COLORADO SUPREME COURT 2 East 14th Avenue Denver, Colorado 80203	
ORIGINAL PROCEEDING District Court, City & County of Denver Case Nos. 2020CV31008 & 2020CV31009	
In Re: **Plaintiff/Petitioner:** Antero Treatment LLC, **v.** **Defendants/Respondents:** Antero Midstream Corporation; Antero Midstream Partners L.P.; Antero Resources Corporation; and Veolia Water Technologies, Inc.	▲ **COURT USE ONLY** ▲ Case No. 2023SA133
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BRIEF OF *AMICI CURIAE* COLORADO CIVIL JUSTICE LEAGUE, COLORADO DEFENSE LAWYERS ASSOCIATION, AMERICAN TORT REFORM ASSOCIATION, DRI CENTER FOR LAW AND PUBLIC POLICY AND THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF DEFENDANT/RESPONDENT VEOLIA WATER TECHNOLOGIES, INC.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all applicable requirements of Colo. App. R. 21(k), 28, 29, and 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the word limit set forth in Colo. App. R. 29(d).

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I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of Colo. App. R. 29, 32, and 53.

Dated: June 28, 2023

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INTRODUCTION

The appeal bond cap statute at issue, C.R.S. §13-16-125, is a substantive measure intended to protect the right to appeal. Since the Colorado General Assembly took this action in 2003, it has been joined by many other state legislatures that have also statutorily limited the size of appeal bonds needed to stay execution of judgment. None of these statutes has ever been found unconstitutional.

The enactment of C.R.S. §13-16-125 was an appropriate exercise of the Legislature's authority to determine public policy. It reflects the General Assembly's recognition that, without caps, the appeal bond requirement would obstruct judgment debtors' right to appeal in cases involving large damages awards. It does not conflict with the judicial rulemaking authority or with C.R.C.P. 121, §1-23(3)(a). The Court should uphold the constitutionality of C.R.S. §13-16-125 and its application in this case, and discharge the Rule to Show Cause.

STATEMENT OF INTEREST

Amici are non-profit organizations whose members operate in Colorado and throughout the United States. *Amici* have an interest in ensuring that Colorado law adequately safeguards the right of defendants in civil litigation, who are often businesses or professionals, to appeal extraordinary judgments. *Amici* have advocated and supported the enactment of appeal bond cap statutes in Colorado and other states so that the burden of supersedeas bonds will not prevent defendants from exercising their right to seek appellate review. Representatives of the Colorado Civil Justice League ("CCJL") and the Colorado Defense Lawyers Association ("CDLA") provided legislative committee testimony in favor of the bill that was enacted as C.R.S. §13-16-125. The American Tort Reform Association ("ATRA") and the Chamber of Commerce of the United States of America ("Chamber") have filed *amicus* briefs addressing the constitutionality and application of appeal bond cap statutes in several states.

Amici agree with the district court's determination that C.R.S. §13-16-125 constitutes substantive law that establishes a $25 million cap on the supersedeas bond required to stay execution of the judgment in this case. *Amici* are concerned that the constitutionality arguments put forth by Plaintiff Antero Treatment, LLC fail to recognize the very real threat posed by massive verdicts to defendants' practical ability to seek appellate review, and do not acknowledge the consensus that has emerged among the states that protecting judgment debtors' right to appeal by capping supersedeas bonds is an appropriate legislative action. *Amici* seek to provide the Court with the public policy rationale underlying appeal bond cap statutes that have been enacted by many state legislatures, including the Colorado General Assembly.

CCJL is a non-profit organization dedicated to improving Colorado's civil justice system through a combination of public outreach, advocacy and legislative initiative. It is a diverse coalition of businesses, trade associations, individuals and private attorneys. CCJL has submitted *amicus curiae* briefs to this Court on numerous previous occasions in cases that have the potential to produce unbalanced approaches to civil litigation.

CDLA is a nonprofit association which exists to support and serve the interests of lawyers involved in the defense of civil litigation. CDLA has roughly 800 members, from all corners of the State of Colorado. CDLA members actively support the preservation of civil jury trials and the promotion of fairness and integrity in the civil justice system. In particular, CDLA members are concerned with ensuring that defendants in civil cases have the ability to exercise their right to appellate review following entry of adverse judgments.

