

DISTRICT COURT, DENVER COUNTY, COLORADO Denver City and County Building 1437 Bannock Street, Room 256 Denver, Colorado 80202	DATE FILED: April 7, 2022 10:05 PM FILING ID: 12F5B17669FB6 CASE NUMBER: 2022CV30971
AMERICANS FOR PROSPERITY; MICHAEL FIELDS; RICHARD ORMAN; and JERRY SONNENBERG, <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> STATE OF COLORADO; GOVERNOR JARED POLIS; DEPARTMENT OF REVENUE; STATE CONTROLLER ROBERT JAROS; COMMUNITY ACCESS ENTERPRISE; CLEAN FLEET ENTERPRISE; CLEAN TRANSIT ENTERPRISE; NONATTAINMENT AREA AIR POLLUTION MITIGATION ENTERPRISE; and STATEWIDE BRIDGE AND TUNNEL ENTERPRISE, <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<i>Attorneys for Plaintiff Americans for Prosperity:</i> Perry L. Glantz, Atty. Reg. No. 16869 Bryan P. Rose, Atty. Reg. No. 51608 STINSON LLP 1144 Fifteenth Street, Suite 2400 Denver, Colorado 80202 Phone: 303.376.8410 Fax No: 303.376.8439 Email: perry.glantz@stinson.com bryan.rose@stinson.com <i>Attorney for Plaintiffs Fields, Orman, and Sonnenberg:</i> Daniel E. Burrows, Atty. Reg. No. 40284 ADVANCE COLORADO 1312 Seventeenth Street, Unit 2029 Denver, Colorado 80202 Phone: 720.588.2008 Email: dan@advancecolorado.org	Case No.: Div. No.:
COMPLAINT	

Plaintiffs Americans for Prosperity (“AFP”), Michael Fields, Richard Orman, and Jerry Sonnenberg (collectively referred to as “Plaintiffs”), for their complaint against the above-stated Defendants, hereby state and allege as follows:

INTRODUCTION

With the enactment of the Taxpayer’s Bill of Rights (“TABOR”) in 1992, the People of Colorado declared there could be no new taxes without prior permission from voters. The General Assembly, upset at being leashed, then spent the next twenty-eight years developing methods to evade the voter approval requirement. The loophole they hit on was to perform ordinary governmental functions via so-called “enterprises” funded by alleged “fees” rather than “taxes.” Since TABOR’s enactment, the General Assembly has created twenty-two new enterprises and increased the fees generated by enterprises from \$742 million in 1994 to \$27.8 **billion** in 2021.

Frustrated with this deceitful cleverness, in 2020, the People spoke again, passing Proposition 117, which shrunk the “enterprise” loophole. Under Proposition 117, the General Assembly must seek voter approval when a new enterprise will generate more than \$100 million in fees during its first five years of operation. Anticipating the General Assembly’s proclivity for gamesmanship, Proposition 117 also requires voter approval if the aggregated revenue for multiple enterprises that are created simultaneously is expected to exceed the \$100 million threshold.

Rather than listen to the People, the General Assembly took their scheming to a new high with S.B. 21-260. In that bill, the General Assembly decided several aspects of Colorado’s transportation system needed more funding. Instead of going to the voters to authorize new taxes, as would be required by TABOR, the General Assembly decided to use their favorite revenue generator: enterprises and fees. But to raise the amount of revenue they wanted, Proposition 117 required voter approval if the bill created only a single enterprise. So the General Assembly got creative, it established five enterprises and split the fees generated by each to avoid Proposition 117 and its required voter approval.

The legislature’s sleight of hand is illegal. All of the new enterprises were created simultaneously. Under Proposition 117, they should have been submitted to the voters. Plaintiffs are therefore suing to vindicate voters’ rights and stop the government from illegitimately taking millions of dollars per year out of citizens’ pockets.

