DISTRICT COURT, DENVER COUNTY, COLORADO Denver City and County Building 1437 Bannock Street, Room 256 Denver, Colorado 80202	
Plaintiff / Petitioner: Barbara Kirkmeyer and Byron Pelton **v.** **Defendant / Respondent:** Heidi Humphreys, in her official capacity at the director of the Colorado Department of Revenue, and Jared Polis, in his official capacity as the Governor of Colorado	**▲ 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.:
COMPLAINT	

Plaintiffs Barbara Kirkmeyer and Byron Pelton, for their complaint against the above-stated Defendants, hereby state and allege as follows:

INTRODUCTION

The Colorado Constitution is explicit: taxes may not be raised without advance voter approval, and voters must be accurately informed before they cast that vote. Since its adoption in 1992, the Colorado Taxpayer's Bill of Rights ("TABOR"), Colo. Const. art. X, § 20, has required that tax increases be presented to the people as a standalone ballot issue and accompanied by an accurate, state-prepared notice of what the increase will cost. Amendment 87 violated both requirements.

First, Amendment 87 bundled a constitutional amendment, which struck multiple requirements in TABOR, together with sweeping statutory increases to individual and corporate income tax rates in a single ballot issue. TABOR prohibits this practice, and leaving the violation

unremedied would gut a core protection the people reserved to themselves. Whether or not the measure satisfied the single-subject rule, TABOR's separate prohibition on consolidating constitutional amendments with statutory rate increases required Amendment 87 to be split and presented to the people as two separate measures. The General Assembly confronted the same consolidation bar in 2005 and presented Referendum C and Referendum D as separate questions, even though Referendum D was expressly contingent on Referendum C.

Second, the TABOR notice included objectively false information about what Amendment 87 would cost taxpayers. The State spent roughly $4 million to print and mail the Blue Book to Colorado households, and the State's own research shows that more than eight in ten voters use it to make their decisions. Yet the tables informing voters how their taxes would change were built on a basic methodological error. The Blue Book applied the new graduated rates to income that had already been apportioned to Colorado, reversing the order of operations that Colorado law, Department of Revenue regulations, and the text of Amendment 87 itself require. The consequences of this error were not marginal. Voters in the $500,000 to $1,000,000 bracket were told they would *receive a tax cut* averaging $284. Correctly calculated, these voters will actually *experience a tax increase* averaging roughly $2,651. For that bracket alone, the Blue Book reported a $15.9 million tax cut where Amendment 87 actually imposes an increase of approximately $148 million. The same error distorted nine of the twelve income brackets in Table 3 and carried through to the constitutionally required revenue estimate in Table 5, misstating the measure's fiscal impact by as much as $1.2 billion.

The notice also promised benefits the measure will not deliver. It invoked education funding twelve times and childcare five times and stated as fact that the measure "increases available state funding to school districts." Governor Polis has since conceded to the Joint Budget Committee that the new revenue will produce "zero for education" and that "within three years, it all goes to Medicaid."

Amendment 87 passed with just 51.72 percent of the vote. These legal defects were material to that result. Amendment 87 was presented to voters in a form that TABOR prohibits, depriving voters of the separate, clear ballot questions the Colorado Constitution requires; and the official ballot materials told many voters that the measure would cut their taxes when in fact it will raise them.

TABOR is a citizen-initiated constitutional measure that requires proposed tax increases be presented to the people through a clear ballot question and an accurate notice so that voters are not confused or misinformed when they vote. Amendment 87 was presented to Colorado voters in a form, and with a notice, that directly conflicts with the explicit protections TABOR guarantees. Plaintiffs therefore ask this Court to declare that Amendment 87 violates TABOR and to enjoin the collection of the taxes it imposes.

JURISDICTION AND VENUE

1. This Court has jurisdiction over Plaintiffs' claims for relief under the Colorado Constitution, article VI § 9(1), article X § 20(1) and C.R.S. § 1-11-213.

