DATE FILED: August 20, 2018 1:38 PM
FILING ID: C90851C89C8AE
CASE NUMBER: 2015CV32305

DISTRICT COURT, CITY & COUNTY OF DENVER, STATE OF COLORADO
1437 Bannock Street, Room 256
Denver, Colorado 80202

TABOR FOUNDATION, a Colorado non-profit corporation; COLORADO UNION OF TAXPAYERS FOUNDATION, a Colorado non-profit corporation; REBECCA R. SOPKIN, an individual; and JAMES S. RANKIN, an individual;
Plaintiffs,
v.

COLORADO DEPARTMENT OF HEALTH CARE POLICY AND FINANCING; COLORADO HEALTHCARE AFFORDABILITY AND SUSTAINABILITY ENTERPRISE; KIM BIMESTEFER, in her official capacity as Executive Director of the Colorado Department of Health Care Policy and Financing; COLORADO DEPARTMENT OF THE TREASURY; WALKER STAPLETON, in his official capacity as Colorado State Treasurer; and the STATE OF COLORADO;
Defendants,
and

COLORADO HOSPITAL ASSOCIATION
Defendant-Intervenor.

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Case No.: 2015 CV 32305

Div.: 275

PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

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ARGUMENT

I. Defendants concede that SB 17-267 does not relate to a single subject.

Defendants fail to rebut Plaintiffs' argument that SB 17-267 violated the single-subject requirement because its disparate provisions do not all directly relate to its stated purpose, the sustainability of rural Colorado. Pls.' Mot. for Summ. J. at 26–33 [hereinafter Pls.' Mot.]. Instead, Defendants respond that indeed most of SB 17-267's provisions apply to the whole state but tend to support the sustainability of rural Colorado as well. Defs.' Resp. to Pls.' Mot. for Summ. J. at 23–25 [hereinafter Defs.' Resp.]. By failing to respond to Plaintiffs' challenges to four specific provisions of the bill or relate them to rural Colorado in any way, Defendants have conceded that SB 17-267 fails the constitution's single-subject requirement.[1]

A. Defendants concede that four provisions of SB 17-267 do not relate to the sustainability of rural Colorado.

Plaintiffs demonstrated that eight provisions of SB 17-267, listed and discussed in its motion, are not directly related to the sustainability of rural Colorado and cannot be severed from the remainder of the bill. Pls.' Mot. at 29–33.

Defendants did not respond to Plaintiffs' arguments on non-severability and thus have conceded that point. Defendants also failed to defend four of the eight provisions that Plaintiffs discussed, each one of which must be "directly related" to the sustainability of rural Colorado for the bill to survive. By failing to offer any argument, Defendants have conceded that the following provisions are unrelated to the sustainability of rural Colorado: (1) doubling of Medicaid pharmacy copays, (2) a two-percent reduction in the budget of most state agencies,

[1] Defendant-Intervenor repeats the arguments from its motion. Plaintiffs' response brief provides a detailed rebuttal of Defendant-Intervenor's arguments. Pls.' Resp. at 37–40.

(3) a $200 million reduction in the excess state revenues cap, and (4) participation in a federal program for children with complex medical conditions.

That concession invalidates SB 17-267: those provisions violate the single-subject requirement and this Court cannot know whether the bill would have been passed and signed by the Governor if those provisions were not included.

B. Defendants fail to justify the four provisions they try to defend.

In their motion for summary judgment, Defendants addressed the following provisions of SB 17-267: (1) business personal property taxes, (2) transportation funding, (3) marijuana-sales-tax revenue, and (4) the creation of CHASE. State Defs.' Cross-Mot. for Summ. J. at 38–40 [hereinafter Defs.' Mot.]. Plaintiffs answered those arguments in its response. Pls.' Resp. to Defs. & Def.-Int.'s Mots. for Summ. J. at 33–36 [hereinafter Pls.' Resp.]. In their response, Defendants address only the provisions dealing with the business personal property taxes and CHASE. Defs.' Resp. at 25.

