DATE FILED: May 8, 2024 12:03 PM
FILING ID: E6F8960C28805
CASE NUMBER: 2024SC295

COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203	
Certiorari to the Court of Appeals Case No. 23CA138 Before Judges Hawthorne (author of opinion), Pawar, and Taubman District Court, Logan County, 2021CV30049 Before Judge Robert James	
Petitioner: Lower South Platte Water Conservancy District, v. **Respondent:** James Aranci, Jack Darnell, Charles Miller, William Lauck, and Curtis Werner, **Defendants:** Patricia Bartlett, Logan County Treasurer in her official capacity; Robert A Sagel, Morgan County Treasurer in his official capacity; Wanda K Trennepohl, Sedgwick County Treasurer in her official capacity; and Debra A Cooper, Washington County Treasurer in her official capacity.	Supreme Court Case No: 24SC295
Counsel for Petitioner, Lower South Platte Water Conservancy District: Julianne M. Woldridge, Reg. # 17772 MacDougall & Woldridge, P.C. 70 Morning Sun Drive, Suite A P.O. Box 7273 Woodland Park, CO 80863 (719) 520-9288 Email: jwoldridge@waterlaw.tv	
LOWER SOUTH PLATTE WATER CONSERVANCY DISTRICT'S AMENDED PETITION FOR WRIT OF CERTIORARI	

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with all requirements of C.A.R. 25, 28, 32, and 53, including all formatting requirements set forth in these rules.

The brief complies with the applicable word limits set forth in C.A.R. 53(f)(1). It contains 3,559 words which is less than the 3,800-word limit.

This brief complies with the standard of review requirements of C.A.R 28(a)(7)(A).

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 25, 28, 32, or 53.

/s/ Julianne M. Woldridge

TABLE OF CONTENTS

	Page
Table of Authorities……..	4
Advisory Listing of Issues Presented for Review…….	5
Reference to Report of Opinion Below……	5
Statement of Grounds on which Jurisdiction is Sought……	5
Reference to Pending Related Cases……	5
Statement of the Case……	6
Argument and Reasons for Granting the Petition…….	8
Conclusion……	19

Appendix A – Court of Appeals Opinion

Appendix B – Water Conservancy Act excerpts

Appendix C – District Court ruling

TABLE OF AUTHORITIES

Cases: Pages:

Bolt v. *Arapahoe Co. School Dist. No. Six*,
898 P.3d 525 (Colo. 1995)…… 17,18

Huber v. Colo. Mining Ass'n., 264 P.3d 884, 892
(Colo. 2011)……. 7, 10, 11, 13, 16

In re Interrogatory on House Bill 21-1164,
487 P.3d 636 (Colo. 2021)……... 11, 12, 13, 14, 16

Kempter v. Hurd, 713 P.2d 1274 (Colo. 1986) …… 8

Madalena v. Zurich American Ins. Co., 21CA1780
(Colo. App. 4th Div., April 6, 2023)…… 9

Mesa County Bd. Of County Comm. v. State of Colorado,
203 P.3d 519 (Colo. 2009)…….. 11, 12, 14, 15

Pearson v. Dist. Ct., 924 P.2d 512 (Colo. 1996)……. 17

Tabor Foundation v. R.T.D., 416 P.3d 101
(Colo. 2018)…… 9, 11

Colorado Constitution:

Title X, Section 20 of the Colorado Constitution…… 5, 10

Statutes:

C.R.S. § 37-45-101 *et seq*. ……. 6

C.R.S. §§ 37-45-121……... 6

37-45-122 (2)(a)(III)…….. 6, 17

Advisory listing of issues for review:

Were the District's real property tax levies calculated at one mill in 2019 and thereafter constitutional and not in violation of Title X, Section 20 of the Colorado Constitution ("TABOR"), when voters approved a broadly worded waiver of TABOR's revenue limitations and the District calculated and levied the taxes within the mill levy rate range mandated by the Water Conservancy Act?

Reports of the Opinion below:

The Opinion of the Court of Appeals announced March 21, 2024 was selected for official publication. Aranci v. Lower So. Platte Water Cons. Dist., 2024 COA 28 (Colo. App. Mar. 21, 2024).

