

SUPREME COURT OF COLORADO

2 E.14th Avenue
Denver Colorado 80203

ORIGINAL PROCEEDING UNDER

C.R.S. § 1-40-107(2)

Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and Submission
Clause for Proposed Initiative 2015-2016 #127
(Establishment of State-owned Bank)

Petitioners: Earl Staelin and David Runco

v.

Respondents: Barbara M.A. Walker and Don Childears
and

Title Board: Jason Gelender, Troy Bratton, David Blake

Attorneys for Proponents:

Earl H. Staelin #30283

Attorney at Law

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DATE FILED: May 3, 2016 11:58 PM

COURT USE ONLY

Supreme Court Case
Number: 2016SA_____

PETITION FOR REVIEW OF ACTION OF TITLE BOARD DECLINING TO SET A
TITLE FOR PROPOSED INITIATIVE 2015-2016 #127 ("ESTABLISHMENT OF
STATE-OWNED BANK")

Earl Staelin and David Runco (“Petitioners”), registered electors of the state of Colorado, by their counsel, respectfully petition this Court pursuant to C.R.S. § 1-40-107(2), to review the action of the Ballot Title Setting Board whereby it granted the motion of Objector Don Childears for rehearing and declined to set title, ballot title and submission clause.

I. ACTION OF THE TITLE BOARD

Earl Staelin and David Runco (“Proponents”) proposed initiative #127 (“Establishment of a State-Owned Bank”). A review and comment hearing was held before representatives of the Offices of Legislative Council and Legislative Legal Services on their initiative on April 6, 2016.

The Title Board hearing was held on April 20, 2016. The Title Board unanimously found that the initiative was limited to a single subject. The Title Board then unanimously set a title, ballot title, and submission clause. At the hearing Objectors were present but raised no objections. Jason Dunn, counsel for Objector Don Childears was also present. Objectors Don Childears and Barbara A. Walker filed timely motions for rehearing. At the rehearing held April 28, 2016 the Title Board considered the first issue raised in Objector Don Childears’ motion and voted to grant the motion. It did not consider Objector Walker’s motion.

Petitioners now seek review of the Title Board's action under C.R.S. § 1-40-107(2).

II. ISSUES PRESENTED FOR REVIEW

The initiative as filed with the Legislative Council provided that the state owned bank may accept deposits of a lawful business that is not able to obtain lawful banking services in Colorado, impliedly referring to lawful marijuana businesses. The final initiative filed with the Secretary of State removed that provision but provided equivalent authority to the board of the bank in a different section involving the board's authority to determine who may be a depositor of the bank. Did the Title Board err in holding that the measure as amended contained a substantial change that was not in direct response to questions or comments by the Legislative Council and that it therefore lacked jurisdiction to set a title?

III. JURISDICTION

Petitioners are entitled to review by the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioners timely filed their Petition for Review within five business days after the second hearing held on April 28, 2016 pursuant to C.R.S. § 1-40-107(2).

IV. SUPPORTING DOCUMENTATION

As required by C.R.S. § 1-40-107(2), attached is a certified copy of the petition, the title, ballot title and submission clause of the proposed measure, the Motions for Rehearing of Don Childears and Barbara Walker, and the final action by the Title Board.

V. RELIEF REQUESTED

- (1) This Court set a briefing schedule that takes into account the fact that this measure can qualify for the 2016 ballot; and
- (2) Petitioners respectfully request that the court reverse the Title Board's grant of the Motion for Rehearing and find that the Title Board had jurisdiction to set title for the Initiative.

Dated: May 3, 2016

Respectfully submitted,

/s/ Earl H. Staelin

Earl H. Staelin

Attorney at Law

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estaelin@comcast.net

Attorneys for Petitioners

Earl Staelin and David Runco

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2016, a true and correct copy of this PETITION FOR REVIEW BY PROPONENTS OF THE ACTION OF THE TITLE BOARD was delivered via regular U.S. Mail to the following:

Jason R. Dunn
David Meschke
Brownstein Hyatt Farber Schreck LLP
410 17th Street
Denver CO 80202
Attorneys for Petitioner Don Childears
303-223-1100

Deanne R. Stodden
Coane, Payton, and Payne, LLC
999 18th Street, Suite S1500
Denver CO 80202
303-861-8888
Attorneys for Objector Barbara M.A. Walker

LeAnn Morrill
Office of the Colorado Attorney General
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver CO 80203
Attorneys for the Title Board

/s/ Earl H. Staelin



STATE OF COLORADO

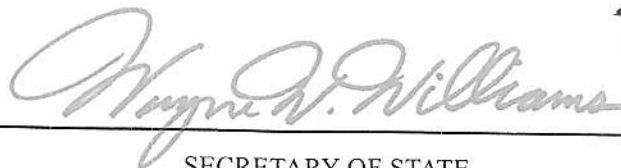
DEPARTMENT OF
STATE

CERTIFICATE

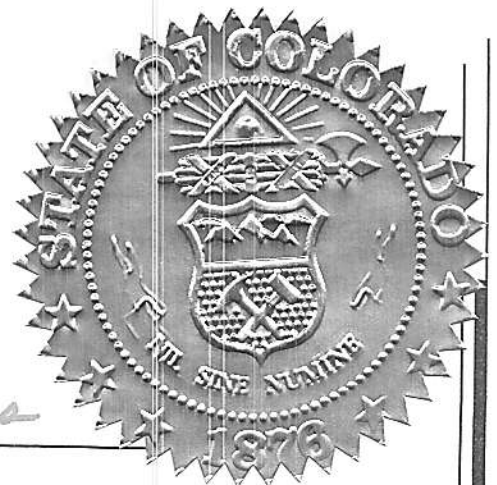
I, WAYNE W. WILLIAMS, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, motions for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2015-2016 #127 'Establishment of State-Owned Bank'"....

