Docket No. 12-1445

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

ANDY KERR, Colorado State Representative, *et al.*,

Plaintiffs-Respondents,

v.

JOHN HICKENLOOPER, Governor of Colorado, in his Official Capacity,

Defendant-Petitioner.

Appeal From The United States District Court for the District of Colorado
The Honorable William J. Martinez, U.S. District Judge
Case No. 11-cv-01350-WJM-BNB

BRIEF OF AMICUS CURIAE COLORADO PARENT TEACHER ASSOCIATION SUPPORTING THE PLAINTIFFS-RESPONDENTS AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to FRAP 26.1 and 29(c), amicus curiae Colorado Parent Teacher Association (Colorado PTA), a 501(c)(3) non-profit corporation incorporated in the State of Colorado, makes the following disclosure:

1. Colorado PTA is not a publicly held corporation or other publicly held entity.

2. Colorado PTA has no parent corporations.

3. No publicly held corporation or other publicly held entity owns 10% or more of Colorado PTA.

4. Colorado PTA is not a trade association.

DATE: April 17, 2013

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STATEMENT OF RELATED CASES

There are no other prior or related appeals.

STATEMENT OF INTEREST OF AMICUS CURIAE

The Colorado Parent Teacher Association ("PTA") is a nonprofit, non-partisan organization created to support and speak on behalf of children and youth in the schools, in the community, and before governmental bodies and other organizations that make decisions affecting children. The Colorado PTA has an interest in ensuring that Colorado's schools are adequately funded, and is gravely concerned that the Colorado Taxpayer's Bill of Rights, or TABOR, substantially interferes with K-12 educational funding. The state of Colorado has one of the lowest national rates of per-pupil funding for its students, which has resulted in part from TABOR's taxing and spending limits. Recently, largely due to TABOR, a number of Colorado school districts have been forced to adopt four-day school weeks, and a Colorado trial court has ruled that the state maintains an unconstitutionally irrational, arbitrary and under-funded school system (*Lobato v. State*, District Court, City & County of Denver, No. 05 CV 4794). The Colorado PTA seeks to provide the Court with a perspective on TABOR compared with (1) other Colorado initiatives and (2) other states' less restrictive restraints on legislative taxing and spending powers.

All parties have consented to the filing of this brief. Fed. R. App. P. 29(a).

RULE 29(c)(5) STATEMENT

No party's counsel authored this brief in whole or in part. No party, nor any party's counsel, contributed any money that was intended to fund preparing or submitting this brief. No person—other than amicus curiae or its counsel—contributed money that was intended to fund preparing or submitting this brief.

SUMMARY OF ARGUMENT

The Governor and several amici curiae distort Plaintiffs' Substituted Complaint ("Complaint") as launching a wholesale attack on Colorado's initiative process. As the District Court correctly determined, it does not. Rather, Plaintiffs have brought a narrow challenge to a single voter-approved initiative, the Colorado Taxpayers Bill of Rights, Colo. Const. art. X, § 20 ("TABOR"), based on Article IV, §Section 4, of the United States Constitution ("the Guarantee Clause") and the Colorado Enabling Act. Plaintiffs challenge TABOR—and TABOR alone—because its restrictions on the General Assembly's power to raise and appropriate revenue fundamentally compromise and undermine the state's Republican Form of Government.

Plaintiffs deserve their day in court. Federal and state courts readily distinguish between broad and narrow Guarantee Clause challenges. These courts have had no problem cabining wholesale attacks on initiative lawmaking, which are attacks "on the state as state" and generally precluded under *Pacific States*

Telephone and Telegraph Co. v. Oregon, 223 U.S. 118, 150 (1912). Plaintiffs' Guarantee Clause claim makes no such indiscriminate attack. Nor do Plaintiffs challenge all restrictions on legislative taxing or spending powers. Overwhelming federal and state authority compels the conclusion that Plaintiffs' narrow challenge to TABOR is justiciable.

