

DISTRICT COURT, DENVER COUNTY STATE OF COLORADO 1437 Bannock Street Room 256 Denver, Colorado 80202	EFILED Document CO Denver County District Court 2nd JD Filing Date: May 21 2012 7:00AM MDT Filing ID: 44359184 Review Clerk: Kyle T Gustafson
TABOR FOUNDATION, a Colorado non-profit corporation, Plaintiff, v. COLORADO BRIDGE ENTERPRISE; COLORADO TRANSPORTATION COMMISSION; TREY ROGERS, GARY M. REIFF, HEATHER BARRY, KATHY GILLILAND, KATHY CONNELL, DOUGLAS ADEN, STEVE PARKER, LES GRUEN, GILBERT ORTIZ, EDWARD J. PETERSON, all in their official capacities as members of the Colorado Transportation Commission, Defendants.	
James M. Manley (Reg. No. 40327) Steven J. Lechner (Reg. No. 19853) MOUNTAIN STATES LEGAL FOUNDATION 2596 South Lewis Way Lakewood, Colorado 80227 (303) 292-2021 jmanley@mountainstateslegal.com lechner@mountainstateslegal.com Attorneys for Plaintiff	COURT USE ONLY Case No.: Division:
COMPLAINT	

Plaintiff, the TABOR Foundation, on behalf of its members and by and through its undersigned attorneys, hereby files this Complaint against Defendants and alleges as follows:

INTRODUCTION

1. Plaintiff seeks enforcement of the Taxpayer's Bill of Rights of the Colorado Constitution ("TABOR"). Colo. Const. art. X, § 20. TABOR requires a vote of the people before the State or any local government may: create new debt, levy new taxes, increase tax rates, or institute tax policy changes directly causing a net tax revenue gain. *Id.* Without a vote of the people, the Colorado Bridge Enterprise has created new debt, levied new taxes, increased tax rates, and instituted tax policy changes causing a net tax revenue gain to the Colorado Department of Transportation and the Bridge Enterprise. By taking these actions without a vote of the people, Defendants have violated the rights of Plaintiff's members to vote on the imposition of new taxes and debt, as guaranteed by TABOR. Plaintiff therefore seeks declaratory and injunctive relief to abate and correct Defendants' unconstitutional actions.

JURISDICTION AND VENUE

2. This Court has jurisdiction over Plaintiff's claims for relief pursuant to the Colorado Constitution, article VI, section 9, and article X, section 20. Venue is proper under Colorado Rule of Civil Procedure 98(b)(2) in any jurisdiction where Defendants or their agents engage in unconstitutional taxation or debt creation. Defendant Bridge Enterprise is headquartered in Denver, Colorado; thus, venue is proper in Denver County, Colorado.

PARTIES

3. Plaintiff TABOR Foundation is a nonprofit, public-interest organization with its principal place of business in Lakewood, Colorado. The TABOR Foundation is dedicated to protecting and enforcing the Taxpayer's Bill of Rights on behalf of its members. It has members who live and work throughout Colorado and who are registered to vote in the State. Many of these members depend on cars and trucks registered in Colorado to operate ranches, produce agricultural products, and clear snow from their property. The TABOR Foundation's members are therefore required to pay the unconstitutional taxes levied by Defendants and repay the unconstitutional indebtedness created by Defendants.

4. Defendant Colorado Bridge Enterprise is a government-owned business within the Colorado Department of Transportation. C.R.S. § 43-4-805(2)(a)(I). The Bridge Enterprise has levied a bridge safety surcharge and issued revenue bonds. C.R.S. § 43-4-805(2)(b)(I)–(II).

5. Defendant Colorado Transportation Commission oversees the Bridge Enterprise. C.R.S. § 43-4-805(2)(a)(I). In that capacity the Colorado Transportation Commission currently is enforcing the policies complained of in this action.

6. Defendant Trey Rogers is a member of the Colorado Transportation Commission and is responsible with the other Commissioners for overseeing the Bridge Enterprise. In that capacity he is currently enforcing the policies complained of in this action and is sued in his official capacity.

7. Defendant Gary M. Reiff is a member of the Colorado Transportation Commission and is responsible with the other Commissioners for overseeing the Bridge

Enterprise. In that capacity he is currently enforcing the policies complained of in this action and is sued in his official capacity.

8. Defendant Heather Barry is a member of the Colorado Transportation Commission and is responsible with the other Commissioners for overseeing the Bridge Enterprise. In that capacity she is currently enforcing the policies complained of in this action and is sued in her official capacity.

9. Defendant Kathy Gilliland is a member of the Colorado Transportation Commission and is responsible with the other Commissioners for overseeing the Bridge Enterprise. In that capacity she is currently enforcing the policies complained of in this action and is sued in her official capacity.

10. Defendant Kathy Connell is a member of the Colorado Transportation Commission and is responsible with the other Commissioners for overseeing the Bridge Enterprise. In that capacity she is currently enforcing the policies complained of in this action and is sued in her official capacity.

