

DISTRICT COURT, EL PASO COUNTY, STATE OF COLORADO
270 S. Tejon Street
Colorado Springs, Colorado 80901

Plaintiff: DOUGLAS BRUCE,

v.

Defendant: EL PASO COUNTY

Case No.

Courtroom:

Douglas Bruce
Box 26018
Colorado Springs CO 80936
(719) 550-0010

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND RELATED
REFUNDS AND DAMAGES**

Plaintiff files this complaint as follows:

GENERAL ALLEGATIONS

1. Plaintiff is a citizen, taxpayer, and property owner in the county. Defendant is the county government. Plaintiff has standing to sue defendant for constitutional violations.
2. Venue is proper in this district court. All events occurred in El Paso County, CO. The county seat is Colorado Springs, Colorado. This district court has jurisdiction over this complaint for violation of the state constitution by defendant.

CAUSE OF ACTION

3. In November 2012, defendant had on the election ballot a referred measure to increase the county sales tax rate 0.23%. The county prepared and mailed false statements about the first-year revenue the tax increase would raise. The issue passed.

4. The county is required to obey the state constitution, include Article X, section 20 of the state constitution, the Taxpayer's Bill of Rights (TABOR). Plaintiff wrote TABOR.

5. TABOR section (3)(b) says each government shall mail "All Registered Voters" in the jurisdiction an election notice with certain financial information. TABOR (3) (b) (iii) requires it include "For the first full fiscal year of each proposed district tax increase, district estimates of the maximum dollar amount of each increase and of district fiscal year spending without the increase." TABOR (2)(b) defines "district" to include "any local government." El Paso County is a local government and a district under TABOR.

6. In 2014, the actual revenue collected in 2013 by the 0.23% county sales tax increase was finalized. It was about \$875,000 more than the amount stated in the election notice. There is no good faith exception in TABOR; it requires districts to tell voters the truth.

7. Plaintiff spoke on the phone with county attorney Amy Folsom. He asked her what the county would do about its false election notice statement. She first claim a good faith exception, which plaintiff noted does not exist. She then admitted there was an excess in that approximate amount above the election notice. She deflected any other response. Plaintiff told her the county must refund the money and comply with TABOR (3)(c).

8. The first sentence of TABOR (3)(c) provides enforcement of government honesty in its tax increase ballot issues. Honesty is part of the Bill of Rights in TABOR. It says,

"Except by later voter approval, if a tax increase or fiscal year spending exceeds any estimate in (b)(iii) for the same fiscal year, the tax increase is thereafter reduced up to 100% in proportion to the combined dollar excess, and the combined excess revenue refunded in the next fiscal year."

9. The purpose of TABOR (3)(c) is to prevent government from "lowballing" the true cost of what it requests in order to lure voters to support it. Note that the 2012 ballot title also did not tell voters the truth, though TABOR (3)(c) requires it to list a "...full fiscal year dollar increase) ANNUALLY." Sad to say, that was also false.

10. The state legislature is also required to enforce the constitution. It did so recently by referring issue BB to the ballot issue. Issue AA had understated the fiscal year spending in its marijuana tax increase ballot language, also a violation of TABOR (3)(c). Findings by the legislature are given great weight in enforcing the constitution. The legislature found the falsely-low figure given to voters triggered liability under TABOR (3)(c). The legislature then sought “later voter approval” of the corrected figure at the next election.

11. In this case, the county knew it had violated the constitution, yet did nothing about it. Initially, the requirement was to lower the 0.23% tax by the fraction of \$875,000 over its requested tax rate increase, or about 0.015% or more, AND refund the excess \$875,000 “in the next fiscal year.” Since the county did not, the money became “Revenue collected, kept, or spent illegally” under TABOR (1). That revenue “since four full fiscal years before a suit is filed shall be refunded with 10% annual simple interest from the initial conduct.” 2017 is not over, so four full fiscal years before 2017 is 2013.

12. That means the county owes a refund to citizens of \$875,000 plus 10% interest since 2013, AND \$875,000 plus 10% interest since 2014, AND \$875,000 plus 10% interest since 2015, AND \$875,000 plus 10% interest since 2016, AND \$875,000 plus 10% interest since 2017. This case will continue into 2018, so the same refund applies for that year until the money is fully refunded. Each year begins on January 1.

13. Plaintiff is using here the \$875,000 rounded figure the county stated. A court-ordered refund should use in each year actual and exact 2013 illegal revenue from the 0.23% sales tax increase. County understatement of fiscal year spending would also be a violation.

14. Defendant is also required to lower its 0.23% sales tax rate by the amount needed to comply with TABOR. That lower figure from 2013 on, with 10% interest, is also required.

WHEREFORE, plaintiff requests this court

1. Order defendant to pay taxpayers the total sum in paragraph 13. It is not practical to refund a sales tax by a sales tax. See TABOR (1): “Refunds need not be proportional when prior payments are impractical to identify or return.” The county recently chose a real property tax refund. Plaintiff has no objection to such a method based on mill levy.

2. To the extent defendant understated in the 2012 election notice its fiscal year spending for 2013, a similar computation and added refund from 2013 until paid is also required.
3. Order defendant reduce within 30 days its 0.23% tax rate to the rate required by TABOR.
4. Pay plaintiff's filing fee, service of process, and costs, and any attorney fees actually incurred, per TABOR (1). Note these charges are not reciprocal.
5. For other such relief as this court deems proper.

I certify the foregoing complaint is true and correct to the best of my knowledge and belief.

Respectfully submitted,

Douglas Bruce
Box 26018
Colorado Springs CO 80936
(719) 550-0010
taxcutter@msn.com

CERTIFICATE OF SERVICE

I certify that this complaint, and the summons issued by the court clerk, will be served on defendant after filing in a legal manner, determined by whether defendant accepts service by hand delivery by plaintiff to avoid costs of service by a third party.