Amici National Federation of Independent Business ("NFIB") *et al.* and Independence Institute *et al.* argue that TABOR is nothing but a run-of-the-mill constitutional restraint on the Colorado General Assembly's fiscal powers. They further contend that a decision by this Court upholding Plaintiffs' claim would "blow holes" through nearly every state constitution. Amici are mistaken: TABOR is one of a kind. No other state constitutional provision restricts a legislature's taxing and spending powers so severely and permanently as TABOR. TABOR is the only state constitutional provision that effectively gives voters exclusive power to raise taxes and increase governmental spending limits. TABOR also stands alone in its requirement for automatic taxpayer refunds for excess government revenue above the spending limits.

Aside from being factually incorrect, amici's arguments are simply irrelevant in the context of a motion to dismiss on jurisdictional grounds. This Court is not deciding plaintiffs' Guarantee Clause claim on the merits; rather, it is

simply deciding whether the District Court properly found that it has jurisdiction over the claim, which it did.

ARGUMENT

I. Plaintiffs Challenge TABOR, Not the State of Colorado's Well-Established Initiative Power.

A. Plaintiffs' Complaint Is Narrowly Drawn.

The Governor and several amici conveniently urge the Court to read Plaintiffs' Complaint as launching a wholesale attack on Colorado's initiative power. *See, e.g.*, Brief for *Amici* Independence Institute and Cato Institute ("Independence Inst. Br.") at 7-8 (arguing that the U.S. Supreme Court has conclusively determined that the initiative power is consistent with the republican form). Indeed, this would be an easy case had Plaintiffs made such a sweeping challenge. This Court could simply cite *Pacific States*, which deems such wholesale challenges to a state's initiative power a non-justiciable political question, and direct the District Court to dismiss. No such claim is presented here.

The District Court correctly found that *Pacific States* does not apply to Plaintiffs' narrowly drawn complaint. Plaintiffs challenge TABOR and TABOR alone. *See* Complaint, Prayers for Relief at 20-21 (seeking invalidation of "the TABOR AMENDMENT"). The Complaint explains that the General Assembly amended Article V, Section 1(1) of the Colorado Constitution in 1910 to provide for the initiative and referendum power. *Id.*, ¶ 68 (citing Laws 1910 Ex. Sess., p.

11). But Plaintiffs do not remotely suggest that this lawsuit seeks to invalidate Colorado's well-established initiative or referendum power. Indeed, prior to the voters' approval of TABOR on November 3, 1992, the Complaint alleges that Colorado—despite its established and frequent use of the initiative power—fully complied with its constitutional obligation to maintain a Republican Form of Government. *Id.*, ¶¶ 73-74.

Plaintiffs' action thus leaves untouched hundreds of statewide and local initiatives adopted by Colorado voters since 1910.[1] With one notable exception,[2] no other statewide initiative even comes close to TABOR's complete revocation of a core legislative power. The subject matter of approved Colorado initiatives runs the gamut—ranging from commercial regulation,[3] to criminal matters,[4] to social

[1] Colorado voters have adopted 78 statewide initiatives since the initiative power was introduced in 1910. *See* Colorado Legislative Council, History of Election Results for Ballot Issues at http://www.leg.state.co.us/lcs/ballothistory.nsf/ (last visited April 8, 2013). Colorado voters have adopted countless additional local initiatives. None of these measures is at issue here.

[2] *See Morrissey v. State*, 951 P.2d 911 (Colo. 1998). In *Morrissey*, the Colorado Supreme Court struck down Amendment 12, a voter initiative regarding legislative term limits, for violating Article V of the United States Constitution. While the state's high court professed not to rest its holding on the Guarantee Clause, it explained that Amendment 12 "abrogated that representative form of government because it takes away from elected officials the right to exercise their own judgment and vote the best interests of their constituencies . . ." *Id.* at 917. To the extent Plaintiffs' Guarantee Clause challenge would sweep up initiatives like Amendment 12, no substantive change in the law would result.

[3] *See, e.g.*, Amendment 50 adopted in 2008, Colo. Const. art. XVIII, § 9 (allowing gambling in specified cities); Amendment 35 adopted in 2004, Colo. Const. art. X,

issues.[5] In drafting and approving these constitutional amendments, voters have stood in the shoes of the General Assembly for a specific purpose but have not revoked any of its core legislative power. For example, when Colorado voters approved Amendment 64 in 2012, Colo. Const. art XVIII, § 16, they arguably removed the General Assembly's specific power to criminalize marijuana possession. *Id.* § 16(4) (defining lawful marijuana operations). But unlike TABOR's complete revocation of legislative taxing and spending powers, Colo Const. art. X, § 20(4) and (7), Amendment 64 does not take away the General Assembly's power to enact criminal laws.