Grounds on which jurisdiction is sought:

The Opinion of the Court of Appeals was announced on March 21, 2024 ("Opinion"). Appendix A. There was no order respecting a rehearing and no extension of time to file this Petition has been granted.

Reference to pending related cases:

The District could not locate any pending cases in which the Supreme Court has granted a writ of certiorari to review the legal issue on which certiorari is sought.

Statement of the case:

The parties stipulated to the following facts before the trial court. The District is a water conservancy district organized under the Water Conservancy Act, C.R.S. § 37-45-101 *et seq*. ("WCA"). The WCA authorized the District to levy and collect real property taxes. It requires the District to determine the amount of money to be raised by real property taxes to meet its budgetary needs and to fix a rate of levy calculated using a formula for determining the number of mills used, not to exceed 0.5 mill before water is delivered from works and one mill after water is delivered. C.R.S. §§ 37-45-121 and 37-45-122 (2)(a)(III), copies attached as Appendix B. The District delivered water from works prior to 2019. In 1996, District voters approved a broadly worded waiver of TABOR's revenue limitations ("Measure 4D"). In 2018, the District certified a property tax levy calculated as .500 mill upon each dollar of the total valuation of assessment on all taxable property within the District. In 2019 and thereafter, the District certified tax levies calculated as 1.000 mill. Amended Order Re: Plaintiff's Motion for Determination of a Question of Law and Defendant's Cross-Motion for Determination of Question of Law, Case No. 21CV30049 (Logan County District Court, Oct. 10, 2022), 2-4. ("Ruling" attached as Appendix C).

Respondents, tax payers within the District, brought action in the District

Court seeking a declaration that the District's tax levies in 2019 and thereafter violate TABOR's requirement for prior voter approval. The District Court interpreted TABOR, the WCA, and Measure 4D and found that the mill levy rate in effect after voter approval of Measure 4D was the mill levy rate in the WCA and was a range between zero and one mill. Ruling, 9. Because the taxes were levied pursuant to the WCA's non-discretionary formula for calculating tax levies within a range from zero to one mill, the District Court found this case akin to the exception to TABOR's election requirements recognized by the Supreme Court in *Huber v. Colo. Mining Ass'n*., 264 P.3d 884, 892 (Colo. 2011). Ruling, 8-9. Since the challenged tax levies did not exceed that rate, they did not violate TABOR and were not unconstitutional. Further, the District Court found that no argument was made or evidence presented to show that the District's budget violated the WCA or was improper. Ruling, 4 and 8.

Respondents appealed to the Court of Appeals. Based on its interpretation of TABOR, the WCA, and Measure 4D the Court of Appeals reversed the District Court and found that that the subject tax levies were unconstitutional under TABOR's requirement of prior voter approval. The Court of Appeals provided several reasons for its decision: the District's increase in its rate of levy from 0.5 mill to one mill was a tax policy change for which the District did not obtain prior

voter approval; the "exception" to TABOR'S election requirements recognized in *Huber* did not apply because the District had discretion as to what revenues it could collect and what expenses it could include in its budget (finding also that this issue had been preserved for appeal); the "mill levy rates" in effect after voters approved Measure 4D was fixed at 0.5 mill which was the number of mills used to calculate the 2018 tax levy; TABOR's requirement of voter approval of a "mill levy above that for the prior year" refers to the fixed rate of levy in the prior year; and because the variable range of mills to calculate taxes authorized by the WCA conflicted with this interpretation of TABOR, TABOR superseded the WCA. Opinion, 16-22. Because the challenged tax levies were calculated at one mill instead of the fixed 0.5 mill, the Court of Appeals found the tax levies violated TABOR and were unconstitutional. Opinion, 22 at ¶44.

Argument and reasons for issuing writ:

Standard of Review and preservation of issues:

This is an appeal from the Court of Appeals' reversal of the judgment of the District Court. The District Court's judgment was made pursuant to C.R.C.P. 56(h) motions for determination of law, based on stipulated facts. Opinion, 2-4. The stipulated facts are conclusive on the parties, making them binding on appeal. *See generally Kempter v. Hurd*, 713 P.2d 1274, 1279 (Colo. 1986).