11. Defendant Douglas Aden is a member of the Colorado Transportation Commission and is responsible with the other Commissioners for overseeing the Bridge Enterprise. In that capacity he is currently enforcing the policies complained of in this action and is sued in his official capacity.

12. Defendant Steve Parker is a member of the Colorado Transportation Commission and is responsible with the other Commissioners for overseeing the Bridge Enterprise. In that capacity he is currently enforcing the policies complained of in this action and is sued in his official capacity.

13. Defendant Les Gruen is a member of the Colorado Transportation Commission and is responsible with the other Commissioners for overseeing the Bridge Enterprise. In that capacity he is currently enforcing the policies complained of in this action and is sued in his official capacity.

14. Defendant Gilbert Ortiz is a member of the Colorado Transportation Commission and is responsible with the other Commissioners for overseeing the Bridge Enterprise. In that capacity he is currently enforcing the policies complained of in this action and is sued in his official capacity.

15. Defendant Edward J. Peterson is a member of the Colorado Transportation Commission and is responsible with the other Commissioners for overseeing the Bridge Enterprise. In that capacity he is currently enforcing the policies complained of in this action and is sued in his official capacity.

STATEMENT OF FACTS

16. TABOR requires a vote of the people before the State may: create new debt, levy new taxes, increase tax rates, or institute tax policy changes directly causing a net tax revenue gain. Colo. Const. art. X, § 20.

17. TABOR exempts from its voting requirements all State-owned businesses that: (a) are authorized to issue their own revenue bonds; (b) are not authorized to levy taxes; and (c) do not receive ten percent or more of their annual revenue in grants from all Colorado state and local governments. Colo. Const. art. X, § 20(2)(d); *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859 (Colo. 1995).

18. Defendant Colorado Bridge Enterprise is a State-owned business within the Colorado Department of Transportation; it is empowered to repair, reconstruct, replace, or maintain bridges, a governmental function previously performed directly by the Colorado Department of Transportation. C.R.S. § 43-4-805(2)(a)(I).

19. Defendant Colorado Bridge Enterprise is not exempt from TABOR's voting requirements.

20. Defendant Bridge Enterprise reported that its 2010 annual revenue was \$43,755,530.

21. In 2010, Defendant Bridge Enterprise was granted ownership of 77 bridges by the State of Colorado.

22. These 77 bridges represent a grant of revenue from the State of Colorado.

23. This grant of revenue from the State of Colorado constituted more than ten percent of Defendant Bridge Enterprise's 2010 annual revenue.

24. Defendant Bridge Enterprise is authorized to levy a bridge safety surcharge and issue revenue bonds. C.R.S. § 43-4-805(2)(b)(I)–(II).

25. The bridge safety surcharge authorized pursuant to C.R.S. § 43-4-805(5)(g)(I) is a tax subject to TABOR's requirement that a public vote be taken before it is levied or increased. Colo. Const. art. X, § 20(4)(a).

26. The bridge safety surcharge authorized pursuant to C.R.S. § 43-4-805(5)(g)(I) is a tax policy change resulting in a net revenue gain to the Colorado Department of Transportation and the Bridge Enterprise. Colo. Const. art. X, § 20(4)(a).

27. The revenue bonds authorized pursuant to C.R.S. § 43-4-805(5)(g)(II) constitute debt that is subject to TABOR's requirement that a public vote be taken before they are created. Colo. Const. art. X, § 20(4)(b).

28. Pursuant to C.R.S. § 43-4-805(5)(g)(I), Defendant Bridge Enterprise has levied a bridge safety surcharge on vehicles registered in Colorado.

29. Pursuant to C.R.S. § 43-4-805(5)(c), Defendant Bridge Enterprise has created financial obligations in the form of revenue bonds.

30. No public vote was held before Defendant Bridge Enterprise levied a bridge safety surcharge on vehicles registered in Colorado.

31. No public vote was held before Defendant Bridge Enterprise created financial obligations in the form of revenue bonds.

32. Defendant Bridge Enterprise does not have adequate present cash reserves pledged irrevocably and held for payments in all future fiscal years to pay for the revenue bonds it has issued. Colo. Const. art. X, § 20(4)(b).

33. Defendant Bridge Enterprise has designated bridges for repair, reconstruction, replacement, or maintenance in 35 Colorado counties.

34. Defendant Bridge Enterprise has designated no bridges for repair, reconstruction, replacement, or maintenance in 29 counties, including Montrose and Grand Counties.

35. TABOR Foundation members in several counties, including Grand County, use cars and trucks registered in the State of Colorado to facilitate the development of livestock and crops.

36. TABOR Foundation members in several counties, including Montrose and Grand Counties, use cars and trucks registered in the State of Colorado to clear snow from their business and residential properties.

37. These members have been assessed and have paid a bridge safety surcharge for the above-described vehicles.

38. These members have not and will not use these vehicles to cross any bridges in the 35 counties where Defendant Bridge Enterprise has designated bridges for repair, reconstruction, replacement, or maintenance.

39. These members have derived no benefit from the bridge safety surcharge they have paid for the above-described vehicles.

