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DENVER DISTRICT COURT  
1437 BANNOCK STREET DENVER  
COLORADO 80202

PLAINTIFFS: DENNIS GALLAGHER; DICKEY  
LEE HULLINGHORST; ROBERT  
HULLINGHORST; and RON STEWART,

v.

DEFENDANTS: STATE OF COLORADO; NATALIE  
MULLIS IN HER CAPACITY AS DIRECTOR,  
COLORADO LEGISLATIVE COUNCIL STAFF,  
COLORADO GENERAL ASSEMBLY; COLORADO  
LEGISLATIVE COUNCIL, COLORADO GENERAL  
ASSEMBLY

▲ COURT USE ONLY ▲

Case No. 20CV396

Division:

VERIFIED COMPLAINT AND MOTION FOR EMERGENCY RESTRAINING ORDER

1. This Complaint and Motion arises out of Defendants' violations of the Colorado Constitution, Article V, § 1 (7.5), which requires the nonpartisan research staff of the General Assembly's Legislative Council to provide a fair and impartial analysis of each initiative and constitutional amendment for publication in the Ballot Information Booklet (the "Blue Book").
2. The Colorado constitution requires the legislature to publish, before any election, a Blue Book which shall include the text and title of each measure, a summary, and the major arguments both for and against the measure. Colo. Const. Art. V, Section 1 (7.5).
3. Per Art. V, Section 1 (7.5)(a), the "the nonpartisan research staff of the general assembly shall prepare and make available to the public ... [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.”

4. This case is about the failure of the joint Legislative Council committee’s failure to allow the nonpartisan research staff to prepare a fair and impartial analysis of referred Constitutional Amendment B, placed on the ballot for 2020.
5. Plaintiffs request an order requiring the official analysis on Amendment B to be “fair and impartial” and to include “the major arguments both for and against the measure” as required by the Colorado Constitution.

#### **PARTIES**

6. Plaintiff Dennis Gallagher is a registered elector who resides in the City and County of Denver.
7. Plaintiff Dickey Lee Hullinghorst is a registered elector who resides in Boulder County Colorado.
8. Plaintiff Ron Stewart is a registered elector who resides in Boulder County Colorado
9. Plaintiff Bob Hullinghorst is a registered elector who resides in Boulder County Colorado
10. Defendants State of Colorado, Colorado Legislative Council and the Joint Legislative Council Committee are all entities of or are in fact the state government with its capitol in the City and County of Denver.
11. Defendant Natalie Mullis, sued in her official capacity as Director, Colorado Legislative Council, is an employee of the Colorado General Assembly charged with the official responsibilities pursuant to Colorado Constitution Article V § 1 (7.5) and § 1-40-124.5 to distribute a fair and impartial analysis of initiatives and proposed constitutional

amendments to voters statewide. Her business address is located in the City and County of Denver.

### **JURISDICTION & STANDING**

12. Pursuant to C.R.S. § 1-1-113(1), Plaintiffs, as eligible electors of Colorado, have standing to challenge wrongful acts of government election officials charged with a duty or function under this code who has committed or is about to commit a breach or neglect of duty or other wrongful act.
13. Pursuant to the Colorado Constitution, Art. VI, § 9, this Court has jurisdiction of this case. C.R.S. § 1-1-113 provides that a challenge to wrongful acts of government election officials may be brought in district court.
14. Pursuant to C.R.C.P. 98, venue is proper in this Court because all Defendants reside in the City and County of Denver.

### **ALLEGATIONS**

15. On June 23, 2020, the Colorado General Assembly, through Senate Concurrent Resolution 20-001, referred to the registered electors of the state of Colorado, an amendment to the state constitution to repeal certain tax assessment requirements.
16. Through this Resolution, the General Assembly seeks to repeal certain language of section 3 of article X of the Colorado constitution, which sets the target assessment rate for nonresidential property at 55% and sets the percentage aggregate statewide assessed value attributable to residential property at 45%. This division of property tax assessment is commonly known as the Gallagher Amendment. The Resolution also repeals the 29% nonresidential property tax assessment rate.