Determinations of the Constitutional challenge required interpretation of TABOR, the WCA, and Measure 4D, which determinations are reviewed *de novo*. *See Tabor Foundation v. R.T.D.*, 416 P.3d 101, 104 (Colo. 2018).

The issues presented by the District for review were presented and argued before the District Court and the Court of Appeals and were preserved for appeal. Ruling, 7. Plaintiffs raised an issue before the Court of Appeals that was not raised in the Trial Court – whether the District's tax levies were not supported by its budget and were, therefore, discretionary. The District Court noted that this issue was not raised at the trial level. Ruling, 10. Over the District's objection, the Court of Appeals found that this issue was preserved for appeal and based its decision in part on that issue. Opinion, 7 at ¶16. An issue not preserved for appeal should not be considered. *See Madalena v. Zurich American Ins. Co.*, 21CA1780, ¶ 50 at 27 Colo. App. 4th Div., April 6, 2023), *pet. for writ denied*, 23SC363 (Colo. Oct. 23, 2023).

Argument:

The District's real property tax levies in 2019 and thereafter were constitutional and did not violate TABOR's election requirements. Voter approval of Measure 4D waived TABOR's revenue limits resulting in the "mill levy rates" then in effect being the operable limit for the District's tax levies. The WCA's

nondiscretionary formula for calculating the taxes within a range between zero and one mill was the operable mill levy rate that became effective after the 1996 election. TABOR's election requirements did not apply to require voter approval of the WCA mandated mill levy rates beyond that obtained in 1996. By interpreting TABOR, the WCA, and Referred Measure 4D in such a way that resulted in conflict between them, the Court of Appeals erred and decided the issue in a manner contrary to Supreme Court decisions.

TABOR requires "voter approval in advance for… any new tax, tax rate increase, mill levy above that for the prior year… or a tax policy change directly causing a net tax revenue gain to any district." TABOR, Section 20 (4) (a) ("TABOR 4(a)"). TABOR also requires voter approval to retain and spend the increased revenue resulting from levies that exceed the limitations in TABOR's subsection (7) (b) and (c) ("TABOR 7").

General rules of statutory construction apply to the interpretation of TABOR. *Huber,* 264 P.3d at 889. Supreme Court decisions instruct that TABOR, the WCA, and voter approval of Measure 4D should be interpreted in light of each other and if possible in a way that avoids conflict between them. TABOR's terms should be given their ordinary and plain meanings, considered as a whole, favoring an interpretation that harmonizes all its provisions. Constructions that would

produce unjust, absurd, or unreasonable results should be avoided. *In re Interrogatory on House Bill 21-1164*, 487 P.3d 636, 642-43 (Colo. 2021). Although TABOR supersedes conflicting state constitutional and state statutory provisions, *TABOR*, Section 20 (1), TABOR must be considered in conjunction with existing statutory taxing laws and interpretations that avoid conflicts between these should prevail. *See Huber*, 264 P.2d at 892; *Mesa County Bd. Of County Comm. v. State of Colorado*, 203 P.3d 519, 526 (Colo. 2009). A standard of reasonableness "tempers TABOR's grip" and it must be viewed "through a lens of practicality and workability." *Tabor Foundation*, 416 P.3d at 107. *See TABOR*, Section 20 (1) (when more than one interpretation is supported by TABOR's terms, the preferred interpretation "[s]hall reasonably restrain most the growth of government." (emphasis added)). To avoid unreasonable results, interpretations of TABOR that "would hinder basic government functions or cripple the government's ability to provide services" should be avoided. *In re Interrogatory*, 487 P.3d at 643.

Ballot questions are interpreted with generally accepted principles of statutory construction. *Mesa Co. Bd. of Co. Comm'rs.*, 203 P.3d at 533. Unless the language is ambiguous, the plain language of the ballot question is given effect. *Id*.