2. 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

3. State Senator Barbara Kirkmeyer, is a Weld County resident and taxpayer who is bringing this action in her personal capacity.

4. State Senator Byron Pelton, is a Logan County resident and taxpayer who is bringing this action in his personal capacity.

DEFENDANTS

5. Heidi Humphreys is the Executive Director of the Colorado Department of Revenue. Under H.B. 25-1296, it will collect the income tax.

6. 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 the actions and omissions of the Department of Revenue.

LEGAL & FACTUAL BACKGROUND

7. Plaintiffs seek enforcement of the Taxpayer's Bill of Rights ("TABOR"), Colo. Const. art. X, § 20 as applied to Amendment 87.

8. The overarching purpose of TABOR is to "restrain . . . the growth of government." Colo. Const. art. X, § 20(1). It does this by requiring voter approval for new taxes or tax increases and providing the election standards that accompany the voter approval process.

9. The preferred interpretation of TABOR shall "reasonably restrain most the growth of government." *Id, § 20(1)*.

10. Amendment 87 was on the November 3, 2026, ballot where it passed by a vote of 51.72 %.

Prohibited consolidation of a constitutional amendment with a tax rate increase

11. Amendment 87 asked voters to amend Colo. art. X § 20 (8)(a) in pertinent part, "Any income tax law change after July 1, 1992 shall also require all taxable net income to be taxed ~~at one rate, excluding refund tax credits or voter-approved tax credits,~~ with no added ~~tax or~~ surcharge."

12. Amendment 87 was codified as an amendment to C.R.S. § 39-22-104 and § 39-22-301, which increased the tax rates on individuals and corporations.

13. TABOR's election provisions prohibit consolidating voter approval of a statutory tax increase with any constitutional provision:

> Ballot issues shall be decided in a state general election, biennial local district election, or on the first Tuesday in November of odd-numbered years. Except for petitions, bonded debt, or charter or constitutional provisions, districts may consolidate ballot issues and voters may approve a delay of up to four years in voting on ballot issues. Colo. Const. art. X § 20(3).

14. "District" means the state or any local government, excluding enterprises. Id. § (2)(b).

15. "Ballot issue" means a non-recall petition or referred measure in an election. Id. § (2)(a).

16. Under the consolidation restriction in TABOR, the tax rate increase and constitutional amendment in Amendment 87 were required to be stand-alone measures.

17. This is a TABOR specific restriction for ballot issues in addition to the already existing single subject requirement for initiatives and legislation that exists in Colo. Const. Art V § 1.

18. Past statewide issues have abided by this restriction. In 2005, Referendum C and D were stand-alone because C asked voters to increase state spending by raising the TABOR cap and D asked voters to approve bonded debt. In that case even though the measures were so connected that D was contingent on C, TABOR required the debt question to be separated from any other ballot issue.

19. The ballot question for Referendum C was:

> Without raising taxes and in order to pay for education; health care; roads, bridges, and other strategic transportation projects; and retirement plans for firefighters and police officers, shall the state be authorized to retain and spend all state revenues in excess of the constitutional limitation on state fiscal year spending for the next five fiscal years beginning with the 2005-06 fiscal year, and to retain and spend an amount of state revenues in excess of such limitation for the 2010-11 fiscal year and for each succeeding fiscal year up to the excess state revenues cap, as defined by this measure?