..... IN TESTIMONY WHEREOF I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 2nd day of May, 2016.



SECRETARY OF STATE



RECEIVED

APR 08 2016

Proposed Constitutional Amendment for the State of Colorado

Colorado Secretary of State

To Establish a Publicly-Owned State Bank
To be Numbered as Article X, Section 22

S.WARD 3:00 P.M.

Be it Enacted by the People of the State of Colorado:

SECTION 1. In the constitution of the state of Colorado, add section 22 to Article X as follows:

Section 22. State-owned bank. (1) Statement of intent. (a) THE STATE OF COLORADO DESIRES TO ESTABLISH A STATE-OWNED BANK AS A TABOR ENTERPRISE, IN ORDER TO STRENGTHEN ITS ECONOMY BY:

I. KEEPING THE STATE'S DEPOSITS LOCAL IN ITS OWN STATE-OWNED BANK, WORKING FOR THE LOCAL ECONOMY;

II. ELIMINATING INTEREST AND FEE EXPENSES ASSOCIATED WITH THE USE OF OUT-OF-STATE BANKS;

III. PROVIDING AN ADDITIONAL SOURCE OF INCOME FOR THE STATE ;

IV. PROTECTING COLORADO'S ECONOMY FROM THE SYSTEMIC RISKS OF BANKS THAT ARE TOO BIG TO FAIL, OF THE SORT THAT CAUSED THE 2008 GREAT RECESSION; AND

V. PROTECTING THE STATE'S OWN DEPOSITS AND INVESTMENTS FROM CONFISCATION IN A "BAIL-IN" AS AUTHORIZED BY THE DODD-FRANK ACT OF 2010.

(b) TRUE AND SUSTAINABLE PROSPERITY COMES IN LARGE PART FROM THE CREATION AND MANAGEMENT OF MONEY AND CREDIT IN THE PUBLIC INTEREST. THIS HAS BEEN REPEATEDLY DEMONSTRATED GLOBALLY AND HISTORICALLY, BEGINNING WITH THE PUBLIC CREDIT SYSTEMS OF MANY OF THE ORIGINAL THIRTEEN COLONIES OF THE UNITED STATES. TODAY IN THE U.S. WE HAVE THE MODEL OF THE BANK OF NORTH DAKOTA, WHICH PROTECTED THE STATE'S ECONOMY FROM RECESSION IN 2008-2009. GLOBALLY, HIGHLY SUCCESSFUL PUBLIC BANKING MODELS ARE FOUND IN GERMANY, SOUTH KOREA, JAPAN, COSTA RICA, AND MANY OTHER COUNTRIES; AND IN THE PAST, IN CANADA, FRANCE, AND AUSTRALIA, AMONG OTHERS.

(c) THE SOLE PURPOSE OF THIS AMENDMENT IS TO ESTABLISH A PUBLICLY OWNED STATE BANK AS A TABOR ENTERPRISE THAT EFFECTIVELY SERVES THE PUBLIC INTEREST AND PROMOTES THE GENERAL WELFARE OF THE CITIZENS OF THE STATE OF COLORADO, AS DEFINED IN SUBSECTION (3) OF THIS SECTION.

(2) Definitions. AS USED IN THIS SECTION:

(a) "SOUND BANKING PRACTICES" MEANS PRACTICES GENERALLY FOLLOWED BY PUBLIC NON-PROFIT BANKS, SUCH AS THE BANK OF NORTH DAKOTA, THAT ARE OPERATED IN THE PUBLIC INTEREST, AS OPPOSED TO THE FREQUENTLY QUESTIONABLE OR UNLAWFUL PRACTICES OF MAJOR PRIVATE FOR-PROFIT BANKS, WHICH ARE OPERATED PRINCIPALLY IN THE INTERESTS OF THEIR SHAREHOLDERS, WHICH OFTEN CONFLICT WITH THE PUBLIC INTEREST, AND THEREBY CREATE UNREASONABLE RISKS FOR THE ECONOMY OF THE UNITED STATES AND THE STATE OF COLORADO. FOR EXAMPLE, SOUND BANKING PRACTICES INCLUDE, BUT ARE NOT LIMITED TO, THE AVOIDANCE OF INVESTMENTS IN SPECULATIVE INSTRUMENTS SUCH AS DERIVATIVES, CREDIT DEFAULT SWAPS, INTEREST RATE SWAPS, COMMODITIES FUTURES, AND MORTGAGE BACKED SECURITIES.

