

DISTRICT COURT, 2nd JUDICIAL DISTRICT
DENVER COUNTY
STATE OF COLORADO

1437 Bannock Street
Denver, Colorado 80202

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CASE NUMBER: 2017CV34617

PLAINTIFFS:
COLORADO UNION OF TAXPAYERS FOUNDATION;
and TABOR COMMITTEE

DEFENDANTS:
CITY OF DENVER COLORADO

Case Number: _____

Div.: Ctrm.:

James Manley (CO Bar No. 40327)
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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs complain against the Defendant as follows:

1. This civil rights lawsuit challenges a City of Denver ordinance that requires non-profit groups to publicly disclose the names and personal information of their donors to the government whenever those groups communicate about municipal ballot issues and questions. Plaintiff Colorado Union of Taxpayers (“CUT”) Foundation is a non-profit organization which is exempt from taxation under 26 U.S.C. § 501(c)(3). Plaintiff TABOR Committee is a non-profit organization which is exempt from taxation under 26 U.S.C. § 501(c)(4). Like many non-profits, the Plaintiffs frequently engage in campaigns to inform the public about issues that Plaintiffs and their donors deem important. As part of these efforts, Plaintiffs regularly communicate to members of the public about state statutes and municipal ordinances in Colorado—including ordinances being considered by Defendant City of Denver (the “City”).

2. Under an ordinance adopted by the City on September 12, 2017, any time a non-profit group spends more than \$500 to communicate with the public about a municipal ballot issue or ballot question, that group must publicly disclose, to the government, the identities of its donors who gave more than \$50 in the past calendar year. For donors who gave more than \$200, Plaintiffs must also collect and disclose those donors’ occupations and employers. Failure to file the necessary disclosures can result in fines of \$500 per day.

3. This new ordinance chills constitutionally protected speech by non-profit groups and their donors. This lawsuit, which asks for only prospective relief, seeks to declare the City’s donor-disclosure requirements unconstitutional under the First Amendment to the U.S. Constitution, and Article II, §10 of the Colorado Constitution. Such a declaration will ensure that Plaintiffs and other non-profit groups may speak freely and openly about issues that matter

to them, free from the fear that, by doing so, they will be forced to violate the privacy of their donors and potentially subject those donors to harassment and retaliation.

4. Plaintiffs bring this civil rights lawsuit pursuant to the First and Fourteenth Amendments to the United States Constitution; Article II, §10 of the Colorado Constitution; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the Colorado Uniform Declaratory Judgment Act, C.R.S. §§ 13-51-101 et seq. Plaintiff seeks injunctive and declaratory relief against the City's donor-disclosure requirements, contained in Denver Revised Municipal Code Sections 15-35(c)–(d), for non-profits speaking about municipal ballot issues and questions, and any associated rules or practices of the City of Denver.

PARTIES

5. Plaintiff CUT is a non-profit Colorado corporation that is tax-exempt under 26 U.S.C. § 501(c)(3).

6. Plaintiff TABOR Committee is a non-profit Colorado corporation that is tax-exempt under 26 U.S.C. § 501(c)(4).

7. Defendant City of Denver is a municipality and political subdivision of the State of Colorado.

STATEMENT OF FACTS

Plaintiffs Frequently Speak About Tax Issues

8. Plaintiffs CUT and TABOR Committee are non-profit organizations based in Colorado. Like hundreds of thousands of charities, churches, hospitals, and other groups nationwide, they qualify as tax-exempt organizations under section 501(c)(3) and 501(c)(4) respectively of the Federal Tax Code.

9. Both CUT and the TABOR Committee are funded entirely by donations from private individuals, couples, families, and grants from other organizations. On the basis of CUT's 501(c)(3) status, these donations are tax-exempt for the giver.

10. Many of Plaintiffs' donors prefer to keep their donations private. Their reasons for preferring to remain private range from simple modesty to fear of harassment by groups and individuals who oppose Plaintiffs' missions and activities.

11. One primary purpose of CUT is to educate the citizens of Colorado about the cost of government and the fiscal impact of proposed actions. CUT engages with these and other issues on both the state and municipal levels.

12. For example, CUT recently opposed a City of Aspen, Colorado, proposal to impose a \$0.20 tax on each disposable carryout bag grocers provide to customers.

13. One primary purpose of the TABOR Committee is to defend the Taxpayer's Bill of Rights in Colorado through advocacy and to assist local activists in doing the same. The TABOR Committee engages with these and other issues on both the state and municipal levels.

14. In the past year alone, the TABOR Committee has been active in issues like liability for sales taxes on construction materials in Avon, Colorado; the proposed use of a wastewater enterprise to implement retention ponds at the Denver Golf Course; a tax election in Colorado Springs; a municipal sales tax increase in Loveland, Colorado; funding for a Denver music festival; and Boulder, Colorado's use of a voter-approved tax.

15. In Colorado, all new taxes, including municipal taxes, must be approved by ballot initiative. Colo. Const. art. X, § 20.

16. Thus, any time a tax is proposed in Denver it will be placed on the ballot, and Plaintiffs will want to communicate with voters about the impact that tax will have on them.