Business Personal Property Tax Credit: Defendants claim SB 17-267's business-personal-property-tax provision has had a disproportionate benefit to rural Colorado because that portion of the state had a slower economic recovery. *Id*. But the only "evidence" Defendants provided to support that claim is a citation to paragraph 23 of Mr. Henry Sobanet's affidavit, *id*., and that paragraph provides nothing more than the conclusion Defendant wants to reach: "Based on the testimony and discussions that I heard, it was clear that the primary intent of the bill was to help the sustainability of rural Colorado. In my opinion, all subjects within S.B. 17-267 are related to the rural sustainability of Colorado." Ex. B to Defs.' Mot. ¶ 23. But the question is not what the legislature's intention was—that much can be gleaned from the bill's title—but what the provisions of the bill actually do. The so-called evidence Defendants cite here is nothing more than a self-serving, unsupported opinion, while the express words of SB 17-267

relating to the business personal property tax cut show that the provision was directed to the entire state, not to the sustainability of rural Colorado.

CHASE and the Healthcare Charge: Defendants claim the creation of CHASE and the Healthcare Charge was necessary because the revenue created by the Hospital Provider Charge was going cause the state to breach the excess state revenues cap. Defs.' Mot. at 37. The other legislative option, Defendants claim, would have been to reduce the volume of revenue collected from the charge, which, they claim without evidence, would have harmed rural hospitals. *Id*. Defendants' consistent approach of trying to defend disparate legislative provisions without any evidence and backed by conclusory statements is shown in no greater relief than here. There is no evidence in the record that rural hospitals would have been harmed by a lower charge or of which hospitals Defendants consider rural or how they or the legislature reached that conclusion. Given their failure to connect the provision to the bill's stated purpose and their improper reliance on their own *ipse dixit*, this provision also fails to directly relate to the sustainability of rural Colorado.

In light of the above, Plaintiffs are entitled to judgment on their claim that SB 17-267 must be invalidated for failure to meet the Colorado constitution's single-subject requirement.

II. Defendants fail to refute Plaintiffs' position that the charges at issue are taxes.

In response to Plaintiffs' arguments that the charges at issue are taxes levied in violation of TABOR, *see* Pls.' Mot. at 13–25; Pls.' Resp. at 15–21, Defendants assert in part that the charges are fees because some hospitals receive a benefit from the program funded by those charges. Defs.' Resp. at 4–17.

In doing so, Defendants urge the Court to ignore that some individual hospitals are net losers in the program—and thus receive no service—by asserting that the hospitals must be evaluated collectively. *Id*. at 6. Fatally, the charge is not assessed or collected at the group level.

Instead, the entities who provide the medical services that trigger the charge, who are liable to pay the charge, and who receive supplemental payments from the government (*i.e.*, the service) are all individual hospitals. There is no basis in the law to shift the analysis to hospital groups.

As set forth below, Defendants' further arguments fail because they (1) ignore beneficiaries of the program who never pay a charge, (2) repeat the improper focus on benefits instead of defraying the cost of services provided, and (3) improperly analyze those costs.

A. The charges are taxes because they do not fund a fee-for-service transaction.

One reason the Hospital Provider Charge and Healthcare Charge are taxes is because many medical service providers, both hospitals and non-hospitals, receive the benefits of the program without ever paying a charge. The charges, in other words, do not fund a fee-for-service transaction. Pls.' Mot. at 14–17, 23–25. Defendants attempt to counter this argument by citing three cases to claim "that a transaction [does not have] to be fee-for-service . . . to be constitutional." Defs.' Resp. at 13. All three cases are inapposite.

First, Defendants rely on *Bruce v. City of Colorado Springs*, which Plaintiffs also cite. That case expressly states that fees are proper when they "are imposed only on those using the services provided to defray the expense of operating or improving the facility." 131 P.3d 1187, 1192 (Colo. App. 2005). This understanding mirrors the idea that a fee must be "reasonably designed to defray the cost of the particular service rendered[.]" *Id.* at 1190. Here, the charges do not meet the *Bruce* criteria because they are being used to provide a significant benefit to non-fee payors, instead of being used to defray the costs of services provided to those who did pay the charge. Pls.' Mot. at 16–17.

Second, Defendants cite *Colorado Bridge Enterprise* to argue that a charge may be a fee even if it is imposed on payors that will never benefit from it. Defs.' Resp. at 15–16. But in that case, the Court of Appeals stated that a fee can be "imposed on those who are *reasonably likely*

to benefit from or use the service[.]" *Tabor Found. v. Colo. Bridge Enter.*, 353 P.3d 896, 900, 903 (Colo. App. 2014) (emphasis added). It also explained that "both witnesses testified that they did take or allow [their] vehicles to be taken out of the county and may have received the benefits of the bridge safety surcharge as to those vehicles." *Id.* It was for that reason that "they would be reasonably likely to benefit from" the service. *Id.* That is not the context of this case. There are several hospitals that lose money in the program and that have lost tens of millions of dollars over multiple years. Pls.' Mot. at 15 (detailing losses).[2] They are not reasonably likely to benefit from a program designed to provide supplemental payments where they consistently lose millions of dollars because of their participation in that program.

