

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Amber L. Miller,
Objector,

v.

Suzanne Taheri and Steven Ward,
Proponents of Initiative 2023-2024 #288.

**MOTION FOR REHEARING ON
INITIATIVE 2023-2024 #288**

Through legal counsel, Amber L. Miller, registered elector of Denver County, hereby files this motion for rehearing on Initiative 2023-2024 #288.

On April 17, 2024, the Title Setting Board erred in setting the following ballot title and submission clause for Initiative 2023-2024 #288:

Shall there be an amendment to the Colorado constitution requiring legislation passed by the state legislature that has a negative effect on the state's gross domestic product to be approved by the voters, and, in connection therewith, requiring legislation that has a negative economic impact to the state's gross domestic product of one hundred million dollars or more during the first five years after the legislation's passage to be approved by a vote of the people prior to becoming effective if a person submits a qualified economic impact statement documenting the impact that is verified; authorizing a party not satisfied with the impact determination to appeal the decision to the district court; and establishing time lines for submission, approval, and appeal of the economic impact statement?

I. The Title Board lacked jurisdiction to set titles.

A. This initiative is so vague as to defy understanding, whether by legislative experts or by the voting public.

Initiative #288 substantially changes legislative powers in state government. The lynchpins of this initiative are the report filed by an “economist” that is approved by an “expert.” One would think the skillset or qualifications of any two individuals who could play such an important role in frustrating validly adopted legislation would be spelled out in an initiative text so voters know if their involvement will address actual economic impacts of

legislation. But even Proponents built a shroud of vagueness into this initiative, and its inherent lack of clarity means this Board cannot set titles for this measure.

When asked by legislative staff at the Review and Comment hearing who an “economist” would be, one of the Proponents stated, “We would assume somebody with some credentials.” Given the vagueness of “some credentials,” staff pressed for some specificity, and this Proponent responded, “I think the term just has its ordinary meaning.”¹

“Some credentials” is startlingly nebulous. As to ordinary meanings of “economist,” the term is commonly defined as:

- “a person who studies or writes about economics;”²
- “a person who studies or has a special knowledge of economics;”³ or
- “a person who studies, teaches, or writes about economics.”⁴

To provide context for determining the capacity of a person to act as an “economist,” Proponent stated that economists aren’t licensed and that defining the term in this initiative might present a practical problem. “I mean, if we defined what an economist is, I don’t... I mean, there’s probably several definitions.” And legislative staff reasonably responded, “I know. That’s where I get tripped up.”⁵

If the nonpartisan staff gets “tripped up” so they do not know if an “economist” is someone who performs economic analyses or is simply a student who “studies” economics (given the definitions above), the measure is irrevocably vague and leaves voters to wonder what, if any, knowledge, insight, and capacity this person needs to stymie the legislative process. At best, Proponents stated an economist is “an expert in the field,” but as staff quickly pointed out, that designation actually belongs to a different person with a different role, as set forth in the initiative.⁶

¹ <https://sg001-harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20240420/72/15668> at 2:13:50-2:14:35 (recording of Review and Comment hearing on companion measure, Initiative #259). This Review and Comment review was adopted by reference into Review and Comment on Initiative #288. See <https://leg.colorado.gov/sites/default/files/initiatives/2023-2024%2520%2523288.002.pdf> at 1.

² https://www.oxfordlearnersdictionaries.com/us/definition/american_english/economist

³ <https://dictionary.cambridge.org/us/dictionary/english/economist>

⁴ <https://www.collinsdictionary.com/us/dictionary/english/economist>

⁵ See fn. 1 at 2:14:55-2:15:05.

⁶ *Id.* at 2:15:55-2:16:05.

Without being elected to any office, any “economist” is able to file a report (the methodology of which is to be “validated by an expert in the field”) and thereby stop the legislative branch from being able to give effect to its acts. And as the Review and Comment hearing established, it is not subject to any substantive review by the chief economist for the General Assembly. Nor does this interference with the legislative role need popular acceptance in the manner that a referendum petition that needs 5% of voters at the last election for secretary of state. Colo. Const., art. V, sec. 1(3). If voters are going to agree to this overhaul of the legislative process, they ought to at least know if the person has something more than a semester of Econ 101 under their belt.

