

# THE DENVER POST

## **Federal judge tosses lawsuit challenging TABOR saying plaintiffs have no right to sue**

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A federal judge in Denver has tossed out a years-old lawsuit that challenged the constitutionality of Colorado's Taxpayer Bill of Rights, saying that the plaintiffs did not show they were injured by the law and have no right to sue.

"The Court finds that none of the named plaintiffs (be they political subdivisions, former or current elected officials, educators, citizens, or anything else) have standing to pursue this action," U.S. District Judge Raymond Moore wrote in Thursday's decision.

The lawsuit, filed six years ago protesting the voter-passed amendment to the Colorado Constitution that requires and tax increase to be approved by voters, is likely to see a renewed round of appeals. The case has gone all the way to the U.S. Supreme Court and back to federal court in Denver, without ever actually dealing with the issue: Does TABOR wrongly take away the taxing authority from legislators and local government?

"We will read it very carefully and determine what options may be available," said Michael Feeley, one member of a team of attorneys representing the TABOR opponents. "We hope to have our day in court. The courts have never addressed the merits of the case."

Andy Kerr, a state senator now running for Congress who is one of the plaintiffs in the case, said he is digesting the ruling, but added: "Obviously, I'm disappointed."

Colorado Attorney General Cynthia Coffman praised the decision.

"After six years of litigation, the federal court today entered an order that should put an end to this protracted and unproductive litigation. The district court's order recognizes that this suit is an improper attempt to debate a public policy question through a federal lawsuit," Coffman said in an emailed statement. "We hope the plaintiffs in this case will not appeal. ... The parties can certainly continue to oppose TABOR as a matter of policy and politics, but it's long past time they gave up their frivolous lawsuit."

The case was shipped back to U.S. District Court in Denver after the U.S. Supreme Court remanded it, vacating a decision by the 10th Circuit Court of Appeals, also in Denver, that determined legislators challenging TABOR in the lawsuit didn't have the right, known as "standing," to do that.

The district court earlier decided that the legislators had that right, but was overturned on appeal. The high court decision to kick it back was based on a recent decision the court made in which Arizona legislators were found to have the right to challenge a voter-passed referendum dealing with redistricting.

In the TABOR case, however, plaintiffs assert that putting tax hikes before voters violates the state constitution by transforming Colorado from a republican form of government into a direct democracy.

Moore notes that the plaintiffs, particularly legislators, citizens and educators — don't say how TABOR has specifically harmed them, and by not showing any damage they can't have any standing to challenge the voter-passed law.

Federal laws require, at a minimum, "... that a party show an actual or threatened injury as a result of defendant's allegedly illegal conduct, the injury can be traced to the challenged action, and is likely to be redressed by a favorable decision," Moore wrote in his 24-page opinion.

Simply complaining about a problem, Moore wrote, isn't actually showing any harm.

Political subdivisions that sued, however, have argued that they are forced into making unreasonable and harmful expenditures of taxpayer dollars to put any tax increase to a public vote, which Moore called a "concrete monetary injury."

However, he noted that school districts, for instance, don't have the right to challenge TABOR because the right to a Republican form of government, where decisions are made by the collective representative body, rests with the people, not the district.

The case should have ended years ago, according to Ilya Shapiro, senior fellow in constitution studies at the Cato Institute in Washington, D.C..

"This was always a loopy case: the idea that voter initiatives violate the Guarantee Clause (where states are guaranteed a republic form of government) is nonsensical and the claims were brought by sore losers in that fight," Shapiro said. "Once the Tenth Circuit decided that the legislators lacked standing, that should have been — and now is — the end of the line. Good riddance to frivolous lawsuits."