

<p>DISTRICT COURT, CITY & COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202</p>	
<p>DOUGLAS COUNTY, COLORADO acting through the BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY COLORADO, in their elected and official capacity, and</p> <p>DOUGLAS COUNTY SHERIFF, DARREN WEEKLY, in his elected and official capacity;</p> <p>Plaintiffs,</p> <p>v.</p> <p>COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT, Division of Labor Standards and Statistics, a Colorado state administrative agency;</p> <p>Defendant</p>	
<p><i>Attorneys for Plaintiff:</i></p> <p>Suzanne Taheri, # 23411 Jonathan Anderson, # 33013 Gwen Benevento, # 34190 WEST GROUP 6501 E. Belleview Ave., Suite 375 Denver, CO 80111 Tel: 303.218.7150 Email: ST@westglp.com</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case Number:</p> <p>Div.:</p>
<p>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</p>	

1. Plaintiffs Douglas County, Colorado, and the Douglas County Board of County Commissioners (“County Commissioners” or “Douglas County”) and Darren Weekly, Douglas County Sheriff, in their official capacity, by and through counsel West Group, allege as follows:

PRELIMINARY STATEMENT

2. The Colorado General Assembly passed, and the Colorado Governor signed Senate Bill 22-230, the Collective Bargaining by County Employees Act (“COBCA”).
3. COBCA grants certain county employees collective bargaining rights and imposes related obligations upon counties.
4. Senate Bill 22-230 became effective on July 1, 2023.
5. The Director of the Colorado Department of Labor and Employment, Division of Labor Standards and Statistics (“Division”) is charged with, among other things, enforcing, interpreting, applying, and administering the provisions of COBCA. § 8-3.3-106, C.R.S.
6. On March 8, 2024, the Colorado Fraternal Order of Police South Metro Lodge #47 (“FOP”) filed a petition of election and referendum to select a collective bargaining unit (“Petition”) with the Division to certify the FOP as the exclusive collective bargaining representative of Douglas County Sheriff’s Office (“Sheriff’s Office”) deputies pursuant to § 8-3.3-109(1), C.R.S. and 7 CCR § 1103-16(4.1.1).
7. Based on the Petition, on March 13, 2024, the Division issued a Notice of Petition for Election for a secret ballot election (“Election”) to decide whether the FOP should be certified as the representative for the Sheriff’s Office employees. § 8-3.3-109(4)(b) C.R.S.; 7 CCR § 1103-16(4.6.1)(B). The Official Notice of Petition for Election is attached as **Exhibit A**.
8. By agreement between Douglas County and the FOP, the Election was scheduled to be held April 29 through May 3, 2024. The Stipulated Election Agreement is attached as **Exhibit B**.
9. The FOP subsequently submitted a motion to withdraw the Petition and cancel the Election, and in response, on April 25, 2024, the Division issued an order adjourning the Election as scheduled. The Division’s Order Adjourning Upcoming Election is attached as

Exhibit C, and the Official Notice Adjourning Election is attached as **Exhibit D**. The Division did not dismiss the Petition, but ordered that, “[u]pon request of the FOP at any time on or before November 4, 2024, the election may be rescheduled at the discretion of the Division.”

Exhibit C.

10. Douglas County has completed specific activities to meet its obligations under COBCA to date, including distributing notice of petition to county employees, providing employee data to the petitioning organization, negotiating a stipulated agreement regarding election dates, and distributing notice of election procedures. § 8-3.3-109(1) and (4), C.R.S.

11. Plaintiffs seek a declaration that COBCA does not apply to the Sheriff’s Office and any other county office that is legally separate from Douglas County, and injunctive relief precluding Defendant from enforcing, interpreting, applying, or administering COBCA with respect to the Sheriff’s Office.

12. Plaintiffs seek a declaratory judgment that Douglas County is not required to engage in collective bargaining under COBCA because it is an unfunded mandate, and injunctive relief precluding Defendant from enforcing, interpreting, applying, or administering COBCA against Douglas County.

13. In the alternative, Plaintiffs seek declaratory relief to prohibit enforcement of COBCA regarding certain terms and conditions of employment.

PARTIES

14. Plaintiff Douglas County, Colorado, is a statutory county established pursuant to § 30-5-120, C.R.S., acting through its Board of County Commissioners.

15. Plaintiff Darren Weekly is the elected sheriff of Douglas County, Colorado.

16. Defendant is the Colorado Department of Labor and Employment, Division of Labor Standards and Statistics, an agency of the State of Colorado.

STANDING

17. The County Commissioners and Sheriff have standing to bring this action for declaratory and injunctive relief under *Colo. State Bd. of Educ. v. Adams Cty. Sch. Dist. 14*, 537 P.3d 1, 13 (Colo. 2023), applying the standing test in *Wimberly v. Ettenberg*, 570 P.2d 535 (Colo. 1977).