COMPLAINT

1. Plaintiffs seek enforcement of the Taxpayer’s Bill of Rights (“TABOR”), Colo. Const. art. X, § 20, and Colo. Rev. Stat. § 24-77-108 (2021) (“Proposition 117”) as applied to Senate Bill 21-260 (“S.B. 21-260”), which entered into effect upon the Governor Jared Polis’s signature on June 17, 2021. Exhibit 1 is a true and accurate copy of S.B. 21-260, as enacted.

2. As set forth below, among its many provisions, S.B. 21-260 simultaneously created five enterprises. It created four completely new enterprises, and another new enterprise that expanded the scope of a pre-existing enterprise.

3. S.B. 21-260 created these new enterprises without a vote of the People, in violation of Proposition 117.

4. The creation of these enterprises constituted a “qualification” of enterprises within the meaning of TABOR, which requires a downward adjustment to the applicable revenue and spending limits imposed by TABOR and the Referendum C excess state revenues cap in such a circumstance.

5. S.B. 21-260 violated TABOR by failing to make the required downward adjustment.

6. By taking these actions, Defendants have violated the rights of Plaintiffs under the Colorado Constitution and Proposition 117.

7. S.B. 21-260 also included a provision that raised the excess state revenues cap by more than \$224 million.

8. That provision does not relate to the subject matter of S.B. 21-260 and thus violates Colorado’s single subject requirement, set forth in article V, § 21 of the Colorado Constitution.

9. Raising the excess state revenues cap without first obtaining voter approval also violates TABOR.

10. Plaintiffs seek declaratory and injunctive relief to abate and correct Defendants’ unlawful and unconstitutional actions.

JURISDICTION AND VENUE

11. This Court has jurisdiction over Plaintiffs’ claims for relief under the Colorado Constitution, article VI § 9(1), and article X § 20(1).

12. Venue is proper in this District under C.R.C.P. 98(b)(2) because all Defendants have their official residence in Denver and the actions of their offices emanate from Denver.

PARTIES

13. AFP is a nonprofit 501(c)(4) grassroots outreach organization dedicated to driving long-term solutions to the country’s biggest challenges. AFP operates state chapters throughout the United States, including in Colorado, and its activists engage friends and neighbors on key issues and encourage them to take an active role in building a culture of mutual benefit, where people succeed by helping one another.

14. The Colorado chapter of AFP recruits and unites Colorado residents to advance policies that help people improve their lives. It supports limited government, fiscal responsibility, and economic prosperity, and it is committed to educating and training Americans to be courageous advocates for the ideas, principles, and policies of a free and open society. AFP is headquartered in Arlington, Virginia and registered with the State of Colorado as a foreign entity pursuant to C.R.S. § 7-90-803.

15. AFP's Colorado activists live, work, use the State transportation system, pay taxes, and are registered to vote in Colorado. AFP and its activists have an interest in preventing the unlawful collection and expenditure of tax dollars and fees; ensuring the State government conforms to the Colorado Constitution and Statutes; and having their tax and fee dollars spent in a constitutional manner.

16. In the campaign to enact Proposition 117 during the 2020 general election, AFP supported grassroots efforts to contact hundreds of thousands of Coloradans through live phone calls, door to door canvassing, text messaging, mail, and digital advertising.

17. As an organization active in Colorado, AFP purchases fuel for its staff's vehicles. It will continue doing so for the foreseeable future and, therefore, will make purchases subject to the road usage fees imposed by S.B. 21-260 if those fees go into effect.

18. As an organization active in Colorado, AFP has purchased personal property from retailers for delivery. It will continue doing so for the foreseeable future and, therefore, will make purchases subject to the retail delivery fees authorized by S.B. 21-260 if those fees go into effect.

19. As an organization active in Colorado, AFP has previously paid for its staff to ride with Uber, Lyft, or similar companies in Colorado (which S.B. 21-260 calls "transportation network companies" ("TNCs")). It will continue doing so in the foreseeable future and, therefore, will be subject to the passenger ride fees imposed by S.B. 21-260 if those fees go into effect.

20. Michael Fields ("Fields") is a citizen, taxpayer, and registered voter in Douglas County, Colorado. He was also one of two designated representatives for Initiative #295, which became Proposition 117 when it qualified for the ballot.