ATRA is a national, nonpartisan, nonprofit coalition of large and small businesses, trade associations, and professional firms. ATRA is dedicated to improving the civil justice system, with a focus on promoting fairness, balance, efficiency and predictability in civil litigation. ATRA is especially concerned with the costs that excessive civil litigation imposes on society. In addition to legislative efforts and public education outreach, ATRA has filed *amicus curiae* briefs, including in this Court, in cases involving important civil justice issues.

The DRI Center for Law and Public Policy is the public policy "think tank" and advocacy voice of DRI, Inc.—an international organization of approximately

14,000 attorneys who represent businesses in civil litigation. DRI's mission includes enhancing the skills, effectiveness, and professionalism of defense lawyers; promoting appreciation of the role of defense lawyers in the civil justice system; and anticipating and addressing substantive and procedural issues germane to defense lawyers and the fairness of the civil justice system. The DRI Center participates as *amicus curiae* in an ongoing effort to promote fairness, consistency, and efficiency in the civil justice system.

The Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

ARGUMENT

I. THE DISTRICT COURT PROPERLY APPLIED C.R.S. §13-16-125 BECAUSE IT IS A SUBSTANTIVE LAW REFLECTING THE COLORADO GENERAL ASSEMBLY'S POLICY DETERMINATION THAT THE RIGHT TO SEEK APPELLATE REVIEW SHOULD NOT BECOME INACCESSIBLE, AND IT DOES NOT CONFLICT WITH C.R.C.P. 121, §1-23(3)(a).

A. Preserving Litigants' Access to the Right to Appeal Adverse Judgments Is an Important Matter Worthy of Legislative Attention.

Appellate review is a critical element of the civil justice system. Appeals create the opportunity for correcting legal errors and eliminating the effects of unfair passion and prejudice. Appeals allow the judiciary to formulate standards that will guide trial courts to address an issue consistently. Recognizing the importance of appeals, Colorado grants civil litigants the right to appellate review by the Colorado Court of Appeals and this Court. *See* Colorado Constitution Article VI, §2(2) ("Appellate review by the supreme court of every final judgment of the district courts . . . shall be allowed"); C.R.S. §13-4-102(1) ("the court of appeals shall have initial jurisdiction over appeals from final judgments of . . . the district courts[.]"). Ensuring that litigants retain their access to Colorado's appellate courts so that they may challenge adverse judgments is essential to due process. *See Evitts v. Lucey*, 469 U.S. 387, 393-94 (1985) (due process requires that a state affording a right of appeal must make that appeal more than a "meaningless ritual").

B. Unlimited Appeal Bond Requirements Threaten Defendants' Right to Appeal.

Defendants hit with substantial damages awards rely on the availability of appellate review to rein in unsupportable damages and address legal errors contributing to the outcome. *See Averyt v. Wal-Mart Stores, Inc.*, 265 P.3d 456, 462 (Colo. 2011) ("the reasonableness of an award is always subject to judicial scrutiny in the post-trial and appellate stages of a case."). Appellate courts on review often identify errors that require reducing the award or even overturning the judgment. *See*, *e.g.*, *Walker v. Ford Motor Co.*, 406 P.3d 845 (Colo. 2017) (vacating multi-million dollar award and remanding for new trial based on jury instruction error).

Without a limitation on the size of a required supersedeas bond, however, a defendant on the receiving end of an exorbitant award may be simply unable to post a bond of the necessary size to protect its assets during an appeal. If a defendant lacks the liquid capital to supply the required bond, that defendant has two alternatives: first, it may seek bankruptcy protection, which provides an automatic stay of the debtor's obligations to pay its creditors. But filing for bankruptcy is for many reasons a highly unpalatable choice, particularly for a corporation and its business partners and employees. No reasonable legal system can impose on a defendant the choice between bankruptcy and forgoing the right of appeal. Second, the defendant may succumb to a disadvantageous settlement, dictated not by the merits of the case but by the defendant's inability to pursue its right of appeal because of the overwhelming financial burden of the appeal bond. Neither of these outcomes provides a just resolution, and both insulate any errors in the trial court's proceedings from appellate review.