20. The ballot question for Referendum D was:

> Without increasing any tax rates or imposing any new taxes, shall the state be authorized to address critical state needs by issuing notes in total amounts of up to $2,072,000,000 with a maximum total repayment cost of up to $3,225,000,000, and with maximum total annual principal and interest payments of $55,000,000 in state fiscal year 2005-06, $95,000,000 in state fiscal year 2006-07, and $125,000,000 in each subsequent state

fiscal year, of which a maximum of $25,000,000 per state fiscal year may be used to pay notes issued for nontransportation purposes, only if voters of the state approve referendum C at the November 2005 statewide election; shall note proceeds and earnings thereon constitute a voter-approved revenue change; shall the general assembly be authorized to make annual appropriations from the state general fund that are exempt from the statutory limitation on total annual state general fund appropriations and from other legally available funds to pay the principal, interest, and necessary costs of the notes; and shall the notes be issued in the following maximum amounts and for the following purposes:

- $1,700,000,000, with maximum annual principal and interest payments of $30,000,000 in state fiscal year 2005-06, $70,000,000 in state fiscal year 2006-07, and $100,000,000 in any subsequent fiscal year, to be used to repair and replace highways and bridges and accelerate the completion of strategic transportation projects included in the strategic transportation project investment programs of the department of transportation;
- $147,000,000 to be credited to the school capital construction expenditures reserve and used to repair, maintain, make safe, and replace deteriorating public school facilities;
- $50,000,000 to be credited to the capital construction fund and used to repair, maintain, make safe, and replace state university, college, and community college facilities; and
- $175,000,000 to be credited to the fire and police members' benefit fund to address shortfalls in state funding of pensions for police officers and firefighters?

21. Referendum C passed with 52% of the vote and Referendum D failed receiving 49% of the vote.

Defective TABOR notice

22. TABOR requires that at least 30 days before a ballot issue election, districts shall mail a notice to voters to increase taxes. The notice shall include only, in pertinent part:

> For proposed district tax or bonded debt increases, the estimated or actual total of district fiscal year spending for the current year and each of the past four years, and the overall percentage and dollar change. Colo. Const. Art X § 20(3)(b)(ii).

23. Statewide notice is sent in what is known as the "blue book" governed under Art. V § 1, (7.5) which provides, in pertinent part:

> (a) Before any election at which the voters of the entire state will vote on any initiated or referred constitutional amendment or legislation, the nonpartisan research staff of the general assembly shall prepare and make available to the public the following information in the form of a ballot information booklet:

(I) The text and title of each measure to be voted on;
(II) A fair and impartial analysis of each measure, which shall include a summary and the major arguments both for and against the measure, and which may include any other information that would assist understanding the purpose and effect of the measure. Any person may file written comments for consideration by the research staff during the preparation of such analysis.
(b) At least thirty days before the election, the research staff shall cause the ballot information booklet to be distributed to active registered voters statewide.
(c) If any measure to be voted on by the voters of the entire state includes matters arising under section 20 of article X of this constitution, the ballot information booklet shall include the information and the titled notice required by section 20 (3) (b) of article X, and the mailing of such information pursuant to section 20 (3) (b) of article X is not required.

24. "Ballot issue notice" means the notice which is required by section 20 (3)(b) of article X of the state constitution and comprises the material between the notice title and the conclusion of the summary of comments. C.R.S. § 1-1-104(2.5)

25. In 2026, Colorado spent roughly $4 million producing and mailing the Blue Book, the state's explanation of ballot measures, to Colorado households.

26. The 2022 Colorado Voter Knowledge Assessment, from the Colorado Office of Judicial Performance Evaluation, released a Research Report that found 91% of voters recalled seeing a copy of the Colorado Blue Book and that 82% used it to review some of their decisions, with 91% claiming it was helpful when making some of their decisions on voting. These numbers were an increase from 2020.

Estimated tax tables contained material errors

27. The 2026 Blue Book section on Amendment 87 (attached as Exhibit 1) included Table 4 and Table 5 under the TABOR notice. Table 5 provided an estimate and a maximum estimate of the increased revenue the state would collect under Amendment 87, as required by TABOR.

28. Additionally, the Blue Book included Table 3 (*See* as Exhibit 1), also part of the TABOR notice and required by C.R.S. S. 1-40-124.5(1)(b)(III). Table 3 divided taxpayers into income-based brackets, listed the current tax amount they owe annually, the new tax amount they would owe under Amendment 87, and the amount of tax savings or increase those numbers resulted in.

