

DISTRICT COURT, CITY AND COUNTY OF  
DENVER, COLORADO  
City & County Building  
1437 Bannock Street  
Denver, Colorado 80202

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**NO OVER TAXATION**, a Registered Colorado  
Issue Committee;  
**LARISA BOLIVAR**, an individual;  
**MIGUEL LOPEZ**, an individual;  
**WILLIAM CHENGELIS**, an individual;  
**KATHLEEN CHIPPI**, an individual;  
**JOHN DOE**, a pseudonym for an individual;  
**JANE ROE ENTERPRISES**, a pseudonym for a  
Colorado entity,  
Plaintiffs,

v.

**JOHN HICKENLOOPER**, in his Official Capacity  
as Governor of Colorado;  
**STATE OF COLORADO DEPARTMENT OF  
REVENUE**;  
**MICHAEL HANCOCK**, in his Official Capacity  
as Mayor of Denver, Colorado;  
**DENVER TREASURY DIVISION**;  
Defendants.

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Case No. 14CV\_\_\_\_\_

Courtroom:

**COMPLAINT AND APPLICATION FOR INJUNCTIVE AND  
DECLARATORY RELIEF, REFUND OF ILLEGALLY-COLLECTED TAXES  
AND DAMAGES, AND REQUEST FOR TRIAL BY JURY**

Plaintiffs, through undersigned counsel, hereby petition and apply for injunctive and declaratory relief, and for a refund and damages, against Defendants and their collection and enforcement of illegal and unconstitutional Marijuana Taxes, as provided in Colorado Proposition AA and Denver Referred Question 2A, and as grounds therefore, state as follows:

**PARTIES**

1. Plaintiff “No Over Taxation” is an Issue Committee registered with the Colorado Secretary of State. No Over Taxation and its members opposed Marijuana Taxes in the November 2013 Election. Members of No Over Taxation include registered electors, recreational marijuana consumers who pay Marijuana Taxes, and licensed sellers of marijuana who pay Marijuana Taxes.

2. Plaintiff Larisa Bolivar is a Registered Colorado Elector, resident of Denver, Colorado, and a marijuana consumer who pays increased taxes for purchases of marijuana under Proposition AA and Question 2A. Ms. Bolivar is the Executive Director of “No Over Taxation,” and formerly operated the first Marijuana Dispensary in Colorado history, the Colorado Compassion Club in Denver, and has the skill, ability, and desire to re-enter the Denver and/or Colorado marijuana business community in the future as a producer and seller of marijuana, and has concrete plans to do so. Ms. Bolivar was a nominee for the Cannabis Business Awards 2013, and is currently obtaining her Master’s Degree in Marijuana Studies from Regis University.

3. Plaintiff Miguel Lopez is a Registered Colorado Elector, resident of Denver, Colorado, and a marijuana consumer who pays increased taxes for purchases of marijuana under Proposition AA and Question 2A. Mr. Lopez is a Community Organizer who leads the historic Denver 420 Rally each year at Denver Civic Center Park on April 20, which is the largest permitted 420/marijuana rally worldwide on the marijuana-significant “holiday” of April 20. Mr. Lopez was a nominee for the Cannabis Business Awards 2013.

4. Plaintiff William Chengelis is a Registered Colorado Elector, resident of Denver, Colorado and a marijuana consumer who pays increased taxes for purchases of marijuana under Proposition AA and Question 2A. Mr. Chengelis is Chairman of the U.S. Marijuana Party, and was awarded “Mr. Cannabis Colorado” at the 2012 Cannabis Business Awards. Mr. Chengelis is a Vietnam-era U.S. Army veteran who suffers from Post Traumatic Stress Disorder (“PTSD”), and finds relief from marijuana for the PTSD condition and its symptoms. Marijuana can be of significant comfort and help for people such as Mr. Chengelis, who suffer on a daily basis due to physical and emotional trauma from their past, such as military service, false accusations of criminal wrongdoing, violent law enforcement raids, extreme flooding, abusive relationships, or similar difficult experiences. However, PTSD is not a qualifying medical condition for Medical Marijuana under the Colorado Constitution, Article XVIII § 14 due to the State of Colorado and Defendant Hickenlooper’s rejection of a petition from veterans to add PTSD as a qualifying medical condition.

5. Plaintiff Kathleen Chippi is a Registered Colorado Elector and a marijuana consumer who pays increased taxes for purchases of marijuana under Proposition AA and Question 2A. Ms. Chippi is a member of “No Over Taxation,” founder of the Patient and Caregiver Rights Litigation Project, a community organizer, and formerly operated the first medical marijuana dispensary in Nederland, CO. Ms. Chippi was a nominee for the Cannabis Business Awards 2012 and has the skill, ability, and desire to re-enter the Denver and/or Colorado marijuana business community in the future as a producer and seller of marijuana, and has concrete plans to do so.

6. Plaintiff John Doe, a pseudonym due to his wish not to waive his right against self-incrimination and to avoid retaliation from governmental authorities for involvement with this case, cultivates, produces, distributes, and sells marijuana as an owner of a licensed Medical Marijuana Center and licensed Recreational Marijuana Store in Denver, Colorado, and licensed cultivation operations. Mr. Doe is forced to pay the sales and excise taxes on retail marijuana provided by Proposition AA and Referred Question 2A.

7. Plaintiff Jane Roe Enterprises, a pseudonym due to the owner(s)’ wish not to waive the right against self-incrimination and to avoid retaliation from governmental authorities for involvement with this case, cultivates, produces, distributes, and sells marijuana as a licensed Medical Marijuana Center and licensed Recreational Marijuana Store in Denver, Colorado, and licensed

cultivation operations. Jane Roe Enterprises is forced to pay the sales and excise taxes on retail marijuana provided by Proposition AA and Referred Question 2A.

8. Defendant John Hickenlooper is sued in his official capacity as the Governor of Colorado, the chief executive of the State. In this capacity, Governor Hickenlooper is located in the City and County of Denver, and is enriched and knowingly heads a “continuing criminal enterprise,” as defined under the U.S. Code, that receives tax monies from the illegal sale of marijuana, and launders said illegal drug proceeds through a banking institution. During the campaign in favor of Proposition AA, Governor Hickenlooper held a fundraiser at a beer brewery and manufacturer, and charged \$1,000 to \$5,000 for individuals to meet their Governor at the fundraiser, which was openly sponsored by individuals and entities that engage in the federally-illegal for-profit sale of marijuana.