The prospect that a defendant may face a back-breaking supersedeas bond is not merely hypothetical. One of the most dramatic examples of the impact of unconstrained appeal bond requirements involved the $11.12 billion judgment entered in a Texas state court against Texaco in 1985. At the time, Texas required a judgment debtor to post a supersedeas bond equal to the entire judgment, regardless of amount, plus costs and interest for the estimated duration of the appeal. *See Texaco, Inc. v. Pennzoil Co.,* 784 F.2d 1133, 1138 (2d Cir. 1986), *rev'd*, 481 U.S. 1 (1987). Texaco sought and successfully obtained a federal injunction, arguing that Texas's appeal bond requirement effectively prevented it from appealing, in violation of the Due Process Clause of the Fourteenth Amendment. *Id*. at 1139 - 41 (requiring a $1 billion bond). The U.S. Supreme Court, however, reversed the federal injunction, finding that the lower federal courts should not have intervened in a pending state judicial proceeding. *See Pennzoil Co. v. Texaco, Inc.,* 481 U.S. 1, 10 (1987). Six days after the U.S. Supreme Court's decision restoring the full bond required by Texas law, Texaco filed for bankruptcy, becoming the largest company in U.S. history to seek protection under Chapter 11.[1] Only after Texaco filed for bankruptcy was it able to pursue its right to appeal in the Texas state courts – where it was determined that the trial court had abused its discretion in entering judgment on $3 billion in punitive damages and not suggesting a remittitur. *See Texaco, Inc. v. Pennzoil Co*., 729 S.W.2d 768, 866 (Tex. App. 1987).

Eye-popping verdicts that could present bonding problems and chill the right of appeal occur frequently. According to the *National Law Journal,* there were 84 verdicts over $25 million in 2021 across the country, including 3 verdicts that topped $1 billion.[2] The trend of massive awards had begun prior to the 2003 enactment of C.R.S. §13-16-125: in 2002 there were 22 verdicts in the United States of more than $100 million and five awards of at least $500 million, including one for $28 billion.[3]

Appeal bond cap statutes similar to C.R.S. §13-16-125 preserve defendants' ability to pursue meritorious appeals where it would otherwise be impossible. One

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[1] *See* Michael Arndt, *Texaco Files For Bankruptcy,* Chic. Trib., Apr. 13, 1987, at https://www.chicagotribune.com/news/ct-xpm-1987-04-13-8701280088-story.html.

[2] *See* Top 100 Verdicts of 2021, Nat'l L.J., July/August 2022, *at* https://images.law.com/media/nationallawjournal/supplements/TVS_NLJ_2021/index.html#p=14.

[3] *See* David Hechler, *Huge Jury Awards in 2002*, Law.com, Feb. 19, 2003, at https://www.law.com/almID/900005534118/.

vivid example is the *Engle* case in Florida, in which a class of cigarette smokers was awarded an astounding $145 billion in punitive damages. *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246, 1254 (Fla. 2006). In the absence of Florida's statutory cap on appeal bonds, the only way for the defendants to obtain a stay of the judgment pending appeal would have been to declare bankruptcy. Fla. Stat. Ann. §768.733, however, limited the supersedeas bond to $100 million. This allowed the defendants to meet the bond requirement and appeal the verdict. In December 2006, the Florida Supreme Court vacated the $145 billion punitive damages award, holding that it was "excessive as a matter of law." *Id.* Had the bond cap statute not been in force, the unobtainable bond requirement would have prevented recognition and correction of this error on appeal.

C. The Colorado General Assembly's Policy Determination Rationally Balanced Judgment Creditors' Interests in Ensuring Recovery with Preserving Judgment Debtors' Right to Obtain Appellate Review in a Manner That Is Consistent With Many Other States.

Recognizing that massive damages awards would jeopardize defendants' ability to exercise their right to appeal if the bonding requirement had no limit, the Colorado Legislature in 2003 enacted C.R.S. §13-16-125 to ensure that the financial burden of a supersedeas bond does not become an insurmountable obstacle to bringing an appeal. In doing so, the statute also provides that judgment creditors receive substantial assurance of payment if the judgment is affirmed – up to $25 million. In striking this balance, Colorado was among the earliest states to take statutory action limiting appeal bond requirements.

