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NFIB, Independence Institute argue against plaintiffs in case to overturn TABOR

By: Heather Draper – February 13, 2013

The National Federation of Independent Business, the TABOR Foundation, the Goldwater Institute and several other conservative public policy groups have filed a “friend of the court” brief in response to a lawsuit that is attempting to overturn Colorado’s Taxpayers Bill of Rights (TABOR).

In the amici curiae brief filed Tuesday challenging the plaintiffs’ position in *Kerr v. Hickenlooper*, the groups argue that “overturning TABOR would open the floodgates for litigation against voter-enacted spending controls around the country, and undermine Colorado voters’ decision to keep government spending in check,” according to a press release Wednesday from NFIB.

“Colorado voters enacted the taxpayer bill of rights to restrain their government’s out-of-control appetite for spending, and today’s difficult economy does not give government the right to untether itself from these restraints,” Karen Harned, executive director of NFIB’s Small Business Legal Center, said in the release.

“If the court allows TABOR to be overturned, it could open a Pandora’s Box for challenges to all sorts of voter-enacted government controls around the country,” the release adds.

The Colorado Union of Taxpayers and several Republican legislators filed a similar amicus brief on Monday, and the Independence Institute and the Cato Institute filed one last Friday.

The 24 plaintiffs in *Kerr v. Hickenlooper*, filed in federal court in Colorado in May 2011, include current and past Colorado state legislators, public officials, educators and private citizens.

They claim that TABOR, an amendment to the Colorado Constitution passed by voters in 1992, has undermined the ability of Colorado’s representative democracy to function and as a result, the state no longer has a “republican form of government,” according to the website, taborcase.org.

Critics of TABOR have long argued that the amendment limiting tax increases is hurting health care and education in the state, particularly higher education, where Colorado ranks 48th in the nation in terms of higher education funding.

Gov. John Hickenlooper, the named defendant in the lawsuit, and Attorney General John Suthers asked that the case be dismissed. In July 2012, U.S. District Judge William J. Martínez ruled the lawsuit could go to trial, denying the state's motion to dismiss.

The case is now pending in the 10th Circuit. Suthers filed his opening brief for Hickenlooper on Feb. 1.

The plaintiffs' answering brief is due April 5. Depending on whether Suthers files a reply brief, the case should be fully briefed and "at issue" before the 10th Circuit in April or May of 2013, according to taborcase.org.