(b) "SOUND FINANCIAL AND PUBLIC POLICY CONSIDERATIONS" MEANS CONSIDERATIONS FOCUSED ON THE PUBLIC INTEREST, SUCH AS THOSE ENUMERATED IN SUBSECTION (3), PARTICULARLY THOSE OF THE CITIZENS OF THE STATE OF COLORADO.

(c) "STATE PERSONNEL SYSTEM" REFERS TO THE SYSTEM ESTABLISHED UNDER SECTION 13 OF ARTICLE XII OF THE COLORADO CONSTITUTION.

(3) Establishment of state-owned bank. (a) THE STATE OF COLORADO HEREBY ESTABLISHES A BANK TO BE OWNED BY THE STATE OF COLORADO AND OPERATED AS AN ENTERPRISE AS DEFINED IN SECTION 20 (2)(d) OF ARTICLE 10 OF THE COLORADO CONSTITUTION. THE BANK IS AUTHORIZED TO LEND MONEY AT INTEREST OR AT NO INTEREST; TO PROMOTE SUSTAINABLE DEVELOPMENT, COMMERCE, INDUSTRY, AND AGRICULTURE IN THE STATE; TO PROMOTE HOME OWNERSHIP, MAINTENANCE AND CONSTRUCTION OF NEEDED INFRASTRUCTURE, EDUCATION, PUBLIC HEALTH AND SAFETY; AND OTHER PURPOSES THAT SUPPORT THE GENERAL WELFARE OF THE CITIZENS OF THE STATE OF COLORADO. THE BANK SHALL HAVE ALL THE POWERS AND AUTHORITY OF OTHER BANKS CHARTERED BY THE STATE OF COLORADO.

(b) THE BANK SHALL BE AUTHORIZED TO ISSUE REVENUE BONDS IN ORDER TO PROVIDE CAPITALIZATION OR TO SUPPORT ANY OF ITS FACILITIES OR OPERATIONS.

(c) THE BANK SHALL CONSTITUTE AN ENTERPRISE FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION SO LONG AS IT RETAINS THE AUTHORITY TO ISSUE REVENUE BONDS AND EACH YEAR RECEIVES LESS THAN TEN PERCENT OF ITS TOTAL REVENUES IN GRANTS FROM ALL COLORADO STATE AND LOCAL GOVERNMENTS COMBINED. SO LONG AS IT CONSTITUTES AN ENTERPRISE PURSUANT TO THIS PARAGRAPH (c) THE BANK SHALL NOT BE SUBJECT TO ANY PROVISIONS OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

(d) ALL PROVISIONS OF THIS SECTION 22 ARE SELF-EXECUTING AND SEVERABLE AND SUPERSEDE CONFLICTING STATE CONSTITUTIONAL, STATE STATUTORY, STATE CHARTERED, OR OTHER STATE OR LOCAL PROVISIONS.

(4) Governance of state bank - elected officials. THE BOARD OF DIRECTORS OF THE BANK CONSISTS OF SEVEN MEMBERS WHO SHALL BE ELECTED AS FOLLOWS:

(a) THE SEVEN BOARD MEMBERS SHALL EACH REPRESENT A DISTRICT WHOSE BOUNDARIES SHALL BE THE SAME AS THE SEVEN CONGRESSIONAL DISTRICTS FROM WHICH COLORADO'S SEVEN CONGRESSIONAL MEMBERS ARE ELECTED. IF THE NUMBER OF REPRESENTATIVES FROM COLORADO SHOULD CHANGE TO AN EVEN NUMBER IN THE FUTURE, THE NUMBER OF DISTRICTS FROM WHICH MEMBERS WILL BE ELECTED FROM WILL CHANGE ACCORDINGLY, AND THE GOVERNOR WILL APPOINT ONE ADDITIONAL BOARD MEMBER MAKING UP THE NEW ODD TOTAL NUMBER. BEFORE NEW ELECTIONS ARE HELD USING NEW DISTRICT BOUNDARIES, BOARD MEMBERS WILL FINISH OUT THE REMAINING TWO YEARS OF THEIR FOUR YEAR TERM, BUT THE OTHER BOARD MEMBERS WILL BE REPLACED BY ELECTIONS FROM THE NEW DISTRICTS.

(b) THE INITIAL ELECTION SHALL BE HELD ON THE FIRST TUESDAY IN NOVEMBER, 2017 IN CONJUNCTION WITH THE GENERAL ELECTION, AND INCLUDE CANDIDATES FOR ALL SEVEN DISTRICTS, THREE OF WHOM SHALL BE ELECTED FOR AN INITIAL TERM OF TWO YEARS AND FOUR OF WHOM SHALL BE ELECTED FOR A TERM OF FOUR YEARS. THEREAFTER, THE TERM OF EACH MEMBER SHALL BE FOR FOUR YEARS. EACH ELECTION HELD AFTER THE INITIAL ELECTION SHALL ALSO BE HELD ON THE FIRST

TUESDAY IN NOVEMBER IN ODD-NUMBERED YEARS IN CONJUNCTION WITH THE GENERAL ELECTION. ELECTIONS FOR MEMBERS OF THE BOARD OF DIRECTORS SHALL BE ON A NON-PARTISAN BASIS. POLITICAL PARTIES MAY NOT ENDORSE CANDIDATES FOR THESE POSITIONS.