In 1996, District voters approved Measure 4D, a broadly worded waiver of TABOR's revenue limitations. Measure 4D was materially identical to voter approved ballot questions interpreted by the Colorado Supreme Court in *Mesa Co. Bd. of County Comm.*, 203 P.3d at 532 (which in turn were also reviewed in *In Re Interrogatory*, 487 P.3d at 645). The Supreme Court interpreted this ballot language as a waiver of TABOR's revenue limitations that also resulted in the "mill levy rates" in effect at the time of the election becoming the operative limit without the need for a second election under TABOR 4(a). *Mesa Co. Bd. of County Comm.*, 203 P.2d at 526. The terms "mill levy" and "mill levy rate" are not defined by TABOR. The Supreme Court recognized, however, that the operable mill levy rate could be variable, could result in fluctuating levies, and could result in the use of a number of mills over that used in the prior year without violating TABOR 4(a). *In re Interrogatory*, 487 P.3d at 644. Voter approval of such a broadly worded waiver of TABOR's revenue limits also satisfies TABOR 4(a)'s requirement for voter approval of a mill levy above that for the prior year or a tax policy change resulting in a revenue increase because the voters are presumed to have approved the mill levy rates then in effect. *Mesa Co. Bd. of County Comm.*, 203 P.3d at 525; *In re Interrogatory*, 487 P.3d at 640.

Both the District Court and the Court of Appeals recognized that voter

approval of Measure 4D resulted in the "mill levy rate" then in effect becoming the operable limit for the District's tax levies. The District Court interpreted the term "mill levy rate" to be the WCA's variable rate for calculating taxes within a range of zero to one mill. Ruling, 9. This is consistent with the Supreme Court's finding that the mill levy in effect after a similar waiver was a variable rate provided by statute. *In re Interrogatory*, 487 P.3d at 640 ¶18. The Court of Appeals, however, interpreted "mill levy rate" to be the 0.5 mill "fixed rate of levy" used by the District in 2018 and interpreted TABOR 4(a) as requiring the District to "obtain voter approval before it fixes a rate of levy above that for the prior year." Opinion, 20 at ¶41. In doing so, the Court of Appeals inserted language into TABOR 4(a) that is not there, interpreting it to require voter approval for any increase above the fixed rate of levy. This is not in accord with the Supreme Court's decisions that the "mill levy rate" in effect after such voter approval could be a variable rate and could result in the use of a number of mills above that for the prior year. TABOR did not "freeze" or require the District to freeze its tax levy. *See Huber*, 264 P.3d at 890 (TABOR did not repeal pre-existing tax statutes that include a tax rate provision for adjusting the amount of tax due).

The Court of Appeals' decision that the District's tax levies required additional voter approval to meet TABOR 4(a) is not in accord with the Supreme

Court's decision that a TABOR (4) election was not required in addition to voter approval of the broadly worded revenue limitation waiver. *Mesa Co. Bd. of County Comm.*, 203 P.3d at 529-30; *In re Interrogatory*, 487 P.3d at 646.

The Court of Appeals interpreted Measure 4D based on one isolated phrase - "provided, however, that no local tax rate or mill levy shall be increased at any time without prior approval of the voters". Opinion., 7, fn. 2. It found that the term "mill levy" in this phrase has to be interpreted as referring to TABOR 4(a)'s requirement for a mill levy above that for the prior year, which it in turn interpreted as being the fixed rate of levy used to calculate the tax levy in 2018. The Court of Appeals decision, however, did not recognize that this exact phrase was contained in the ballot questions interpreted in *Mesa Co. Bd. of County Comm.* and *In Re Interrogatory*, wherein the Supreme Court recognized that approval of such language by the voters could result in a varying tax levy even if the number of mills used is increased over that used in the prior year, without violating TABOR. *In re Interrogatory*, 487 P.3d at 640. The Court of Appeals also did not consider the other language of the ballot question that the Supreme Court considered and harmonize the various provisions. This phrase must be interpreted in conjunction with all other provisions of the ballot question including the waiver of all revenue limitations notwithstanding any limitation of TABOR. *Id.*, at 645.

