denied the right to bring such an action under the circumstances presented by this record, then wrong must go unchallenged, and the citizen and taxpayer reduced to mere spectator without redress." *Howard v. City of Boulder*, 290 P.2nd 237, 238 (Colo. 1955). This Court has not imposed a separate "nexus" requirement in such constitutional cases, as acknowledged in *Hotaling v. Hickenlooper*, 275 P.3rd 723, 727 n.4 (Colo. App. 2011).

Colorado has a long tradition of conferring standing on a wide class of plaintiffs. *Ainscough v. Owens*, 98 P.3rd 851,853(Colo. 2004). "In addition to traditional legal controversies, our [Colorado] trial courts frequently decide general complaints challenging the legality of government activities and other cases involving intangible harm" *Id.* The injury required for standing in Colorado may be tangible, such as physical damage or economic harm; "however, it may also be intangible, such as aesthetic issues or the deprivation of civil liberties. Deprivations of many legally created rights, although themselves intangible, are nonetheless injuries-in-fact." Id. "The test [for standing] in Colorado has traditionally been relatively easy to satisfy." Id.

Examples abound of the broad taxpayer-citizen standing allowed in Colorado Courts. In *Colorado State Civil Service Employees Association v. Love,* 448 P.2nd 624,627 (Colo. 1968), for example, this Court held that taxpayer citizens may sue to protect a matter of "great public concern" regarding the constitutionality of government actions. The *Love* decision did not involve any taxpayer nexus, but the Court instead acknowledged the fundamental "precept of constitutional law that a self-executing constitutional provision *ipso facto* affords the means of protecting the right given and of enforcing the duty imposed." Id. The Court sited its previous decision in *Howard v. Boulder*, 290 P.2nd 237 (Colo. 1955) for support, in which the Court concluded that "we can see no greater interest the taxpayer can have than his interest in the form of government under which he is required to live, or in any proposed change thereof." Id. In such circumstances, "the rights involved extend beyond the self-interest of individual litigants and are of great public concern." *Colorado State Civil Service Employees Association* 448 P.2nd at 627 [A self-executing constitutional provision is enforceable without ancillary legislation, and consequently obligatory. *Crawford v. Denver*, 398 P.2nd 627, 632-33 (Colo. 1965).]

This Court has consistently adhered to the principle that a self-executing constitutional provision affords the means of protecting the right and of enforcing

the duty imposed. *Ainscough*, 90 P.3rd at 857. In taxpayer-citizen cases, moreover, the Court has consistently recognized that a generalized injury-in-fact is sufficient." A citizen has standing to pursue his or her interests in insuring that governmental units conform to the State Constitution." Id, quoting *Nicholl v. E-470 Public Highway Authority*, 896 P.2nd 859, 866 (Colo. 1995). See also *Dodge v. Department of Social Services of the State of Colorado*, 600 P.2nd 70, 71-72 (1979).

The Petitioners misapprehend Colorado law when implying that taxpayer-citizen standing requires an unconstitutional expenditure. Under Colorado law, a plaintiff is not required to show specific government expenditures. An injury-in-fact is sufficient to confer standing even where no economic harm is implicated because "a citizen has standing to pursue his or her interests in insuring that governmental units conform to the State Constitution." *Boulder Valley School District RE-2 v. Colorado State Board of Education* 217 P.3rd 918, 924 (Colo. App. 2009). "As our precedent makes clear, an interest in seeing that governmental entities function within the boundaries of the State Constitution is sufficient to confer standing; when a plaintiff-taxpayer alleges that a government action violates a specific constitutional provision, such an averment satisfies the two-step standing analysis described above." Id. The intangible interest in having

a government that does not prefer or support religion over non-religion is sufficient to confer such standing. Cf. *Conrad v. City and County of Denver*, 656 P.2nd 662, 668 (Colo. 1983).

Taxpayer-citizen standing exists, in short, when the plaintiff's injury flows from a governmental violation of a specific constitutional provision. This principle is not limited to tax and spend challenges. Here, the Preference Clause is such a constitutional provision that creates a protectable legal interest in the Respondents.

The applicable test for standing in Colorado, in the final analysis, ultimately involves "a single inquiry as to whether a plaintiff-taxpayer has averred a violation of a specific constitutional provision." See *Dodge,* 600 P.2nd at 73. As this Court recently reaffirmed in *Barber v. Ritter,* 196 P. 3rd 238, 247 (Colo. 2008), "Colorado case law requires us to hold that when a plaintiff-taxpayer alleges that a government action violates a specific constitutional provision, such an averment satisfies the two-step standing analysis." The infringement of a constitutional guarantee injures the taxpayer citizen's interest in constitutional governance, which is a legally protected interest.