(c) A CANDIDATE MUST BE A CITIZEN OF THE STATE OF COLORADO FOR AT LEAST FOUR YEARS BEFORE HE OR SHE CAN DECLARE THEIR CANDIDACY AND MUST BE A RESIDENT OF THEIR DISTRICT FOR TWO YEARS PRIOR TO THE DEADLINE FOR CANDIDATE REGISTRATION.

(d) TO BE INCLUDED ON THE BALLOT, CANDIDATES MUST REGISTER WITH THE SECRETARY OF STATE'S OFFICE, WHICH SHALL PROVIDE AN AUTOMATED ONLINE PROCESS THAT INCLUDES THE OPPORTUNITY FOR EACH CANDIDATE TO LIST THEIR QUALIFICATIONS AND REASONS WHY THEY WANT TO SERVE.

(e) IN THE EVENT THAT NO CANDIDATE WITHIN A DISTRICT RECEIVES A MAJORITY OF VOTES FROM THAT DISTRICT, THE SECRETARY OF STATE SHALL SET A RUN-OFF ELECTION BETWEEN THE TWO CANDIDATES RECEIVING THE MOST VOTES. THE RUN-OFF ELECTION MUST BE HELD WITHIN THIRTY DAYS AFTER THE RESULT OF THE INITIAL ELECTION IS CERTIFIED.

(f) THE GENERAL ASSEMBLY SHALL APPROPRIATE FUNDS AS NECESSARY TO CONDUCT THE ELECTIONS PROVIDED FOR IN THIS SUBSECTION. FUNDS APPROPRIATED FOR THE ELECTION SHALL NOT BE DEEMED TO BE PART OF THE REVENUE OF THE BANK. THE SECRETARY OF STATE SHALL SET AND CONDUCT ALL ELECTIONS FOR THE BOARD OF DIRECTORS OF THE BANK IN ACCORDANCE WITH THIS SUBSECTION 4.

(g) THE BANK SHALL COMMENCE OPERATIONS JANUARY 1, 2018.

(5) Governance of state bank: management, employees, and advisors: (a) THE BOARD OF DIRECTORS SHALL RECEIVE ADVISORY INPUT ON THE GENERAL DIRECTION OF THE BANK FROM A NINE-MEMBER BOARD OF ADVISORS WHOSE MEMBERS REPRESENT A BROAD CROSS-SECTION OF THE STATE INCLUDING BUSINESS AND INDUSTRY, FARMING, FINANCE, EDUCATION, AND LABOR. OF THE NINE, AT LEAST TWO MUST BE OFFICERS OF BANKS WHOSE MAJORITY OF STOCK IS OWNED BY COLORADO RESIDENTS. AT LEAST ONE DIRECTOR MUST BE AN OFFICER OF A STATE-CHARTERED OR FEDERALLY CHARTERED FINANCIAL INSTITUTION. THE GOVERNOR SHALL APPOINT A CHAIRMAN, VICE CHAIRMAN, AND SECRETARY FROM THE ADVISORY BOARD OF DIRECTORS. THE GOVERNOR SHALL APPOINT THE BOARD MEMBERS FOR STAGGERED TERMS OF FOUR YEARS EACH, EXCEPT FOR THE INITIAL APPOINTMENT WHICH SHALL PROVIDE FOUR-YEAR TERMS FOR FIVE MEMBERS AND TWO-YEAR TERMS FOR FOUR MEMBERS, SUBJECT TO CONFIRMATION BY A MAJORITY OF THE SENATE OF THE GENERAL ASSEMBLY OF THE STATE OF COLORADO. VARIOUS GROUPS WITHIN EACH AREA OF INTEREST MAY NOMINATE MEMBERS OF THE BOARD OF ADVISORS IN A MANNER TO BE DETERMINED BY THE GENERAL ASSEMBLY.

(b) AUTHORITY OF THE ADVISORY BOARD OF DIRECTORS. THE ADVISORY BOARD OF DIRECTORS TO THE BANK SHALL:

I. MEET REGULARLY WITH THE MANAGEMENT OF THE BANK TO REVIEW THE BANK'S OPERATIONS TO DETERMINE WHETHER RECOMMENDATIONS SHOULD BE CONSIDERED BY THE BOARD RELATED TO IMPROVED MANAGEMENT PERFORMANCE, BETTER CUSTOMER SERVICE, AND OVERALL IMPROVEMENT IN INTERNAL METHODS, PROCEDURES, AND OPERATING POLICIES OF THE BANK.

II. MAKE RECOMMENDATIONS TO THE BOARD OF DIRECTORS OF THE BANK RELATING TO THE ESTABLISHMENT OF ADDITIONAL OBJECTIVES FOR THE OPERATION OF THE BANK.