Colorado voters have also used their initiative power to adopt legislative reform and reapportionment measures.[6] Plaintiffs' narrow challenge to TABOR steers clear of these measures as well. By enacting these "reform" measures,

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§ 21 (increasing tobacco taxes for health-related purposes); Amendment 8 adopted in 1992, Colo. Const. art. XXVII (dedicating lottery revenues to state parks).

[4] *See, e.g.*, Amendment 64 adopted in 2012, Colo. Const. art XVIII, § 16 (legalizing and regulating the possession and sale of marijuana); Amendment 10 adopted in 1992, Colo. Rev. Stat. § 33-4-101.3 (prohibiting black bear hunting except during specified time periods and subjecting violators to misdemeanor penalties).

[5] *See, e.g.*, Amendment 43 adopted in 2006, Colo. Const. art. II, § 31 (defining marriage as between a man and a woman).

[6] *See, e.g.*, Amendment 65 adopted in 2012, Colo. Rev. Stat. § 1-45-103.7(9) (advisory measure regarding campaign contributions); Amendment 8 adopted in 1988, Colo. Const. art. V, § 20 (requiring hearings for all bills referred to committee, so-called "GAVEL amendment"); Issue 9 adopted in 1974, Colo. Const. art. V, §§ 46, 47 (reapportioning legislative districts).

Colorado voters exercised their right to restructure the inner workings of government, but have not taken away any core powers from the General Assembly. Indeed, several commentators have argued that the initiative power is most appropriately used—consistent with the Republican Form of Government—to enact governmental reforms since elected officials often lack incentives to enact such reforms themselves.[7]

B. Plaintiffs' Complaint Is Perfectly Clear.

In an apparent attempt to deem Plaintiffs' Complaint non-justiciable on political question grounds, amici Independence Institute professes confusion over its allegations. *See*, *e.g.*, Independence Inst. Br. at 3-5. The Court should disregard amici's manufactured confusion because the Complaint clearly states the basis for its Guarantee Clause and Enabling Act claims. Indeed, the Complaint walks through the allegedly offending sections of TABOR, which include: its limitations on the allowable information in ballot materials (*id*. ¶ 76 [citing paragraph 3 of TABOR]; restrictions on legislative taxing, borrowing, and spending powers (*id*. ¶ 77-78 [citing paragraphs 4 and 7 of TABOR]); and

[7] *See*, *e.g.*, Hans A. Linde, *Practicing Theory: The Forgotten Law of Initiative Lawmaking*, 45 UCLA L. Rev. 1735, 1755 (1988) (distinguishing fiscal initiatives that preempt representative government from more preferable initiatives that reform state government); Catherine C. Engberg, Note, *Taking the Initiative: May Congress Reform State Initiative Lawmaking to Guarantee a Republican Form of Government*, 54 Stan. L. Rev. 569, 594-95 (2001) (arguing that legislative reform initiatives are consistent with republican governance).

prohibitions on new or increased property and income taxes (*id*. ¶ 80 [citing paragraph 8 of TABOR]).

Amici's contrived confusion stems from its cramped reading of Plaintiffs' complaint. Amici complain, for example, that the Complaint references "tax and appropriate" in one paragraph versus "raise and appropriate" in another. Independence Inst. Br. at 4. Amici appear to have forgotten the rule that "[a] pleading should be read as a whole." *Zokari v. Gates*, 561 F.3d 1076, 1085 (10th Cir. 2009). Here, taken as a whole, Plaintiffs clearly rest their Guarantee Clause and Enabling Act claims on the "totality of these TABOR provisions" (Complaint ¶ 81) and request its invalidation on those grounds (*id.*, Prayers for Relief).