And to be clear, the so-called “expert” is no check on this economist. As staff pointed out, the “economist” and the “expert” “can be co-workers, be employees of the same company. They can be similarly interested. This is not a third-party validation necessarily. This is not validated by someone with any degree of independence.” In fact, all it will take is “one economist with a buddy” to trigger the legislature’s chief economist’s mandatory approval of those conclusions.⁷

The so-called expert is unlikely to be engaged to provide an independent, intellectually trustworthy analysis. As legislative staff pointed out, “I just know, empirically, that many economics firms are hired to produce analyses that contain certain findings.... If I’m being hired by a certain group in order to determine, to complete an economic analysis, it’s not difficult for me to calibrate an economic model to produce a certain output. I mean, it’s just not.”⁸ Except to say an expert could be cross-examined in court, Proponents did not dispute that these concerns would reflect how Initiative #288 would operate.

The objection here is that Proponents used terminology that is vague, undefined, and intended to mislead voters to think that there is expertise and independence in this process when Proponents admit there is not. As a result, voters will not know that the lawmaking process – and two branches of government – can be halted for up to two (2) years by one person who, according to Proponents, has “some credentials” to call themselves an economist and by an “expert” who can be engaged as a paid-for, rubber stamp for the purpose of delaying legislation.

This measure is purposely muddled, and as such, no title can be set. As the Supreme Court has held, “Here, perhaps because the original text of the proposed initiative is difficult to comprehend, the titles and summary are not clear. If the Board cannot comprehend the initiatives well enough to state their single subject in the titles, the initiatives cannot be forwarded to the voters and must, instead, be returned to the proponent.” *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 #44*, 977 P.2d 856, 858 (Colo. 1999) (citations and internal punctuation omitted).

⁷ *Id.* at 2:21:50-2:22:10.

⁸ *Id.* at 2:23:45-2:24:12.

Proponents' decision not to define "economist" ignites a confusing process that is created to delay validly enacted legislation. It is an unprecedented limitation on the well-understood powers of the General Assembly. As such, Initiative #288 should be returned to Proponents, lest the electorate get "tripped up" by the inherent vagueness of this measure.

B. This initiative contains multiple subjects.

This initiative provides the only definition of "general appropriations bills" in law, and in so doing, it creates additional subjects.

The initiative states which legislative acts it does apply to and then states which ones it doesn't apply to. Included in the latter list are "general appropriation bills, including the School Finance Act." Proposed Section 17(9)(e). The problem is, the School Finance Act isn't a general appropriations bill – or hasn't been denominated as such until Initiative #288.

1. *By defining the School Finance Act as a general appropriations bill, Initiative #288 exempts the Act from the single subject requirement that applies to legislation.*

In connection with Initiative #259 (the predecessor measure to #288 that amends statute rather than the Constitution), the Review and Comment memo posed the following question to Proponents:

10. Does the measure apply to the long bill and the school finance act? What happens if these constitutionally-required legislative items do not take effect before commencement of the fiscal year for which they apply? What happens if the long bill or the school finance act are not approved by the voters?

In response to this question, one of the Proponents stated only, "I think we'll look at exempting some items."⁹ And in their amended version of Initiative #288, the Proponents added several exceptions including one for "General appropriations bills, including the School Finance Act." Proposed Section 17(9)(e) of Article XVIII.

The phrase, "general appropriations bills," is not defined by law. The Colorado Supreme Court has noted that "A general appropriations bill provides for the appropriation of moneys for numerous, diverse purposes." *In re Interrogatory Propounded by Governor Roy Romer on House Bill No. 1353*, 738 P.2d 371, 373 (Colo. 1987).

The designation of a piece of legislation being deemed a "general appropriation bill" is an important one. One such characteristic of a general appropriation bill is that it is not bound by the single subject requirement for legislation. "The Colorado Constitution itself recognizes that a general appropriations bill comprehends multiple subjects and specifically excepts such

⁹ *Id.* at 2:06:48-2:07:10.

bills from the single subject requirement of Article V, Section 21.” *Id.* That provision of the Constitution states:

No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

Colo. Const., art. V, sec. 21 (emphasis added).

Initiative #288 states the School Finance Act is “includ[ed]” as a “general appropriations bill.” By using “including,” Proponents have converted the School Finance Act into one example of a “general appropriations bill.”