29. Legislative Council Services used the spreadsheet attached as Exhibit 2 to calculate the amounts for Table 3 and Table 5.

30. The state's calculations for Table 3 were made through a fundamental methodological error and are therefore false.

31. Amendment 87's graduated tax rates were applied to an income figure that was already apportioned to Colorado, rather than first calculating the graduated tax on the taxpayer's full Colorado taxable income and then applying the nonresident apportionment percentage.

32. These two methods produce materially different results (and amounts in the brackets) under progressive taxation.

33. The spreadsheet used Column H, Average CTI Subject to Tax (the effective Colorado-apportioned taxable-income equivalent) in its calculations where it should have used Column G, Average CTI (Colorado taxable income before residency apportionment).

34. This methodology is contrary to Colorado tax law and the published guidance from the Colorado Department of Revenue, which instructs that part-year residents' and nonresidents' taxes must first be calculated as if they were full-year residents, then the tax is apportioned.

35. Taxpayers include individuals and businesses.

36. The actual text of Amendment 87 applies the graduated rates to federal taxable income as modified by Colorado statutory adjustments, not to an already-apportioned income equivalent.

37. The methodology used to calculate Table 3 ran afoul of Colorado tax law, Department of Revenue calculation guidance, and the instructions in Amendment 87 itself. The use of already-apportioned income to determine progressive tax brackets conflicts with DOR's published order of operations.

38. The Colorado Department of Revenue states: "Part-year residents and nonresidents must first calculate Colorado tax as though they were full-year residents. The calculated tax is THEN apportioned, based on the percentage of their income that is subject to Colorado income tax." (Emphasis added.) https://tax.colorado.gov/income-tax-topics-part-year-residents-nonresidents This instruction is based on C.R.S. § 39-22-110 and Colorado Regulation 1 CCR 201-2, Rule 39-22-110.

39. The calculation used for Table 3 would make no mathematical difference for a flat tax, but failing to use the legally prescribed order of operations in calculating the difference between a flat and a progressive tax system resulted in a failure to inform voters of the actual difference in taxes under Amendment 87. This provided materially false information.

40. To illustrate the difference, a taxpayer with $700,000 in Colorado taxable income before apportionment, with 50% attributable to Colorado, is currently paying $15,400 in taxes under the 4.4% flat tax rate. Under Amendment 87, the graduated rate must be calculated before apportionment, resulting in a new tax payment of $18,237.50. This is an actual rate-schedule change of an increased $2,837.50.

41. While this error was applied to the taxes of nonresidents and part-time residents, it brought down the average taxes owed of all Colorado taxpayers in this bracket, leading full-time residents to believe they would receive a tax cut when Amendment 87 actually imposes an increase on them.

42. Table 3 would have led this taxpayer to believe that the average change in taxes for a payer in his bracket was actually a *savings* of $284. This is a difference of $2,935.00.

43. The Department of Revenue's 2023 Individual Statistics of Income, Table 1, which was used to calculate Table 3, showed that the average Colorado taxable income of the $500,000-$1,000,000 tax bracket was $631,083.

44. The correct calculation for this bracket, using Colorado's actual tax law, should have resulted in an approximate increase of $2,651, on average, not the $284 in savings voters were told about. ($2,651 is approximate because the spreadsheet does not disclose a few data points that could alter the amount somewhat.)

45. A correction to this bracket alone would result in approximately $131 million in *increased* taxes for Colorado residents and up to $148 million for the entire bracket, including part-time and non-residents paying taxes in Colorado, rather than the $15.9 million *reduction* that the spreadsheet shows.

46. The error led many taxpayers who will owe thousands of dollars of increased taxes owed under Amendment 87 to believe that they would save money and see their taxes reduced, instead.

