

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch**

Civil Action No. 13-cv-01389-RPM

TRANS-HIGH CORPORATION, d.b.a HIGH TIMES MAGAZINE,
THE DAILY DOOBIE, LLC, and
THE HEMP CONNOISSEUR, LLC,

Plaintiffs,

v.

THE STATE OF COLORADO and
JOHN HICKENLOOPER,

Defendants.

And,

Civil Action No. 13-cv-01431-RPM

TATTERED COVER, INC., a Colorado corporation doing business as
Tattered Cover Book Store in Denver and Highlands Ranch,
Colorado;

BACK COUNTRY BOOKS, INC., a Colorado corporation doing business
as Boulder Book Store in Boulder, Colorado;

THOMAS G. MULLIGAN, doing business as Magpies Newsstand in
Durango, Colorado,

NEWSSTAND SOLUTIONS, LLC, a Colorado limited liability company
doing business as Book Train, in Glenwood Springs, Colorado, and
Woody's Newsstand, in Greeley, Colorado;

MOUNTAIN STATES NEWS DISTRIBUTORS, INC., doing business as
Magwest, Inc. and operating Al's Newsstand in Fort Collins,
Colorado;

AMERICAN BOOKSELLERS FOUNDATION FOR FREE
EXPRESSION, a Delaware not-for-profit corporation, and,
MOUNTAINS AND PLAINS INDEPENDENT BOOKSELLERS
ASSOCIATION, a Colorado nonprofit corporation,

Plaintiffs,

v.

BARBARA BROHL, in her official capacity as Executive Director of
Colorado Department of Revenue;

JOHN HICKENLOOPER, in his official capacity as Governor of the State
of Colorado;

JOHN SUTHERS, in his official capacity as Attorney General of the State of
Colorado; and,

PETE WEIR, MITCHELL R. MORRISSEY, FRANK RUYBALID, DAN

MAY, BRUCE BROWN, TODD RISBERG, DAN
HOTSENPILLER, CLIFF REIDEL, SHERY CALOIA, JEFF
CHOSTNER, THOM LeDOUX, DAVID MAHONEE, ROBERT
E. WATSON, BRETT BARKEY, JENNIFER SWANSON, JIM
BULLOCK, DAVE YOUNG, GEORGE BRAUCHLER,
KENNETH R. BUCK, STAN GARNETT, PETE HAUTZINGER,
and, WILL FURSE, in their official capacities as the District
Attorneys for their respective judicial districts in the State of
Colorado,

Defendants.

ORDER, PERMANENT INJUNCTION AND FINAL JUDGMENT ON CONSENT

Before the Court is the following proposed Order, Permanent Injunction, and Final Judgment on Consent, and finding good cause for the entry of same, the Court hereby orders as follows:

WHEREAS:

- A.** The Colorado Legislature recently enacted the Colorado Retail Marijuana Code, House Bill 13-1317 (the “Retail Marijuana Code”) regarding the regulation of marijuana;
- B.** The Retail Marijuana Code was signed into law by Governor John Hickenlooper;
- C.** Section 12.43.4-202(3)(c)(II) of the Retail Marijuana Code requires the Department of Revenue to promulgate regulations on the subject of “requiring that magazines whose primary focus is marijuana or marijuana businesses are only sold in retail marijuana stores or behind the counter in establishments where persons under twenty-one years of age are present” (the “Code Provision”);
- D.** On May 29, 2013, Plaintiffs Trans-High Corporation d.b.a. High Times Magazine, The Daily Doobie, LLC, and The Hemp Connoisseur, LLC (the “High Times Plaintiffs”) filed a civil action in the United States District Court for the District of Colorado against the State of Colorado and John Hickenlooper, in his official capacity as Governor of the State of Colorado (the “High Times Complaint”);

E. On June 3, 2013, Plaintiffs the Tattered Cover, Inc., Back Country Books, Inc., Thomas G. Mulligan, Newsstand Solutions, LLC, Mountain States News Distributors, Inc., American Booksellers Foundation for Free Expression, and Mountain and Plains Independent Booksellers Association (collectively, the “Tattered Cover Plaintiffs”) filed a civil action in the United States District Court for the District of Colorado against Barbara Brohl, in her official capacity as Executive Director of the Colorado Department of Revenue, John Hickenlooper, in his official capacity as Governor of the State of Colorado, and John Suthers, in his official capacity as Attorney General of the State of Colorado (collectively, the “Tattered Cover State Defendants”) and against twenty-two (22) elected District Attorneys in the State of Colorado (the “Tattered Cover Complaint”);

F. This Order shall refer to the High Times Plaintiffs and the Tattered Cover Plaintiffs collectively as the “Plaintiffs,” and shall refer to Governor John Hickenlooper as named in the High Times Complaint and the Tattered Cover State Defendants collectively as the “State Defendants”;

G. In the High Times and Tattered Cover Complaints, Plaintiffs maintain that the Code Provision violates the First Amendment of the United States Constitution and Article II, Section 10 of the Constitution of the State of Colorado;

H. On June 5, 2013, the Department of Revenue promulgated Emergency Regulation R 1101, which provides:

No magazine whose primary focus is marijuana or marijuana businesses is required to be sold only in retail marijuana stores or behind the counter in establishments where persons under twenty-one years of age are present, because such a requirement would violate the United States Constitution, the Colorado Constitution, and section 24-4-103(4)(a.5)(IV), C.R.S.