The brief for amici Independence Institute *et al*. labels Plaintiffs' lawsuit "strange" because it challenges all of TABOR, including its taxing, spending and borrowing restrictions. Amici's argument is both premature and misguided because the District Court has not considered the merits of Plaintiff's claim. Once Plaintiffs are afforded their day in court, the District Court may fashion appropriate relief. Indeed, the District Court may determine that some portions of TABOR withstand Plaintiffs' constitutional challenge pursuant to TABOR's severability clause. *See* Colo. Const. art X, § 20(1).

C. Federal and State Courts Readily Find Narrow Guarantee Clause Challenges Justiciable.

Pacific States does not prevent Plaintiffs from presenting their case on the merits; the case is properly cabined as applying only to broad challenges to a state's initiative power. In *Pacific States*, the plaintiff's Guarantee Clause claim challenged the State of Oregon's entire system of direct democracy and thus challenged the "state as a state." *Pacific States*, 223 U.S. at 150. Justice White deemed such wholesale attack to be non-justiciable. *Id.* at 151.[8]

In contrast, numerous federal courts have properly considered Guarantee Clause challenges on the merits where the lawsuit challenges a particular initiative or legislative or judicial act. The First Circuit, for example, soundly rejected the notion that Guarantee Clause cases are always non-justiciable, finding instead that

[8] The Governor contends that the petitioner in *Pacific States* actually brought a narrower challenge, and specifically argued that a state's legislature must retain taxation authority in order to maintain a Republican Form of Government. Governor's Opening Brief ("Governor's Br.") at 43 and Addendum C. The Governor's reference to the *Pacific States* briefing fails to advance his point. As a threshold matter, the four selected pages from the *Pacific States* briefing hardly demonstrate that the plaintiff's challenge was narrower than the Supreme Court believed it to be. In fact, one selected page—referencing potential due process and equal protection violations—suggests just the opposite. Addendum C at C-6. But even if the *Pacific States* plaintiffs did in fact raise a narrow challenge to the "tax as tax," alongside their broader challenge to the "state as a state," at best the excerpted briefing suggests that the Supreme Court could have considered the matter on different grounds.

justiciability depends on the merits of the underlying claim. *See Largess v. Supreme Judicial Court*, 373 F.3d 219, 225 (1st Cir. 2004). The *Largess* court proceeded to consider a Guarantee Clause challenge to the state court's remedy in a same sex marriage case where it was alleged that the judicial remedy intruded on the legislative function. *Id.* at 225-26.

Likewise, the Seventh and Third Circuits and, most recently, a district court in the Fourth Circuit, have all refused to recite the political question doctrine as an excuse to walk away from narrow Guarantee Clause challenges. *See Risser v. Thompson*, 930 F.2d 549, 552-53 (7th Cir. 1991) (Posner, J.) (considering the merits of Guarantee Clause challenge to partial veto provision of Wisconsin's state constitution); *Bauers v. Heisel*, 361 F.2d 581, 588-89 (3d. Cir. 1966) (concluding that Civil Rights Act does not abrogate judicial or prosecutorial immunity because such result would violate the Guarantee Clause); *Corr v. Metro. Wash. Airports Auth.*, 800 F. Supp. 2d 743, 757-58 (E.D. Va. 2011) (considering the merits of Guarantee Clause challenge to the taxing powers of an unelected airport authority).

State courts have had even greater opportunity to consider Guarantee Clause challenges to specific ballot measures—and they have not shied away from ruling on the merits. For example, the Kansas Supreme Court, in *VanSickle v. Shanahan*, 511 P.2d 223 (Kan. 1973), considered the merits of a Guarantee Clause challenge to a voter-approved constitutional amendment that vested certain legislative power

in the governor. The *VanSickle* court found the case justiciable, distinguishing *Pacific States* and its predecessor, *Luther v. Borden*, 48 U.S. 1 (1849), because the *VanSickle* plaintiffs—like Plaintiffs here—were not challenging "the state government as a political entity." 511 P.2d at 233.