40. TABOR guarantees these members' right to vote before Defendants may: create new debt, levy new taxes, increase tax rates, or institute tax policy changes directly causing a net tax revenue gain. Colo. Const. art. X, § 20.

41. Residents of all Colorado counties, including Montrose and Grand Counties, pay the same bridge safety surcharge rates as residents of the 35 counties where Defendant Bridge Enterprise has designated bridges for repair, reconstruction, replacement, or maintenance.

42. Residents of all Colorado counties pay the same bridge safety surcharge rates, regardless of a taxpayer's actual use of the bridges designated for repair, reconstruction, replacement, or maintenance by Defendant Bridge Enterprise.

FIRST CLAIM FOR RELIEF

(Unconstitutional Taxation)

43. Plaintiff hereby realleges and incorporates the allegations in the preceding paragraphs as if the same were fully set forth here.

44. TABOR requires a vote of the people before the State or a State-owned entity may: levy new taxes; increase tax rates; or institute tax policy changes directly causing a net tax revenue gain to any district. Colo. Const. art. X, § 20(4)(a).

45. Defendant Bridge Enterprise is subject to TABOR because it is a State-owned entity that is authorized to levy taxes and that has levied a bridge safety tax.

46. Defendant Bridge Enterprise is subject to TABOR because it is a State-owned entity that, in 2010, received more than ten percent of its annual revenue in grants from the State of Colorado.

47. The bridge safety surcharge levied pursuant to C.R.S. § 43-4-805(5)(g)(I) is a tax subject to TABOR's requirement that a public vote be taken before it is levied or increased. Colo. Const. art. X, § 20(4)(a).

48. No public vote was held that authorized Defendants to levy a bridge safety surcharge on vehicles registered in Colorado.

49. The bridge safety surcharge levied by Defendants without a vote of the people violates TABOR and is, therefore, unconstitutional.

50. Plaintiff's members have been forced to pay the unconstitutional bridge safety surcharge levied by Defendant Bridge Enterprise without the opportunity to vote.

51. Plaintiff is therefore entitled to declaratory and permanent injunctive relief against continued enforcement and maintenance of Defendants' bridge safety surcharge, until such time as Defendants receive voter approval for the bridge safety surcharge, as required by TABOR.

52. Plaintiff is further entitled to an order refunding to all taxpayers, including Plaintiff's members, all revenue collected, kept, or spent unconstitutionally in the four fiscal years preceding today's date, with ten percent annual simple interest calculated from the date of the initial unconstitutional conduct. Colo. Const. art. X, § 20(1).

SECOND CLAIM FOR RELIEF
(Unconstitutional Debt)

53. Plaintiff hereby realleges and incorporates the allegations in the preceding paragraphs as if the same were fully set forth here.

54. TABOR requires a vote of the people before the State or a State-owned entity may create new debt. Colo. Const. art. X, § 20(4)(b).

55. Defendant Bridge Enterprise is subject to TABOR because it is a State-owned entity that is authorized to levy taxes and that has levied a bridge safety tax.

56. Defendant Bridge Enterprise is subject to TABOR because it is a State-owned entity that, in 2010, received more than ten percent of its annual revenue in grants from the State of Colorado.

57. The revenue bonds authorized pursuant to C.R.S. § 43-4-805(5)(g)(II) constitute debt that is subject to TABOR's requirement that a public vote be taken before they are created. Colo. Const. art. X, § 20(4)(b).

58. Pursuant to C.R.S. § 43-4-805(5)(c), Defendants have created debt obligations in the form of revenue bonds.

59. No public vote was held that authorized Defendants to create debt obligations in the form of revenue bonds.

60. The Bridge Enterprise does not have adequate present cash reserves pledged irrevocably and held for payments in all future fiscal years to pay for the revenue bonds it has issued. Colo. Const. art X, § 20(4)(b).

61. The revenue bonds issued by Defendants without a vote of the people violate TABOR and are, therefore, unconstitutional.

62. Plaintiff is therefore entitled to declaratory and permanent injunctive relief ordering Defendants to cease issuing revenue bonds until such time as Defendants receive voter approval for the revenue bonds, as required by TABOR.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Declare that the bridge safety surcharge levied by Defendants without voter approval violates Colo. Const. art. X, § 20 and is therefore unconstitutional;

2. Declare that the revenue bonds issued by Defendants without voter approval violate Colo. Const. art. X, § 20 and are therefore unconstitutional;

3. Issue an order holding unconstitutional and setting aside the bridge safety surcharge;

4. Issue an order directing Defendants to refund all revenue collected, kept, or spent unconstitutionally in the four fiscal years preceding today's date, with ten percent annual simple interest calculated from the date of the initial unconstitutional conduct, as required by Colo. Const. art. X, § 20(1);

5. Permanently enjoin Defendants from issuing revenue bonds until such time as Defendants comply with the voting requirements of Colo. Const. art. X, § 20(3);

6. Award Plaintiff costs and attorney fees in accordance with law, including Colo. Const. art. X, § 20(1); and

7. Award any other further relief this Court deems just and appropriate.

DATED this 21st day of May 2012.

Respectfully Submitted:

/s/ James M. Manley

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