21. Richard Orman ("Orman") is a citizen, taxpayer, and registered voter in Boulder County, Colorado.

22. Jerry Sonnenberg ("Sonnenberg") is a citizen, taxpayer, and registered voter in Logan County, Colorado.

23. Plaintiffs Fields and Sonnenberg own and drive at least one gasoline-powered vehicle each, and regularly purchase fuel for these vehicles. They will continue doing so for the foreseeable future and, therefore, will make purchases subject to the road usage fees imposed by S.B. 21-260 if those fees go into effect.

24. Plaintiff Sonnenberg also owns and drives a diesel-powered vehicle and regularly purchases fuel for that vehicle. He will continue doing so for the foreseeable future and, therefore, will make purchases subject to the road usage fees imposed by S.B. 21-260 if those fees go into effect.

25. Plaintiff Orman owns and drives an electric vehicle. He also has reservations for forthcoming electric vehicles from Ford, Tesla, and Rivian. Plaintiff Orman will continue owning and driving electric vehicles for the foreseeable future and, therefore will be subject to the increased electric vehicle registration fees and the new electric vehicle road usage equalization fees imposed by S.B. 21-260 if those fees go into effect.

26. Plaintiffs Fields, Orman, and Sonnenberg have all previously purchased personal property from retailers for delivery to their homes. They will continue doing so for the foreseeable future and, therefore, will make purchases subject to the retail delivery fees authorized by S.B. 21-260 if those fees go into effect.

27. Plaintiffs Fields, Orman, and Sonnenberg have all previously taken rides in TNCs. They will continue doing so in the foreseeable future and, therefore, will be subject to the passenger ride fees imposed by S.B. 21-260 if those fees go into effect.

DEFENDANTS

28. Defendant State of Colorado is subject to TABOR and is responsible for the enactment and implementation of S.B. 21-260.

29. Defendant Community Access Enterprise (“Community Access”) was created by S.B. 21-260. It operates within the Colorado Energy Office. Community Access will impose a fee on retail deliveries to fund its operations, beginning in fiscal year 2022–23. Colo. Rev. Stat. § 24-38.5-303 (2021).

30. Defendant Clean Fleet Enterprise (“Clean Fleet”) was created by S.B. 21-260. It operates within the Colorado Department of Public Health and Environment (“CDPHE”). To fund its operations, Clean Fleet will impose fees on TNC rides and retail deliveries beginning in fiscal year 2022–23. Colo. Rev. Stat. § 25-7.5-103 (2021).

31. Defendant Clean Transit Enterprise (“Clean Transit”) was created by S.B. 21-260. Clean Transit operates within the Colorado Department of Transportation (“CDOT”). It will impose a fee on retail deliveries to fund its operations, beginning in fiscal year 2022–22. Colo. Rev. Stat. § 43-4-1203 (2021).

32. Defendant Nonattainment Area Air Pollution Mitigation Enterprise (“Nonattainment”) was created by S.B. 21-260. It operates within CDOT. To fund its operations, Nonattainment will impose fees on TNC rides and retail deliveries beginning in fiscal year 2022–23. Colo. Rev. Stat. § 43-4-1303 (2021).

33. Defendant Statewide Bridge and Tunnel Enterprise (“Bridge and Tunnel”) was created by S.B. 21-260. Bridge and Tunnel operates within CDOT. To fund its operations, Bridge and Tunnel will impose fees on retail deliveries, gasoline, and “special fuel” purchases beginning in fiscal year 2022–23. Colo. Rev. Stat. § 43-4-805 (2021). “Special fuel” includes the fuel used by Plaintiff Sonnenberg discussed in ¶ 24.

34. Bridge and Tunnel also imposes fees on electric motor vehicle registrations.

35. Department of Revenue is an office within the office of the governor. Under S.B. 21-260, it will collect the fees discussed in ¶¶ 29–34.