Interpreted according to standard statutory interpretative aids and in accord with Supreme Court decision, Measure 4D resulted in the WCA's mill levy rate becoming the operable limit for the District; and that mill levy rate is a variable rate calculated using a number of mills between zero and one. Measure 4D did not authorize a change in that mill levy rate. In addition, to be consistent with Supreme Court decisions, TABOR 4(a)'s requirement for voter approval for a "mill levy over that for the prior year" must refer to the same mill levy rate then in effect.

The Court of Appeals' decision that the District's levies constituted a "tax policy change" in violation of TABOR is not in accord with Supreme Court's decisions that TABOR 4(a)'s requirement for voter approval of a tax policy change resulting in a revenue increase did not require additional voter approval after voters approved a broadly worded TABOR limitations waiver. *Mesa Co. Bd. of County Comm.*, 203 P.3d at 534. A "tax policy change" as used in TABOR requires more than a mere increase in tax levies; it has to be a change that results in a net revenue increase that voters have not approved. Voter approval of a net revenue increase doesn't require a separate election under TABOR 4(a), even if the issue is a tax policy change. *Id.*

The challenged tax levies pursuant to the WCA didn't require an additional

TABOR election because they were within an exception recognized by the Supreme Court. TABOR did not repeal pre-existing taxing statutes that include non-discriminatory provisions for adjusting the amount of tax due; rather, TABOR's objective is to prevent a government entity from "*enacting* taxing and spending increases above [TABOR's] limits without voter approval." *Huber*, 264 P.2d at 890. In the context of TABOR 4(a), legislative enactment requiring a voter approval is distinguished from ministerial, non-discretionary implementation of previously enacted tax laws. *Id*. TABOR 4(a)'s election requirements apply to legislative enactment of tax rate increases and mill levies over that for the prior year, or tax policy changes directly causing a net tax revenue gain. *Id.*, at 891. TABOR does not require voter approval each time a government agency adjusts a tax according to an existing taxing statute. *Id*., at 893. TABOR 4(a)'s election requirements do not apply where a "mill levy" or tax rate fluctuates pursuant to a statutorily mandated formula and does not exceed that statutory formula. *Id.*, at 890-93; *In re Interrogatory*, 487 P.3d at 636, 644 (TABOR 4(a)'s requirements are subject to certain "exceptions").

The WCA provides that the District:

> shall determine the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the district, and shall fix a rate of levy which, when levied upon every dollar of valuation for assessment of property within the district and

> with other revenues, will raise the amount required by the district to supply funds for paying expenses…except that said rate shall not exceed… one mill on each dollar of valuation for assessment of the property within the district.

(emphasis added). C.R.S. § 37-45-122 (2) (a) (III). The generally accepted meaning of the word "shall" is that the action is mandatory. *Pearson v. Dist. Ct.*, 924 P.2d 512, 516 (Colo. 1996). The WCA is the legislative enactment. It imposes a mandatory, nondiscretionary duty on the District to calculate and levy taxes according to the formula or method contained therein, within a variable range between zero and one mill. This case, therefore, is akin to the exception to TABOR's 4(a) election requirements recognized in *Huber*. In defining this TABOR exception, the Supreme Court also relied on its decision in *Bolt* v. *Arapahoe Co. School Dist. No. Six*, 898 P.3d 525 (Colo. 1995) as an example of when TABOR's election requirements shouldn't apply. The statutory taxing mandate recognized in *Bolt* is materially like the WCA's taxing mandate. *Bolt*, 898 P.3d at fn. 6 ("once a school district has issued bonds, the school district 'shall' certify to the board of county commissioners 'the amount needed for its bond redemption fund to pay all installments…the Board then has the duty 'to levy a tax on all the taxable property of said district at a rate sufficient to produce such amount…'").