III. MAKE RECOMMENDATIONS TO THE BOARD OF DIRECTORS CONCERNING THE APPOINTMENT OF OFFICERS OF THE BANK.

(c) THE BOARD OF DIRECTORS SHALL ALSO RECEIVE REGULAR FINANCIAL REPORTS, NO LESS THAN ONCE A MONTH, FROM THE MANAGEMENT OF THE BANK. THE FINANCES OF THE BANK SHALL BE AUDITED ANNUALLY BY AN INDEPENDENT ACCOUNTING FIRM FREE FROM ANY CONFLICTS OF INTEREST WITH THE BANK OR STATE. THE BOARD SHALL MAKE ALL REPORTS AND THE AUDIT PUBLIC WHEN IT RECEIVES THEM. THE BOARD SHALL CHANGE AUDITORS AT LEAST EVERY THREE YEARS.

(d) EXCEPT FOR THE PRESIDENT OF THE BANK, WHO SHALL BE APPOINTED BY THE BOARD OF DIRECTORS AND SERVE AT THEIR PLEASURE, THE MANAGEMENT AND EMPLOYEES OF THE BANK SHALL BE HIRED BY THE PRESIDENT ACCORDING TO THE STANDARDS OF THE STATE PERSONNEL SYSTEM. THE PRESIDENT SHALL ENDEAVOR TO HIRE THE BEST QUALIFIED PERSONS FROM AMONG THE CANDIDATES APPROVED BY THE STATE PERSONNEL SYSTEM AND THE BANK SHALL COMPENSATE THEM ACCORDINGLY BY SALARY. THE TITLES AND DUTIES OF THE REMAINING TOP FIVE OFFICIALS SHALL BE DETERMINED BY THE BOARD OF DIRECTORS. NO EMPLOYEE OF THE BANK SHALL RECEIVE COMPENSATION IN THE FORM OF COMMISSIONS, FEES, OR BONUSES, EXCEPT THAT THE BOARD MAY ESTABLISH A SYSTEM FOR AWARDING MODEST BONUSES FOR OUTSTANDING PERFORMANCE OF AN EMPLOYEE'S DUTIES IN SERVICE OF THE BANK'S PURPOSES. THE PRESIDENT OF THE BANK MUST HAVE SUBSTANTIAL EXPERIENCE IN BANKING. THE MANAGEMENT OF THE BANK SHALL BE RESPONSIBLE FOR THE DAY-TO-DAY OPERATIONS OF THE BANK, WHICH SHALL FOLLOW THE GENERAL OBJECTIVES SET FORTH IN THIS SECTION AND, SUBSEQUENTLY, BY THE BOARD OF DIRECTORS.

(6) Rules and Regulations of State Bank. (a) FOLLOWING THE COMMENCEMENT OF OPERATIONS ON JANUARY 1, 2018, THE INITIAL MANAGEMENT OF THE BANK, CONSISTING OF THE TOP FIVE OPERATING OFFICIALS OF THE BANK, INCLUDING THE PRESIDENT APPOINTED BY THE BOARD OF DIRECTORS AND THOSE HIRED BY THE PRESIDENT UNDER THE PROTOCOLS OF THE STATE PERSONNEL SYSTEM, SHALL BE CHARGED WITH DRAFTING THE RULES AND REGULATIONS OF THE BANK, SUBJECT TO CONSIDERATION OF RECOMMENDATIONS BY THE ADVISORY BOARD AND APPROVAL OF THE BOARD OF DIRECTORS OF THE BANK. THE PROPOSED RULES AND REGULATIONS APPROVED BY THE BOARD OF DIRECTORS SHALL BE SUBMITTED TO THE GENERAL ASSEMBLY FOR FINAL APPROVAL.

(b) THE RULES AND REGULATIONS SHALL COVER, BUT NOT BE LIMITED TO, THE FOLLOWING ISSUES: PROTECTION OF PUBLIC DEPOSITS, ADEQUACY OF CAPITALIZATION, LENDING CRITERIA, SECURITY FOR LOANS, ACCOUNTING STANDARDS APPLICABLE TO THE BANK, CRITERIA FOR INVESTMENTS, WHO MAY BE A DEPOSITOR AT THE BANK, POLICIES FOR MANAGEMENT OF LOANS, THE ISSUE AS TO WHETHER AND TO WHAT EXTENT, BASED UPON DIFFERENCES BETWEEN THE BANK AND PRIVATE BANKS, THE ADMINISTRATION AND ENFORCEMENT OF SUCH RULES AND REGULATIONS GOVERNING THE BANK SHOULD REMAIN UNDER THE AUTHORITY OF THE BANKING BOARD OR UNDER THE MANAGEMENT OF THE BOARD OF THE BANK, WHETHER AND UNDER WHAT CONDITIONS THE BANK MAY EXTEND THE FULL FAITH AND CREDIT OF THE BANK TO OBLIGATIONS THAT IT ASSUMES, WHETHER THE BANK MAY GUARANTEE THE LOANS OF OTHER BANKS, AND ANY OTHER ISSUES RELEVANT TO THE ESTABLISHMENT AND OPERATION OF THE BANK SO AS TO ENSURE ITS FINANCIAL SOUNDNESS AND ITS ETHICAL MANAGEMENT TO SERVE THE PUBLIC INTEREST OF THE CITIZENS OF COLORADO.