36. Defendant Jared Polis is the Governor of Colorado and is sued in his official capacity. As governor, he holds and exercises supreme executive power in the state and must take care that the laws are faithfully executed. As such, he is ultimately responsible for all executive actions and omissions of the state, including:

- a. the actions and omissions of Defendant Department of Revenue;
- b. the actions and omissions of the Colorado Energy Office, which contains Defendant Community Access;
- c. the actions and omissions of the Colorado Department of Public Health and Environment, which contains Defendant Clean Fleet; and
- d. the actions and omissions of the Colorado Department of Transportation, which contains Defendants Clean Transit, Nonattainment, and Bridge and Tunnel.

37. Defendant Robert Jaros is the State Controller and is sued in his official capacity. As controller, he tracks and reports on state spending, reserves, and revenues to determine compliance with, *inter alia*, TABOR and Referendum C.

LEGAL & FACTUAL BACKGROUND

I. The Taxpayer Bill of Rights, Applicable Spending Limits, and Enterprises.

38. The overarching purpose of TABOR is to “restrain . . . the growth of government.” Colo. Const. art. X, § 20(1). It does this by, among other things, requiring voter approval for new taxes or tax increases, *id.* § 20(4), and limiting the amount of revenue the State may keep and spend in any particular year. *Id.* § 20(7).

39. Referendum C, approved by voters in 2005, allowed the state to keep and spend certain revenues that exceed the standard TABOR limit but fall below an annually adjusted “excess state revenues cap.” Colo. Rev. Stat. § 24-77-103.6 (2021).

40. Both the standard TABOR limit and the Referendum C cap apply to the revenue of state and local governments (*i.e.*, TABOR “districts”) but not to revenue controlled by “enterprises,” which are excluded from the definition of TABOR districts. Colo. Const. art. X, § 20(2)(b), (d); *see also* Colo. Rev. Stat. § 24-77-102(3), (17) (2021). An “enterprise” is “a government-owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined.” Colo. Const. art. X, § 20(2)(d).

41. Under TABOR and Referendum C, revenue that exceeds the cap must be refunded unless the state secures voter approval to keep and spend the excess revenue. Colo. Const. art. X, § 20(7)(d); Colo. Rev. Stat. § 24-77-103.6(1)(b) (2021).

42. At the state level, the standard TABOR limit is based on the lower of the previous fiscal year’s revenue or limit, adjusted by the sum of the inflation rate, the state’s percentage population growth, the qualification and disqualification of enterprises, and any voter-approved revenue changes. Colo. Const. art. X, § 20(7); C.R.S. 24-77-103. The Referendum C cap is adjusted in identical fashion. Colo. Rev. Stat. § 24-77-103.6 (2021).

43. Upon qualification of an enterprise, TABOR requires a one-time adjustment to both the TABOR limit and the Referendum C cap: “Qualification . . . as an enterprise shall change district bases and future year limits.” Colo. Const. art. X, § 20(7)(d); *accord* Colo. Rev. Stat. §§ 24-77-103(1)(b), 24-77-103.6(6)(B) (2021).

II. Proposition 117.

44. Since TABOR’s enactment, the General Assembly has chafed under its restrictions and adopted methods to avoid its application. Chief among these labors has been a multi-year effort to redirect a greater share of the state government to enterprises.

45. The motivation for this effort has been to generate new state revenue without the required TABOR vote and to withdraw a greater amount of state revenue from the applicable revenue limits. This effort has been summarized by the Legislative Council:

Enterprise status can create additional budget flexibility for an exempted program and the General Fund budget. When a program is granted enterprise status, its revenue is not counted toward the TABOR limit calculation. Because enterprise programs are primarily user-funded, they can grow fee revenue over time at rates sufficient to fund expenses without increasing the size of the TABOR refund, and therefore affecting the General Fund budget. Enterprise status shifts the

responsibility of paying for a government-provided product or service away from the state to the persons or entity benefiting from the product or service.¹

46. Enterprise revenue now constitutes the largest share of state revenue. In the 2020–21 fiscal year, enterprise revenue totaled \$27.8 billion, while the revenue subject to the TABOR/Referendum C cap was much lower, totaling only \$16.1 billion.²

47. The growth in the General Assembly’s use of enterprises to evade the voting and revenue limits imposed by TABOR led to a voter initiative that sought to rein in this abuse: Proposition 117.