Other states have embraced the wisdom of Colorado's policy. Most states now have statutory caps on supersedeas bonds for all civil litigants. The $25 million cap set forth in C.R.S. §13-16-125 is the most common limit, present in the appeal bond cap statutes of fourteen states in addition to Colorado.[4] Thirteen additional states have statutory appeal bond caps ranging in amounts from $35 million in Mississippi up to $150 million in Minnesota, but all are far below the judgment entered in this case.[5] Fourteen other states have appeal bond cap statutes

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[4] Ariz. Rev. Stat. Ann. §12-2108 (2011); Ark. Code Ann. §16-55-214 (2003); Ga. Code Ann. §5-6-46 (2004); Haw. Rev. Stat. §607-26 (2006); Ind. Code 34-49-5-3 (2002); Mich. Comp. Laws §600.2607 (2002) ($25 million cap, indexed to inflation); N.C. Gen. Stat. §1-289 (2003); N.D. Cent. Code §28-21-25 (2005); S.C. Code Ann. §18-9-130 (2012); S.D. Codified Laws §15-26A-26 (2003); Tenn. Code Ann. §27-1-124 (2011); Tex. Civ. Prac. & Rem. Code Ann. §52.006 (2003); Va. Code Ann. §8.01-676.1 (2005); Wyo. Stat. Ann. §1-17-201 (2007).

[5] Fla. Stat. Ann. §45.045 (2006) ($50 million cap); Iowa Code §625A.9 (2004) ($100 million cap); Ky. Rev. Stat. Ann. §411.187 (2000) ($100 million cap); Md. Code Ann., Courts and Judicial Proceedings §12-301.1 (2015) ($100 million cap); Minn. Stat. §550.36 (2004) ($150 million cap); Miss. Code. Ann. §11-51-31 (2016) ($35 million cap); Mo. Rev. Stat. §512.099 (2005) ($50 million cap); Mont. Code Ann. §25-12-103 (2013) ($50 million cap); Neb. Rev. Stat. §25-1916 (2004) ($50 million cap); Nev. Rev. Stat. Ann. §20.037 (2015) ($50 million cap); Ohio Rev. Code Ann. §2505.09 (2002) ($50 million cap); W. Va. Code §58-5-14 (2007) ($50 million cap, indexed to inflation); Wis. Stat. §808.07 (2003) ($100 million cap).

that apply only to certain litigants or categories of damage awards.[6] Notably, five of the remaining states automatically stay execution of judgment upon the taking of an appeal, eliminating any legislative concern in those states that the size of a supersedeas bond will place an appeal out of any defendants' reach.[7] Thus, the Colorado General Assembly's concern for protecting the right to appeal and the policy balance it struck in C.R.S. §13-16-125 mirror other states' conclusion that legislative action is necessary to ensure that massive damages awards do not block defendants' practical ability to appeal.

D. C.R.S. §13-16-125 Is a Constitutional Exercise of Legislative Authority to Establish Policy.

Under the Colorado Constitution, the "General Assembly is free to fashion substantive rules which reflect policy judgments" even though their enactments "may affect procedures in the judicial system." *J. T. v. O'Rourke In & For Tenth Jud. Dist.*, 651 P.2d 407, 411 n.2 (Colo. 1982). If a statute is "based in public policy" and does not embody an attempt "to regulate the day-to-day procedural

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[6] *See* Ala. Code §6-12-4 (2006); Cal. Health & Safety Code §104558 (2003); Idaho Stat. Ann. §13-202 (2003); Ill. Comp. Stat. Ann. §5/2-1306 (2013); Kan. Code §50 -6a05 (2005); La. Rev. Stat. Ann. §39:98.6 (2003); N.J. Stat. Ann. §52:4D-13 (2003); N.M. Stat. §39-3-22 (2007); Okla. Stat. Ann. tit. 12 §990.4B.5 (2004); Or. Rev. Stat. §19.312 (2003); 35 Pa. Cons. Stat. §5701.309 (2003); R.I. Gen. Laws §42-133-11.1 (2008); Utah R. Civ. P. 62(i)(2); Wash. Rev. Code §43.340 (2006).