9. Defendant State of Colorado Department of Revenue, located in the City and County of Denver, collects taxes authorized by Proposition AA, a 10% sales tax (which can be raised to 15% without voter approval) and 15% excise tax on recreational marijuana. The State of Colorado collects these taxes explicitly from transactions of the retail and wholesale transfer of marijuana, a Schedule I narcotic illegal under federal law.

10. Defendant Michael Hancock is sued in his official capacity as the Mayor of Denver, Colorado, the chief executive of the City and County of Denver. In this capacity, Mayor Hancock is located in the City and County of Denver, and is enriched and knowingly heads a “continuing criminal enterprise,” as defined

under the U.S. Code, that receives tax monies from the illegal sale of marijuana, and launders said illegal drug proceeds through a banking institution.

11. Defendant Denver Treasury Division, located in the City and County of Denver, collects the taxes authorized by Referred Question 2A, a 3.5% marijuana sales tax (which can be raised to 15% without voter approval). The City and County of Denver collects these taxes from explicit transactions of the retail and wholesale transfer of marijuana, a Schedule I narcotic illegal under federal law.

### **JURISDICTION AND VENUE**

12. This Court has jurisdiction over this matter pursuant to C.R.C.P. 106(a)(2); 106(a)(4); C.R.C .P. 65; Colorado Declaratory Judgment Act, C.R.S. § 13-51-101 et seq., and C.R.C.P. 57.

13. Pursuant to C.R.C.P. 98, venue is proper in this Court because most of the Plaintiffs and Defendants reside in the City and County of Denver, and the principal decisions and actions taken by the Defendants occurred or will occur in the City and County of Denver.

### **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

14. God made marijuana and gave it to mankind. See Genesis 1:29. The marijuana plant, scientifically classified as *cannabis sativa L.*, is a seed-bearing plant. *Cannabis sativa L.* has been consumed by human beings for thousands of years for many purposes, including medicinal, recreational, spiritual,

industrial, and as food. Cannabis has brought joy to millions of human beings throughout time.

15. *Cannabis sativa L.* can grow naturally without human assistance in every single Nation on the face of the planet. Nearly every culture in human history has used *cannabis sativa L.* For millennia, during the sum total of unrecorded and recorded human history, no human culture or government chose to regulate, restrict, or even regard *cannabis sativa L.* as wrongful, illegal, nor immoral, until recent history.

16. The Founding Fathers of the United States of America, including George Washington and Thomas Jefferson, grew the *cannabis sativa L.* plant on their farms and plantations, before and after the Thirteen Colonies became part of the United States of America. The founding document of the United States of America, itself, The Declaration of Independence, was written on hemp paper, made from the *cannabis sativa L.* plant.

17. The United States of America became the first government in human history to criminally prohibit the *cannabis sativa L.* plant. The passage of the Marihuana Tax Act of 1937 was coupled with outrageous racially-charged fear-mongering in the newspapers and movies of the time. In passing this and other statutes, the government invented the word “marihuana,” or “marijuana,” which is not a scientific term. The government and cannabis opponents specifically concocted a Spanish-sounding word to stoke fear and hatred of the plant with linkage to Mexican immigrants. The terms “marihuana” and “marijuana” have

somewhat transcended their race-conscious history, and have become terms of general acceptance in the vernacular and in the law, referring to *cannabis sativa L.*

18. The newspaper owners in 1937, specifically William Randolph Hearst, had extensive timber holdings and used wood pulp to publish newspapers. These newspaper owners, along with nylon and plastics magnate the DuPont family, believed industrial hemp would compete with their interests, and thus created a climate of false societal fear and outrage which resulted in the Prohibition of *cannabis sativa L.*

19. In 1969, the United States Supreme Court reversed criminal convictions obtained against Dr. Timothy Leary under the Marihuana Tax Act of 1937 under the Fifth Amendment, due to the fact that a person seeking the stamp and complying with the law would be forced to incriminate himself in violation of the Fifth Amendment. Timothy Leary v. United States, 395 U.S. 6 (1969).

20. In response to the U.S. Supreme Court holding in the Timothy Leary case which abrogated the Marihuana Tax Act of 1937, Congress enacted the Federal Controlled Substances Act (“CSA”) as part of the Comprehensive Drug Abuse Prevention and Control Act of 1970. States also had their own Prohibition laws, and both the federal and state governments spent the next few decades attempting to enforce Marijuana Prohibition, at great expense of loss of liberty and money.

21. The recommendation of the “National Commission on Marihuana and Drug Abuse” otherwise known as the “Shafer Commission” after its chair,

former Pennsylvania Governor Raymond P. Shafer, in 1972 recommended Congress amend federal law so that the use and possession of marijuana would no longer be a criminal offense:

[T]he criminal law is too harsh a tool to apply to personal possession even in the effort to discourage use. ... It implies an overwhelming indictment of the behavior which we believe is not appropriate. The actual and potential harm of use of the drug is not great enough to justify intrusion by the criminal law into private behavior, a step which our society takes only with the greatest reluctance.

... Therefore, the Commission recommends ... [that the] possession of marijuana for personal use no longer be an offense, [and that the] casual distribution of small amounts of marihuana for no remuneration, or insignificant remuneration, no longer be an offense.

See <http://www.druglibrary.org/schaffer/Library/studies/nc/ncmenu.htm>.

22. Despite this and other authorities, the federal government and all states have criminalized marijuana for decades. In 2001, Colorado voters amended to the Colorado Constitution, Article XVIII § 14 (“Amendment 20”), which provided for a constitutional right to the use of marijuana by persons suffering from debilitating medical conditions, and providing that such medical use is not a criminal offense under Colorado state laws.

23. In the decade or more since enactment of Amendment 20, for-profit marijuana farmers and stores have thrived in Colorado, farms and stores that employ thousands of workers and provide over 100,000 patients with medical marijuana. In Fiscal Year 2011-2012, Colorado’s medical marijuana farmers and stores sold an estimated \$199.1 million worth of medical marijuana. See 2013 State Ballot Information Booklet, Research Publication No. 626-2 (hereinafter

“Blue Book”), page 19; <http://www.colorado.gov/cs/Satellite/CGA-LegislativeCouncil/CLC/1200536134742>.

