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RESOLUTION NO. 23-180

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO

RESOLUTION AUTHORIZING LITIGATION AGAINST STATE OF COLORADO, BY AND THROUGH JARED S. POLIS, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF COLORADO; AND JENA GRISWOLD, IN HER CAPACITY AS COLORADO SECRETARY OF STATE TO CHALLENGE PROVISIONS OF COLORADO SENATE BILL 23-303 AND COLORADO PROPOSITION HH

WHEREAS, pursuant to C.R.S. §§30-11-101(1)(a) and 30-11-107(1)(e), the Board of County Commissioners of the County of El Paso, State of Colorado ("Board" or "County") has the authority to represent and manage the business and concerns of the County, including the authority to authorize litigation on behalf of the County; and

WHEREAS, on May 15, 2023, the Colorado Legislature passed Colorado Senate Bill 23-303, concerning a reduction in property taxes, and, in connection therewith, creating a limit on annual property tax increases for certain local governments; temporarily reducing the valuation for assessment of certain residential and nonresidential property; creating new subclasses of property; permitting the state to retain and spend revenue up to the Proposition HH cap; requiring the retained revenue to be used to reimburse certain local governments for lost property tax revenue and to be deposited in the state education fund to backfill the reduction in school district property tax revenue; transferring general fund money to the state public school fund and to a cash fund to also be used for the reimbursements; eliminating the cap on the amount of excess state revenues that may be used for the reimbursements for the 2023 property tax year; referring a ballot issue; and making an appropriation; and

WHEREAS, Advance Colorado, a Colorado nonprofit corporation, has filed a verified complaint against the State of Colorado under C.R.S. § 1-11-203.5 (Exhibit 1; "litigation") challenging several aspects of Colorado Senate Bill 23-303 and Proposition HH, including violation of the single subject rule contained in Colorado Constitution, Article V, Section 21; and

WHEREAS, Advance Colorado has requested that El Paso County join the litigation and has offered to represent El Paso County and cover any fees and costs associated with the litigation.

NOW THEREFORE, BE IT RESOLVED that the Board of County Commissioners of El Paso County, State of Colorado, hereby authorizes the County Attorney's Office, by and through Advance Colorado, to pursue litigation against the State of Colorado.

BE IT FURTHER RESOLVED that Cami Bremer, duly elected, qualified member and Chair of the Board of County Commissioners, or Carrie Geitner, duly elected, qualified member and Vice Chair of the Board of County Commissioners, be and is hereby authorized on behalf of the Board to execute any and all documents necessary to carry out the intent of the Board as described herein.

BE IT FURTHER RESOLVED, that the County Attorney and his designees, are hereby authorized and appointed on behalf of the Board to execute and file any and all documents necessary to carry out the intent of the Board as described herein.

DONE THIS 23rd day of May, 2023, at Calhan, Colorado.

ATTEST:

Steve Schleiker
County Clerk & Recorder

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: Cami Bremer

Cami Bremer
Chair

DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street Denver, CO 80202 303-606-2300	~~DATE FILED: May 15, 2023 7:23 PM~~ FILING ID: B989B1ED8E815 CASE NUMBER: 2023CV31432
Plaintiffs: STEVEN WARD, a Colorado resident and registered Colorado voter and ADVANCE COLORADO, a Colorado nonprofit corporation **v.** **Defendants:** STATE OF COLORADO, by and through JARED S. POLIS, in his official capacity as Governor of Colorado; and JENA GRISWOLD, in her capacity as Colorado Secretary of State.	**▲ COURT USE ONLY ▲**
Attorney for Plaintiffs: Suzanne M. Taheri, #23411 WEST GROUP LAW & POLICY 6501 E. Belleview Ave, Suite 375 Englewood, CO 80111 Phone Number: (303) 263-0844 Email: st@westglp.com	Case Number: Div.: Crtm.:
VERIFIED COMPLAINT UNDER 1-11-203.5	

Plaintiffs Steve Ward and Advance Colorado, by and through counsel West Group, as and for this verified complaint against Defendants STATE OF COLORADO ("State of Colorado"), by and through JARED S. POLIS, in his official capacity as Governor, and JENA GRISWOLD, in her capacity as Colorado Secretary of State (collectively, the "Defendants"), allege as follows:

PRELIMINARY STATEMENT

1. The Colorado General Assembly passed Senate Bill 23-303 ("Bill") on May 8, 2023, addressing property taxes and referring a ballot measure regarding a voter-approved revenue change.