17. The effect of the Gallagher Amendment is to maintain a steady split between the taxable value of residential property and that of commercial property. Under this system, commercial property values are set at 55% of total state property value and residential property values are set at 45%. While this has a bearing on property taxes, many commercial properties receive special treatment under exemptions not available to homeowners, thereby reducing their assessed property taxes by up to 75%.
18. Over the past two months, the Legislative Council has held three processes to garner input from almost 100 registered interested parties, culminating in a September 3, 2020 hearing which set the final language for inclusion in the Blue Book.
19. The September 3, 2020 hearing was also set just seven (7) days prior to the deadline to submit language to the printer to ensure that the Blue Book reaches voters in time.
20. The first two processes had substantially set the language for the title and analysis of each initiative and constitutional amendment to be included on the November 3, 2020 ballot and in the 2020 Blue Book to be distributed to all eligible electors as required by state law and the Colorado constitution.
21. On September 3, 2020, legislative leaders, including a sponsor of the Resolution that placed Amendment B on the ballot and the House Majority leader, both proponents of this amendment, offered amendments to the analysis of Amendment B which substantially, and improperly, changed both the analysis and the arguments to be printed in the Blue Book.
22. The Legislative Council, fully one third of whom are sponsors of Resolution 20-001, subsequently adopted these last-minute amendments.



23. Because of the nature of these last-minute amendments, those opposing these significant and substantive amendments were not given the opportunity to address or provide information to counter the impartial and inaccurate statements that were put forward.
24. This underhanded move allowed the proponents of this amendment, some of whom are involved in the campaign to support adoption, through their offices, to use the Blue Book, funded with taxpayer dollars, to place in every voter's mailbox, campaign language and material in support of Amendment B.
25. Specifically, proponents of the amendment made multiple efforts to suggest that repeal would either lead to tax cuts for homeowners or have no impact on the amount of residential taxes paid.
26. On page 1, of Amendment 3 to Amendment B, attached as Exhibit 1, Majority Leader Garnett proposed language, later adopted, that states that "[a]ssessment rates for all property types will remain the same as they are now." Without Constitutional protection the legislature can change assessment rates at any time. The Amendment is inaccurate and intentionally misleading, future legislatures can reduce assessments for special interests at any time. Amendment B does not freeze assessment rates. More importantly, this language suggests that tax rates will remain the same. In actuality, even if assessments remain the same, increases in housing value will lead to significant increases in property taxes. The suggestion of this language is directly counter to the actual impact of this amendment. History tells us how significant these tax increases will be. Colorado residential taxpayers have saved over \$35 billion over the course of the Gallagher Amendment and saved over \$2.8 billion last year alone. See *Exhibit 1*.

27. More significantly, this language suggests that property taxes will not change under this amendment. In fact, the Colorado Property Tax Administrator has estimated that residential property taxes will be \$203.7 million higher in the first year that this amendment is adopted than they otherwise would be under the Gallagher Amendment. *See Exhibit 2.*
28. On line 27 of page 2, amendment B provides that "Amendment B would eliminate automatic tax increases adopted by some local jurisdictions". This is a gigantic overreach of both the truth and the majority of Amendment B's effect for most Coloradans. Most local jurisdictions don't have automatic tax increases. And many of the jurisdictions where automatic tax increases would occur are jurisdictions where residential property value increases would result in significantly higher taxes being paid by homeowners and renters. This assertion is more a campaign slogan than a reality because Amendment B is far more likely to increase taxes on residential property than to eliminate tax increases. The proponents use this argument against the Gallagher in three separate amendments to the research council's staff recommendations. This addition to the Blue Book seems more like campaign talk than fair and impartial reporting. *See Exhibit 1.*
29. In addition to the efforts of elected officials to use their positions to misrepresent the tax consequences of this amendment on homeowners, these officials also used their position to place campaign material in the Blue Book.
30. The entire "Arguments For Amendment B" section of the analysis was replaced at the last minute with language such as: "owners of high-end homes in Denver's wealthiest neighborhoods would get a tax cut next year." *See Exhibit 1.* This is an improper use of taxpayer dollars to publish incendiary and divisive campaign talking points.