18. The Division has issued official notice regarding the submitted Petition. **Exhibit A.** Although the scheduled Election was adjourned, the Division has not dismissed the Petition or cancelled the Election, and it may order a date for the Election any time before November 4, 2024. **Exhibit C.**

19. Douglas County has and will suffer injury in fact from the enforcement of COBCA requiring specific collective bargaining activities and the use of substantial funding and other resources for such activities in violation of Douglas County’s legally protected right and interests, including to contract with employees, to allocate county funds, and to provide county services.

20. The Sheriff has and will suffer injury in fact from the enforcement of COBCA to impose salaries and employment terms and conditions negotiated by a separate public entity in violation of the Sheriff’s legally protected rights and interests, including employment terms and conditions and keeping and preserving the peace.

JURISDICTION AND VENUE

21. The jurisdiction of this Court arises under article VI, section 9(1), of the Colorado Constitution, the Uniform Declaratory Judgments Law, §§ 13-51-101 to 115, C.R.S., and the Colorado Rules of Civil Procedure 57 and 65.

22. The Court has personal jurisdiction over the Defendant. § 13-1-124, C.R.S.

23. Venue is proper in this Court under CRCP 98(b)(2) and (c).

24. All necessary parties are before the Court pursuant to C.R.C.P. 57(j), an actual and justiciable controversy exists regarding the parties' respective rights, and a declaratory judgment will terminate the controversy giving rise to this proceeding.

GENERAL ALLEGATIONS

A. COBCA Is Not Applicable to the Sheriff's Office.

25. COBCA provides collective bargaining rights to "county employees" and creates related obligations for and rights of "counties." §§ 8-3.3-101 to 116, C.R.S.

26. COBCA provides procedures for collective bargaining, decision making, and dispute resolution for negotiations between a county employees' representative and county commissioners.

27. The County Commissioners exercise the powers of Douglas County pursuant to § 30-11-103, C.R.S.

28. The County Commissioners have specific duties under COBCA, including negotiating with the representative of employees and approving a collective bargaining agreement. §§ 8-3.3-112 and 113, C.R.S.

29. The county sheriff is a constitutional office, which is a separate public entity from the county and county commissioners. Colo. Const. art XIV, § 8 and 8.5; *Tunget v. Bd. of County*

Comm'rs, 992 P.2d 650 (Colo. App. 2000); *Bristol v. Bd. of County Comm'rs of Clear Creek*, 312 F.3d 1213 (10th Cir. 2002).

30. The County Commissioners do not control the Sheriff's Office.

31. Statutorily, COBCA does not extend beyond county employees and does not include sheriff's employees.

32. In addition, because the sheriff is a separate and distinct constitutional office, COBCA would be unconstitutional if it extended to the Sheriff's Office. COBCA must be interpreted in the way that renders it constitutional, therefore, it cannot give the County Commissioners collective bargaining authority that usurps the Sheriff's authority to control the hiring, firing, or terms of employment of the Sheriff's Office employees.

33. Accordingly, COBCA does not apply to the Sheriff's Office, and the Defendant has no authority to implement or enforce COBCA with respect to the Sheriff's Office.

34. This conclusion also applies to other separate constitutional county elected officials such as the clerk and recorder, coroner, treasurer, surveyor, and assessor, as well as the county health department. Colo. Const. art XIV, §§ 8, 8.7, and 12.; *Jefferson Cnty. Health Servs. Ass'n, Inc. v. Feeney*, 974 P.2d 1001, 1004 (Colo. 1998) (County "health department is a legal entity, separate and distinct from the board of county commissioners"); and *Travis v. Bd. of Cty. Comm'rs*, No. 10-cv-00214-REB-CBS, 2010 U.S. Dist. LEXIS 108610, at *7 (D. Colo. Sep. 27, 2010).

B. COBCA is not Mandatory Because it is an Unfunded Mandate.

35. Colorado statute prohibits a state mandate on any local government "unless the state provides additional moneys to reimburse such local government for the costs of such new state mandate," and, if reimbursement funds are not provided, the mandate "shall be optional on the part of the local government." § 29-1-304.5(1), C.R.S.

36. Douglas County is a “local government” under this statute. §§ 29-1-304.5(3)(b), C.R.S.

37. A “state mandate” means “any legal requirement established by statutory provision or administrative rule or regulation which requires any local government to undertake a specific activity....” § 29-1-304.5(3)(d), C.R.S.

38. COBCA requires counties to undertake many specific activities related to the collective bargaining process, including distributing notices of bargaining activities, the election process, and employee rights; providing county information and data to a petitioning employee organization and exclusive representative; conducting collective bargaining elections; providing an exclusive representative with access to county employees during paid working hours, making payroll deductions; and meeting with an exclusive representative to negotiate a collective bargaining agreement and engaging in mediation if necessary. §§ 8-3.3-102, 103, 104, 109, 112, 114, C.R.S.

39. COBCA is a “state mandate” because it requires Douglas County to undertake specific activities.

40. The specific activities required by COBCA will impose various substantial costs upon a county required to implement COBCA.