B. The Court of Appeals Correctly Applied the Supreme Court's Requirements for Taxpayer-Citizen Standing.

The Court of Appeals correctly indentified and applied this Court's requirements for taxpayer-citizen standing.

The Court of Appeals initially recognized that to have either taxpayer or general standing, a plaintiff must show that he or she has suffered (1) an injury-in-fact to (2) a legally protected interest. *Wimberly v. Ettenberg* 570 P.2nd 535, 538 (Colo. 1977). (Petitioners' Appendix at 20-21.) The Court also acknowledged that Colorado applies a relatively broad definition of standing. *Ainscough* 90 P.3rd at 855. (Petitioners' Appendix at 21.)

As to the first *Wimberly* prong, injury-in-fact, the Court of Appeals noted that the injury may be tangible, "or the injury may be intangible such as a deprivation of a legally created right or the interest in ensuring that governmental units conform to the State Constitution." *Barber v. Ritter*, 196 P.3rd 238, 246 (Colo. 2008). (Petitioners' Appendix at 21.) The second *Wimberly* prong, according to the Court, is also "satisfied when the plaintiff has a claim for relief under the Constitution, the common law, a statute or a rule or regulation." *Ainscough* 90 P. 3rd at 856. (Petitioners' Appendix at 22.) Again, the Court noted that the legally protected interest may be intangible, such as "an interest in having a government that acts within the boundaries of our state constitution." *Ainscough*, 90 P. 3rd at 856. (Petitioners Appendix at 22.)

In the context of taxpayer-citizen standing, the Court of Appeals further explained that "when a plaintiff-taxpayer alleges that a government action violates a specific constitutional provision, such an averment satisfies the two-step *Wimberly* analysis. *Boulder Valley School District RE-2*, 217 P. 3rd at 924. (Petitioners Appendix at 22-23.) Under the *Wimberly* test, the first prong can be satisfied by a complaint that the government is not conforming to the state Constitution, which also satisfies, according to the Court, the second prong of the *Wimberly* test because the claim arises from a legally protected interest under the Constitution. (Petitioners Appendix at 23.)

The Court of Appeals then applied this Court's taxpayer-citizen standing requirements to the circumstances of the present case. As to the first *Wimberly* factor, the Court noted, in part, "that the taxpayers claim an intangible injury-in-fact to their interests as taxpayers in having a government that does not promote religion in a manner contrary to the Preference Clause. An alleged violation of the Constitution is an injury-in-fact sufficient for a plaintiff to have standing in Colorado." (Petitioners Appendix at 26.) The Court also found that the Respondents in the present case "came into contact with the proclamations." (Petitioners Appendix at 26.) Finally, the Court concluded that the Respondents'

claim "is based on a legally protected interest because it arises under the Colorado Constitution." (Petitioners Appendix at 26.)

The Court of Appeals, in short, explicitly identified and correctly applied this Court's standing precedents to the facts of the case.

C. The Court of Appeals' Standing Analysis and Conclusions do not Warrant Supreme Court Review.

Supreme Court review is not warranted in this case. Colorado Appellate Rule 49 gives the Court discretion to grant certiorari "when there are special and important reasons therefore." No such reasons affect the Court of Appeals decision here. The Court of Appeals clearly did not decide a question of substance in a way not in accord with applicable decisions of the Supreme Court. Nor did the Court depart from the accepted and usual course of judicial proceedings so as to call for the exercise of the Supreme Court's power of mandamus supervision.

The Court of Appeals, if anything, considered an additional and unnecessary factor in its standing analysis. The Petitioners complain that the Court of Appeals should not have *sua sponte* reviewed the record for a fiscal nexus to the alleged constitutional violation, but that is certainly not an issue that warrants Supreme Court review, which is not appropriate merely to correct alleged error. Here, in any event, the Court of Appeals identified and correctly applied the proper

standards of this Court in finding standing by the Respondents. No compelling reason exists requiring Supreme Court review.

II. THE COURT OF APPEALS UNREMARKABLY CONCLUDED THAT GOVERNMENT SPEECH PROMOTING A DAY OF PRAYER APPEARS TO ENDORSE RELIGION -- THAT IS THE OBJECTIVE OF SUCH SPEECH.