48. Proposition 117 was approved by a majority vote during the general election of November 2020. Codified at Colo. Rev. Stat. § 24-77-108 (2021), Proposition 117 requires voter approval before the creation of certain new enterprises, under the following terms:

(1) After January 1, 2021, any state enterprise qualified or created, as defined under Colo. Const. Art. X, § 20(2)(d) with projected or actual revenue from fees and surcharges of over \$100,000,000 total in its first five fiscal years must be approved at a statewide general election....

(2) Revenue collected for enterprises created simultaneously or within the five preceding years serving primarily the same purpose shall be aggregated in calculating the applicability of this section.

III. The Single Subject Requirement.

49. The Colorado Constitution requires that “[n]o bill, except general appropriation bills, shall be passed containing more than one subject[,]” which “shall be clearly expressed in its title[.]” Colo. Const. art. V, § 21.

50. If a bill includes a subject that is beyond the single subject in the title, that portion “shall be void only as to so much thereof as shall not be so expressed.” *Id.*

51. “To constitute more than one subject ...the text of the measure must relate to more than one subject and it must have at least two distinct and separate purposes which are not

¹ Legislative Council Staff, Memorandum re: State Government Enterprises, at 1 (May 20, 2019), https://leg.colorado.gov/sites/default/files/interested_persons_memo_regarding_tabor_enterprises_2019.pdf.

² Office of the State Controller, Colorado Annual Comprehensive Financial Report for Fiscal Year Ended June 30, 2021, at 292, https://drive.google.com/file/d/1Tkdi_yVHqBai5Uo4_Drsz5SjeO6Qcktd/view.

dependent upon or connected with each other.” *In re Proposed “Public Rights in Waters II,”* 898 P.2d 1076, 1078–79 (Colo. 1995).

IV. Senate Bill 21-260.

52. Senate Bill 21-260 creates new sources of funding purportedly directed to the benefit of the state’s transportation system by, among other things, creating new state enterprises and imposing new fees.

53. As summarized by the bill’s accompanying fiscal note,³ the new enterprises and the fees they control may be described as follows:

- a. *Community Access Enterprise.* This enterprise is created within the Colorado Energy Office (CEO) to support widespread adoption of electric vehicles and electric alternatives to motor vehicles, including development of vehicle charging infrastructure, as well as financial incentives for electric vehicle purchases, electric alternatives to motor vehicles, and use of public transit. The bill allows the enterprise to impose a community access retail delivery fee to fund its operations. It also allows the enterprise to invest in transportation infrastructure programs.⁴
- b. *Clean Fleet Enterprise.* This enterprise is created within Colorado Department of Public Health and Environment (CDPHE) to incentivize and support the use of electric motor vehicles and other technologies in private and government vehicle fleets by providing financial assistance for electric motor vehicles to fleet operators, and by providing or supporting related services. The bill allows the enterprise to impose a clean fleet fee on retail deliveries and rides provided by TNCs [transportation network companies that use a digital network to connect riders and drivers] to fund its operations. It may also issue grants, loans and rebates to incentivize and support the adoption of electric motor vehicles in motor vehicle fleets.⁵
- c. *Clean Transit Enterprise.* This enterprise is created within the Colorado Department of Transportation (CDOT) to support public transit electrification planning efforts, facility upgrades, fleet motor vehicle replacement, as well as construction and development of electric motor vehicle charging and fueling infrastructure. The bill allows the enterprise to impose a clean transit retail delivery

³ Legislative Council Staff, Final Fiscal Note S.B. 21-260, at 3–4 (Sept. 9, 2021), https://leg.colorado.gov/sites/default/files/documents/2021A/bills/fn/2021a_sb260_f1.pdf.

⁴ See S.B. 21-260, § 6.