41. The fiscal note issued for COBCA during legislative consideration estimated that COBCA will increase overall county staffing costs by at least \$32.1 million as early as the first applicable fiscal year, for “hiring legal and human resources staff with expertise in labor law and benefit plan administration to prepare for, negotiate, manage, and renew collective bargaining agreements.” Fiscal Note on SB 22-230, at 6, 73rd Gen. Assemb., 2nd Sess. (July 11, 2022) available at:

https://leg.colorado.gov/sites/default/files/documents/2022A/bills/fn/2022a_sb230_fl.pdf
accessed Apr. 29, 2024.

42. As a large county, Douglas County is estimated to have an increase of \$2,144,950 per year for increased staffing costs on an ongoing basis. *Id.* This does not include potential mediation and fact-finding costs estimated at \$100,000. *Id.* at 7.

43. The State has not appropriated funds to reimburse Douglas County for the specific activities required under COBCA.

44. COBCA is an unfunded mandate, and Douglas County's compliance with COBCA is, therefore, optional.

C. In the Alternative, COBCA Does Not Allow Negotiation of Employment Terms that are Subject to Other Statutory Authority.

45. If COBCA is mandatory and does apply to the Sheriff's Office, it does not grant Sheriff's Office employees the right to engage in collective bargaining negotiations with respect to certain employment matters for which the Sheriff has statutory responsibility or authority.

46. COBCA does not "restrict, duplicate, or usurp any responsibility or authority granted to the county commissioners of any county by the state constitution, a home rule county charter, or any other state law." § 8-3.3-105(2), C.R.S. In addition, under COBCA a "collective bargaining agreement must be consistent with the applicable state and federal laws..." § 8-3.3-113(6), C.R.S.

47. Sheriffs have specific statutory responsibilities and authority, including fixing undersheriff and deputy salaries, revoking deputy appointments at will, and keeping and preserving the peace. §§ 30-2-106(1); 30-10-504 and 516, C.R.S. COBCA does not restrict such statutory responsibilities and authorities, therefore, these such employment matters are not subject to collective bargaining negotiation requirements.

48. Accordingly, the County Commissioners are not required to negotiate regarding certain employment matters under COBCA.

FIRST CLAIM FOR RELIEF

THE DEFENDANT CANNOT ENFORCE, INTERPRET, APPLY, OR ADMINISTER COBCA WITH RESPECT TO THE SHERIFF’S OFFICE.

49. Plaintiffs incorporate the above allegations by reference.

50. COBCA by its own terms and in accordance with the state constitution does not apply to the Sheriff’s Office and its employees, or to any other county office that is legally separate from the county. It should be declared inapplicable to the Sheriff’s Office, and the Defendant should be enjoined from enforcing, interpreting, applying, and administering COBCA with respect to the Sheriff’s Office.

51. The Defendant has exceeded its authority by taking action to implement and enforce COBCA with respect to the Sheriff’s Office, and such action must be declared void and enjoined from taking effect.

SECOND CLAIM FOR RELIEF

THE DEFENDANT CANNOT REQUIRE THE COUNTY’S COMPLIANCE WITH COBCA BECAUSE IT IS AN UNFUNDED MANDATE AND IS OPTIONAL

52. Plaintiffs incorporate the above allegations by reference.

53. Douglas County has the option of complying with COBCA’s provisions because COBCA is an unfunded state mandate.

54. The Defendant has exceeded its authority by taking action to implement and enforce COBCA with respect to Douglas County, and such action must be declared void and enjoined from taking effect.

THIRD CLAIM FOR RELIEF

IN THE ALTERNATIVE, THE DEFENDANT CANNOT REQUIRE NEGOTIATION REGARDING EMPLOYMENT MATTERS THAT ARE SUBJECT TO OTHER STATUTORY AUTHORITY

55. Plaintiffs incorporate the above allegations by reference.

56. If COBCA is mandatory and applies to the Sheriff's Office, negotiation is not required for employment terms that are subject to other statutory responsibility or authority.

57. The Defendant may not implement or enforce collective bargaining that would restrict other statutory authority.

PRAYER FOR RELIEF

Based on the above allegations, the Plaintiffs respectfully request that the Court:

- A. Declare that COBCA does not apply to the Sheriff's Office, and that actions taken by the Defendant regarding the Sheriff's Office collective bargaining process under COBCA are void and permanently enjoin the implementation and enforcement of COBCA with respect to the Sheriff's Office;
- B. Declare that the County Commissioners are not obligated to engage in activities under COBCA because it is an unfunded state mandate and permanently enjoin the implementation and enforcement of COBCA with respect to Douglas County;
- C. In the alternative, declare that the County Commissioners are not required under COBCA to negotiate employment terms for Sheriff's Office employees that are subject to other statutory responsibility and authority;
- D. Enter judgment in favor of Plaintiffs and against Defendant on all claims;
- E. Award Plaintiffs costs under Colorado Rule of Civil Procedure 54(d); and
- F. Award Plaintiffs any other relief that the Court deems just and reasonable.

Dated: May 7, 2024

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