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4:28 P.M.

COLORADO TITLE SETTING BOARD

Colorado Secretary of State

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IN THE MATTER OF THE BALLOT TITLE AND SUBMISSION  
CLAUSE FOR INITIATIVE 2019-2020 #24, Funding for Public Schools

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**MOTION FOR REHEARING**

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On behalf of Tyler Sandberg, a registered elector of the State of Colorado, the undersigned counsel hereby submits this Motion for Rehearing of the Title Board's April 3, 2019, decision to set the title of 2019-2020 Initiative #24 ("Initiative"), pursuant to C.R.S. § 1-40-107, and as grounds therefore states as follows:

- I. **The Initiative impermissibly contains multiple separate and distinct subjects in violation of the constitutional single-subject requirement.**

The Initiative contains multiple separate subjects including at least the following:

- a. **Central purpose.**

The Objector proposes that the central purpose of the Initiative is increasing income and property taxes to be dedicated to the Quality Public Education Fund and appropriated for schools and specific public education programs.

At the initial Title Board hearing, the proponents' stated a broader single subject: to create a more fair, sustainable, and adequate system for funding public schools. While a proposed voter initiative's subject or purpose may be broad, the Supreme Court has stated that an initiative cannot satisfy the single-subject requirement simply by claiming that each proposed change falls under the same general overarching theme. *Matter of Title, Ballot Title, and Submission Clause for 2013-2014 #89*, 328 P.3d 172 (Colo. 2014). An initiative cannot include purposes unrelated to the initiative's central theme to gain passage of a provision. *See Matter of Title, Ballot Title and Submission Clause, Summary Clause for 1997-1998 No. 74*, 962 P.2d 927 (Colo. 1998) (the single-subject requirement for state initiative is intended to ensure that each proposal for change is considered on its own merits); *and Bruce v.*

*City of Colorado Springs*, 252 P.3d 30 (Colo. App. 2010) (purpose of single subject requirement is to ensure that each initiative depends upon its own merits for passage).

The Initiative includes other distinct and separate purposes, including education policy regarding paid full-day kindergarten and significant tax policy changes (the state's flat tax, the required ratio between residential and business property tax rates, and reducing the commercial property tax rate). These are not necessarily or properly related to the central purpose of the Initiative. *See In re Title, Ballot Title and Submission Clause, for 2007-2008, #17*, 172 P.3d 871 (Colo. 2007) (single subject provision prohibits initiatives from containing two or more separate and discrete subjects that are not dependent upon or necessarily connected with each other), *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 258(A)*, 4 P.3d 1094 (Colo. 2000) (single-subject requirement prevents joining two distinct and separate purposes that are not dependent upon or connected with each other), *and In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 No. 200A*, 992 P.2d 27 (Colo. 2000) (purpose of the single-subject requirement is to prevent joining in the same act disconnected and incongruous measures).

These multiple subjects represent distinct and different purposes in violation of the single subject requirement of Colo. Const. art. V § 1(5.5) and C.R.S. § 1-40-106.5.

**b. Eliminating the flat tax.**

The state derives its authority to tax from Article X of the state constitution. Colo. Const. art. X § 20(8) requires a single, or flat, income tax rate: "Any income tax law change after July 1, 1992 shall also require all taxable net income to be taxes at one rate..." The income tax structure in Colorado has been the subject of legislation and several proposed citizen initiatives over the years addressing this tax policy alone. There is ongoing significant debate over the economic impact of a flat income tax compared to a graduated income tax. This Initiative would end the state's single tax rate and impose graduated individual income tax rates.

This is a significant tax policy change that is not necessary or properly connected to increasing funding for public schools and which should depend upon its own merits for passage. It is a separate subject within this proposed measure. A citizen-initiated

amendment to the Colorado Constitution could certainly amend the flat tax provision, but a proposed initiative cannot accomplish that change in a single subject where it also seeks to dramatically reshape education policy and create an entirely new property tax scheme.

**c. Establishing full-day kindergarten.**

Colorado currently funds only half-day kindergarten. Governor Polis campaigned on providing full-day kindergarten at no cost to families. The general assembly is currently considering the policy of funding full-day kindergarten proposed in HB 19-1262 after a similar bill was introduced but not passed last year. This Initiative states that the general assembly shall appropriate money for full-day kindergarten (Section 4, § 22-55-109(3)(b)(VI)). Whether or not to establish a state-funded full-day kindergarten program is a proposal that should depend upon its own merits for passage, which is why legislators wisely chose to introduce a standalone bill that deals with that single subject. It is not necessarily or properly connected to the purpose of increasing funding for public education, nor for creating a fair, sustainable, and adequate system for funding public schools. In addition, this provision creates a danger of log rolling, because the Initiative may attract a “yes” vote from voters who support the increased funding for public schools but who otherwise might not support funding for full-day kindergarten if it were proposed separately. *See In Matter of Title, Ballot Title, 374 P.3d 460 (Colo. 2016), and see Matter of Title, Ballot Title, Submission Clause, and Summary Adopted April 5, 1995, by Title Board Pertaining to a Proposed Initiative Public Rights in Waters II, 898 P.2d 1076 (Colo. 1995)* (single-subject requirement precludes joining together of multiple subjects into single initiative in hope of attracting support from various factions which may have different or even conflicting interests).

**d. Reforming the Gallagher Amendment.**

This Initiative reduces the nonresidential property tax rate and alters the calculation of the residential property tax rate under Colo. Const. art. X § 3, known as the “Gallagher Amendment.”