2. In violation of the Colorado Constitution, the Bill does not contain a single subject. Rather, it contains at least four separate subjects.

3. In violation of the Colorado Constitution, the Bill's title does not clearly express the subject of the Bill and is misleading.

4. Section 3 of the Bill includes the referred measure (the "Referred Measure"). It is also and separately in violation of the Colorado Constitution for the same reasons: the title of the Referred Measure does not clearly express the measure's subject and the measure does not have a single subject.

5. Plaintiffs seek a declaration that the Bill is void and ineffective precluding its implementation and enforcement.

6. In the alternative, Plaintiffs seek an Order correcting the ballot title on the Referred Measure to provide a clear, detailed and politically neutral explanation of its contents.

PARTIES

7. Plaintiff, Ward, is an individual residing in Englewood, in Arapahoe County, Colorado. He is a registered voter and proponent of ballot measure 2023-2024 #21 "Limitation on Property Tax Increases."

8. Plaintiff, Advance Colorado, is a registered Colorado nonprofit organization, with members that are registered electors in Colorado.

9. Defendant State of Colorado (the "State" or "Colorado"), operating through legislative and executive action, adopted the Bill.

10. Defendant Jared S. Polis, sued in his official capacity, is the Governor of Colorado and, in that capacity, has the power to enforce the laws of the State of Colorado, and is required by the Colorado Constitution to ensure that all laws of the state are faithfully executed.

11. Defendant Jena Griswold, sued in her official capacity, is the Secretary of State of Colorado and, in that capacity, Colorado's chief state election official.

JURISDICTION AND VENUE

12. The jurisdiction of this Court arises under the Colorado Constitution, C.R.S. § 1-11-203.5, the Uniform Declaratory Judgments Law, C.R.S. §§ 13-51-101 et seq., and the Colorado Rules of Civil Procedure 57 and 65.

13. The Court has personal jurisdiction over the Defendants, who are the State of Colorado and elected Colorado officials.

14. Venue is proper in this Court under CRCP 98(c).

FACTS

A. The Implementation and Enforcement of the Bill Should Be Enjoined Because It Violates Article V, Section 21 of the Colorado Constitution.

15. In contravention of Article V, Section 21 of the Colorado Constitution ("Section 21"), the Bill contains more than a single subject, and the title of the Bill fails to clearly express the full contents of the Bill.

16. Under Section 21, Colorado bills must be limited to a single subject, and that subject must be clearly described by the bill's title. If a bill title does not clearly express certain content in a bill, the omitted content is void:

> No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed. Colo. Const. art. V, § 21.

17. The Bill's title reads in full as follows:

> CONCERNING A REDUCTION IN PROPERTY TAXES, AND, IN CONNECTION THEREWITH , CREATING A LIMIT ON ANNUAL PROPERTY TAX INCREASES FOR CERTAIN LOCAL GOVERNMENTS; TEMPORARILY REDUCING THE VALUATION FOR ASSESSMENT OF CERTAIN RESIDENTIAL AND NONRESIDENTIAL PROPERTY; CREATING NEW SUBCLASSES OF PROPERTY ; PERMITTING THE STATE TO RETAIN AND SPEND REVENUE UP TO THE PROPOSITION HH CAP; REQUIRING THE RETAINED REVENUE TO BE USED TO REIMBURSE CERTAIN LOCAL GOVERNMENTS FOR LOST PROPERTY TAX REVENUE AND TO BE DEPOSITED IN THE STATE EDUCATION FUND TO BACKFILL THE REDUCTION IN SCHOOL DISTRICT PROPERTY TAX REVENUE; TRANSFERRING GENERAL FUND MONEY TO THE STATE PUBLIC SCHOOL FUND AND TO A CASH FUND TO ALSO BE USED FOR THE REIMBURSEMENTS ; ELIMINATING THE CAP ON THE AMOUNT OF EXCESS STATE REVENUES THAT MAY BE USED FOR THE REIMBURSEMENTS FOR THE 2023 PROPERTY TAX YEAR; REFERRING A BALLOT ISSUE; AND MAKING AN APPROPRIATION.