The Petitioners complain unpersuasively that the Court of Appeals erroneously applied the law to the undisputed facts when concluding that Day of Prayer Proclamations give the appearance of religious endorsement. The Petitioners do not contend that the Court of Appeals misapprehended the applicable law or that the Court relied upon inappropriate facts. The Petitioners, instead, essentially argue that no one could reasonably believe that official proclamations declaring a Day of Prayer for the entire state of Colorado give the appearance of religious endorsement. The Court of Appeals, however, did not indulge a strained or absurd interpretation in reaching its conclusion. On the contrary, any other conclusion from the factual record in this case would itself be perverse.

The Court of Appeals concluded that the purpose of gubernatorial proclamations is to express the Governor's support for their content. The Court also found that Day of Prayer Proclamations are not identified with a particular organization, but rather are broadly denominated as a "Colorado Day of Prayer,"

implying government sponsorship. The Court also found that Day of Prayer Proclamations contain explicitly biblical verses and religious themes and that the Proclamations promote a specific religious event.

The Court further found that the Proclamations are distinguishable from "ceremonial deism." They are not simply used to solemnize certain governmental proceedings, such as the case with legislative invocations. The context of the Proclamations, instead, is singular and religious, i.e., they are intended to promote a specific religious event.

In short, according to the Court of Appeals, Day of Prayer Proclamations convey a predominately religious message because they include explicitly biblical verses and religious themes; they have little secular content; they exhort individuals to "unite in prayer;" they bear the Governor's imprimatur in the form of his official signature and seal; they convey a religious message that is undisputedly attributable to the Governor; and they indicate that the Proclamations were issued with the Governor's full support and approval. (Petitioners Appendix 57-59.) Based on these undisputed facts, the Court of Appeals correctly concluded that Day of Prayer Proclamations do give the appearance of religious endorsement. That is hardly a startling conclusion.

The Petitioners unpersuasively argue, however, that official Proclamations of a Colorado Day of Prayer should not be taken seriously because the Governor is essentially pandering to constituents and everyone knows it. The Petitioners' argument is logically and factually flawed because official proclamations are sought precisely because they lend the governor's credibility and prestige to the subject of the proclamation. Proclamations are valued for the appearance of the Governor's support, in this case by a religious organization seeking to mobilize support for prayer and religion. That is undisputedly why the NDP Task Force solicits such official proclamations from government officials, like the Colorado Governor.

The reality of endorsement turns on the words and images actually conveyed. Here, the Court of Appeals correctly, and unremarkably, concluded that official proclamations of a Colorado Day of Prayer, issued by the Governor is his official capacity, and in response to the requests of a patently evangelical organization, do give the appearance of endorsement. By contrast, the Governor obviously would not issue a proclamation of racial invective, precisely in order to prevent giving his official sanction, credibility and prestige to despicable or deplorable subject matter, even if a private party requested such a proclamation. The Governor would not issue such a proclamation because of the unavoidable

appearance of endorsement. Likewise, however, Day of Prayer Proclamations also exude the appearance of endorsement.

Official proclamations by the Governor undeniably invoke the prestige of government, as candidly admitted by Shirley Dobson, the person requesting Day of Prayer Proclamations for the NDP Task Force. Government endorsement of religion, however, is prohibited by the Colorado Constitution. That is what makes Day of Prayer Proclamations inappropriate, regardless of whether the government speaks on other subjects. The Colorado Constitution prohibits government speech endorsing religion, a limitation that does not apply to other government speech. The Petitioners miss the mark, therefore, by citing other proclamations that are not prohibited by the Colorado Constitution. Government speech on secular topics does not authorize government speech endorsing religion.

Statewide proclamations of a Day of Prayer are every bit as offensive to the Preference Clause as Christian nativity displays at Christmas, erected to celebrate the birth of Jesus, often at the request of private religious groups. Statewide proclamations also are as objectionable as roadside crosses put up by private parties with official State insignia. *See American Atheists, Inc. v. Duncan*, 637 Fed. 3rd 1095 (10th Cir. 2010). Proclamations in aide of proselytization constitute endorsement prohibited by the Preference Clause of the Colorado Constitution.

Government speech endorsing religion is prohibited, moreover, without any requirement of official government coercion. The Court of Appeals correctly recognized that "endorsement is distinct from command. The government need not command citizens to participate in a particular religious activity or belief in order for the governmental action to be unconstitutional." (Petitioners Appendix at 36.) Endorsement itself is prohibited by the Colorado Constitution, not just coercive measures.

Finally, Supreme Court review is not necessary in this case to vindicate the "Governor's prerogative." The Court of Appeals correctly held that the Colorado Constitution does not recognize a gubernatorial prerogative to engage in official government speech endorsing religion. Official proclamations, of course, do constitute actual government speech emanating from the Executive Branch, but there are constitutional restraints on government speech "for example, government speech must comport with the Establishment Clause." *Pleasant Grove v. Summam* 129 S. Ct. 1125, 1127 (2009).