⁵ See *id.*, § 11.

fee to fund its operations, and to issue grants, loans or rebates to support electrification of public transit.⁶

- d. *Nonattainment Area Air Pollution Mitigation Enterprise*. This enterprise is created within CDOT to mitigate transportation-related emissions in ozone nonattainment areas by funding projects that reduce traffic or directly reduce air pollution through the congestion mitigation and air quality improvement program. The bill allows the enterprise to impose an air pollution mitigation fee on retail deliveries and rides provided by TNCs to fund its operations.⁷
- e. *Statewide Bridge Enterprise*. The bill authorizes the Statewide Bridge and Tunnel Enterprise to complete surface transportation projects for tunnels. The enterprise may also impose a bridge and tunnel impact fee on diesel fuel, as well as a bridge and tunnel retail delivery fee, to fund its operations.⁸

54. S.B. 21-260 also adjusted the applicable revenue limit by raising the Referendum C cap by \$224,957,602. S.B. 21-120, § 8. According to the Fiscal Note, the purpose of this change was to “revert[] the reduction made by the General Assembly in Senate Bill 17-267.” Fiscal Note, at 4.

FIRST CLAIM FOR RELIEF (Violation of Proposition 117 or Single Subject Rule)

55. Plaintiffs incorporate all previous allegations as if fully set forth herein.

56. S.B. 21-260 simultaneously created five enterprises: the Community Access Enterprise, the Clean Fleet Enterprise, the Clean Transit Enterprise, the Nonattainment Area Air Pollution Mitigation Enterprise, and the Bridge and Tunnel Enterprise.

57. The projected five-year aggregate revenue to be raised by the new fees and surcharges applicable to these five enterprises far exceeds \$100 million. Indeed, the threshold is met from their first two years of operation because total revenue for the five enterprises’ first year of operation was determined to be \$77.8 million, while in the second year of operation it was determined to be \$95.3 million. Fiscal Note, at 7.

58. Furthermore, each enterprise created by S.B. 21-260 can levy a retail delivery fee. That fee alone is projected to collect \$75.9 million in the first year. Fiscal Note, at 9.

59. No statewide general election was held to obtain voter approval for the five enterprises created by S.B. 21-260.

⁶ See *id.*, § 52.

⁷ See *id.*

⁸ See *id.*, § 48.

60. Failure to obtain voter approval violates Proposition 117.

61. Alternatively, by including all five enterprises in a single bill, the General Assembly violated the Single Subject Rule. If, in fact, the various enterprises do not “serve primarily the same purpose”, they are consequently not dependent upon or connected with each other and putting them in the same bill violated the Single Subject Rule.

SECOND CLAIM FOR RELIEF
(Qualification of Enterprises without Adjustment of Revenue Cap)

62. Plaintiffs incorporate all previous allegations as if fully set forth herein.

63. S.B. 21-260 created five enterprises.

64. The purported creation and modification of the enterprises in S.B. 21-260 constitute “qualifications” under TABOR.

65. The qualification of any enterprise requires the General Assembly to adjust the TABOR limit/Referendum C revenues cap downward by an amount equal to the aggregate of the expected first-year revenue of the enterprise.

66. S.B. 21-260 violated TABOR because it made no such downward adjustment. In fact, S.B. 21-260 purported to adjust the caps *upward*.

67. This is not merely a technical violation. Even taking into account the S.B. 21-260 adjustment, the Legislative Council is projecting revenues being \$1,752,300 over the cap.⁹ Over-cap revenues must be refunded unless voters approve doing something else with them. Thus, the improper calculation of the cap affects the available refund.

68. Plaintiffs Fields, Orman, and Sonnenberg would be entitled to a larger refund or to vote on alternate uses for those funds but for S.B. 21-260.

THIRD CLAIM FOR RELIEF
(Violation of Single Subject Requirement)

69. Plaintiffs incorporate all previous allegations as if fully set forth herein.

70. By its title, S.B. 21-260 concerns the sustainability of Colorado’s transportation system.

71. However, S.B. 21-260 also included an increase to the Referendum C cap by \$224,957,602. S.B. 21-260 § 8.

⁹ Legislative Council Staff, *Economic & Revenue Forecast 10* (Dec. 2021), available at <https://leg.colorado.gov/sites/default/files/images/december2021forecast.pdf>.

