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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 2019-2020 #179

MOTION FOR REHEARING

On my own behalf, as a registered elector of the State of Colorado, the undersigned hereby submits this Motion for Rehearing for Initiative 2019- 2020 #179 - Concerning State Tax Policy, pursuant to Section 1-40-107, C.R.S., and as grounds therefore states as follows:

**I. INITIATIVE #179 IMPERMISSIBLY CONTAINS MULTIPLE
SEPARATE AND DISTINCT SUBJECTS IN VIOLATION OF THE
SINGLE SUBJECT REQUIREMENT**

The current title indicates that the subject of the measure “concerns the establishment of constitutional principles to guide the state tax system.” However, the measure actually contains multiple separate subjects including at least the following:

A. Establishing a new and undefined entitlement

Both the measure and the title state that taxpayers are “entitled” to a fair and just tax system. The use of this legal term of art creates “a right to receive a value or benefit.” *West’s Encyclopedia of American Law, edition 2 (2008)*. The legal ramifications of the use of this term are not made clear to voters either in the measure or in the title.

B. Requiring that the tax system meet the impossible goal of being competitive with the tax systems in other states

As there are fifty (50) other states with widely varying tax systems it is impossible to determine how any tax system could be competitive with all of them. Seven (7) states have no state income tax. Among the states that do have income taxes the rates vary from a low of 2.9% (Nevada) to 13.3% (California). In addition, the income taxes are levied in some states on wage and salary income, and in others on only dividend and interest income. Finally, some states tax corporate income and some do not.

The term competitive is subject to several contradictory meanings. Would our system be competitive in its simplicity and ease of understanding? Would it be competitive in fairness? Would it be competitive as regards corporations or individuals or both? Would it be competitive in the amount of revenue raised? Either this aspiration to be competitive with all of these different approaches means nothing at all, or else its meaning is completely subjective and undetermined.

C. Through broad and vague language surreptitiously repealing and replacing crucial provisions of Article X, Section 20 of the Colorado Constitution (“TABOR”)

The Colorado Constitution currently contains Article X, Section 20, commonly known as the “Taxpayer’s Bill of Rights” or TABOR. This contains a requirement that the law be interpreted in the manner that shall “reasonably restrain most the growth of government.” Colo. Const. Art. X, Sec. 20(1). The broad language in the proposed measure would require instead that taxpayers shall be subject to such taxes as “are necessary to provide the revenue to satisfy” an ensuing list of items.

In summary, while the broad language of this measure appears to be only aspirational, it in fact attempts to achieve a number of completely separate goals which would significantly change Colorado law and fail to meet the single subject requirement.

II. THE TITLE BOARD LACKS JURISDICTION BECAUSE ERRORS AND MISLEADING LANGUAGE IN THE PROPOSED MEASURE RESULTS IN A CONFUSING MEASURE.

The Title Board should deny jurisdiction to consider this measure because, as explained above, it fails to meet drafting requirements of simplicity and clarity and will confuse voters. See C.R.S. § 1-40-105(3) (“To the extent possible, drafts shall be worded with simplicity and clarity and so that the effect of the measure will not be misleading or likely to cause confusion among voters.”). The broad language used conceals from voters the significant changes it would bring to Colorado law.

III. THE TITLE CONTAINS AN IMPERMISSIBLE CATCHPHRASE

Both the measure and the title contain an impermissible catchphrase. The phrase “fair and just tax system” has no concrete meaning and is designed to appeal to voters’ emotions, and should not be permitted. In re Title, Ballot Title and Submission Clause, and Summary 1999-2000, No. 258(A), 4 P.3d 1094, 1100 (Colo. 2000).

IV. THE TITLE FAILS TO CONVEY TO VOTERS THE EFFECTS OF THE MEASURE

Voters need to be informed that this measure would create a new entitlement with undisclosed effects at the constitutional level. Voters should be aware of the impossible subjectivity of determining how our tax system could be competitive with all other states' tax systems. Voters need to be aware that this Constitutional amendment conflicts with and would repeal and replace significant taxpayer protections that currently exist in Colorado law.

CONCLUSION

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

Respectfully submitted this 12th day of February, 2020.

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