In the end, the conclusion that Day of Prayer Proclamations endorse religion is not really the nub of the Petitioners' objection, as such proclamations obviously do endorse religion. The Petitioners really disagree with the principle that endorsement is prohibited. Under both the Colorado Preference Clause and the

Establishment Clause of the United States Constitution, however, that is not an open question for this Court's review. Government endorsement of religion is proscribed under both State and Federal Constitution because it is a dangerous mix. That is the well-established law.

III. SPECIAL INTEREST PRAYER PROCLAMATIONS ARE NOT ANALOGOUS TO LEGISLATIVE INVOCATIONS.

Despite acknowledging that Day of Prayer Proclamations are issued on demand to the NDP Task Force to promote a specific religious event, the Petitioners nonetheless urge this Court to apply the United State Supreme Court's analysis applicable to legislative invocations. See *Marsh v. Chambers*, 463 U.S. 783, 792 (1983). This argument is irreconcilable with the Petitioners' own description of the Governor's Day of Prayer Proclamations as an on-demand public service provided to the NDP Task Force.

The United State Supreme Court, moreover, has never applied the reasoning in *Marsh* beyond the realm of legislative invocations, and this is certainly not the case for the unprecedented expansion of *Marsh* demanded by the Petitioners. Special interest proclamations by government officials, including the Colorado Governor, are simply not perceived as merely ceremonial, but rather they are sectarian, divisive and controversial.

The United State Supreme Court has previously recognized in *Allegheny County v. ACLU*, 492 U.S. 573, 603 n. 52 (1989), that Prayer Proclamations stand on different footing than "ceremonial deism," such as non-sectarian legislative invocations. The Supreme Court stated:

> "It is worth noting that just because *Marsh* sustained the validity of legislative prayer, it does not necessarily follow that practices like proclaiming a National Day of Prayer are constitutional. Legislative prayer does not urge citizens to engage in religious practices, and on that basis could well be distinguishable from an exhortation from government to the people that they engage in religious conduct."

The Proclamations at issue are particularly suspect under the law because they include annual themes and references that are palpably and identifiably biblical. These biblical references in Colorado Day of Prayer Proclamations are incorporated at the request of the NDP Task Force; the annual themes and scriptural references are selected by the NDP Task Force; and according to the Petitioners, the Colorado Day of Prayer Proclamations reflect the special interest of the requesting party, i.e., the NDP Task Force. The claim, therefore, that these proclamations are just a ceremonial acknowledgement of religion is not supported by the evidence. The Proclamations would not pass constitutional muster under *Marsh*, even as legislative prayer, because they incorporate exclusively Christian themes and references.

The comparison of Prayer Proclamations to legislative invocations is itself not compelling, as the Court of Appeals recognized. In the case of legislative invocations, at issue in *Marsh*, the Supreme Court concluded that the invocations had no religious significance and were merely a means of solemnizing the beginning of legislative sessions. By contrast, declaring a statewide Colorado Day of Prayer is intended to promote the Day of Prayer itself; it is not solemnizing something else with ceremonial deism. With Day of Prayer proclamations, the designation of a specific day as a statewide event is done for the very purpose of celebrating and engaging in prayer.

Day of Prayer Proclamations are not "ceremonial acknowledgments" of religion. The Proclamations represent government speech designating a particular day to assist an overtly Christian proselytizing organization in its missionary pursuits. The Proclamations are issued upon request, but they are issued as an official statewide declaration of a "Colorado Day of Prayer," while incorporating recognizably biblical references and themes. These facts do not compel the Colorado Supreme Court to become the first court in the country to expand the application of *Marsh* beyond legislative invocations.

CONCLUSION

The Petitioners have not presented special and important reasons justifying review by this Court. The Court of Appeals correctly applied well-settled principles of law to the particular facts of the case, and this Court, accordingly, should deny the Petition for Review.

Dated: August 8, 2012.

INDERWISH & BONIFAZI, P.C.

Dan Bonifazi, Esq.
John H. Inderwish, Esq.
Attorneys for Respondents

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within Response to Petition for Writ of Certiorari to the Colorado Supreme Court upon all parties herein via Lexis/Nexis, this 8th day of August 8, 2012, addressed as follows:

John W. Suthers, Attorney General
Daniel D. Domenico, Solicitor General
Fred Yarger, Assistant Solicitor General
Matthew D. Grove, Assistant Attorney General
1525 Sherman Street, 7th Floor
Denver, CO 80203

Kristi McKenna, Paralegal.