Third, Defendants cite *City of Aspen* to claim that non-fee payors can benefit from a service without converting a charge into a tax. Defs.' Resp. at 16. In *City of Aspen*, the court wrote: "[T]he benefits of the waste reduction program are shared by citizens and visitors to Aspen who never pay the charge . . . These facts do not make the charge a tax. We have held that a charge may *incidentally* benefit the general public without becoming a tax." *Colo. Union of Taxpayers Found. v. City of Aspen*, 418 P.3d 506, 514–15 (Colo. 2018) (citation omitted) (emphasis added). In doing so, the court cited *Barber* for the proposition that an "incidental benefit to the public" was permissible. *Barber v. Ritter*, 196 P.3d 238, 250 (Colo. 2008) (The "incidental defraying of general governmental expense does not transform a fee into a tax.").

[2] Defendants contend that because FY 2009–10 is outside the statute of limitations the hospital losses from that year should not be considered. Defs.' Resp. at 3, ¶ 11. Plaintiffs included those years as undisputed factual data points in support of their arguments on liability; they are not included in calculating Plaintiffs' claim for damages. *See Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 103 (2002) (statute of limitations does not prevent plaintiff "from using the prior acts as background evidence in support of a timely claim"). Even excluding that year and using Defendants' preferred numbers, Plaintiffs' analysis is in no way undermined because in all following years certain hospitals have lost money by being forced to participate in the program.

The question presented here, however, is not whether the charge incidentally defrays general government expenses or incidentally benefits the public. Plaintiffs have demonstrated that there are two classes of medical providers that receive substantial benefit from the program despite not paying the charge: statutorily-exempt hospitals, which received over $13 million, and non-hospital medical providers that serviced the expansion population, which received "roughly sixty-nine percent of the more than $6 billion spent on 'expansion populations[.]'" Pls.' Mot. at 16–17. Defendants confirm this when they write that, in the most recent year, of "expansion population expenditures of $1,849.90 million . . . hospitals would receive $554.97 million of that total." Defs.' Resp. at 21. That means roughly $1.3 billion went to non-hospital medical providers that do not pay the charge.

This case does not present *City of Aspen*'s "incidental benefit to the public," or *Barber*'s "incidental defraying of general governmental expense." Instead, the fundamental design of the program directs large amounts of its benefits to specific classes of non-payors. For that reason, the charge is a tax, not a fee.

B. The charges are taxes because they are not reasonably related to defray the cost of the service provided.

Here, the size of the charge is not reasonable to defray the cost of the service provided. Pls.' Mot. at 17–23; *id*. at 20 (arguing a "ratio of more than **21:1** is not a reasonable relationship"). Defendants make two errors in response. Defs.' Resp. at 17–22. First, they continue improperly to focus on *the benefit received* by hospitals instead of *the cost to* the governmental unit providing the service. Second, they improperly conflate "expenditures" and "costs."

1. The Court must assess the cost to the government of providing the service, not the benefit received by those paying the charge.

In determining whether a charge is a tax or a fee, the test is "whether there is a reasonable relationship between the direct or indirect cost to the government of providing the product or

activity assessed and the amount being charged." *City of Aspen*, 418 P.3d at 514. The benefit received by the charge-payor is not relevant to this inquiry. Yet, without any attempt to refute the test articulated in *City of Aspen,* Defendants continue to assert that the charges are fees because they fund a benefit to the hospitals. Defs.' Mot. at 16–22 (describing benefits); Defs.' Resp. at 20 ("The fee paying hospitals receive massive benefit from the expansion itself and from access to the federal funds made possible by the program[.]"); *id*. ("The fee paying hospitals unquestionably received benefit from these services.").

Plaintiffs do not dispute that many hospitals (except those that lost money) benefit, but *City of Aspen* makes this irrelevant and the proper test is whether the assessed charge is reasonably related to defraying the costs of the services provided.

2. Defendants improperly conflate "expenditure" and "cost."

Plaintiffs make a distinction among the "expenditures" reported by the Department and the "costs" the Department actually incurred to provide services. Pls.' Mot. at 20–23. Defendants respond that all reported "expenditures" should be counted as "costs." Defs.' Resp. at 17–22. Defendants misconstrue Plaintiffs' position and, in doing so, reinforce Plaintiffs' argument.