(7) Initial Operation of Bank. WITHIN THREE MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION 22 OF ARTICLE X, THE GENERAL ASSEMBLY SHALL APPROPRIATE FUNDS TO ENABLE THE BANK TO PURCHASE OR LEASE LAND, PHYSICAL STRUCTURES, AND FURNISHINGS SUFFICIENT FOR THE BANK TO BEGIN LENDING OPERATIONS. AFTER THE BOARD OF DIRECTORS IS ELECTED, A PRESIDENT IS HIRED, AND ADVISORY BOARD IS SELECTED, THE PRESIDENT OF THE BANK, AFTER CONSULTATION WITH THE ADVISORY BOARD, AND WITH THE APPROVAL OF THE BOARD OF DIRECTORS, SHALL PURCHASE OR LEASE

THE LAND, PHYSICAL STRUCTURES, AND FURNISHINGS NECESSARY TO ENABLE THE BANK TO CONDUCT ITS BUSINESS. THE BANK SHALL ESTABLISH ITS OFFICES WITHIN THE STATE OF COLORADO.

(8) **Capitalization of State Bank.** THE CAPITALIZATION OF THE BANK MAY INCLUDE ANY PROCEEDS FROM TAXES AND OTHER REVENUES AND FUNDS OF THE STATE, INCLUDING OTHER FUNDS SUCH AS MAY BE COLLECTED CURRENTLY FOR THE STATE BY OTHER BANKS, THAT ARE NOT OTHERWISE OBLIGATED, OTHER DEPOSITS IN ADDITION TO THOSE FROM THE STATE AS PERMITTED BY SOUND BANKING PRACTICES, AND FUNDS GENERATED BY REVENUE BONDS ISSUED BY THE BANK. ALL SPECIFICALLY ALLOCATED FUNDS AND OTHER ASSETS OF THE STATE NORMALLY HELD BY FINANCIAL INSTITUTIONS SHALL BE DEPOSITED AND HELD BY THE STATE BANK, INCLUDING MONEY HELD BY OTHER BANKS FOR THE STATE OF COLORADO PRIOR TO THE ESTABLISHMENT OF THE BANK, WHICH SHALL BE TRANSFERRED TO THE BANK WITHIN TEN WORKING DAYS, OR IN ANY EVENT AS SOON AS PRACTICABLE AFTER THE BOARD OF DIRECTORS DECLARES THAT THE BANK IS READY TO RECEIVE THE TRANSFER OF FUNDS. THE TRANSFER OF FUNDS SHALL COMMENCE NO LATER THAN TWO YEARS FROM THE EFFECTIVE DATE OF THIS SECTION 22 OF ARTICLE X. THE BOARD OF DIRECTORS, UPON RECEIVING THE ADVICE AND RECOMMENDATIONS FROM THE MANAGEMENT OF THE BANK, SHALL DETERMINE THE MEANS FOR ADDITIONAL CAPITALIZATION AS REQUIRED TO MEET THE OBJECTIVES OF THE BANK AS SET FORTH IN THIS SECTION.

(9) **Effective date.** THIS SECTION SHALL BE EFFECTIVE JANUARY 1, 2017.

Proposed Constitutional Amendment for the State of Colorado

To Establish a Publicly-Owned State Bank
To be Numbered as Article X, Section 22

RECEIVED

APR 08 2016

Colorado Secretary of State
DATE FILED: APR 08 2016

S-WARD 3:00 P.M.

Be it Enacted by the People of the State of Colorado:

SECTION 1. In the constitution of the state of Colorado, **add** section 22 to Article X as follows:

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- I. KEEPING THE STATE'S DEPOSITS LOCAL IN ITS OWN STATE-OWNED BANK, WORKING FOR THE LOCAL ECONOMY;
- II. EELIMINATING INTEREST AND FEE EXPENSES ASSOCIATED WITH THE USE OF OUT-OF-STATE BANKS;
- III. PROVIDING AN ADDITIONAL SOURCE OF INCOME FOR THE STATE;
- IV. PROTECTING COLORADO'S ECONOMY FROM THE SYSTEMIC RISKS OF BANKS THAT ARE TOO BIG TO FAIL, OF THE SORT THAT CAUSED THE 2008 GREAT RECESSION; AND
- V. PROTECTING THE STATE'S OWN DEPOSITS AND INVESTMENTS FROM CONFISCATION IN A "BAIL-IN" AS AUTHORIZED BY THE DODD-FRANK ACT OF 2010.