I. On June 5, 2013, the Attorney General issued an Opinion stating that:

The above-referenced rules were submitted to this office on 6/5/2013 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance. The rules as adopted reconcile the requirements of the United States Constitution, the Colorado Constitution, House Bill 13-1317, and section 24-4-103(4)(a.5)(IV), C.R.S., of the State Administrative Procedure Act.

J. The Plaintiffs and the State Defendants wish to settle these actions without further proceedings, in accordance with the terms of this Order, and believe that such settlement is in their best interests and the best interests of the people of the State of Colorado.

NOW THEREFORE, upon consent of the Plaintiffs and the State Defendants, it is Ordered, Adjudged, and Decreed by this Court:

1. The two cases at issue here, Civil Action No. **13-cv-01389-RPM** and Civil Action **13-cv-01431-RPM**, are hereby ordered consolidated pursuant to Fed. R. Civ. 42(a)(2).

2. The Code Provision “requiring that magazines whose primary focus is marijuana or marijuana businesses are only sold in retail marijuana stores or behind the counter in establishments where persons under twenty-one years of age are present” is void and unconstitutional because it violates the First Amendment to the United States Constitution and Article II, Section 10 of the Constitution of the State of Colorado.

3. The State Defendants and all persons acting on behalf of the State of Colorado hereby are permanently enjoined and restrained from enforcing the Code Provision in any manner, including civil and criminal proceedings, and are further enjoined and restrained from conducting administrative proceedings to promulgate, and from promulgating, regulations purporting to enforce the Code Provision.

4. Plaintiffs and their attorneys waive any and all claims for attorneys’ fees and costs through the date of entry of this ORDER, PERMANENT INJUNCTION AND FINAL JUDGMENT ON CONSENT. The Plaintiffs and the State Defendants shall bear their own costs and fees.

DONE AND ENTERED
THIS 11 DAY OF JUNE, 2013

BY THE COURT



Richard P. Matsch
Senior District Judge

The foregoing **ORDER, PERMANENT INJUNCTION AND FINAL JUDGMENT ON CONSENT** is stipulated and approved by counsel for the Plaintiffs and the State Defendants, as indicated below:

For the High Times Plaintiffs:

s/ David A. Lane
David A. Lane
Darren M. Jankord
KILLMER, LANE & NEWMAN, LLP
1543 Champa Street, Suite 400
Denver, CO 80202
(303) 571-1000

For the Tattered Cover Plaintiffs:

s/ Christopher P. Beall
Thomas B. Kelley
Steven D. Zansberg
Christopher P. Beall
LEVINE SULLIVAN KOCH & SCHULZ, LLP
1888 Sherman Street, Suite 370
Denver, Colorado 80203
(303) 376-2400
In cooperation with the American Civil
Liberties Union Foundation of Colorado

Mark Silverstein
Sara J. Rich
ACLU FOUNDATION OF COLORADO
303 E. 17th Avenue, Suite 350
Denver, Colorado 80203
(303) 777-5482

Michael A. Bamberger
Richard M. Zuckerman
DENTONS US LLP
1221 Avenue of the Americas
New York City, New York 10020-1089
(212) 768-6700

For Governor John Hickenlooper:

s/ David C. Blake
JOHN W. SUTHERS
Attorney General
DAVID C. BLAKE
Deputy Attorney General
LEEANN MORRILL
First Assistant Attorney General
KATHRYN STARNELLA
Assistant Attorney General
Office of the Attorney General
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, Colorado 80203
(720) 508-6000

For Attorney General John Suthers:

s/ David C. Blake
JOHN W. SUTHERS
Attorney General
DAVID C. BLAKE
Deputy Attorney General
LEEANN MORRILL
First Assistant Attorney General
KATHRYN STARNELLA
Assistant Attorney General
Office of the Attorney General
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, Colorado 80203
(720) 508-6000

For Department of Revenue Executive Director
Barbara Brohl:

s/ Melanie J. Snyder
JOHN W. SUTHERS
Attorney General
MELANIE J. SNYDER
Deputy Attorney General
CLAUDIA BRETT GOLDIN
First Assistant Attorney General
Office of the Attorney General
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 8th Floor
Denver, Colorado 80203
(720) 508-6000