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COLORADO TITLE SETTING BOARD

Colorado Secretary of State

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR INITIATIVE 2017-2018 #126

MOTION FOR REHEARING

On behalf of Bill Fritts, a registered elector of the State of Colorado, the undersigned counsel hereby submits this Motion for Rehearing for Initiative 2017-2018 #126 pursuant to Section 1-40-107, C.R.S., and as grounds therefore states as follows:

I. THE TITLE BOARD LACKS JURISDICTION.

While the review and comment memorandum prepared by legislative staff suggested technical changes to Section 4 of the measure, the changes actually made by the Proponents in their final version of the measure, as submitted to the Title Board, go beyond mere formatting edits and do not relate to the changes suggested in the memorandum or at the hearing. Accordingly, the Title Board lacks jurisdiction to hear this measure.

II. INITIATIVE #126 VIOLATES THE SINGLE-SUBJECT REQUIREMENT.

Under article V, section 1(5.5) of the Colorado constitution and section 1-40-106.5, C.R.S., proposed ballot measures must contain only a single subject: “[T]he Board may not set the titles of a proposed Initiative, or submit it to the voters, if the Initiative contains multiple subjects.” *Aisenberg v. Campbell (In re Title, Ballot Title & Submission Clause 1999–2000 #104)*, 987 P.2d 249, 253 (Colo. 2000).

The single subject requirement serves two functions. First, the single subject requirement “is intended to ensure that each proposal depends upon its own merits for passage.” *Johnson v. Curry (In re Title, Ballot Title & Submission Clause for 2015-2016 #132)*, 374 P.3d 460, 465 (Colo. 2016). Second, the single subject requirement is intended to “prevent surprise and fraud from being practiced upon voters caused by the inadvertent passage of a surreptitious provision ‘coiled up in the folds’ of a complex initiative.” *Id.* “If an initiative advances separate and distinct purposes, the fact that they both relate to the same general concept or subject is insufficient to satisfy the single subject requirement.” *Id.*

Although counsel for the Proponents stated at both the review and comment hearing and at the initial title board hearing for Initiative #126 that the single subject of their measure is “reducing charges of payday loans,” the measure actually contains at least two separate and distinct subjects:

1. imposing a thirty-six percent cap on the annual percentage rate for deferred deposit loans and prohibiting any other fees or charges; and

2. changing the types of loan transactions that constitute unfair or deceptive practices.

These multiple subjects have no necessary or proper connection, and thus cause the measure to violate the single-subject requirement. Accordingly, the measure should be returned to the Proponents on that basis.

III. THE FISCAL IMPACT STATEMENT AND ABSTRACT FAIL TO MEET THE STATUTORY REQUIREMENTS.

The initial fiscal impact statement and abstract prepared by Legislative Council fails to comply with the requirements set forth in section 1-40-105.5, C.R.S., because they provide voters with no meaningful information and, thus, will mislead them as to the economic impact of passing Initiative #126.

Section 1-40-105.5 sets forth the process for an initial fiscal impact statement so that voters have at least some knowledge of a proposed measure's economic impact before they decide whether to sign a petition to place the measure on the ballot. This new process is important; the fiscal impact statement's abstract is one of two items (the other being the title) summarizing the measure that is included in the petition.

Because of its importance, section 1-40-105.5 lays out what must be included in the fiscal impact statement and abstract, and section 1-40-107(2)(a)(II) provides that the abstract may be challenged at a rehearing if it fails to meet section 1-40-105.5's requirements. Moreover, in preparing the fiscal impact statement, Legislative Council must "tak[e] into consideration any fiscal impact estimate submitted by the designated representatives of the proponents or other interested person[s] that is submitted." C.R.S. § 1-40-105.5(2)(a); *see also* C.R.S. § 1-40-105.5(2)(b) (noting that Legislative Council "shall consider these estimates and the bases thereon when preparing the initial fiscal impact statement").

The entirety of the analysis of the fiscal estimate is as follows:

State and Local Government Impact

Limiting the maximum annual percentage rate on payday loans to 36 percent and eliminating the additional financing charges and maintenance fees is expected to have no state or local fiscal impact. Currently, the Department of Law licenses payday lenders, conducts compliance examinations of their loans, and establishes rules for payday lenders. The department also investigates and litigates cases involving payday lenders under current law. If the measure is approved by voters, examinations will be modified to reflect the new rates established by statute and new rules will be promulgated by the department. However, existing resources are sufficient to continue to litigate these types of cases in the future and the department already receives money for rulemaking. Therefore, no further state or local government expenditures are required.

Economic Impact

The measure will result in smaller financing charges paid by payday borrowers and received by payday lenders. To the degree borrowers spend marginally more money on goods and services than lenders, the measure may result in additional spending in the economy.

The entirety of the abstract is even shorter:

State and Local Government Impact

The measure is not expected to impact state or local government revenue or expenditures. Under current law, the Department of Law already licenses payday lenders, conducts compliance examinations of their loans, and establishes rules for their operation.

Economic Impact

The measure will result in smaller interest payments paid by payday borrowers and received by payday lenders. To the degree borrowers spend marginally more money than lenders on goods and services, the measure may increase spending in the economy.

Neither the fiscal impact estimate nor the abstract considers or contains information concerning the financial or economic impact to lenders who provide such loans, even though such information was submitted to Legislative Council in accordance with their deadlines and procedures. At a minimum, the abstract should include language that informs voters of the impact to the industry as part of the required "statement of the measure's economic benefits for all Coloradoans."

IV. THE TITLE SET FOR INITIATIVE #126 IS MISLEADING AND INCLUDES AN IMPERMISSIBLE CATCHPHRASE.

The title set for Initiative #126 at the initial Title Board hearing reads:

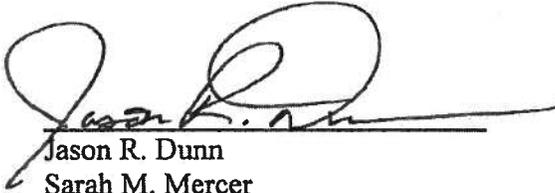
An amendment to the Colorado Revised Statutes concerning limitations on payday lenders, and, in connection therewith, reducing allowable charges on payday loans to an annual percentage rate of no more than thirty-six percent.

This title is misleading because it fails to fully and accurately describe the measure and because it includes impermissible catchphrases. The Colorado Supreme Court has made clear that the title must accurately present the major features of a measure, and phrases that "work in favor of a proposal without contributing to voter understanding" must be avoided. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000, No. 258(A)*, 4 P.3d 1094, 1100 (Colo. 2000). The words chosen by the Title Board "should not prejudice electors to vote for or against the proposed initiative merely by virtue of those words' appeal to emotion." *Id.* Because the title as drafted fails to meet these requirements, it should be amended.

V. CONCLUSION.

Accordingly, the Objector respectfully requests that this Motion for Rehearing be granted and a rehearing set pursuant to C.R.S. § 1-40-107(1).

Respectfully submitted this 28th day of February, 2018.



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