24. During these years, the U.S. Department of Justice, U.S. Drug Enforcement Administration (“DEA”), and the U.S. Attorney for the District of Colorado, have selectively allowed some aspects of Colorado’s for-profit medical marijuana industry to exist without significant interference, while selecting others for harsh criminal prosecution. Some marijuana stores, farmers, owners, workers, landlords, and associated others have been lulled into a sense of security in the face of this selective federal impotence/restraint. However, federal officials have never given their express approval of Colorado’s marijuana farmers and stores, and marijuana remains an illegal narcotic under Federal law.

25. On notable occasions, the federal officials and federal courts have imprisoned individuals for alleged marijuana-related conduct that is legal under state law. An example of federal action was Christopher Bartkowicz, who in early 2010 was federally prosecuted for a small basement home garden in Highlands Ranch, Colorado, far smaller than hundreds of other massive warehouse-style farms and retail shops operating openly throughout Colorado. The day of this federal raid, U.S. DEA “Special Agent in Charge” Jeffrey Sweetin publicly stated the following:

[Marijuana] is still a violation of federal law. It’s not medicine. We’re still going to continue to arrest and prosecute people. ... Technically, ***every [marijuana] dispensary in this state is in blatant violation of federal law***. The time is coming when we go into a dispensary, ***we find out what their profit is***, we seize the building

and ***we arrest everybody***. They're violating federal law; they're at risk of arrest and imprisonment.

John Ingold, "Owner who bragged of large medical-pot operation jailed in DEA raid," Denver Post, February 13, 2010 [http://www.denverpost.com/ci\\_14393797](http://www.denverpost.com/ci_14393797) (emphasis added). Mr. Bartkowicz was sentenced to five years in federal prison due to marijuana. The U.S. District Court for Colorado specifically held that Colorado state law related to marijuana afforded Mr. Bartkowicz had no defense whatsoever to federal crimes. See United States v. Bartkowicz, No. 1:10-cr-00118-PAB (D. Colo. May 5, 2010).

26. In January 2012, U.S. Attorney John Walsh issued letters to dozens of Centers and their landlords, operating with full permission of State and Local authorities, commanding these shops and landlords to "cease and desist" from selling marijuana under threat of prosecution or forfeiture. In an exchange of letters with Attorney Robert J. Corry, Jr., the U.S. Attorney expressly rejected the notion that such shops would be operating in a "safe harbor" if they remained outside of 1000 feet from a school, and instead confirmed the U.S. Department of Justice view that all such shops operate in violation of federal law and are subject to prosecution. Michael Roberts, "Medical Marijuana Update: U.S. Attorney John Walsh rejects safe harbor for MMCs," Westword, March 2, 2012 (Walsh: "Let me be very clear: The purported safe harbor described in your March 1, 2012 letter ***does not exist.***") (emphasis added);

[http://blogs.westword.com/latestword/2012/03/medical\\_marijuana\\_dispensaries\\_1000\\_feet\\_schools\\_safe\\_feds.php?page=2](http://blogs.westword.com/latestword/2012/03/medical_marijuana_dispensaries_1000_feet_schools_safe_feds.php?page=2)

27. In a television interview with Denver 9 News, U.S. Attorney John Walsh ominously claimed that:

“The fact remains - and sometimes we don’t talk about this - but the fact remains [marijuana] is against federal law,” he added. “The bottom line is it's against federal law. We're trying to approach this approach in a measured way, ***but there really are no guarantees.***”

<http://www.9news.com/news/article/243562/339/US-Atty-on-marijuana-crackdown-Not-a-bluff-> (emphasis added).

28. In November 2012, Colorado voters passed the “Regulate Marijuana Like Alcohol Act of 2012,” identified on the ballot as Amendment 64, and now codified in the Colorado Constitution, Article XVIII § 16.

29. The purpose of the “Regulate Marijuana Like Alcohol Act of 2012” is contained in the very first section of the measure, which is “that the use of marijuana should be legal for persons twenty-one years of age or older ***and taxed in a manner similar to alcohol.***” Colorado Constitution, Article XVIII § 16(1)(a) (emphasis added). In order to purchase marijuana, all persons will be required to show government-issued identification containing their name, date of birth, and photograph of their face. See Colorado Constitution, Article XVIII § 16(b)(1) (“individuals will have to show proof of age before purchasing marijuana.”).

30. Alcohol excise taxes in Colorado are presently less than 1% of the retail purchase price, as follows:

- 8¢ per gallon for 3.2% Beer
- 8¢ per gallon for Malt Liquor (beer)
- 8¢ per gallon for Hard Cider (apple and pear only)
- 7.33¢ per liter for Vinous Liquor
- 60.26¢ per liter for Spirituous Liquor

Source: Colorado Department of Revenue.

<http://www.colorado.gov/cs/Satellite?c=Page&childpagename=Revenue%2FREVXLayout&cid=1207733395727&pagename=REVXWrapper> The marijuana taxes are not “in a manner similar to” alcohol taxes, as required by the Colorado Constitution, Article XVIII § 16.

31. After passage of Amendment 64 in November 2012, the Colorado General Assembly passed House Bill 13-1318, which provided that Proposition AA be placed on the General Election Ballot in November 2013. The Denver City Council also placed on the ballot for the same election Referred Question 2A.

[http://www.denvergov.org/portals/703/documents/elections/voterinfo/docs/tabornotice\\_november2013coordinated.pdf](http://www.denvergov.org/portals/703/documents/elections/voterinfo/docs/tabornotice_november2013coordinated.pdf)

32. The campaign in favor of Proposition AA contended that passage of the marijuana taxes would provide Colorado with protection from federal government interference with Colorado’s cannabis industry. The “Blue Book” prepared by the Legislative Council of Colorado General Assembly acknowledged that “the sale of marijuana remains illegal under federal law,” yet argued that government taxing and profiting from the for-profit sale of this illegal marijuana

“may discourage federal interference with the industry...”. See 2013 State Ballot Information Booklet, Research Publication No. 626-2, at page 18 (hereinafter “Blue Book”).

33. A majority of voters in Colorado and in Denver passed Proposition AA and Referred Question 2A, and the Defendants are presently collecting tax revenue from the sale of recreational marijuana that commenced January 1, 2014. In order to purchase recreational marijuana, a consumer is required to establish that he or she is age 21 or older by displaying government-issued picture identification which identifies the persons’ name, age, street address, and contains a photograph of the person. Recreational Marijuana shops customarily make copies of identifications presented, a practice required for Medical Marijuana shops.