[7] *See* N.H. Rev. Stat. Ann. §527:1 (1986); Conn. R. App. P. §61-11; Me. R. Civ. P. 62; Mass. R. Civ. P. 62(d); Vt. R. Civ. P. 62(d)(1).

operation of the courts," the statute does not usurp judicial authority. *People v. McKenna*, 611 P.2d 574, 577 (Colo. 1980). *See also People v. Wiedemer*, 852 P.2d 424, 436 (Colo. 1993) (the Legislature "has the authority to enact statutes directed to substantive matters").

To assess if a statute is "substantive" in nature, the Court may take guidance from the legislative declaration. *Garhart v. Columbia/Healthone, L.L.C.*, 95 P.3d 571, 582 (Colo. 2004). Although the Colorado General Assembly did not include a statement of purpose within the bill that established C.R.S. §13-16-125, legislatures in other states identified protecting the right to appeal as the primary motivation for their appeal bond cap statutes. For example, Montana's appeal bond cap statute articulates that it was enacted "in order to ensure that financial considerations do not adversely impact the right of appeal[.]" Mont. Code Ann. §25-12-103 (1). Also, the Arizona Legislature included an extensive declaration of findings and purpose in its appeal bond cap legislation, observing that:

> 1. Both across the nation and in Arizona, <u>the size of damage awards in civil actions has escalated in recent years</u>. . . .
>
> 3. <u>The existence of an overly large appeal bond infringes on the due process rights of appellants</u>. Under such a system, defendants who are subject to overly large damage awards may simply be unable to post a bond to protect their assets and assert their appeal rights. They may be forced into bankruptcy or compelled to settle their case, thereby rendering the right to appeal nearly meaningless.
>
> 4. Limiting the bond requirement to the lesser of the value of the judgment, fifty per cent of the appellant's net worth or twenty-five

> million dollars regardless of the value of the judgment would ensure that defendants can fully exercise their fundamental right to appeal.
>
> 5. Enacting a limit on the bond requirement to stay the execution of a judgment impacts the rights of appellants and is therefore a matter of substantive law that falls within the jurisdiction of the legislature.

2011 Ariz. Legis. Serv. Ch. 99 (S.B. 1212), Sec.16 (emphasis added). These explicit statements of the legislative purpose underlying the similar Montana and Arizona statutes signal that Colorado's General Assembly likewise enacted its bond cap legislation in order to protect defendants' right to appeal.[8]

Preserving litigants' ability to exercise their appellate rights by ensuring that a supersedeas bond does not create an unbearable financial burden is a policy matter squarely within the legislative authority. As one commentator put it, "the

[8] The Colorado legislative committee hearings support this conclusion. In the House Finance Committee hearing, the proposed appeal bond cap legislation was introduced as "a bill that . . . will protect one of our most fundamental rights in America, and that is the right to due process under the law, whether you are an individual or a corporation." Hearings on H.B. 1366 before the H. Finance Comm., 64th Gen. Assemb., 1st Sess. (Apr. 23, 2003). The bill was offered "as a result of recent exorbitant [judgment awards] in civil litigation" due to concern that "due process has the potential of being hamstrung, and this bill has the potential to prevent that from happening . . . by establishing a $25 million cap for appeal bonds." *Id.* After the bill passed the House and moved to the Senate for consideration, members of the Senate Committee for Business Affairs & Labor received testimony from CDLA representative Jeff Ruebel that the bill would help litigants facing a "significant judgment" avoid "a situation where they are "having to decide whether or not [to pursue the] appeal and set the record right or whether they're going to have to waive the right to appeal in order to keep in business." Hearings on H.B. 1366 before the Sen. Comm. on Business Affairs & Labor, 64th Gen. Assemb., 1st Sess. (Apr. 28, 2003).

scope of the right to execute on a judgment is clearly a substantive issue" for a legislature to determine.[9] !In fact, the only reported separation of powers constitutional challenge to an appeal bond cap statute was rejected because the provision at issue, Fla. Stat. Ann. §45.045, "concerns substantive rights to property and to appeal" and so does not constitute "an impermissible intrusion on the procedural practices of the courts." *BDO Seidman v. Banco Espirito Santo Int'l, Ltd*., 998 So.2d 1, 2 (Fla. 3d Dist. Ct. App. 2008), *rev. denied,* 996 So.2d 211 (Fla.2008) (emphasis added).[10] Likewise, C.R.S. §13-16-125 concerns substantive rights rather than procedural practices.