The Bill Violates Single Subject Requirements

18. The Bill impermissibly includes at least four subjects. First, the Bill reduces property tax revenue. Second, it requests voter approval for the state to retain and use funds for other expenditures, including on a politically appealing subject (education), in a greater amount than needed to compensate for the loss of property tax revenue for education and sends money in excess of a backfill to the State Education Fund. Third, the Bill appropriates an amount to the

housing development grant fund to be used for tenant rent. Fourth, the Bill gives the General Assembly the ability to decide what happens to refunds under Colo. Const. Article X § 20 ("TABOR") after the 10-year time period described in the Bill, completely reversing taxpayers' current right to vote on any changes to TABOR. The Bill's multiple subjects violate Section 21.

19. The Bill impermissibly ties property tax relief, a popular subject, with a tax increase, an unpopular subject. The tax increase is not properly connected to the tax relief because it goes beyond the described backfill and increases funding for education at the state level, even though the Ballot title indicates the funding would go to the school districts at the local level.

20. The purpose of the single subject amendment is forbidding the joining of "incongruous subjects in the same measure" thereby ensuring that "each proposal depends on its own merits for passage." *In re Proposed Initiative on "Public Rights in Water II"*, 898 P.2d 1076 (Colo. 1995). It prevents a single initiative from 'log rolling' or 'Christmas tree' tactics in which proponents attempt to garner support for their initiative from "various factions which may have different or even conflicting interests." *Id.*

21. Furthermore, the Bill continues to logroll as it creates a cash fund for renters and permanently eliminates voters' constitutional rights to vote on TABOR changes. Each of the four subjects is distinctly different from the others, and they are not necessarily and properly connected or constitutionally a single subject.

22. The Bill's title fails to clearly express a single subject because it addresses the separate subjects of (1) a reduction in property taxes; (2) permitting the state to retain and spend revenue in excess of the amount of property tax revenue reduction for the purpose of increasing education funding at the state (not local) level; (3) increasing an unconnected cash fund for renters; and (4) permanently altering the TABOR formula.

The Bill Violates Clear Title Requirements

23. The Bill's title calls for an unspecified "reduction" in property taxes and does not meet the standard of clearly expressing the subject of the Bill with the absence of actual numbers.

24. The Bill title also refers to the retention of funds in a manner that makes it difficult for a typical voter to understand or even figure out how much money is being retained and spent because there are no numbers included.

25. The Bill's title does not meet the standard of clearly expressing the subject of the Bill because it refers to funds to "backfill" the reduction in school district property tax revenue but does not disclose that the measure would go beyond backfilling to allow the state to retain funds for education, in excess of property tax revenue reductions.

26. Further, the Bill's title does not even mention the compounding formula in Section 3 that increases the funding cap under the TABOR limit by one percentage point each year for ten years.

27. The Bill's title does not meet the constitutional standard of clearly expressing the subject of the Bill because it does not contain any reference to the local government opt-out provision.

28. The Bill's title does not meet the standard of clearly expressing the subject of the Bill because it fails to describe or reference the last-minute amendment that allows for an appropriation to the housing development grant fund for renters.

29. The Bill's title does not meet the standard of clearly expressing the subject of the Bill because it fails to describe or reference the fact that legislators are given the right to permanently change the TABOR cap after 10 years without a vote of the people as is currently required by the Constitution.

30. Accordingly, the Bill is void and unenforceable as unconstitutional under Article V, Section 21 of the Colorado Constitution.