The Gallagher Amendment is a major piece of tax policy in Colorado’s constitution, and frequently the subject of state tax policy discussions. The Gallagher Amendment requires a constant ratio dividing the state’s total property tax burden between residential and commercial property. The implications of the

Gallagher Amendment on state property taxes is significant, and the possibility of, and options for, reforming this tax policy are fervently debated.

Recent reform efforts include the general assembly's interim legislative committee tasked with studying property tax issues and the impact of the Gallagher Amendment, the "Alternatives to the Gallagher Amendment Interim Study Committee." The committee forwarded three alternatives to change the Gallagher Amendment that are proposed bills for consideration by the general assembly during its 2019 session. Each one of those bills represents a single subject that the legislature will rightly consider on their individual merits.

This Initiative proposes to modify the Gallagher Amendment by decreasing the assessment rate for commercial property taxes and changing the method of setting an assessment rate for residential property, effectively increasing residential property tax revenues and ending the consistent ratio between residential and commercial property tax rates. Adjusting the long-standing ration between commercial and residential property tax could have wide-ranging implications for all local taxes, including municipalities, counties and special districts. It is a significant property tax policy change which should depend upon its own merits for passage. It is a separate subject within this proposed measure.

**e. Reducing the commercial property tax rate.**

The Initiative proposes to reduce the commercial property tax rate from 29% to 24%. While the overall effect of the Initiative is to increase funding for public schools, lowering the commercial tax rate does the precise opposite. Thus, it is not necessarily and properly connected to increasing funding for public schools. This issue is similar to the single-subject concerns raised by the Title Board regarding the reduction in certain income tax rates in proposed Initiative 2019-2020 #25 prior to its withdrawal.

Furthermore, reducing the property tax burden on corporations creates a danger of log rolling, because the Initiative may attract a "yes" vote from voters who support the increased funding for public schools but who otherwise might not support reducing the commercial tax rate if it were proposed separately.

**II. The title set by the Title Board is inaccurate, unclear, misleading and unfair.**

- a. The portion of the title regarding increasing individual income tax rates is inaccurate and unclear and is misleading and unfair because it fails to express the magnitude of the tax rate increase.**

The title states that the initiative would be "...increasing income tax rates incrementally for individuals, trusts, and estates using four tax brackets starting at .37% for income above \$150,000 and increasing to 3.12% for income above \$400,000..."

As written, this title is mathematically inaccurate. The title states that, for income above \$150,000, the proposal would increase tax rates *0.37 percent* (current rate of 4.63% increased by 0.37%). However, the Initiative would increase the tax rate an additional *0.37 percentage points* on top of the existing rate (current rate of 4.63% increased to 5.0%). The same problem exists when the title states that, for income above \$400,000, the proposal increases the income tax rate *3.12 percent* (rather than an additional *3.12 percentage points*).

A voter who reads the current title would almost certainly assume their taxes would be increased somewhere between 0.37% and 3.12%. That voter would be surprised when the taxes came due. In addition, as written, voters cannot evaluate the magnitude of the tax rate increase. A tax increase of "3.12%" may not appear to voters to be a significant increase, but it should be disclosed that the initiative actually proposes a *3.12 percentage point* increase, which represents a 78% increase over the current income tax rate (going from current 4.63% rate to 7.75% rate is a 78% increase).

The Objector requests the wording of this section to be amended to read: "...increasing income tax rates incrementally for individuals, trusts and estates using four tax brackets, starting with increasing the rate for income above \$150,000 by 8% up to increasing the rate for income above \$400,000 by 78%."

This language would clarify the title language and accurately describe the tax rate increase being proposed.

**b. The portion of the title regarding increasing corporate income tax rates is inaccurate.**

The title's mathematical inaccuracies discussed above also apply to the proposed corporate tax increase. The title states that the Initiative would be "...increasing the corporate income tax rate by 1.37%..." This is not an accurate statement. Increasing the tax rate from 4.63% to 6.0% is a 30% increase. It would be correct for the title to state that the proposal is: "...increasing the corporate tax rate by 30%..."

**c. The title does not make clear that the proposal alters the state's single rate income tax policy and is confusing and misleading.**

Under this Initiative, Coloradans would no longer have their income taxed at a single rate, altering the flat tax policy maintained in Colorado for many years. The title states that the Initiative would be "...creating an exception to the single rate state income tax for revenue that is dedicated to the funding of public schools..."

Referring to the income tax increases as an "exception" is confusing and misleading because it implies that the flat tax is still in effect, but that there is an exception that does not apply generally. The wording of the title avoids conveying to voters that taxpayers would no longer be taxed at a single rate and that the proposal would end the flat tax policy as it currently pertains to the income of all taxpayers. The Objector suggests the following change: "...ending the state's single rate state income tax and creating tax brackets with graduated increased taxes to be dedicated to the funding of public schools..."

**d. The title does not make clear that the proposal applies to joint tax filers and is confusing and misleading.**

The Initiative's title states that it seeks to increase the tax rates on "individuals, trusts, and estates." Many Coloradans file their taxes jointly with their spouse. The title does not clearly indicate to joint filers that they will be included in the tax increase.

Voters may assume that the proposed graduated tax increase will be applied to each individual's income, when in reality, the proposal seeks to apply the new graduated rates to their combined income when they file jointly. For instance, two married teachers who file jointly and each make \$80,000 may assume that because the title refers to "individual" tax filers, they will not face a tax increase under the proposal. But under the proposal will increase their taxes because their joint income is over the proposed \$150,000 threshold.

### III. 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 9<sup>th</sup> day of April, 2019.

/s/ Jonathan Anderson

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