As the Board is well aware, voters are deemed to understand words used in an initiative based on their plain, generally understood meaning. That intent frames the application of any initiative. Here, “including” is a commonly used and well understood term. It means:

- “having something as part of a group or set;”¹⁰
- “used for saying that a person or thing is part of a particular group or amount;”¹¹
- “involving, containing, or comprising.”¹²

Voters would not be aware that, by voting “yes” on Initiative #288, they would be creating a new exception to the single subject requirement. Proponents should not be able to create a Trojan horse for legislative mischief in the future.

Proponents made it clear that, as used in their measure, “legislation” means “all legislation.” In response to the following question in the Review and Comment memo, Proponents simply stated, “Yes.”

2.a. What does the term “legislation” mean? **Does it include all legislation** that has been enacted by the General Assembly, and then either signed by the Governor or allowed to become law without the Governor's signature?¹³

Thus, the rules of this measure affect every legislative act of the General Assembly.

¹⁰ <https://www.oxfordlearnersdictionaries.com/definition/english/including>.

¹¹ <https://dictionary.cambridge.org/us/dictionary/english/including>.

¹² <https://www.collinsdictionary.com/dictionary/english/including>.

¹³ <https://leg.colorado.gov/sites/default/files/initiatives/2023-2024%2520%2523259.002.pdf> at 2 (emphasis added); *see also* fn. 1 at 1:26:10-23 (recording of question posed to, and answer by, Proponents).

Even though their measure’s subsection (9) states it applies to “[t]his section,” there is no contrary definition of “general appropriations bill” in the Constitution or statute. And rules of construction specify, “**Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.**” C.R.S. § 2-4-101; *Martin v. Montezuma-Cortez Sch. Dist. RE-1*, 841 P.2d 237, 246 (Colo. 1992) (rules of construction apply “in the absence of express definitions” in the law in question); see *Campaign Integrity Watchdog v. Alliance for a Safe & Indep. Woodmen Hills*, 2018 CO 7, ¶20 (C.R.S. § 2-4-101 is used to interpret definitions in citizen initiatives to give effect to voter intent). Therefore, Proponents’ measure will apply in conjunction with other legislative limitations in the Colorado Constitution to extend the single subject exception to the annual School Finance Act.

2. *By defining the School Finance Act as a general appropriations bill, Initiative #288 allows the governor to line item veto any of the provisions of that Act.*

Additionally, in denominating the School Finance Act as a general appropriations bill, Proponents have expanded the powers of the governor in ways voters would never anticipate.

According to the Colorado Constitution, the governor can use a line item veto as to “any bill making appropriations of money.”

The governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be law, and the item or items disapproved shall be void, unless enacted in manner following: If the general assembly be in session, he shall transmit to the house in which the bill originated a copy of the item or items thereof disapproved, together with his objections thereto, and the items objected to shall be separately reconsidered, and each item shall then take the same course as is prescribed for the passage of bills over the executive veto.

Colo. Const. Art. IV, sec. 12 (emphasis added). Therefore, if Initiative #288 is adopted, a governor can use the line item veto on any portion of the School Finance Act with which he disagrees. Voters would not know this is what Initiative #288 does, and it should be returned to Proponents.

II. The title is misleading.

The title states that the economic impact statement must “document[] the impact is verified.” But there is no requirement for verification of the conclusions of the report of an “economist.” Instead, the initiative provides that an “expert” validate the “*methodological soundness*” of said report. (The measure also states “The assumptions must be reviewed,” but that provision is separated without other punctuation by “and.”)

There is no requirement that the *conclusions* of the report be validated or verified or even reviewed by the “expert.” The title represents that they will be (“if a person submits a qualified economic impact statement *documenting the impact is verified*”) and is thus substantively inaccurate.

WHEREFORE, Objectors seek appropriate relief in light of the above claims, including the striking of the titles set and return of Initiative #288 to Proponents for failure to comply with the single subject requirement of Article V, sec. 1(5.5) of the Colorado Constitution and the amendment of the title to eliminate misleading references to the initiative’s text.

Respectfully submitted this 24th day of April, 2024.

RECHT KORNFELD, P.C.

s/ Mark G. Grueskin

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CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2023-2024 #288** was sent this day, the 24th day of April, 2024, via email to Proponents’ legal counsel, to:

Suzanne Taheri
st@westglp.com

s/ Erin Mohr
Erin Mohr