State courts have also considered the merits of Guarantee Clause challenges to initiatives, like TABOR, that place restraints on the fiscal powers of state legislatures. *See, e.g.*, *In re Initiative Petition No. 348, State Question 640*, 820 P.2d 772, 779-81 (Okla. 1991) (considering the merits of a Guarantee Clause challenge to statewide initiative that required voter approval of revenue-raising bills); *Amador Valley Joint Union High Sch. Dist. v. State Board of Equalization*, 583 P.2d 1281, 1288-89 (Cal. 1978) (considering whether Proposition 13's requirement that local special taxes be approved by a two-thirds majority of qualified electors violates the Republican Form of Government).[9]

[9] California courts, for example, routinely consider whether ballot measures—particularly fiscal ones—impermissibly interfere with "essential government functions" of state and local legislative bodies. *See, e.g.*, *Brosnahan v. Brown*, 651 P.2d 274, 287 (Cal. 1982) (considering whether the plea bargaining restrictions in voter-approved statewide initiative, the "Victims' Bill of Rights," would impermissibly interfere with essential governmental functions); *Geiger v. Board of Supervisors*, 313 P.2d 545, 549 (Cal. 1957) (holding that ordinance levying a sales and use tax was not subject to referendum because application of the referendum process would seriously impair "essential governmental functions")*; Citizens for Jobs and the Economy v. County of Orange*, 115 Cal.Rptr.2d 90, 102-06 (2002) (striking down county initiative that placed spending restrictions on board of supervisors because it impermissibly intruded into the board's financial affairs). Several commentators have argued that the Guarantee Clause should be interpreted

In short, Plaintiffs deserve their day in court on their narrow claim. Federal and state authority compels the conclusion that Plaintiffs' Guarantee Clause challenge to TABOR is justiciable.

II. TABOR Imposes Uniquely Stringent Constitutional Restrictions on Legislative Taxing and Spending Powers.

Amici NFIB *et al.* raise the spectre of a flood of litigation challenging state constitutional provisions relating to governmental taxing, spending, and borrowing powers if the District Court is allowed to hear Plaintiffs' claims. NFIB Br. at 5-10. Those fears are unfounded. TABOR stands alone in its restrictions on legislative authority and its resulting conflicts with republican governance. No other state constitutional provision limits legislative taxing and spending powers as severely and permanently as TABOR.[10]

TABOR is the only state constitutional provision that sets an absolute limit on state spending powers that both cannot be overridden by the state legislature and also requires an automatic refund of any excess government revenue above the

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to prohibit impairment of essential government functions pursuant to this line of cases. *See* James M Fischer, *Ballot Propositions: The Challenge of Direct Democracy to State Constitutional Jurisprudence*, 11 Hastings Const. L.Q. 43, 65 (1983); William Leinen, Note, *Preserving Republican Governance: An Essential Government Functions Exception to Direct Democratic Measures*, 52 William and Mary L. Rev. 997, 1020-23 (2010).

[10] Colorado PTA does not address in its brief state statutory provisions restricting governmental spending, taxing, or borrowing powers because those provisions ordinarily can be amended by the state legislature without voter approval.

spending limit. These provisions mean that TABOR is not just a spending limitation, but that it also effectively imposes a limitation on state taxation powers in Colorado that can only be altered by the voters. TABOR cannot be amended by the General Assembly or repealed by the voters.[11] The sum total of these provisions is that TABOR imposes the most restrictive constraints among all states on legislative authority to set spending and taxation levels.

A. TABOR's Spending Restrictions Are Unique Among All State Constitutions.

TABOR imposes a stringent limitation on state spending: Above a set baseline, spending may increase only by the sum of population increase and inflation. Colo. Const. art. X, § 20(7).[12] Any government revenues above this limitation must be refunded to taxpayers. *Id.* at § 20(7)(d) ("If revenue from sources not excluded from fiscal year spending exceeds these limits in dollars for that fiscal year, the excess shall be refunded in the next fiscal year unless voters approve a revenue change as an offset."). The spending limit can only be altered by a majority of the voters at an election, not by the General Assembly. *Id.*

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[11] As explained in Plaintiffs-Respondents' brief, TABOR cannot be repealed by the voters since, after its adoption, the Colorado Constitution was amended to prohibit initiatives—like TABOR—that deal with more than one subject. Plaintiffs-Respondents' Response to Governor's Opening Brief at 21.