34. Proposition AA imposes a 15% state excise tax on the wholesale transfer or sale of marijuana from a cultivation facility to the retail store or infused manufacturer, and a 10% sales tax on the retail sale (which can be raised to 15% without voter approval). In order to pay these taxes and be in compliance, the consumer, cultivator, or retailer are required to identify themselves as possessing, distributing, or selling marijuana, all violations of the federal CSA.

35. Colorado statute confirms that a payer of the Retail Marijuana Sales Tax of Proposition AA must “make returns” and positively identify himself or herself as a seller of marijuana, as follows:

IN ADDITION TO THE TAX IMPOSED PURSUANT TO PART 1 OF ARTICLE 26 OF THIS TITLE AND THE SALES TAX IMPOSED BY A LOCAL GOVERNMENT PURSUANT TO TITLE 29, 30, 31, OR 32, BEGINNING JANUARY 1, 2014, THERE IS IMPOSED UPON ALL SALES OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS BY A RETAILER A TAX AT THE RATE OF TEN PERCENT OF THE AMOUNT OF THE SALE, TO BE COMPUTED IN ACCORDANCE WITH SCHEDULES OR FORMS PRESCRIBED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT; EXCEPT THAT A RETAIL MARIJUANA STORE IS NOT ALLOWED TO RETAIN ANY PORTION OF THE RETAIL MARIJUANA SALES TAX COLLECTED PURSUANT TO THIS PART 2 TO COVER THE EXPENSES OF COLLECTING AND REMITTING THE TAX AND EXCEPT THAT THE DEPARTMENT OF REVENUE MAY REQUIRE A RETAILER TO MAKE RETURNS AND REMIT THE TAX DESCRIBED IN THIS PART 2 BY ELECTRONIC MEANS.

C.R.S. § 39-28.8-202(1)(a)

36. Similarly, Colorado Statute provides that the payer of the Retail Marijuana Excise Tax of Proposition AA must “file a return” confirming the payer as a seller of marijuana, as follows:

BEGINNING JANUARY 1, 2014, EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (1), THERE IS LEVIED AND SHALL BE COLLECTED, IN ADDITION TO THE SALES TAX IMPOSED PURSUANT TO PART 1 OF ARTICLE 26 OF THIS TITLE AND PART 2 OF THIS ARTICLE, A TAX ON THE FIRST SALE OR TRANSFER OF UNPROCESSED RETAIL MARIJUANA BY A RETAIL MARIJUANA CULTIVATION FACILITY, AT A RATE OF FIFTEEN PERCENT OF THE AVERAGE MARKET RATE OF THE UNPROCESSED RETAIL MARIJUANA. THE TAX SHALL BE IMPOSED AT THE TIME WHEN THE RETAIL MARIJUANA CULTIVATION FACILITY FIRST SELLS OR TRANSFERS UNPROCESSED RETAIL MARIJUANA FROM THE RETAIL MARIJUANA CULTIVATION FACILITY TO A RETAIL MARIJUANA PRODUCT MANUFACTURING

FACILITY, A RETAIL MARIJUANA STORE, OR ANOTHER RETAIL MARIJUANA CULTIVATION FACILITY.

EVERY RETAIL MARIJUANA CULTIVATION FACILITY SHALL FILE A RETURN WITH THE DEPARTMENT EACH MONTH. THE RETURN, WHICH SHALL BE UPON FORMS PRESCRIBED AND FURNISHED BY THE DEPARTMENT, SHALL CONTAIN, AMONG OTHER THINGS, THE TOTAL AMOUNT OF UNPROCESSED RETAIL MARIJUANA SOLD OR TRANSFERRED DURING THE PRECEDING MONTH AND THE TAX DUE THEREON.

EVERY RETAIL MARIJUANA CULTIVATION FACILITY SHALL FILE A RETURN WITH THE DEPARTMENT BY THE TWENTIETH DAY OF THE MONTH FOLLOWING THE MONTH REPORTED AND WITH THE REPORT SHALL REMIT THE AMOUNT OF TAX DUE.

C.R.S. § 39-28.8-304(1)-(2)

37. Colorado statutes also provide penalties for willfully evading the payment of the marijuana tax, as follows:

IT IS UNLAWFUL FOR ANY RETAIL MARIJUANA CULTIVATION FACILITY TO SELL OR TRANSFER RETAIL MARIJUANA WITHOUT A LICENSE AS REQUIRED BY LAW, OR TO WILLFULLY MAKE ANY FALSE OR FRAUDULENT RETURN OR FALSE STATEMENT ON ANY RETURN, OR TO WILLFULLY EVADE THE PAYMENT OF THE TAX, OR ANY PART THEREOF, AS IMPOSED BY THIS PART 3. ANY RETAIL MARIJUANA CULTIVATION FACILITY OR AGENT THEREOF WHO WILLFULLY VIOLATES ANY PROVISION OF THIS PART 3 SHALL BE PUNISHED AS PROVIDED BY SECTION 39-21-118.

C.R.S. § 39-28.8-306.

38. Referred Question 2A provides for a 3.5% sales tax (which can be raised to as high as 15% without voter approval) on marijuana sold within the City and County of Denver. In order to pay these taxes and be in compliance, the

consumer, cultivator, or retailer will all be required to identify themselves as possessing, distributing, or selling marijuana, all violations of the federal CSA.

39. The excessive marijuana taxes were set too high. The excessive taxes are defeating the purpose of Amendment 64 by revitalizing the underground market and putting regulated marijuana businesses out of business. The tax rates of the Marijuana Taxes are higher than tax rates on any other product or industry in Colorado history. A national organization that represents the cannabis industry contends that marijuana-related businesses should not be taxed at rates higher than other businesses, and argues that high tax rates may drive them “out of business.”

See website of National Cannabis Industry Association,

[www.thecannabisindustry.org/campaigns/federal-policy](http://www.thecannabisindustry.org/campaigns/federal-policy) (“Fair Tax Policy” ...

“Cannabis-related businesses should not pay higher effective tax rates than other businesses... some medical cannabis operations could be driven out of business on account of” higher effective tax burdens.)

40. The excessively high tax rates in Proposition AA and Question 2A will drive some out of business, and will make it “unreasonably impracticable” to operate a marijuana business in the State of Colorado. See Colorado Constitution, Article XVIII § 16(2)(o) (definition of “unreasonably impracticable”); Colorado Constitution, Article XVIII § 16(5)(a) (prohibition on regulations that make the operation of marijuana stores unreasonably impracticable).