47. This is a fundamental falsehood because an application of the Department of Revenue's instructions concerning tax calculation would have yielded a significantly different result and would have led to voters being truthfully informed that, on average, those in the $500,000-$1,000,000 bracket would pay a significant *increase* in taxes rather than seeing a several hundred dollar decrease.

48. This methodological error resulted in false information in nine of the 12 Blue Book Table 3 brackets, as they would change if the correct Column G were used instead of Column H. At least one bracket misstated the taxpayers' savings by as much as 100%.

49. The state's constitutionally required TABOR revenue estimate (in Table 5, required by Colorado Constitution, Art. X, § 20(3)(b)(iii)) was fundamentally false because it was significantly based on the same flawed tax calculations used to produces the false estimates in Table 3.

50. Projections based on an error-ridden and non-legal methodology were used to create the estimates in Table 5.

51. Table 5 stated that $1.972 billion was the central revenue forecast and that $2.7 billion was the maximum revenue forecast.

52. These estimates in Table 5 cannot be considered truthful or reliable since they were calculated in a manner contrary to Colorado's legally required method and carried the Table 3 methodology into future years to create the forecast.

53. The estimates are inaccurate by as much as $1.2 billion.

54. Table 5's estimates are constitutionally required fiscal information, but they are not valid because they were not calculated in the legally correct method. The method used reversed the steps required in the law to calculate taxes.

55. Table 5 did not substantially comply with the constitutional TABOR notice requirements.

56. The state did not make a good faith effort to comply, as Colorado's law and rules for tax calculations and assessment methods (listed above) were not followed.

57. The ballot title for Amendment 87 included a similar table to Table 3, though the income brackets and amounts were somewhat different.

58. The ballot title's table suffered from the same methodological error as Table 3 in the Blue Book and thus also provided false information to voters who relied on the Table to inform their vote, including informing some voters that they would save money when they would actually owe thousands more and including informing other voters that they would owe approximately one-third the amount in increased taxes than they will actually owe under Amendment 87 and the proper legal calculation.

Materially false statements of dedicated revenue

59. The blue book must contain a "fair and impartial analysis of each measure, which shall include a summary and the major arguments both for and against the measure, and which may include any other information that would assist understanding the purpose and effect of the measure."

60. It is not adequate to repeat or republish the initiative itself if the claims in the initiative are false. Rather than assist voters in understanding the effect of the measure, the blue book misled voters on the effect of the measure.

61. The promise of funding for education appears 12 times in the notice, the promise to fund childcare appears 5 times. While health care appears without specificity, Medicaid appears only once. The notice states as fact that money to local school districts will increase, "[T]he measure increases available state funding to school districts." *See* Exhibit 1.

As Defendant Polis admitted to the Legislative Joint Budget Committee the funds from Amendment 87 will result in, "[z]ero for education, zero for actually making people healthier, zero for early childhood," he said. "Just within three years, it all goes to Medicaid." Joint Budget Committee [Nov 12, 2026] audio, 0:20:30 - 0:20:40 (For the quote in the body, paragraph 59).

62. This was known to the Defendant, yet the TABOR notice materially misled the voters with promises of improved services in areas beyond Medicaid.

CLAIM FOR RELIEF (COLO. CONST. ART. X, § 20 "TABOR")

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

64. Amendment 87 consolidated an amendment to a constitutional provision with a tax rate increase.

65. The TABOR notice for Amendment 87 materially and substantially misled the electorate.

66. Amendment 87 violated Colo. Const. Art. X § 20(3).

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court:

A. Declare that Amendment 87 violates TABOR because it consolidated a ballot issue with a constitutional provision.

B. Declare that Amendment 87 violates TABOR because the notice to voters was materially and substantially inaccurate;

C. Enjoin the Department of Revenue from collecting any increased taxes under Amendment 87.

D. Award attorneys' fees and costs as allowed by law; and

E. Grant any other such relief that the Court finds just and equitable.

Respectfully submitted this 19th day of November, 2026

s/ Suzanne M. Taheri
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