[12] The baseline for this limit was adjusted by Colorado voters via a referendum in 2005. *See* Colo. Rev. Stat. § 24-77-103.6. TABOR also prohibits any weakening to other, pre-existing limits on government "revenue, spending, and debt" without voter approval. Colo. Const. art. X, § 20(1).

NFIB fails to justify its "concern" that other states' spending restraints would also be subject to constitutional challenge should Plaintiffs' case be heard on the merits. *See* NFIB Br. at 8. Plaintiffs do not broadly challenge all spending restraints; they challenge TABOR alone because it, among other things, completely displaces the core legislative spending power. Complaint ¶¶ 75, 78, 81. Only two other states constitutions set spending limits without a provision for a legislative override: Alaska and Oklahoma. *See* Alaska Const. art. IX, § 16 (restricting spending increases to population growth and inflation); Okla. Const. art. X, § 23 para. 1 (restricting spending increases to 12% plus inflation above the prior year's appropriations). While several other states do impose significant limitations on spending growth, these limitations do not similarly conflict with a Republican Form of Government. Indeed, all of those states allow for the legislature to exceed those limits in at least limited circumstances, such as with a declaration of emergency and/or a supermajority vote by the legislature.[13]

[13] *See, e.g.*, Ariz. Const. art. IX, § 17 (cap on state expenditures is set relative to overall state personal income; cap can be overridden by 2/3 legislative vote); La. Const. art. 7, § 10 (spending cap is based on increase of state personal income; cap can be overridden by 2/3 legislative vote); Oreg. Const. art. IX, § 14 (revenue over governor's estimate used for education spending or refunded to taxpayers; cap can be overridden by 2/3 legislative vote); S.C. Const. art. X, § 7 (spending can not increase above prior year's appropriations faster than state's economic growth rate; cap can be overridden by 2/3 legislative vote). Some states set caps on appropriations relative to predicted or actual revenue for the year. While these caps often cannot be overridden by the legislature, they are in fact more similar to balanced budget provisions. Because there is no cap on the total revenues that can

Moreover, even Alaska's and Oklahoma's spending restrictions are less restrictive than TABOR. TABOR requires the refunding of revenue over the spending limit to taxpayers. Colo. Const. art. X, § 20(7)(d). Under Alaska's provisions, revenue over the spending restriction is to be invested and saved for future fiscal years, Alaska Const. art. IX, § 16, while Oklahoma's constitutional provision imposes no mandate on how surplus revenue is to be used, Okla. Const. art. X, § 23. Both Alaska's and Oklahoma's provisions therefore at least allow flexibility for states to save surplus revenues for future years, unlike TABOR.

B. TABOR Effectively Imposes a Unique Voter Approval Requirement for Increasing Colorado Taxes.

As the Governor's opening brief concedes, TABOR also effectively imposes a voter approval requirement on increases of government taxes in Colorado. *See* Governor's Br. at 9 ("TABOR prohibits the Colorado General Assembly and any local government from increasing tax rates, imposing new taxes, or issuing new public debt without voter approval."); *see also* Amicus Brief of Sen. Kevin Lundberg *et al.* at 4-5 (stating that TABOR "simply requires voter approval before implementation of" tax increases).

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be accumulated, spending can increase so long as revenues increase as well. *See, e.g.*, Del. Const. art. VIII, § 6 (appropriations cannot exceed 98% of estimated general fund revenue for the fiscal year; cap can be increased to 100% by 3/5 vote of legislature); R.I. Const. art. IX, § 16 (appropriations cannot exceed 98% of estimated revenue for fiscal year).

NFIB *et al.* suggests that TABOR's displacement of legislative taxing power is nothing more than a variation of other states' taxing restraints. NFIB Br. at 6-7.[14] Not so. Colorado is joined by just two other states (Missouri and Michigan) that require voter approval for all new taxes and tax increases. And compared to Missouri and Michigan, only Colorado's TABOR provides the General Assembly with no effective authority to enact taxes to fulfill its legislative obligations.