B. If the Bill is Not Void, The Submission of the Referred Measure in the Bill Should Be Corrected Because the Title Violates Article V § 21 of the Colorado Constitution.

31. In contravention of Article V §21 of the Colorado Constitution, the title of the Referred Measure fails to clearly express the full contents of the measure and fails to clearly express a single subject.

32. The Referred Measure's title reads in full as follows:

> SHALL THE STATE REDUCE PROPERTY TAXES FOR HOMES AND BUSINESSES, INCLUDING EXPANDING PROPERTY TAX RELIEF FOR SENIORS, AND BACKFILL COUNTIES, WATER DISTRICTS, FIRE DISTRICTS, AMBULANCE AND HOSPITAL DISTRICTS, AND OTHER LOCAL GOVERNMENTS AND FUND SCHOOL DISTRICTS BY USING A PORTION OF THE STATE SURPLUS UP TO THE PROPOSITION HH CAP AS DEFINED IN THIS MEASURE?

33. Again, the Referred Measure's title does not tell voters the actual amount that the tax rate will change. This title is one step short of, "how do you feel about property taxes?"

34. Pursuant to both law and custom, revenue measures in Colorado are expected to include precise numbers: the amount of the change in tax rates and numbers sufficient to place that change in context, including the rate currently in force and the projected change in total state revenue.

35. Plaintiffs have extensive experience sponsoring citizen initiatives involving reductions in tax rates, and the Colorado Title Board has historically required significant technical detail regarding the precise financials of any revenue measures before the measure can be presented to a vote of the people.

36. It is a violation of constitutional rights and due process for Plaintiffs and other citizens to be held to one standard by the Title Board and state law that compels specific speech in their ballot measure titles, but for the state legislature to be held to a completely separate standard that allows unfair, misleading, and non-specific language for referred measures.

37. The Referred Measure's title does not meet the standard of clearly expressing the subject of the measure, because it (a) fails to provide the rates for property tax changes or projections of any reductions in revenue or increased appropriations, (b) it refers to funds to "backfill" certain expenditure categories, but does not explain that the measure would retain funds for education in excess of what is needed to backfill the property tax revenue reductions; (c) it does not mention the compounding formula in that increases funding cap under TABOR by one percentage point each year for ten years and that thereafter the legislature will get sole decision-making authority to permanently alter the TABOR formula, (d) it describes excess revenue collected under TABOR as "surplus funds" and does not explain that the funds would otherwise be returned to taxpayers; (e) it does not adequately explain the local government opt out provision, (f) it does not advise voters of a last-minute amendment that allowed for an appropriation to the housing development grant fund for the purpose of tenant rent, and (g) it inaccurately states that retained funds will be used for "school districts," rather than the state education fund.

38. The Referred Measure's title fails to clearly express the single subject of the measure, rather, it expresses more than one subject, specifically, reducing property tax rates and allowing the state to keep and spend additional funds.

39. The Referred Measure's title is misleading, with both significant proposed changes in the law and the actual amounts of tax and spending changes missing.

40. The Referred Measure's title is misleading in that the bill exempts the ballot title from C.R.S. § 1-40-106(3)(d) which requires a ballot title for a statewide referred measure must be in the same form as a ballot title for an initiative which must describe the measure as a "change to the Colorado Revised Statutes."

41. The Referred Measure's title is misleading in that the bill gave a new definition to TABOR refunds, re-defining them as "state surplus" to confuse and misinform voters who historically vote to keep their refunds when they understand a ballot measure is asking them to give up the refunds.

42. The Referred Measure's title does not comply with C.R.S. § 1-40-106(f) which requires that a ballot title for measures that reduce local district property tax revenue through a tax change begin with the following mandatory statement: "Shall funding available for counties,

school districts, water district, fire districts, and other districts funded, at least in part, by property taxes be impacted by a reduction of (projected dollar figure of property tax revenue reduction to all districts in the first full fiscal year that the measure reduces revenue) in property tax revenue."