(b) TTRUE AND SUSTAINABLE PROSPERITY COMES IN LARGE PART FROM THE CREATION AND MANAGEMENT OF MONEY AND CREDIT IN THE PUBLIC INTEREST. THIS HAS BEEN REPEATEDLY DEMONSTRATED GLOBALLY AND HISTORICALLY, BEGINNING WITH THE PUBLIC CREDIT SYSTEMS OF MANY OF THE ORIGINAL THIRTEEN COLONIES OF THE UNITED STATES. TODAY IN THE U.S. WE HAVE THE MODEL OF THE BANK OF NORTH DAKOTA, WHICH PROTECTED THE STATE'S ECONOMY FROM RECESSION IN 2008-2009. GLOBALLY, HIGHLY SUCCESSFUL PUBLIC BANKING MODELS ARE FOUND IN GERMANY, SOUTH KKOREA, JJAPAN, CCOSTA RICA, AND MANY OTHER COUNTRIES; AND IN THE PAST, IN CCANADA, FFRANCE, AND AAUSTRALIA, AMONG OTHERS.

(c) THE SOLE PURPOSE OF THIS AMENDMENT IS TO ESTABLISH A PUBLICLY-OWNED STATE BANK AS A TABOR ~~TABOR~~ ENTERPRISE THAT EFFECTIVELY SERVES THE PUBLIC INTEREST AND PROMOTES THE GENERAL WELFARE OF THE CITIZENS OF THE STATE OF COLORADO, AS DEFINED IN SUBSECTION (34) OF THIS SECTION.

(2) Definitions. AS USED IN THIS SECTION:

(a) "SOUND BANKING PRACTICES" MEANS PRACTICES GENERALLY FOLLOWED BY PUBLIC NON-PROFIT BANKS, SUCH AS THE BANK OF NORTH DAKOTA, THAT ARE OPERATED IN THE PUBLIC INTEREST, AS OPPOSED TO THE FREQUENTLY QUESTIONABLE OR UNLAWFUL PRACTICES OF MAJOR PRIVATE FOR-PROFIT BANKS, WHICH ARE OPERATED PRINCIPALLY IN THE INTERESTS OF THEIR SHAREHOLDERS, WHICH OFTEN CONFLICT WITH THE PUBLIC INTEREST, AND THEREBY CREATE UNREASONABLE RISKS FOR THE ECONOMY OF THE UNITED STATES AND THE STATE OF COLORADO. FOR EXAMPLE, SOUND BANKING PRACTICES INCLUDE, BUT ARE NOT LIMITED TO, THE AVOIDANCE OF INVESTMENTS IN SPECULATIVE

INSTRUMENTS SUCH AS DERIVATIVES, CREDIT DEFAULT SWAPS, INTEREST RATE SWAPS, COMMODITIES FUTURES, AND MORTGAGE BACKED SECURITIES.

(b) "SOUND FINANCIAL AND PUBLIC POLICY CONSIDERATIONS" MEANS CONSIDERATIONS FOCUSED ON THE PUBLIC INTEREST, SUCH AS THOSE ENUMERATED IN SUBSECTION (3), PARTICULARLY THOSE OF THE CITIZENS OF THE STATE OF COLORADO.

(c) "STATE PERSONNEL SYSTEM" REFERS TO THE SYSTEM ESTABLISHED UNDER SECTION 13 OF ARTICLE XII OF THE COLORADO CONSTITUTION.

(3) **Establishment of ~~§~~State-owned ~~h~~Bank.** (a) THE STATE OF COLORADO HEREBY ESTABLISHES A BANK TO BE OWNED BY THE STATE OF COLORADO AND OPERATED AS AN ENTERPRISE AS DEFINED IN SECTION 20 (2)(d) OF ARTICLE 10 OF THE COLORADO CONSTITUTION, ~~ART. 10, §20(A)(2)~~. THE BANK IS AUTHORIZED TO LEND MONEY AT INTEREST OR AT NO INTEREST; TO PROMOTE SUSTAINABLE DEVELOPMENT, COMMERCE, INDUSTRY, AND AGRICULTURE IN THE STATE; TO PROMOTE HOME OWNERSHIP, MAINTENANCE AND CONSTRUCTION OF NEEDED INFRASTRUCTURE, EDUCATION, PUBLIC HEALTH AND SAFETY; AND OTHER PURPOSES THAT SUPPORT THE GENERAL WELFARE OF THE CITIZENS OF THE STATE OF COLORADO. THE BANK SHALL HAVE ALL THE POWERS AND AUTHORITY OF OTHER BANKS CHARTERED BY THE STATE OF COLORADO.

(b) THE BANK SHALL BE AUTHORIZED TO ISSUE REVENUE BONDS IN ORDER TO PROVIDE CAPITALIZATION ~~AND/OR~~ TO SUPPORT ANY OF ITS FACILITIES OR OPERATIONS.