TABOR does authorize the General Assembly or a local legislature to temporarily increase taxes by a two-thirds supermajority, but only in "emergencies." Colo. Const. art. X, § 20(6). However, this authorization is so limited that, unsurprisingly, the General Assembly has *never* adopted an emergency tax increase pursuant to TABOR. First, it can only operate in an "emergency" situation, *id.*, which is defined by TABOR to exclude revenue shortfalls or economic conditions. *Id.* at § 20(2)(c) ("'Emergency' excludes

[14] NFIB *et al.* correctly notes that other states place restrictions on legislative taxing authority—such as legislative supermajority requirements—but they fail to point to any other state (besides Colorado) that wholly displaces legislative taxing authority. States with supermajority requirements for tax increases include Arizona, Ariz. Const. art. IX, § 22 (two-thirds); California, Calif. Const. art. 13A, § 3 (two-thirds); Mississippi, Miss. Const. art. 4, § 70 (three-fifths); Oklahoma, Okla. Const. art. V, § 33 (three-fourths); and South Dakota, S.D. Const. art. XI, §§ 13-14 (two-thirds). Other states require a supermajority for revenue increases to exceed a certain baseline. *See* Fla. Const. art. VII, § 1(e) (two-thirds legislative vote required in order for state revenue to increase faster than state personal income).

economic conditions, revenue shortfalls, or district salary or fringe benefit increases."). Missouri and Michigan also provide for legislative approval of temporary tax increases in emergencies, but their definitions of emergency are much broader. *See* Mich. Const. art. IX, §§ 26-27 (state revenue increases may not exceed growth in state personal income; cap can be waived by voter approval, or by an emergency increase of taxes through gubernatorial declaration of an emergency and 2/3 legislative vote; provision provides no definition of emergency); Mo. Const. art. X, §§ 18, 18a, 19 (similar provisions, with an additional cap on tax increases in any given year without voter approval or emergency declaration and 2/3 legislative vote).

Second, any legislative increase of taxes does not alter the spending limits under TABOR. *See* Colo. Const. art. X, § 20(6) ("Emergency tax revenue is excluded for purposes of . . . (7)," the provision setting spending limits.) As a result, if the revenue from a legislative tax increase exceeds the spending limits, it must nonetheless be refunded to taxpayers under TABOR's rebate provisions. *See id.* § 20(7)(d). And, as noted above, those spending limits cannot be altered by the General Assembly.

Third, any legislative increase of taxes is only effective until the next election, when it must be approved by voters, or repealed. *See id.* § 20(6)(c) ("A tax not approved on the next election due 60 days or more after the declaration

shall end with that election month."). Because TABOR requires any votes on tax increases to occur at least once a year, *see id.* § 20(3)(a), this imposes a maximum fourteen-month duration on any emergency tax increase. This provision is almost unique among state constitutions as well.[15]

In sum, no other state places such stringent limits on legislative approval of tax increases. In practice, moreover, the combination of these restrictions means that TABOR effectively imposes a requirement of voter approval for any tax increase at the state or local level. No other state completely prevents a legislature from increasing taxes (whether by majority or supermajority).

CONCLUSION

For the reasons set forth above, this Court should dismiss this interlocutory appeal and remand the case to the District Court for further proceedings on the merits.

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[15] Only Michigan and Missouri also impose time limits on legislatively enacted exemptions to constitutional tax restrictions, in both cases one fiscal year. *See* Mich. Const. art. IX, § 27; Mo. Const. art. X, § 19.

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)
Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains **4,431** words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007 in 14 point font Times New Roman style.

DATE: April 17, 2013

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CERTIFICATE OF DIGITAL SUBMISSION AND PRIVACY REDACTION

I hereby certify that the foregoing **Brief of Amicus Curiae Colorado Parents Teacher Association**, as submitted in digital form via the Court's ECF system, is an exact copy of the written document filed with the Clerk and has been scanned for viruses with ESET Endpoint Antivirus, Version Number 5.0.2126.0, Last Update 4/11/2013, 12:19:04 PM, virus signature database version 8219 (20130411), and according to the program, is free of viruses.

In addition, I certify all required privacy redactions have been made pursuant to 10th Circ. R. 25.5.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals Tenth Circuit by using the court's CM/ECF system on April 17, 2013.

Participants in the case who are registered CM/ECF users will be served by the court's CM/ECF system.

I further certify that the below-listed participants in the case are not registered CM/ECF users. On April 17, 2013 I served the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

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