

Colorado Secretary of State

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Mark G. Grueskin, Objector,

vs.

Natalie Menten and Chip Creager, Proponents.

**MOTION FOR REHEARING ON INITIATIVE 2019-2020 #127
("Petitions")**

Mark G. Grueskin ("Objector"), a registered elector of the State of Colorado, through his undersigned counsel, submits this Motion For Rehearing on Initiative 2019-2020 #127 ("#127"), pursuant to C.R.S. § 1-40-107, and states:

The Board set the following ballot title and submission clause for Initiative 2019-2020 #127 on January 2, 2020:

Shall there be an amendment to the Colorado constitution concerning petitions, and, in connection therewith, providing the right to petition at all levels of government; changing requirements, procedures, and deadlines for qualifying petitions for the ballot, setting brief, plain English titles for petitions, challenging compliance with petition requirements, and informing voters of the contents of a petition; limiting the amount of state legislation that is petition-exempt; allowing law enacted through petition to be changed only through voter approval of another petition; establishing a fine for interfering with a petition circulator or signer for petitioning peaceably in public access areas; allowing the governor to veto legislation to be referred to the people; exempting petitions from municipal home-rule provisions; and repealing all conflicting laws?

A. Initiative #127 contains multiple subjects, contrary to Colo. Const. art. V, sec. 1(5.5).

Initiative #127 violates the single subject requirement for initiatives. *In re Title for Initiative 2001-2002 #43*, 46 P.3d 438, 448 (Colo. 2002), *Colo. Const. art. V, sec. 1(5.5)*.

Initiative #127 includes nine separate subjects. It would:

- 1) Modify numerous procedural aspects of the initiative petition process (including filing procedures, deadlines, administration, signature requirements (number), signature requirements (form); signature review, protests and appeals, voter information, enforcement and election timing);
- 2) Modify numerous procedural aspects of the referendum process (including but not limited to the procedural changes to the initiative petition process listed above);

- 3) Repeal and replace all local initiative and referenda procedures;
- 4) Repeal the single subject requirement applicable to state wide initiatives (a substantive change);
- 5) Limit the free speech rights of initiative and referenda under the United States and Colorado Constitutions by eliminating their opportunity to have their views included in election notices;
- 6) Repeal and replace all local government single subject provisions (a substantive change);
- 7) Limit the power of the General Assembly to add safety clauses to legislation;
- 8) Limit the power of the General Assembly by requiring voter approval for statutory changes on the same “topic” as a failed referendum;
- 9) Make enterprises, now exempt from the spending and revenue limits of TABOR, subject to those limitations (Colorado Constitution, art. X, sec. 20).

B. The Title Board lacked jurisdiction to set a title for Initiative #127 because the proponents made substantial changes to the measure, after the Title Board (twice) refused to set a title for the measure, without resubmitting the measure for review and comment as required.

Proponents submitted #127 for title setting on October 7, 2019. They made no changes prior to submission as a result of the review and comment memorandum or hearing, as indicated by the fact that their submission to the Title Board was marked both “original and final”. The Board considered the measure on December 4, 2019 and determined that it did not have jurisdiction to set a title for the measure because it contained more than one subject.

Without resubmitting the measure for further review and comment, Proponents deleted certain provisions of the measure and resubmitted it for title setting on December 6, 2019. The Board considered the revised measure on December 18 and again determined that it did not have jurisdiction to set a title for the measure because it contained more than one subject.

Again, without resubmitting the measure for review and comment, Proponents deleted additional provisions of the measure and submitted their third version for title setting on December 20, 2019. The Board considered the measure again on January 2, this time setting a title.

Under Article V, Section 1(5.5) of the Colorado Constitution, Proponents may delete provisions of their measure after rejection by the Title Board on single subject grounds, “unless the official or officials responsible for the fixing of the title determine that the revisions are so substantial that such review and comment is in the public interest.”

In this case, proponents made the following changes to #127 after rejection by the Title Board:

- 1) Eliminated language in Section 1(1) concerning single subjects;
- 2) Eliminated a reference to Article X, Section 20 of the Colorado Constitution in Section 1(4), which made the remaining language applicable to all elections instead of only elections under TABOR.

- 3) Eliminated a provision that would have required a 75% vote in each chamber of the General Assembly before a safety clause could be added to a bill;
- 4) Eliminated a requirement for Supreme Court review of the General Assembly's addition of a safety clause to any bill;
- 5) Eliminated a definition of "subject" which eliminated the measure's new constitutional standard intended to replace the current single subject requirement for state wide initiative petitions;
- 6) Eliminated a requirement of strict enforcement of the right to petition and vote;
- 7) Eliminated a provision that would have superceded provisions of campaign finance law that define when contributions and spending in support of an initiative or referendum are subject to reporting requirements;
- 8) Eliminated a provision that would have made Article XXVIII of the Colorado Constitution (Campaign and Political Finance) inapplicable to initiative and referenda petitions;
- 9) Eliminated a provision that would have made the Fair Campaign Practices Act, C.R.S. Title 1, Article 45, inapplicable to initiative and referenda petitions;
- 10) Eliminated a provision that would have repealed C.R.S. Title 1, Article 41 (Odd-numbered Year Elections);
- 11) Eliminated a provision that would have repealed eight sections of C.R.S. Title 1, Article 40 (Initiative and Referendum).

Nearly every one of these amendments is so substantial that it warrants further review and comment. Taken together, they amount to a redrafting of the measure. The Board should not have set title for #127, but should have required Proponents to submit it for further review and comment.

C. The Title Board should not have set a title for #127 because certain provisions are so vague, unclear and incomprehensible that the measures meaning cannot be ascertained.

Certain provisions of #127 are so poorly drafted that it is impossible to comprehend their meaning or intent. For instance, Section 1(4) includes a sentence that reads, "*No petition changes any law; it only gives citizens the Right to Vote.*" Another provision reads, "*Government hostility to petitions must cease.*" It is unclear what these provisions mean or what legal effect they may have. Under these circumstances, it is impossible to know if they should be referenced in the title or not. If the meaning of these and other provisions of the measure cannot be determined, a title cannot be set for the measure.

Accordingly, the Objector respectfully requests that a rehearing be set pursuant to C.R.S. § 1-40-107.

Respectfully submitted this 9th day of January, 2020.

s/ Thomas M. Rogers III
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CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the Motion For Rehearing for Initiative 2019-2020 #127, was sent this 9th day of January, 2020 by U.S. Mail, postage prepaid, to proponents at:

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s/ Erin Holweger