41. The excessively high tax rates in Proposition AA and Referred Question 2A have subverted the purpose of Amendment 64, which is to create a

legitimate market in cannabis, not an underground market. The tax rates are so high that the underground market has experienced resurgence in Colorado.

Associated Press, “Legal pot hasn’t stopped Colorado black market,” April 4, 2014, <http://www.usatoday.com/story/news/nation/2014/04/04/colo-pot-black-market/7292263/>.

42. On November 21, 2013, only sixteen days after ballots had been counted and the November 2013 Election was final, it became clear that the campaign promise of the pro-tax Proposition AA campaign, that the marijuana tax would “discourage federal interference with the industry,” was false.

43. On November 21, 2013, federal officials from the U.S. Department of Justice raided approximately a dozen medical marijuana businesses in Denver and other jurisdictions in Colorado. Federal officials smashed windows, destroyed property worth millions, and used front-end loaders and dump trucks to cart away hundreds of pounds of medical marijuana being grown and stored for patients with debilitating medical conditions. Each of these businesses raided had valid licenses to operate granted by both the State of Colorado and the local jurisdiction. The U.S. Attorney’s Office for Colorado declined specific comment because it alleged this was an “ongoing” investigation. Colleen Slevin and Kristin Wyatt, Associated Press, “Denver Pot Businesses Raided Ahead of Legal Pot Sales,” November 21, 2013. <http://bigstory.ap.org/article/dea-irs-raiding-denver-area-pot-businesses>

44. On December 22, 2013, the U.S. Justice Department Deputy Attorney General James Cole reiterated on CBS's 60 Minutes that "any of that [marijuana commerce] is still in violation of the Controlled Substances Act of federal law." See <http://www.cbsnews.com/news/medical-marijuana-colorado-green-rush/>

45. In the same 60 Minutes segment, Law Professor Sam Kamin, University of Denver, opined that:

The federal government sees it as a serious crime. They say, "We know that California and 16 other states, the District of Columbia -- we know you guys think it's medicine. It's not. We hear that you want to legalize it. You can't. We can't make you undo your statutes, but we can sure come in and prosecute your citizens that are violating federal law."

See <http://www.cbsnews.com/news/medical-marijuana-colorado-green-rush/>

46. During the excitement surrounding the expanding implementation of Amendment 64 on January 1, 2014, Colorado U.S. Attorney John Walsh said federal authorities "will be monitoring Colorado's efforts to regulate marijuana closely." John Ingold, The Denver Post, "World's first legal recreational marijuana sales begin in Colorado," January 1, 2014.

[http://www.denverpost.com/news/ci\\_24828236/worlds-first-legal-recreational-marijuana-sales-begin-colorado#ixzz32HFkoDmO](http://www.denverpost.com/news/ci_24828236/worlds-first-legal-recreational-marijuana-sales-begin-colorado#ixzz32HFkoDmO)

47. In April 2014, the U.S. Attorney for Colorado again raided the previous targets of the November 2013 raids, and also arrested and criminally charged four individuals with federal criminal offenses related to the CSA. These

individuals operated marijuana businesses licensed by both the State of Colorado and City and County of Denver, and on information and belief, paid their marijuana taxes pursuant to Proposition AA and Denver Referred Question 2A. See Superseding Criminal Indictment of Hector Diaz, David Jeffrey Furtado, Luis Fernand Uribe, and Gerardo Uribe, U.S. District Court for the District of Colorado, Case No. 13-cr-00492 REB (Attached hereto as Plaintiff’s Exhibit A, incorporated herein by reference);

<http://www.justice.gov/usao/co/news/2014/apr/4-28-14.html>.

48. Counts 3-7 of this Superseding Indictment alleged Conspiracy and Money Laundering, stemming from alleged “monetary transaction by and through or to a financial institution, affecting interstate or foreign commerce, in criminally derived property of a value greater than \$10,000.00 ... such property having been derived from a specified unlawful activity, to wit: the cultivation, manufacture, and distribution of marijuana, a Schedule I Controlled Substance, and a conspiracy to commit the same, all of which is in violation of Title 21, United States Code, Sections 841(a)(1), (b)(1)(A)(vii) and 846, and did aid, abet, counsel, command or procure the same ...”. See Plaintiffs’ Exhibit A.

49. The movement, payment, and transfer of money constituted the substance of the U.S. Attorney’s Indictment against the four individuals licensed and taxed by the State of Colorado and City and County of Denver on their marijuana-related profits. The Indictment refers specifically to certain bank account numbers within which money was deposited.

50. Subsequent filings by the U.S. Attorney for Colorado made clear that critical evidence used in the federal indictments was financial and tax records of the marijuana businesses, and contrary to previous anonymous “sources,” federal prosecutors have made no allegations whatsoever in any court filing or other attributed credible statement about the suspects’ ties to so-called “Columbian drug cartels.” John Ingold, The Denver Post, “Case against Colorado pot raid suspects rests on financial records,” May 28, 2014.

[http://www.denverpost.com/news/ci\\_25844137/case-against-colorado-pot-raid-suspects-rests-financial#ixzz33pDIXGUT](http://www.denverpost.com/news/ci_25844137/case-against-colorado-pot-raid-suspects-rests-financial#ixzz33pDIXGUT).

51. A similar federal indictment could have been made against any one of the hundreds of entities or individuals who are licensed by the State of Colorado and City and County of Denver to engage in the “cultivation, manufacture, and distribution of marijuana” for profit, and which are required to reveal their criminal activities and incriminate themselves by paying marijuana-specific taxes by Proposition AA and Denver Referred Question 2A.

52. The marijuana-specific taxes are in fact collected by Defendants, and deposited into J.P. Morgan Chase Bank, which itself aids and abets these particular instances of money laundering by allowing the State and City and County to deposit the proceeds of illegal activities in this bank, which then commingles the funds and transmits them across state and international borders.

David Migoya, The Denver Post, “State banks pot money that industry is unable to

do itself,” January 5, 2014,

[http://www.denverpost.com/marijuana/ci\\_24843283/state-banks-pot-money-that-industry-is-unable](http://www.denverpost.com/marijuana/ci_24843283/state-banks-pot-money-that-industry-is-unable).

### **LEGAL ANALYSIS**

53. Marijuana is currently illegal under federal law. Plaintiffs are forced to incriminate themselves by payment of Marijuana Taxes. For purposes of the Federal Controlled Substances Act (“CSA”), “Marihuana” is defined as follows:

all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

21 U.S.C. § 802(16).

54. The CSA provides that “it shall be unlawful for any person knowingly or intentionally to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance...” 21 U.S.C. § 841(1)(a).