This case is unique in that the service at issue only involves the collection and redistribution of money: individual hospitals pay the charge, Defendants then receive a higher amount of money from the federal government than they otherwise would, and then Defendants redistribute the combined funds back to the hospitals, albeit in a way that leaves some hospitals net losers in the transaction. In that context, it is necessary to draw a distinction between the "costs" of providing the service and the "expenditures" that Defendants list in their annual reports because the two are not the same. *See* Pls.' Mot. at 21.

Defendants misconstrue Plaintiffs' position, stating that "Plaintiffs' argument is akin to saying that the Colorado Bridge Enterprise could pay for its administrative staff, but couldn't pay contractors to fix bridges. Or that the City of Aspen could fund staff to provide education, but couldn't buy reusable bags to give away or provide recycling containers." Defs.' Resp. at 18. Both of those examples actually *buttress* Plaintiffs' position. The payment of contractors to fix bridges and the purchasing of reusable bags and recycling containers are "costs" because the government entities in those cases had to pay money or incur liabilities to obtain the bridge repair, reusable bags, and recycling containers, *i.e.*, it "cost" them money to provide those services and products to the fee payors. Not so here. The Department and CHASE pay no money and incur no liability to obtain the money they use to make supplemental-payment, expansion-population, or offset-revenue-loss expenditures. In the first and third of these instances, they act merely as middle-men or conduits through which money flows from its original source to the ultimate beneficiaries. In the remaining instance, expansion populations, most of the money also comes from another source (the federal government), and the fact that Colorado makes a small contribution to the expenditure does not make it a relevant cost. A review of each expenditure makes this clear.

Supplemental Payments: Defendants argue that the total amount of the supplemental payments is a cost because the money used to make the payments is not retained by the Department or CHASE. Defs.' Resp. at 19. But that position does not take into account the nature of the service at issue. The Department and CHASE act as conduits: they pool money obtained from charge-paying hospitals and the federal government and that combined money is then redistributed to the hospitals. The only relevant costs associated with this service, therefore, are the costs incurred in the collection, handling, and distribution of the money, which is

accounted for in the administrative costs line item. The money that is shuffled around in this transaction is not a cost of providing the service.

Expansion Populations: The expansion-population line item represents money that funds medical services for populations that were made eligible for Medicaid by the Affordable Care Act. These expenditures are not a cost to the Department or CHASE because the federal government reimburses the state for the claims at a 100- or 95-percent matching rate. Pls.' Mot. at 21. As with supplemental payments, the money used to make these payments cannot be considered a cost to the Department or CHASE of providing any service. Defendants respond that some administrative costs connected to expansion populations are not covered at the highest matching rate, such as "installing or adapting claims processing and information retrieval systems to work with the populations . . . [and] maintaining those same systems[.]" Defs.' Resp. at 21. Plaintiffs agree the Department may have incurred some administrative costs to disburse those expenditures and accounted for that. Pls.' Mot. at 21. Plaintiffs also have argued, however, that the 5-percent expenditure that Colorado makes to secure the 95-percent from the federal government is not *a relevant cost* because "that program [is] separate from the Hospital Provider Charge and [is] not a cost to the Department to provide the service funded by the charge." *Id*. at 21–22. Defendants provide the math to reinforce Plaintiffs' position and show how little of the expansion-population line item could even remotely be considered a cost: "at a 95% FMAP it would cost $92.49 million to obtain the $1,849.90 million[.]" Defs.' Resp. at 21. Even if the Court agreed that Colorado's contribution to the expansion-population expenditure was a cost, that only amounts to $92 million. The remainder of the more than $1.8 billion that was paid to expansion populations comes from the federal government and thus cannot be considered a cost to the Department or CHASE of providing the service.