Denver’s Non-Profit Donor Disclosure Ordinance

17. Under a new law, non-profit organizations in Denver are required to turn their donor lists over to the government whenever they spend more than \$500 to communicate with voters about a municipal ballot issue or ballot question—exactly the kind of speech that Plaintiffs engage in on a regular basis.

18. The reporting requirements of Denver Revised Municipal Code Sections 15-35(c)-(d), as enacted on September 12, 2017, are triggered when a non-profit organization:

- spends \$500 or more;
- to pay for any form of communication;
- to support or oppose a municipal ballot issue or ballot question;
- within a one-year period prior to the election.

19. Once a non-profit triggers the reporting requirements of Sections 15-35(c)–(d), that organization must file “for each month before an election, beginning [on the month the \$500 threshold is first exceeded]” a report with the City. DENVER REVISED MUNICIPAL CODE § 15-35(c).

20. The required report must include the “name and address of each person who makes a contribution or contribution in-kind” of more than \$50 to the organization. DENVER REVISED MUNICIPAL CODE § 15-35(d)(3).

21. If someone gives \$200 or more, the report must also include that individual’s occupation and employer. DENVER REVISED MUNICIPAL CODE § 15-35(d)(4).

22. The amount of money the organization spends on its speech must also be explained in detail. The report must include the date, the amount of any expenditure of \$50 or more, the name and address of the person or entity where an expenditure was made, and the types of good or services purchased. DENVER REVISED MUNICIPAL CODE § 15-35(d)(6).

23. The ordinance also applies to groups that oppose or support individual candidates for political office. However, since Plaintiffs do not engage in these kinds of communications, Plaintiffs do not challenge the ordinance as it applies to speech about candidates for office.

24. Media organizations—even non-profit ones—are exempted from the reporting requirements of the ordinance. DENVER REVISED MUNICIPAL CODE § 15-32(i)(4).

25. The media exemption includes “[a]ny news articles, editorial endorsements, opinion or commentary writings, or letters to the editor printed in a newspaper, magazine, or other periodical not owned or controlled by a candidate or political party,” as well as “[a]ny editorial endorsements or opinions aired by a broadcast facility not owned or controlled by a candidate or political party.” DENVER REVISED MUNICIPAL CODE § 15-32(i)(4)(a)-(b).

26. A non-profit that refuses or fails to disclose its donors is subject to penalties of up to \$50 per day not to exceed \$500 per violation. DENVER REVISED MUNICIPAL CODE § 15-40.5.

27. The reporting requirements take effect January 1, 2018, and apply to all speech opposing or supporting Denver ballot issues and questions thereafter.

Injury to Plaintiffs

28. Denver forces non-profit groups to choose between protecting the privacy of their donors and meaningfully participating in topics of debate that are important to those same donors. Denver's donor-disclosure requirements for non-profit organizations substantially burden and chill Plaintiffs' rights to free speech and association under the First and Fourteenth amendments to the United States Constitution and Article II, § 10 of the Colorado Constitution.

29. As they have done throughout their respective histories, Plaintiffs continue to speak about municipal ballot issues and questions that affect Colorado taxpayers, including those proposed by the City of Denver.

30. Plaintiffs plan to speak about, oppose, and support municipal ballot issues and questions in the City of Denver in the future. To engage in debates about future ballot issues and questions fully and effectively, Plaintiffs must be able to communicate information and opinions to voters in Denver. When Plaintiffs engage in speech and debate about Denver ballot issues and questions in the future, they will be forced to choose between either remaining silent or disclosing the names and personal information of their donors to the government.

31. To effectively communicate their messages on a given issue, Plaintiffs must typically spend more than \$500 on mailers, websites, videos, targeted advertising, and other forms of speech, and they frequently do so.

32. Many of Plaintiffs' donors do not wish to have their identities disclosed to the government. They do not wish to have their names, addresses, donation amounts, and occupations made part of a publicly accessible record. The reasons for this range from simple modesty to fear of intimidation and retaliation.

33. Plaintiffs have received donations that were made on the condition that the identity of the donor not be disclosed.

34. Because the reporting requirements apply to all donations received in the 12 months prior to an election, even donors who have not contributed to the ballot-related speech will be subject to disclosure.

35. Even donors who contributed before the ballot measure was proposed would be subject to disclosure.

36. Donors are less likely to donate money to charities if they know their identities, occupations, and donation amounts will be disclosed to the government and made publicly available.

37. Even before an organization contemplates spending more than \$500 to communicate with voters about a ballot issue or ballot question, that non-profit must choose which harm it will suffer: a chilling of its speech, or a loss of privacy for its donors. No matter which path they choose, Denver forces Plaintiffs and other non-profit organizations to endure a significant constitutional injury in exchange for exercising their First Amendment rights.

38. Plaintiffs would like to continue engaging in public debates about Denver ballot issues and questions. But as long as Denver's donor-disclosure requirements remain in place, Plaintiffs will be chilled from doing so.