55. The CSA provides that “[i]t shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under any provision of this subchapter or subchapter II of this chapter. Each

separate use of a communication facility shall be a separate offense under this subsection. For purposes of this subsection, the term ‘communication facility’ means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication.” 21 U.S.C. § 843(b).

56. The CSA provides that “[a]ny person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.” 21 U.S.C. § 846.

57. Under the CSA, a person is engaged in a “continuing criminal enterprise” if;

(1) he violates any provision of this subchapter or subchapter II of this chapter the punishment for which is a felony, and

(2) such violation is a part of a continuing series of violations of this subchapter or subchapter II of this chapter-

(a) which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and

(b) from which such person obtains substantial income or resources.

21 U.S.C. § 848(c)(1)-(2). Defendants, themselves, engage in continuing series of criminal violations by licensing and undertaking actions in concert with five or more persons. Defendants occupy positions of “organizer,” “supervisory

position,” and “other position of management” of Colorado’s marijuana distribution system. Defendants obtain substantial income or resources from their actions in conjunction with the taxation of marijuana.

58. The CSA provides that the use of the tax revenue by Defendants in this case is itself a crime:

It shall be unlawful for any person who has received any income derived, directly or indirectly, from a violation of this subchapter or subchapter II of this chapter punishable by imprisonment for more than one year in which such person has participated as a principal within the meaning of section 2 of title 18, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this section if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any violation of this subchapter or subchapter II of this chapter after such purchase do not amount in the aggregate to 1 per centum of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

21 U.S.C. § 854(a). Defendants deposit into a bank, specifically J.P. Morgan Chase, and use and invest funds obtained from the illegal sale of marijuana in activities which affect interstate or foreign commerce.

59. The CSA provides that it shall be unlawful to;

(1) knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance;

(2) manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant,

or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.

21 U.S.C. § 856(a)(1)-(2). Defendants manage, control, and profit from locations used for the purpose of manufacturing and distributing the Schedule I controlled substance or marijuana.

60. As noted, in Leary v. United States, 395 U.S. 6 (1969), the U.S. Supreme Court overturned the criminal convictions of Dr. Timothy Leary for alleged violations of the Marihuana Tax Act of 1937, because the marijuana tax necessarily required the payer of the tax to incriminate himself. And where assertion of the privilege would itself tend to incriminate, witnesses are allowed to exercise the privilege through silence. See, e.g., Leary v. United States, 395 U.S. 6, 28-29 (1969) (no requirement that taxpayer complete tax form where doing so would have revealed income from illegal activities); Albertson v. Subversive Activities Control Bd., 382 U.S. 70, 77-79 (1965) (members of the Communist Party not required to complete registration form “where response to any of the form’s questions . . . might involve [them] in the admission of a crucial element of a crime”).

61. The Colorado Supreme Court, similarly, in People v. Duleff, 515 P.2d 1239 (Colo. 1973) overturned a criminal conviction under Colorado law for cultivation of marijuana without a license, because compliance with the

“licensing” requirement in statute would have required a person to violate his constitutional right against self-incrimination and reveal a violation of federal law:

The relevant question is not whether the initial decision to produce marijuana is voluntary, but whether, once that decision has been made, the accused may be compelled to incriminate himself by complying with the licensing requirements. But cf. *Lewis v. United States*, 348 U.S. 419, 75 S.Ct. 415, 99 L.Ed. 475 (1955), overruled, *Marchetti v. United States*, *Supra*.

Under the circumstances of this case, in order to fully comply with the requirements set forth in C.R.S.1963, 48--5--3(1) and C.R.S.1963, 48--5--4, Duleff would have been forced to reveal information which would have tended to incriminate him of violating the federal marijuana tax laws. See Int.Rev.Code of 1954, §§ 4741--4757.

62. The Colorado Supreme Court held specifically that the Fifth Amendment prohibits *state* licensing requirements that force a person to reveal a violation of *federal* law:

[T]he Fifth Amendment prohibits licensing requirements from being used as a means of discovering past or present criminal activity which is subject to prosecution by calling attention to the licensee and his activities. ... There is no doubt that the information which Duleff would have been required to disclose would have been useful to the investigation of his activities, would have substantially increased the risk of prosecution, and may well have been a direct admission of guilt under federal law. See Int.Rev.Code of 1954, § 4744. The Fifth Amendment protects individuals from such compulsory, incriminating disclosures and provides a complete defense to prosecution.

People v. Duleff, 515 P.2d 1239, 1240; citing U.S. Constitution, Amends V and XIV; Leary v. United States, 395 U.S. 6 (1969); Haynes v. United States, 390 U.S. 85 (1968); Grosso v. United States, 390 U.S. 62 (1968); Marchetti v. United States, 390 U.S. 39 (1968).

63. In State v. Maurello, 932 P.2d 851 (Colo. App. 1997), the Colorado Court of Appeals upheld a dismissal of the charges of possession of marijuana with intent to distribute and possession of more than eight ounces of marijuana, on the ground that the then-existing “Colorado Controlled Substance Tax,” § 39-28.7-101, et seq., C.R.S. (1986 Repl. Vol. 16B) (repealed effective March 26, 1996; Colo. Sess. Laws 1996, ch. 139 at 135) was a penalty for double jeopardy purposes. The Court of Appeals found it notable that “[o]ur statute did not provide for any anonymity or limitation on the use of the records as evidence in subsequent criminal proceedings. Indeed, our statute expressly required the Department to maintain accurate records of all tax stamps sold. Section 39-28.7-103.” State v. Maurello, 932 P.2d at 852. Similarly, Proposition AA and Denver Referred Question 2A do not provide for anonymity and require tax records be maintained.