Moreover, rightly understood, this $92 million still cannot be considered a cost *of providing the service the charge was intended to fund*. Colorado's Medicaid expansion was not triggered by or contingent on the levying of the Hospital Provider Charge. These are separate programs, triggered by services to separate populations, and applicable to different categories of health service providers. Simply put, the expansion-population expenditure is not a "service" generated by the charges at issue; it is a reimbursement for medical services provided to the expansion population. This point is emphasized by how little of the expansion-population expenditure is paid to hospitals. Defendants explain that of the $1.8 billion in expansion-population expenditures in the most recent year, "hospitals would receive $554.97 million of that total." Defs.' Resp. at 21. That means non-hospital providers servicing expansion populations received the lion's share, or $1.3 billion. Put differently, those payments are not a result of the Hospital Provider or Healthcare Charge; they are a result of Colorado expanding Medicaid, non-hospitals servicing patients, and the federal government providing a 95-percent reimbursement to those non-hospitals for Medicaid claims. Defendants implicitly admit that expenditures to these non-hospitals cannot be counted in the calculation at issue here when it states that "'costs' and 'expenditures' are acceptable if they are spent in support of providing services *to those who pay the fees*." Defs.' Resp. at 19 (emphasis added). Non-hospitals do not pay the charge.

In addition, with the creation of CHASE under SB 17-267, Defendants' argument falls apart. Even if the $92 million is considered a cost *to the Department* because the Department had to secure funding from general appropriations to make its 5-percent contribution, it cannot be a cost *to CHASE* because CHASE does not reimburse service providers for expansion-population Medicaid claims. The Department pays those claims.

Offset Revenue Loss: Plaintiffs argue the offset-revenue-loss line item is not a cost because it was actually a revenue source for the Department and, even if considered a cost, is not a relevant cost because "the Department did not incur that cost to render the service the Hospital Provider Charge was meant to defray (*i.e.*, supplemental payments to hospitals that paid the charge)." Pls.' Mot. at 22.

Defendants confirm Plaintiffs' position: the offset-revenue-loss expenditure is income to the Department. Defs.' Resp. at 21–22. Defendants explain that the state used to collect this revenue from the federal government via a certification of public expenditures. For example, "if a county hospital fully pays for the cost of providing a Medicaid-covered administrative activity, it can certify that expenditure to the state and the state can collect matching federal funds." *Id.* at 22. Because the state could not maintain this revenue source under the Hospital Provider Charge, it instead "replace[d] the lost federal funds," which "make[s] the program revenue neutral." *Id.* The state, in other words, used to collect the revenue stream in one way and after the statutory change, it now collects that revenue in another way. But in both instances, it is income to the state, not a cost.

In summary, of the four line items in the Department's annual reports listing expenditures for the Hospital Provider Charge program, the only relevant item for determining whether the charge at issue in this case is reasonably related to the cost to defray services provided is the administrative-cost line item. Pls.' Mot. at 20–23. The other expenditures are either funded by the federal government and/or the state or constitute income to the Department. The relationship between the charge and the cost to provide the services at issue is not reasonable, and the charge is therefore a tax under Colorado law.

III. Defendants concede that the Court must examine the substance of the two revenue streams to determine whether a TABOR "qualification" occurred.

Plaintiffs argue that the General Assembly did not lower the excess state revenues cap by the proper amount when it qualified CHASE as an enterprise.[3] Pls.' Mot. at 33–40. Defendants use a form-over-substance argument to claim a cap reduction was not necessary because the General Assembly purported to end one program and then created a new (albeit nearly identical) program in the same bill. Defs.' Mot. at 30–40. But, in doing so, Defendants concede that Plaintiffs' analytical framework is correct by attempting to minimize the similarities between the two programs and exaggerating the differences. Defs.' Resp. at 25–26. That is, Defendants concede the similarity between the two programs is a relevant question the Court must answer to determine whether a "qualification" has occurred and thus whether a cap reduction is demanded.

A. Defendants have not undermined Plaintiffs' demonstration that the two charges at issue are materially the same.

Plaintiffs raised five points to show that the two charges are the same in all relevant respects: (1) they "were enacted with identical legislative findings," (2) "the programs funded by both charges have the same objectives," (3) they "use the same funding method to accomplish their objectives," (4) "both charges are contingent upon approval from the federal government and receipt of federal funds," and (5) both authorize seeking "a waiver from the federal government's broad-base provider requirement . . . and both exempt the same types of hospitals from the charge." Pls.' Mot at 34–35.

Defendants respond to the first two points by arguing that "the first portion of the legislative findings are mostly the same but not identical," Defs.' Resp. at 25, but they do not analyze how the findings about the core substance of the two programs are "not identical."

[3] This argument applies only if the Court finds the charge to be a fee rather than a tax. *See* Pls.' Mot. at 25–26.

Compare id. with Pls.' Mot. at 34 (citing identical provisions). Defendants also argue that the addition of the so-called business consulting services makes the two programs meaningfully different. Defs.' Resp. at 25–26. But these minor new services do not alter the core program, revenue raised, or the substantive analysis.

