

DISTRICT COURT, PITKIN COUNTY
STATE OF COLORADO

506 E. Main
Suite 300
Aspen, Colorado 81611

COLORADO UNION OF TAXPAYERS FOUNDATION, a
Colorado non-profit corporation,

Plaintiff,

v.

CITY OF ASPEN; MICK IRELAND, ADAM FRISCH,
TORRE, STEVE SKADRON, DEREK JOHNSON, all in
their official capacities as members of the Aspen City
Council,

Defendants.

James M. Manley (Reg. No. 40327)
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COMPLAINT

Plaintiff, the Colorado Union of Taxpayers 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, Defendants have levied a tax on disposable grocery bags. By levying a tax without a vote of the people, Defendants have violated the rights of Plaintiff's members to vote on the imposition of new taxes, 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 City of Aspen is located in Pitkin County, Colorado; thus, venue is proper in Pitkin County.

PARTIES

3. Plaintiff Colorado Union of Taxpayers Foundation ("CUT") is a nonprofit, public-interest, membership organization with its principal place of business in Denver, Colorado. CUT was formed to educate the public as to the dangers of excessive taxation,

regulation, and government spending. Among the specific goals of CUT is to protect citizens' rights to petition government. CUT has members who are registered to vote in the City of Aspen. These members shop in Aspen grocery stores and have been required to pay the unconstitutional tax levied by Defendants.

4. Defendant City of Aspen is a municipal corporation, organized to provide local governance for the City of Aspen. It is a local government as defined by Colo. Const. art. X, § 20(2)(b).

5. Defendant Mick Ireland is Mayor of the City of Aspen and a member of the Aspen City Council and is responsible with the other Council members for governing the City of Aspen. In that capacity he is currently enforcing the policies complained of in this action and is sued in his official capacity.

6. Defendant Adam Frisch is a member of the Aspen City Council and is responsible with the other Council members for governing the City of Aspen. In that capacity he is currently enforcing the policies complained of in this action and is sued in his official capacity.

7. Defendant Torre is a member of the Aspen City Council and is responsible with the other Council members for governing the City of Aspen. In that capacity he is currently enforcing the policies complained of in this action and is sued in his official capacity.

8. Defendant Steve Skadron is a member of the Aspen City Council and is responsible with the other Council members for governing the City of Aspen. In that capacity he is currently enforcing the policies complained of in this action and is sued in his official capacity.

9. Defendant Derek Johnson is a member of the Aspen City Council and is responsible with the other Council members for governing the City of Aspen. In that capacity he is currently enforcing the policies complained of in this action and is sued in his official capacity.

STATEMENT OF FACTS

10. TABOR requires a vote of the people before a local government may: levy new taxes, increase tax rates, or institute tax policy changes directly causing a net tax revenue gain. Colo. Const. art. X, § 20(4)(a).

11. Defendant City of Aspen is subject to TABOR's voting requirements.

12. Defendants have levied a Waste Reduction Fee (a bag tax) imposed on and required to be paid by customers making a purchase from a grocer for each disposable paper bag used during the purchase. Aspen Municipal Code § 13.24.

13. Like a sales tax, grocers must collect the bag tax from customers and remit the proceeds to the City. Aspen Municipal Code § 13.24.050(e) ("A Grocer shall pay and the City of Aspen shall collect this fee at the same time as the City Sales Tax.").

14. The bag tax revenue funds the general expenses of government, including, *inter alia*, public educational campaigns, infrastructure, pollution-reduction equipment, and community cleanup events. Aspen Municipal Code § 13.24.050(g).

15. The bag tax levied by Defendants 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).

16. The bag tax levied by Defendants is also subject to TABOR's requirement that a public vote be taken before it is enacted because it is a tax policy change resulting in a net revenue gain to the City of Aspen. Colo. Const. art. X, § 20(4)(a).

17. No public vote seeking approval of the bag tax was held before Defendants levied the tax.

18. CUT members registered to vote in the City of Aspen have been forced to pay the bag tax.

19. These members have derived no direct benefits from the bag taxes they have paid.

20. TABOR guarantees these members' right to vote before Defendants may: levy new taxes, increase tax rates, or institute tax policy changes directly causing a net tax revenue gain. Colo. Const. art. X, § 20(4)(a).

21. All customers of Aspen grocery stores pay the same bag tax rates, regardless of a customer's actual use of any of the government services funded by the bag tax.

CLAIM FOR RELIEF
(Unconstitutional Taxation)

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

23. TABOR requires a vote of the people before a local government 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).

24. Defendant City of Aspen is subject to TABOR because it is a local government that is authorized to levy taxes and that has levied a tax on disposable grocery bags.

25. The bag tax levied by Defendants is 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. No public vote has been held that authorized Defendants to levy the bag tax.

27. The bag tax levied by Defendants without a vote of the people violates TABOR and is, therefore, unconstitutional.

28. Plaintiff's members have been forced to pay the unconstitutional bag tax levied by Defendants without the opportunity to vote.

29. Plaintiff is therefore entitled to declaratory and permanent injunctive relief against continued enforcement and maintenance of the bag tax, until such time as Defendants receive voter approval for the bag tax, as required by TABOR.

30. 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).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

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

2. Issue an order holding unconstitutional and setting aside the bag tax;

3. 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);

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

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

DATED this 21st day of August 2012.

Respectfully Submitted:

/s/ James M. Manley

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