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[9] Earl M. Maltz, *The Ghost of Winberry: Separation of Powers and Tort Reform Proposals*, 44 Rutgers L.J. 39, 53 (2013). Professor Maltz explains that:

> appeal bonds do not have any impact on the mechanisms by which a court determines whether appeals should be heard or the manner in which appeals are decided. Instead, by staying the judgment of the lower court, the posting of an adequate appeal bond simply prevents a judgment creditor from seizing the property of a judgment debtor to enforce a lower court judgment during the pendency of an appeal from that judgment. . . . Against this background, statutes that limit the size of appeal bonds should not be viewed as presenting significant separation of powers issues.

[10] The court in *BDO Seidman* noted that at the time of its decision in 2008, 21 states had adopted appeal bond cap statutes, "none of which have been held unconstitutional." 998 So.2d at 3, n.2.

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The General Assembly's policy responsibility includes how to manage the effects of litigation damage awards to mitigate harmful impacts on other rights and societal needs. Indeed, in exercising its authority to address policy concerns <u>the Legislature may limit the amount of damages that a claimant may recover at all</u>. *Scholz v. Metropolitan Pathologists, P.C.*, 851 P.2d 901, 907 n.8 (Colo. 1993) (observing that "numerous cases" decided by this Court "have held it to be within the prerogative of the General Assembly to classify and restrict recovery by various tort claimants."). Indeed, this Court has consistently recognized that statutes capping recoverable damages are constitutional and within the General Assembly's legislative authority. *See*, *e.g.*, *Garhart*, 95 P.3d at 582 (rejecting separation of powers challenge to C.R.S. §13-64-302(1)(b) cap on medical malpractice noneconomic damages); *Dillard v. Indus. Claim Appeals Office*, 134 P.3d 407, 410-12 (Colo. 2006) (limitations on permanent partial disability benefits awarded for mental impairment established by C.R.S. §8-42-107(7)(b) and §8-42-107.5 are actions "the General Assembly has the prerogative of doing").

By striking the balance established in C.R.S. §13-16-125 between the security interest of judgment creditors and the ability of judgment debtors to exercise their right to appeal without incurring financial disaster, the Colorado General Assembly addressed the substance of these matters and not the procedural operation of the courts. *See BDO Seidman*, 998 So.2d at 2 ("we do not view

[Florida's appeal bond cap statute] as an intrusion into the practice and procedure of the judiciary."). C.R.S. §13-16-125 is thus a constitutionally proper exercise of legislative power that supersedes any conflicting rule of procedure.

E. The District Court Correctly Concluded that C.R.S. §13-16-125 Does Not Conflict with C.R.C.P. 121 §1-23(3)(a).

The $25 million cap on appeal bonds established by C.R.S. §13-16-125 should be applied in this case not only because the statute is a substantive measure properly established by legislative authority, but also because the bond cap does not create a "manifest inconsistency" with any judicial rule. *See Crowe v. Tull*, 126 P.3d 196, 206-07 (Colo. 2006). Whenever possible, courts should seek to reconcile statutes and court rules that may overlap, so that the statute's policy purposes are not frustrated. *Id*. at 206; *People v. McKenna*, 585 P.2d 275, 278-79 (Colo. 1978).

Here, the district court rightly observed that the statutory cap on the amount of an appeal bond does not conflict with the bond-setting practice standard of C.R.C.P. 121, §1-23(3)(a). (App.2, pp.877-78.) Incorporating as it does the phrase "[u]nless the court otherwise orders," C.R.C.P. 121, §1-23(3)(a) does not mandate rigid adherence to the presumptive formula. Rather, the rule is inherently flexible, and it can accommodate the statutory $25 million upper limit on appeal bonds when directed by C.R.S. §13-16-125. *See Crowe*, 126 P.3d at 208 (statute "complements, rather than contradicts" court rules governing lawyer conduct).