43. The Referred Measure's title does not comply with C.R.S. § 1-40-106(g) which requires that measures that increase tax revenue for any district through a tax change and specify the public services to funded by the increased revenue, the ballot title shall state "in order to increase or improve levels of public service, including, but not limited to (the public service specified in the measure)". The Referred Measure does not just backfill education; it increases funding to education and must so explicitly state this fact in the title.

44. Accordingly, section 3 of the Bill is void and unenforceable as unconstitutional under Article V § 21 of the Colorado Constitution.

CLAIMS

FIRST CAUSE OF ACTION
VIOLATION OF SINGLE SUBJECT REQUIREMENT IN COLORADO CONSTITUTION, ARTICLE V, SECTION 21 REGARDING THE BILL

45. Plaintiff repeats and realleges the allegations contained in paragraphs 1-44 above as if fully set forth herein.

46. Article V, Section 21 of the Colorado Constitution requires that every bill contain only a single subject. That single subject must be clearly expressed in the bill's title.

47. The Bill contains more than one subject. First, the Bill concerns the subject of reducing property taxes. Second, the Bill requests voter approval to retain and spend funds for other purposes as "backfill" but in excess of an amount that would be needed to backfill the reduced property tax revenue. Third, the Bill appropriates funds to the housing development grant fund, to be used for tenant rent. Fourth, the Bill gives the legislature the authority to make a permanent change to the TABOR formula after ten years. The Referred Measure within the Bill, for voter-approval to retain revenue, concerns an increase in state revenue and also constitutes multiple subjects other than reduction of property taxes.

48. The State has violated Article V, Section 21 of the Colorado Constitution, and accordingly, the Bill must be declared void as unconstitutional and enjoined from taking effect.

SECOND CAUSE OF ACTION
VIOLATION OF CLEAR TITLE IN COLORADO CONSTITUTION, ARTICLE V, SECTION 21 REGARDING THE BILL AND THE BALLOT MEASURE

49. Plaintiff repeats and realleges the allegations contained in paragraphs 1-48 above as if fully set forth herein.

50. Article V, Section 21 of the Colorado Constitution requires that the subject of a bill shall be clearly expressed in its title; but if any subject is not expressed in the title, such act shall be void.

51. The Bill title does not clearly express the contents of the Referred Measure in violation of Article V, Section 21.

52. The referred question does not clearly express the contents of the measure in violation of Article V, Section 21.

53. The State has violated Article V, Section 21 of the Colorado Constitution, and accordingly, section 3 of the Bill must be declared void as unconstitutional and enjoined from taking effect.

PRAYER FOR RELIEF

WHEREFORE, based on the above allegations, Plaintiff respectfully requests that this Court grant the following relief:

A. A final judgment in favor of Plaintiff declaring that the Bill is void as a matter of law, or, in the alternative, a final judgment in favor of Plaintiff declaring that section 3 of the Bill is void as a matter of law;

B. If the Bill or Section 3 is not enjoined and declared unconstitutional and void, judgement correcting the text of the ballot title so that it does not unfairly mislead voters;

C. Judgment in favor of Plaintiff and against the Defendants on all claims;

D. An order awarding Plaintiff's costs, interests, and attorneys' fees incurred in connection with the commencement and prosecution of this action; and

E. Such other relief as the Court deems just and reasonable.

Dated: May 15, 2023

/s/ Suzanne Taheri
Suzanne Taheri
WEST GROUP
6501 E Belleview, Ste 375
Denver, CO 80111
Tel.: 303-218-7141
st@westglp.com
Attorney for Plaintiff

VERIFICATION OF PETITION

I, Steven Ward, declare under the penalty of perjury to the law of Colorado that the factual allegations set forth in the foregoing Verified Petition for Relief Under C.R.S. § 1-11-203.5 are true and correct to the best of my knowledge, information, and belief.

Steven M. Ward

Subscribed and sworn to before me this 15 (Date) day of May (Month), 2023 (Year) by

Steven Ward
Name of Signer

Signature of Notary Public

Jacqueline McKinnon
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20164025867
MY COMMISSION EXPIRES JULY 8, 2024