CONSTITUTIONAL VIOLATIONS

First Claim for Relief **(First Amendment)**

39. Plaintiffs incorporate the allegations in the preceding paragraphs.

40. The First Amendment prohibits the government from requiring charitable groups to publicly disclose the identities of their donors and information about their expenditures because the government's interest in such disclosure, in the context of ballot issues and questions, is *de minimis*, while the corresponding harm of such disclosure to the speech and associational rights of non-profits and their donors is great.

41. Speech about proposed ballot issues and questions is a quintessential form of protected speech under the First Amendment to the U.S. Constitution. This law chills substantial amounts of protected speech due to its requirement that Plaintiffs and other non-profit groups disclose their donors to the government any time they engage in such speech.

42. These reporting requirements visit severe burdens on non-profits that wish to communicate about the issues of the day, in the form of reporting fees, potential \$500 per-violation fines, and the exposure of private information about their donors and supporters.

43. Under Defendant's donor-disclosure requirements, every non-profit group that spends more than \$500 to communicate with voters about a ballot issue or ballot question in the City necessarily exposes the private information of its donors to public review and scrutiny.

44. Many of Plaintiffs' donors do not wish to have their names, addresses, occupations, employers' identities, or date, time, and amount of their contributions disclosed to the government, or have it incorporated into a publicly available document.

45. Plaintiffs also would incur substantial cost in time and money to provide detailed reports of their expenditures to the government regarding their expenditures. Such reports would also unduly intrude on their rights to confidentiality and freedom of association. Plaintiffs also have an ethical responsibility to their donors to preserve their confidentiality.

46. As a direct and proximate result of Denver Revised Municipal Code Sections 15-35(c)–(d), Plaintiffs and others similarly situated have suffered and will suffer irreparable harm to their First Amendment rights to free speech and association every time they wish to speak about a municipal ballot issue or ballot question, in violation of 42 U.S.C. § 1983. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize this harm. Unless Defendant is enjoined from implementing and administering Denver Revised Municipal Code Sections 15-35(c)–(d), as it relates to ballot issues or ballot questions, Plaintiffs and others similarly situated, will continue to suffer great and irreparable harm.

Second Claim for Relief
(Colorado Free Speech Clause)

47. Plaintiffs incorporate the allegations in the preceding paragraphs.

48. Speech about proposed ballot issues and questions is a quintessential form of protected speech under Article II, § 10 of the Colorado Constitution. This law chills substantial amounts of protected speech due to its requirement that Plaintiffs and other non-profit groups publicly disclose their donors and information about their expenditures to the government any time they engage in such speech.

49. As a direct and proximate result of Denver Revised Municipal Code Sections 15-35(c)–(d), Plaintiffs and others similarly situated have suffered and will suffer irreparable harm to their rights under Article II, §10 of the Colorado Constitution. Plaintiffs have no adequate

legal, administrative, or other remedy by which to prevent or minimize this harm. Unless Defendant is enjoined from implementing and administering Denver Revised Municipal Code Sections 15-35(c)–(d), as it relates to speech about ballot issues and questions, Plaintiffs and others similarly situated will continue to suffer great and irreparable harm.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request relief as follows:

1. For entry of judgment against Defendant;
2. For a declaration under the Colorado Uniform Declaratory Judgments Act that Denver Revised Municipal Code § 15-35(c)–(d) are unconstitutional, facially and as-applied, as they relate to speech about municipal ballot issues and questions;
3. For entry of a permanent injunction against Defendant prohibiting it from administering Denver Revised Municipal Code § 15-35(c)–(d) as they relate to speech about ballot issues and questions;
4. For an award of attorneys’ fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988(b); and,
5. For an award of costs in this action pursuant to C.R.S.A. § 13-51-114; and,
6. For such further legal and equitable relief as the Court may deem just and proper.

Dated: December 13, 2017

Respectfully submitted,

/s/ James Manley
James Manley (CO Bar No. 40327)
Matthew R. Miller
(*Pro hac vice* application pending)
**Scharf-Norton Center for
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GOLDWATER INSTITUTE**
Attorneys for Plaintiffs

Your filing has been successfully submitted to the court. Your filing is not considered final until the court accepts it.

Filing Information:
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Case Number: 2017CV034617

Case Caption: Colorado Union of Taxpayers Foundation et al v. City of Denver Colorado

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Submitted By: James Manley

Filing Party(ies):

Party	Type	Status	Attorney
Colorado Union of Taxpayers Foundation	Plaintiff	Active	James M Manley (Goldwater Institute)
TABOR Committee	Plaintiff	Active	James M Manley (Goldwater Institute)

Documents:

Document ID	Document	Title	Statutory Fee	Security
E65DA7CF5B56F	Complaint	Complaint	\$224.00	Public
CC9AA4CAC051A	Civil Case Cover Sheet	Civil Case Cover Sheet	\$0.00	Public
2B7C3645F8F91	Summons	Summons	\$0.00	Public

Courtesy Copy(ies):

Party	Type	Attorney	Organization	Method
Kris Schlott	N/A	N/A	Goldwater Institute	E-Service

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