II. C.R.S. §13-16-125 RATIONALLY ADDRESSES A LEGITIMATE GOVERNMENTAL PURPOSE, AND SO COMPORTS WITH CONSTITUTIONAL EQUAL PROTECTION REQUIREMENTS.

A statute reviewed under the rational basis test "will not be found to violate equal protection guarantees so long as it is reasonable and bears a rational relationship to a legitimate state objective." *Scholz*, 851 P.2d at 906. C.R.S. §13-16-125 meets that test.

The statute serves a weighty government purpose: protecting defendants' ability to appeal. In the absence of the statute, defendants who receive heavy judgments would face prohibitive supersedeas bond requirements that could put appeals out of reach and leave bankruptcy or settlement on unfavorable terms as the only available options. Ensuring that appellate review of the largest awards remains practically available to judgment debtors has been embraced as appropriate policy not just by Colorado, but by most states.[11]

Further, the upper limit established by C.R.S. §13-16-125 on supersedeas bonds reflects a rational policy conclusion. In light of the national experience with escalating verdicts, the General Assembly reasonably concluded, as 14 other state legislatures did, that a $25 million bond limit properly balances judgment debtors' interest in preserving their ability to appeal with judgment creditors' interest in

[11] *See* n.4 & n.5.

assurance of collection.[12] Finding the equilibrium between competing interests is a quintessential legislative responsibility. *See Snook v. Joyce Homes, Inc*., 215 P.3d 1210, 1215-16 (Colo. App. 2009) (finding that General Assembly's balance of competing interests demonstrated "a rational basis in fact" for damages cap set by C.R.S. §8-41-401(3)). Although some parties may argue for a different balance, "[t]he legislature's line drawing need not be perfect." *Dillard*, 134 P.3d at 414.

The Court has consistently concluded that legislative enactments limiting aspects of a claimant's monetary recovery do not violate equal protection guarantees. *See*, *e.g*., *id.* at 413-14 (caps in C.R.S. §8-42-107(7) and §8-42-107.5 for mental impairment injuries under Workers' Compensation Act); *Garhart*, 95 P.3d at 584 (noneconomic damages cap for health care professional negligence claims in C.R.S. §13-64-302(1)(b)); *Charlton v. Kimata*, 815 P.2d 946, 951-52 (Colo. 1991) (limiting damages for social host liquor liability under C.R.S. §12-47-128.5); *Bushnell v. Sapp*, 571 P.2d 1100, 1106 (Colo. 1977) (elimination of pain and suffering damages for some claims under former "no fault" statute in C.R.S.

[12] *See* n.4. Notably, in 2011 Tennessee reduced its appeal bond cap to the $25 million level from the previous $75 million cap. *Compare* Tenn. Code Ann. §27-1-124 (2011) *with* Tenn. Code Ann. §27-1-124 (2003). That state's legislative action supports the conclusion that $25 million continues to provide a reasonable amount of protection for judgment creditors while preserving defendants' access to appellate review.

§10-4-714). Like those other cap statutes, C.R.S. §13-16-125 passes the rational basis test.

CONCLUSION

The Court should uphold the General Assembly's authority to protect the right to appeal by establishing a limit on the bond amount required to secure a stay of execution on a civil judgment. The General Assembly acted pursuant to its legislative authority to enact this substantive protection, and did so by establishing a reasonable policy balance that considers the interests of both judgment debtors and judgment creditors. Accordingly, the Court should affirm the constitutionality of C.R.S. §13-16-125 and discharge the Rule to Show Cause.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 28, 2023, a true and correct copy of the foregoing **BRIEF OF *AMICI CURIAE* COLORADO CIVIL JUSTICE LEAGUE, COLORADO DEFENSE LAWYERS ASSOCIATION, AMERICAN TORT REFORM ASSOCIATION, DRI CENTER FOR LAW AND PUBLIC POLICY AND THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA'S MOTION FOR LEAVE TO SUBMIT *AMICI CURIAE* IN SUPPORT OF DEFENDANT/RESPONDENT VEOLIA WATER TECHNOLOGIES, INC.** was filed electronically via Colorado Courts E-filing system, and served upon all counsel of record and the Attorney General.

/s/ Lee Mickus