31. Proponents also inserted charts and graphs focused on assessment rates as opposed to taxable value, which is at the heart of the Gallagher Amendment.
32. Taken together, the substantial amendments offered by proponents of Amendment B, at the final hearing and only days before the Blue Book goes to the printer, show an abuse of office and a failure to provide the voters of Colorado with an impartial and fair analysis of this constitutional amendment.

### **CLAIMS FOR RELIEF**

**(Colorado Constitution Article V § 1(7.5); § 1-1-113, C.R.S.)**

33. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.
34. The Colorado Constitution Article V § 1(7.5) requires Defendants to provide a "fair and impartial analysis of each measure, which shall include a summary and the major arguments both for and against the measure" of Amendment B, "which may include other information that would assist understanding the purpose and effect of the measure."
35. The final draft of the ballot information booklet includes false and misleading statements to suggest that the adoption of Amendment B will lead to tax cuts for residential property owners.
36. The final draft of the ballot information booklet includes the highly prejudicial and misleading statements, both in the neutral analysis section as well as the For section which are talking points pulled directly from proponent campaign material.
37. Colorado Revised Statutes § 1-1-113 requires government officials charged with a duty or function not to commit breach of duty or other wrongful act. Defendants' knowing collaboration with the proponents of Amendment B to provide the voters with false

statements regarding the effect of Amendment B is a breach of Defendants' duty and a wrongful act.

38. The acceptance of these false statements under the mantle of the state will cause irreparable harm and damages because it will cause the Legislative Council's ballot information booklet to be a free, highly valuable, campaign tool for the proponents. The consequences of this manifest unfairness will weaken the legitimacy of any election result, and will create a dangerous precedent whereby the Legislative Council's ballot information booklet will merely become a partisan and unfair tool in direct contravention to Article V § 1(7.5) of the Colorado Constitution.
39. A fair and impartial presentation of the arguments for and against can and should be presented so that people can objectively make up their own minds. The unfairness in the ballot information booklet clearly skewed the entire process, and will rob the people of Colorado as much as it will harm the prospects of passing Amendment B.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for the following relief:

- a) Enter judgment in their favor against Defendants;
- b) Enjoin Defendants from printing and or sending any of the ballot information booklets until this court's ruling has been announced.
- c) Enter an affirmative order requiring Defendants to provide the analysis developed by the research staff of Legislative Council prior to the hearing of September 3, 2020. This will provide a truly fair and impartial analysis as is their duty under the Colorado Constitution, Article V, § 1 (7.5);



- d) Grant them any and all other relief the Court deems proper.

Respectfully submitted this 8<sup>th</sup> day of September, 2020.

VERIFICATION

I, Dennis Gallagher, hereby declare under oath, subject to penalty of perjury, that the facts set forth in the foregoing Verified Complaint are true to the best of my knowledge.

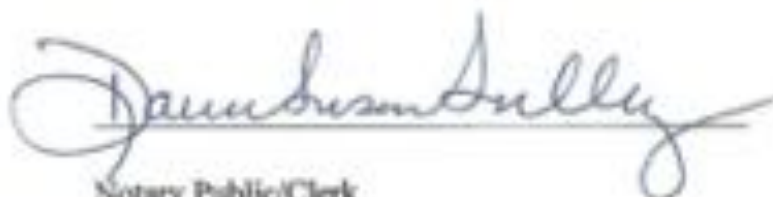


Dennis Gallagher

Subscribed and affirmed, or sworn to before me by Dennis Gallagher in the County of

Denver, State of Colorado, this 9 day of September, 2020.

My commission expires: 9/24/2021



Notary Public/Clerk