First, it is undisputed that the consulting services are not the primary service at issue. *See* Pls.' Resp. at 16 (CHASE Board Member Burnett stating that although CHASE is supposed to provide consulting services, the "primary business service" is the "collection of fees and distribution of supplemental payments"). Second, the consulting services have not yet been implemented. *See* Pls.' Mot. at 25. Third, the costs that CHASE may eventually incur to provide consulting services will be minimal because they are part of CHASE's administrate costs. *Id*. And because, by statute, CHASE's "administrative costs . . . are limited to three percent of [its] expenditures," C.R.S. § 25.5-4-402.4(4)(a)(III), the cost to provide the consulting services will always be small and will not drive either the core of the program or the size of the Healthcare Charge. The consulting services, therefore, do not affect the similarity of revenue stream or the primary purpose for which it is raised.

Defendants next respond to Plaintiffs' argument "that the programs are the same because both programs charge fees, require federal approval, and authorize federal waivers." Defs.' Resp. at 26. Defendants argue that "this does not mean that they are the same program; it reflects the reality of participation in federal programs." *Id*. Plaintiffs' argument is not that the two programs "participate[] in federal programs," but that they participate in the exact same federal program, subject to the exact same limitations and exemptions. Pls. Mot. at 35. Defendants claim the federal program's "extrinsic constraints cannot be the determining factor in whether the state programs are the same." Defs.' Resp. at 26. But there is nothing "extrinsic"

about them: these constraints are at the very heart of both charges. They are the reason Colorado can and does impose charges on its hospitals to increase federal matching funds, and without these waivers, approvals, constraints, and limitations, there would be no program.

Defendants have failed to rebut Plaintiffs' argument that "both charges do the same thing, by the same method, with the same exemptions, and subject to the same limitations." Pls.' Mot. at 35; *see also* Pls.' Resp. at 25. The new, not-yet-implemented consulting services do not restructure the program into something wholly new because the substance of the two revenue streams, and the programs they fund, are the same.

B. Defendants' position that the excess state revenues cap does not need to be lowered is untenable.

Defendants argue that even if the charges are same, the cap does not need to be lowered because "the Hospital Provider Fee revenue was never included in calculating the cap[.]" Defs.' Resp. at 29. Plaintiffs already have answered that argument. Pls.' Resp. at 29–32.

Plaintiffs' position is that the cap must be lowered because the Hospital Provider Charge revenue was subject to the cap—which Defendants admit—and the revenue raised by the Hospital Provider Charge and the Healthcare Charge is the same in all material respects. *See* Pls.' Mot at 33; Pls. Resp. at 24. Put simply, if A is subject to the cap and A = B, then B also is subject to the cap. That the General Assembly lowered the cap by $200 million is further evidence to support Plaintiffs' position. And it is necessary for the Court to examine the substance of what the General Assembly did in this case because it is well known that the government may "attempt[] to circumvent TABOR's requirements[.]" *City of Aspen*, 418 P.3d at 514. In this case, the lowering of the cap in SB 17-267 is probative evidence that the General Assembly knew that its actions in creating CHASE implicated the cap. Why else would the

legislature—unbidden by the other provisions in the bill, as Defendants would have the Court believe—lower the jealously guarded cap by $200 million?[4]

Given Defendants' concession that the relevant question in determining whether a "qualification" has occurred is the similarity between the charges before and after the charge was collected by the enterprise, and because the two charges are materially the same, Plaintiffs are entitled to summary judgment on this claim.

CONCLUSION

Plaintiffs are entitled to summary judgment on the claims in the Second Amended and Supplemented Complaint. They have established there are no disputed issues of material fact and have refuted responses from Defendants and Defendant-Intervenor. Plaintiffs respectfully request that the Court enter judgment in their favor and deny Defendants' cross-motions.

DATED this 20th day of August, 2018.

Respectfully submitted,

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[4] *See generally* Defs.' Mot. at 36–37 (discussing legislative process to negotiate around cap); Brian Eason, *A year after fiscal deal, Colorado may owe taxpayer refunds*, Denver Post, July 16, 2018, https://dpo.st/2P0hXx8 (discussing annual budget struggle with cap).

CERTIFICATE OF SERVICE

I certify that on the 20th day of August, 2018, the foregoing document was served on the following counsel of record via the Integrated Colorado Courts E-Filing System:

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