64. Eleven other states have had state taxes on marijuana or other illegal drugs overturned on either rationales involving self-incrimination or double jeopardy. See, e.g., Fla. Dep't of Revenue v. Herre, 634 So.2d 618 (Fla.1994) (self-incrimination); State v. Smith, 120 Idaho 77, 813 P.2d 888 (1991) (self-incrimination); Wilson v. Dep't of Revenue, 169 Ill.2d 306, 214 Ill.Dec. 849, 662 N.E.2d 415 (1996) (double jeopardy); Bryant v. State, 660 N.E.2d 290 (Ind.1995) (double jeopardy); Comm'r of Revenue v. Mullins, 428 Mass. 406, 702 N.E.2d 1 (1998) (double jeopardy); Dep't of Revenue v. Kurth Ranch, 511 U.S. 767, 114 S.Ct. 1937, 128 L.Ed.2d 767 (1994) (double jeopardy); Desimone v. State, 116

Nev. 195, 996 P.2d 405 (2000) (double jeopardy); N.M. Taxation & Revenue Dep't v. Whitener, 117 N.M. 130, 869 P.2d 829 (N.M.Ct.App.1993) (double jeopardy); State v. Roberts, 384 N.W.2d 688 (S.D.1986) (self-incrimination); Brunner v. Collection Div., 945 P.2d 687 (Utah 1997) (double jeopardy); State v. Hall, 207 Wis.2d 54, 557 N.W.2d 778 (1997) (self-incrimination).

### **FIRST CLAIM FOR RELIEF**

**(Declaratory Judgment and Permanent Injunction pursuant to C.R.C.P. 57 and 65 and Colorado Declaratory Judgment Act, Colo. Rev. Stat. § 13-51-101 et seq.)**

### **(CONSTITUTIONAL PROTECTIONS AGAINST SELF-INCRIMINATION AND DOUBLE JEOPARDY)**

65. Plaintiffs incorporate the foregoing paragraphs and allegations as if fully set forth herein.

66. A genuine controversy exists between Plaintiffs and Defendants for which Plaintiffs are entitled to declaratory relief under C.R.C.P 57 and C.R.S. § 13-51-101.

67. Marijuana-specific taxes require plaintiffs and any other person paying said taxes to incriminate themselves as committing multiple violations of federal law, including but not limited to, participating in, aiding and abetting, or conspiring to commit a “continuing criminal enterprise” and “money laundering.” These illegally-collected taxes are ultimately laundered by the State of Colorado through J.P. Morgan Chase Bank, which also participates knowingly in the continuing criminal enterprise.

68. There can be no possible scenario where a person paying said marijuana-specific taxes can also be in full compliance with federal law, related to the activities upon which the taxes are paid.

69. Accordingly, marijuana-specific taxes violate the U.S. Constitution Fifth Amendment, and the Colorado Constitution Article II § 18, respective protections against Self-Incrimination and Double Jeopardy.

70. Plaintiffs have suffered damages in an amount to be determined at trial. It is illegal for government to retain tax monies illegally collected in violation of the constitution, so all amounts must be returned, and all records related to previous tax payments, destroyed.

### **SECOND CLAIM FOR RELIEF**

**(Declaratory Judgment and Permanent Injunction pursuant to C.R.C.P. 57 and 65 and Colorado Declaratory Judgment Act, Colo. Rev. Stat. § 13-51-101 et seq.)**

**(FEDERAL PREEMPTION; VOID FOR ILLEGALITY AND PUBLIC POLICY)**

71. Plaintiffs incorporate the foregoing paragraphs and allegations as if fully set forth herein.

72. A genuine controversy exists between Plaintiffs and Defendants for which Plaintiffs are entitled to declaratory relief under C.R.C.P 57 and C.R.S. § 13-51-101.

73. Marijuana taxes assessed at the State or Local levels are assessed on activities that violate Federal law. Federal law is supreme over, and pre-empts,

state or local law.

74. Marijuana taxes are in part rationalized in order to fund state and local regulatory schemes aiding and abetting the illegal for-profit distribution of marijuana. Taxes specifically designed to be collected on illegal activities are void for illegality. The statutes providing specifically that taxes are to be collected on illegal activities are against public policy, and are therefore void.

75. The state and local regulatory schemes for marijuana themselves violate federal law, the Federal Controlled Substances Act, 21 U.S.C. § 841 et seq., and are consequently preempted and invalid. Gonzales v. Raich, 545 U.S. 1 (2005).

76. Defendants Governor Hickenlooper and Mayor Hancock, themselves, are federal criminal actors who oversee and operate a “continuing criminal enterprise” as defined by federal law (21 U.S.C. § 848(c)(1)-(2)). The Hickenlooper/Hancock Continuing Criminal Enterprise engages in “money laundering” since these defendants, and at least five of their agents acting under their authority, deposit the proceeds of illegal marijuana taxes into a banking institution(s), with Governor Hickenlooper and Mayor Hancock as the ultimate “organizer,” “supervisory position,” and “other position of management” of this illegal criminal scheme. The organizers of this illegal scheme launder their illegal drug proceeds through, and conspire with, J.P. Morgan Chase Bank to violate federal law and deposit these funds into a banking institution, and comingling said funds with funds collected from lawful enterprises.

77. The Hickenlooper/Hancock Continuing Criminal Enterprise engages in knowing criminal behavior. The Colorado Attorney General has previously advised the Governor and Colorado General Assembly that the state marijuana regulatory regime is a violation of federal law, and cited letters from numerous U.S. Attorneys in states where medical marijuana is legal under state law. April 26, 2011 Letter from Colorado Attorney General John Suthers, with attached letters. <http://www.cannabistherapyinstitute.com/legal/feds/doj.walsh.memo.pdf>.

78. The U.S. Attorney for Colorado, the chief federal prosecutor in this state, confirmed that “a state cannot authorize violations of federal law.” See Letter from U.S. Attorney John F. Walsh, April 26, 2011; citing U.S. v. Bartkowicz, No. 10-cr-00118 PAB (D. Colo. 2010). <http://www.cannabistherapyinstitute.com/legal/feds/doj.walsh.memo.pdf>.

79. The U.S. Constitution’s Supremacy Clause, Article VI, cl. 2, invalidates marijuana-specific taxes, on their face. “The underlying rationale of the preemption doctrine is that the Supremacy Clause invalidates state laws that ‘interfere with, or are contrary to, the laws of Congress.’” Sapp v. El Paso County Department of Human Services, 181 P.3d 1179 (Colo. App. 2008); Brubaker v. Bd. of County Comm’rs, 652 P.2d 1050, 1054 (Colo. 1982) (quoting Gibbons v. Ogden, 22 U.S. 1, 211, 6 L.Ed. 23, 73 (1824)). One of three types of preemption, conflict preemption, voids a state statute that actually conflicts with a valid federal law. See *id.* at 1055; see also In re Estate of Klarner, 113 P.3d 150, 156 (Colo. 2005). “A conflict will be found ‘where compliance with both federal and state

regulations is a physical impossibility . . . ,’ or where the state ‘law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’” Brubaker, 652 P.2d at 1055 (citation omitted) (quoting in part Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-43, 83 S.Ct. 1210, 1217, 10 L.Ed.2d 248 (1963), and Hines v. Davidowitz, 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581 (1941)).