72. The increase of the Referendum C cap serves its own separate purpose outside the sustainability of Colorado's transportation system. It is a decision that affects the General Assembly's entire budgeting process and has no necessary connection to the specific purpose of S.B. 21-260.

73. Because raising the Referendum C cap is a separate subject from the rest of S.B.21-260, including it in S.B. 21-260 violates the Colorado Constitution.

FOURTH CLAIM FOR RELIEF (Increase to Cap Violates TABOR)

74. Plaintiffs incorporate all previous allegations as if fully set forth herein.

75. TABOR set a limitation on state fiscal year spending, requiring any excess state revenues be refunded to the taxpayers unless the state secures voter approval to keep and spend the excess revenue.

76. In 2005, in accordance with TABOR, the state secured voter approval through Referendum C to retain and spend all state revenues in excess of the limitation on state fiscal year spending for the following five years. After July 1, 2010, Referendum C allowed the state to keep and spend certain revenues that exceed the standard TABOR limit but fall below an annually adjusted "excess state revenues cap." Exhibit 2 is a true and correct copy of Colo. Rev. Stat. § 24-77-103.6 (2005) as originally enacted.

77. Under Referendum C, the excess state revenues cap each year is determined by the revenues cap from the prior year, with adjustments for inflation, the change in state population, the qualification or disqualification of enterprises, debt service charges, and voter-approved revenue changes. *Id.*

78. In 2017, the legislature reduced the excess state revenue cap for the 2017-18 fiscal year by two hundred million dollars. By doing so, the legislature reduced the excess state revenues cap for subsequent years.

79. S.B. 21-260 increased the Referendum C cap for the 2020-21 fiscal year by \$224,957,602. This increase in retention of excess funds was effected without voter approval; it therefore violated TABOR and Referendum C.

80. This is not merely a technical violation. As stated in ¶ 67, revenues are expected to be over the cap even accounting for the S.B. 21-260 adjustment. Because over-cap revenues must be refunded unless voters approve doing something else with them, the improper calculation of the cap affects the available refund.

81. Plaintiffs Fields, Orman and Sonnenberg would be entitled to a larger refund or to vote on alternate uses for those funds but for S.B. 21-260.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Declare that S.B. 21-260 violated Proposition 117 by creating five enterprises simultaneously with a projected aggregated revenue exceeding \$100 million during the first five years of their operation without obtaining voter approval *or, alternatively*, declare that S.B. 21-260 violated the Single Subject Rule by creating five unrelated enterprises in a single bill;
- B. Enjoin Defendants from operating the Community Access Enterprise, the Clean Fleet Enterprise, the Clean Transit Enterprise, the Nonattainment Area Air Pollution Mitigation Enterprise, and the Bridge and Tunnel Enterprise unless and until such enterprises are approved at a statewide general election;
- C. Enjoin the Community Access Enterprise, the Clean Fleet Enterprise, the Clean Transit Enterprise, the Nonattainment Area Air Pollution Mitigation Enterprise Defendants, and the Bridge and Tunnel Enterprise from charging or collecting any fees unless and until such enterprises are approved at a statewide general election;
- D. Enjoin the Department of Revenue from collecting any fees and transferring any funds as authorized by S.B. 21-260 and the Community Access Enterprise, the Clean Fleet Enterprise, the Clean Transit Enterprise, the Nonattainment Area Air Pollution Mitigation Enterprise, and the Bridge and Tunnel Enterprise unless and until such enterprises are approved at a statewide general election;
- E. Order the State of Colorado and Defendant Jaros to adjust the revenues cap downward by an amount equal to the aggregate of the expected first-year revenue of the enterprises created or modified by S.B. 21-260;
- F. Strike the increase of the Referendum C cap from S.B. 21-260 as unconstitutional and in violation of TABOR;
- G. Hold unlawful and set aside S.B. 21-260 in its entirety;
- H. Award attorneys' fees and costs as allowed by law;
- I. Award pre- and post-judgment interest as allowed by law; and
- J. Grant any other such relief that the Court finds just and equitable.

Respectfully submitted on this 7th day of April, 2022.

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