The District's tax levies were not legislative enactments. They were non-

discretionary ministerial acts made pursuant to a mandatory formula imposed by a statute that pre-dates TABOR. Like the mining taxes in *Huber* and the mill levy increase in *Bolt*, the District's tax levies fluctuated pursuant to a statutorily mandated formula. It is consistent with Supreme Court decisions, therefore, to interpret TABOR 4(a)'s election requirements as inapplicable to the challenged tax levies. The important consideration in Huber was that the formula or method for calculating the tax levies was nondiscretionary and legislatively enacted.

The Court of Appeals, however, focused on the District's budgeting process and its perception that the District's ability to decide what revenues to seek and expenses to include in its budget was discretionary, therefore, distinguishing this case from *Huber*. Opinion, 17. This is a misinterpretation of *Huber* and the WCA. Because the WCA is a tax mandate, the budget determines the mill levy and there is no discretion to certify a mill levy higher or lower than that needed to meet the budget. *See Bolt*, 898 P.2d at 539 ("for all intents and purposes the district levy is imposed when the district budget is adopted."). Moreover, the Court of Appeals considered the appropriateness of the District's budget process, which was not an issue preserved for appeal and for which there is no support in the record.

The Court of Appeals also relied on its interpretation of the WCA's taxing mandate as having no objective components, therefore distinguishing it from

Huber. Opinion, 19. This interpretation was in error. The WCA's calculation method contains objective components including the budget as it is certified and the delivery of water from works. The underlying rationale for this exception to TABOR should still apply – the distinction between a discretionary legislative act establishing a mandatory tax calculation method and a nondiscretionary calculation of tax levies using that method.

CONCLUSION

Supreme Court decisions interpreting TABOR in light of statutory tax authorizations and voter approved waivers of TABOR revenue limits support the conclusion that voter approval of Measure 4D effected a waiver of TABOR's revenue limits and resulted in the mill levy rate contained in the WCD becoming the operable limit for the District. That mill levy rate is variable and calculated within a range between zero and one mill. A second voter approval was not required by TABOR 4(a) to affect this mill levy rate. The District's tax levies were within this range and, therefore, did not require a second election to be constitutional. The District Court's decision, therefore, to refuse maintenance of a class action was appropriate. The Court of Appeals' decision to award costs and fees should be reversed.

The Court of Appeals' decision creates uncertainty and confusion as to the

application of TABOR in circumstances that should be decided in accord with Supreme Court decisions. The District and others should be entitled to rely on the Colorado Supreme Court's interpretations of TABOR and voter approved waivers of TABOR's revenue limitations.

The Court should grant the writ of certiorari and review the issue consistent with its prior decisions.

Dated: May 8, 2024.

MacDougall & Woldridge, P.C.

By: /s/ Julianne M. Woldridge
Julianne M. Woldridge
Counsel for the District

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Lower South Platte Water Conservancy District's AMENDED Petition for Writ of Certiorari was served on the following this 8th day of May 2024 via Colorado E-Filing of an advisory copy in 23CA138 or 21CV30049:

Charles Miller	TYLER LEANDRO MARTINEZ (National Taxpayers Union Foundation)
Curtis Werner	TYLER LEANDRO MARTINEZ (National Taxpayers Union Foundation)
Debra A Cooper	CHARLES CONOR CAVANAGH (Messner Reeves LLP) MICHAEL CALEB MEYER (Messner Reeves LLP)
Jack Darnell	TYLER LEANDRO MARTINEZ (National Taxpayers Union Foundation)
James Aranci	TYLER LEANDRO MARTINEZ (National Taxpayers Union Foundation)
Patricia Bartlett	CHARLES CONOR CAVANAGH (Messner Reeves LLP) MICHAEL CALEB MEYER (Messner Reeves LLP) MICHELLE ELIZABETH MEAD (8th Judicial District Attorneys Office)

Robert A Sagel	CHARLES CONOR CAVANAGH (Messner Reeves LLP) MICHAEL CALEB MEYER (Messner Reeves LLP)
Wanda K Trennepohl	CHARLES CONOR CAVANAGH (Messner Reeves LLP) MICHAEL CALEB MEYER (Messner Reeves LLP)
William Lauck	TYLER LEANDRO MARTINEZ (National Taxpayers Union Foundation)

/s/ Julianne M. Woldridge