80. Marijuana taxes at the State and Local level, Proposition AA and Denver Referred Question 2A, respectively, actually conflict with, interfere with, and are contrary to the laws of the U.S. Congress. Compliance with both federal and state/local law is a physical impossibility, in this instance.

81. This Court should enjoin enforcement of marijuana-specific taxes, as they directly conflict with federal law. This Court should issue declaratory relief that the statutes and laws providing for and requiring payment of these taxes are void *ab initio* and are unenforceable, and providing for a confidential refund of all taxes collected illegally and laundered through J.P. Morgan Chase Bank or any other banking institution.

### **THIRD CLAIM FOR RELIEF**

**(Declaratory Judgment and Permanent Injunction pursuant to C.R.C.P. 57 and 65 and Colorado Declaratory Judgment Act, Colo. Rev. Stat. § 13-51-101 et seq.)**

**(EXCESSIVE TAXES AS “UNREASONABLY IMPRACTICABLE” IN VIOLATION OF COLORADO CONSTITUTION, ARTICLE XVIII § 16)**

82. Plaintiffs incorporate the foregoing paragraphs and allegations as if

fully set forth herein.

83. A genuine controversy exists between Plaintiffs and Defendants for which Plaintiffs are entitled to relief under C.R.C.P 57 and C.R.S. § 13-51-101.

84. The taxes provided for by Proposition AA and Denver Referred Question 2A are respectively, a 10% statewide sales tax, a 15% statewide excise tax, and a 3.5% local Denver sales tax, in addition to the already-existing generic, non-marijuana taxes rates of 2.9% statewide sales tax, and a 7.62% local Denver sales tax, all adding up to the highest tax burden imposed in Colorado against any specific product or economic sector.

85. The purpose of the Colorado Constitution, Article XVIII § 16 (“Amendment 64”) was to legalize marijuana, and consequently to enhance “public safety” (see § 16(1)(b)), by eliminating the unregulated “black market” in marijuana. A secondary purpose of Amendment 64 was to tax marijuana “in a manner similar to alcohol.” See § 16(1)(a).

86. To this end, Amendment 64 prohibits any regulation that makes the operation of marijuana establishments “unreasonably impracticable.” Colorado Constitution, Article XVIII § 16(5)(a).

87. The Colorado Constitution defines “unreasonably impracticable” as follows:

(o) “UNREASONABLY IMPRACTICABLE” MEANS THAT THE MEASURES NECESSARY TO COMPLY WITH THE REGULATIONS REQUIRE SUCH A HIGH INVESTMENT OF RISK, MONEY, TIME, OR ANY OTHER RESOURCE OR ASSET THAT THE OPERATION

OF A MARIJUANA ESTABLISHMENT IS NOT WORTHY OF BEING CARRIED OUT IN PRACTICE BY A REASONABLY PRUDENT BUSINESSPERSON.

88. The excess taxes are “unreasonably impracticable” in violation of Amendment 64, and have allowed the unregulated, untaxed, underground market to undercut the regulated stores and consumers that attempt to pay the excessive taxes, defeating the core purpose of Amendment 64 and creating a public safety emergency.

89. Excess taxes will cause the regulated stores to go out of business, unable to compete with the untaxed, unregulated market.

90. This Court should enjoin future enforcement and collection of these “unreasonably impracticable” taxes, which are not assessed “in a manner similar to alcohol.”

**FOURTH CLAIM FOR RELIEF**

**(Declaratory Judgment and Permanent Injunction pursuant to C.R.C.P. 57 and 65 and Colorado Declaratory Judgment Act, Colo. Rev. Stat. § 13-51-101 et seq.)**

**(EQUITABLE CLAIMS FOR UNJUST ENRICHMENT / QUANTUM MERUIT)**

91. Plaintiffs incorporate the foregoing paragraphs and allegations as if fully set forth herein.

92. A genuine controversy exists between Plaintiffs and Defendants for which Plaintiffs are entitled to relief under C.R.C.P 57 and C.R.S. § 13-51-101.

93. Marijuana taxes assessed at the State or Local levels are assessed on

activities that violate Federal law.

94. As an alternative to the legal claims asserted above, Plaintiffs also assert equitable claims for Unjust Enrichment and Quantum Meruit.

95. A benefit was conferred on Defendants by the Plaintiffs, namely payment of illegal marijuana taxes; Defendants appreciated or realized the benefit; and Defendants accepted the benefit under such circumstances that it would be inequitable for Defendants to retain the benefit without payment of its value.

Salzman v. Bachrach, 996 P.2d 1263 (Colo. 2000).

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request a trial by jury for all issues so triable, and pray for the following relief:

- A. Enter judgment in Plaintiffs' favor against Defendants;
- B. Grant Plaintiffs' Declaratory Judgment finding that the marijuana-specific taxes provided for by Proposition AA and Denver Referred Question 2A are unconstitutional, illegal, and void for the above reasons;
- C. Enter a temporary restraining order, preliminary injunction, and/or permanent injunction ordering the Defendants, and all those acting in concert with them, to cease and desist from enforcement of the marijuana tax statutes, to cease and desist from any further collection, deposit, or laundering of the marijuana taxes, for a full refund of marijuana tax monies paid by any person or entity, and for destruction of all tax records and identifying information after full refunds are made;

D. Grant Plaintiffs any and all other relief the Court deems proper.

Date: June 9, 2014

Respectfully submitted,

*/s/ Robert J. Corry, Jr.*

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Robert J. Corry, Jr.  
Matthew W. Buck

**CERTIFICATE OF SERVICE**

I hereby certify that on June 9, 2014 I served this **COMPLAINT AND APPLICATION FOR INJUNCTIVE AND DECLARATORY RELIEF, REFUND OF ILLEGALLY-COLLECTED TAXES AND DAMAGES, AND REQUEST FOR TRIAL BY JURY**, a **SUMMONS**, and **CIVIL COVER SHEET** by ICCES E-Service, electronic mail, or U.S. Mail, upon the following:

Colorado Attorney General John Suthers  
(Attorney for Governor John Hickenlooper and Colorado Department of Revenue)

Denver City Attorney Scott Martinez  
(Attorney for Mayor Michael Hancock and Denver Treasury Division)

*/s/ Robert J. Corry, Jr.*

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Robert J. Corry, Jr.