(c) THE BANK SHALL CONSTITUTE AN ENTERPRISE FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION SO LONG AS IT RETAINS THE AUTHORITY TO ISSUE REVENUE BONDS AND EACH YEAR RECEIVES LESS THAN TEN PERCENT OF ITS TOTAL REVENUES IN GRANTS FROM ALL COLORADO STATE AND LOCAL GOVERNMENTS COMBINED. SO LONG AS IT CONSTITUTES AN ENTERPRISE PURSUANT TO THIS PARAGRAPH ~~(c)~~ THE BANK SHALL NOT BE SUBJECT TO ANY PROVISIONS OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

~~(d) THE BANK MAY ACCEPT THE DEPOSITS OF ANY BUSINESS LAWFULLY OPERATING UNDER THE CONSTITUTION AND LAWS OF THE STATE OF COLORADO BUT WHICH DOES NOT HAVE A BANK OR FINANCIAL INSTITUTION IN THE STATE OF COLORADO IN WHICH IT MAY LAWFULLY DEPOSIT ITS MONEYS.~~

~~(d)~~ ALL PROVISIONS OF THIS SECTION 22 ARE SELF-EXECUTING AND SEVERABLE AND SUPERSEDE CONFLICTING STATE CONSTITUTIONAL, STATE STATUTORY, STATE CHARTERED, OR OTHER STATE OR LOCAL PROVISIONS.

(4) **Governance of state bank~~;~~ - elected officials~~;~~** THE BOARD OF DIRECTORS OF THE BANK CONSISTS OF SEVEN MEMBERS WHO SHALL BE ELECTED AS FOLLOWS:

(a) THE SEVEN BOARD MEMBERS SHALL EACH REPRESENT A DISTRICT WHOSE BOUNDARIES SHALL BE THE SAME AS THE SEVEN CONGRESSIONAL DISTRICTS FROM WHICH ~~C~~OLORADO'S SEVEN CONGRESSIONAL MEMBERS~~PERSONS~~ ARE ELECTED. IF THE NUMBER OF REPRESENTATIVES FROM ~~C~~OLORADO SHOULD CHANGE TO AN EVEN NUMBER IN THE FUTURE, THE NUMBER OF DISTRICTS FROM WHICH MEMBERS WILL BE ELECTED FROM WILL CHANGE ACCORDINGLY, AND THE GOVERNOR WILL APPOINT ONE ADDITIONAL BOARD MEMBER MAKING UP THE NEW ODD TOTAL NUMBER. BEFORE NEW ELECTIONS ARE HELD USING NEW DISTRICT BOUNDARIES, BOARD MEMBERS WILL FINISH OUT THE REMAINING TWO YEARS OF THEIR FOUR YEAR TERM, BUT THE OTHER BOARD MEMBERS WILL BE REPLACED BY ELECTIONS FROM THE NEW DISTRICTS.

(b) THE INITIAL ELECTION SHALL BE HELD ON THE FIRST TUESDAY IN NOVEMBER, 2017 IN CONJUNCTION WITH THE GENERAL ELECTION, AND INCLUDE CANDIDATES FOR ALL SEVEN DISTRICTS, THREE OF WHOM SHALL BE ELECTED FOR AN INITIAL TERM OF TWO YEARS AND FOUR OF WHOM SHALL BE ELECTED FOR A TERM OF FOUR YEARS. THEREAFTER, THE TERM OF EACH MEMBER SHALL BE FOR FOUR YEARS. EACH ELECTION HELD AFTER THE INITIAL ELECTION SHALL ALSO BE HELD ON THE FIRST TUESDAY IN NOVEMBER IN ODD-NUMBERED YEARS IN CONJUNCTION WITH THE GENERAL ELECTION. ELECTIONS FOR MEMBERS OF THE BOARD OF DIRECTORS SHALL BE ON A NON-PARTISAN BASIS. POLITICAL PARTIES MAY NOT ENDORSE CANDIDATES FOR THESE POSITIONS.

(c) A CANDIDATE MUST BE A CITIZEN OF THE STATE OF COLORADO FOR AT LEAST FOUR YEARS BEFORE HE OR SHE CAN DECLARE THEIR CANDIDACY AND MUST BE A RESIDENT OF THEIR DISTRICT FOR TWO YEARS PRIOR TO THE DEADLINE FOR CANDIDATE REGISTRATION.

(d) TO BE INCLUDED ON THE BALLOT, CANDIDATES MUST REGISTER WITH THE SECRETARY OF STATE'S OFFICE, WHICH SHALL PROVIDE AN AUTOMATED ONLINE PROCESS THAT INCLUDES THE OPPORTUNITY FOR EACH CANDIDATE TO LIST THEIR QUALIFICATIONS AND REASONS WHY THEY WANT TO SERVE.

(e) IN THE EVENT THAT NO CANDIDATE WITHIN A DISTRICT RECEIVES A MAJORITY OF VOTES FROM THAT DISTRICT, THE SECRETARY OF STATE SHALL SET A RUN-OFF ELECTION BETWEEN THE TWO CANDIDATES RECEIVING THE MOST VOTES. THE RUN-OFF ELECTION MUST BE HELD WITHIN THIRTY DAYS AFTER THE RESULT OF THE INITIAL ELECTION IS CERTIFIED.

(f) THE GENERAL ASSEMBLY SHALL APPROPRIATE FUNDS AS NECESSARY TO CONDUCT THE ELECTIONS PROVIDED FOR IN THIS SUBSECTION. FUNDS APPROPRIATED FOR THE ELECTION SHALL NOT BE DEEMED TO BE PART OF THE REVENUE OF THE BANK. THE SECRETARY OF STATE SHALL SET AND CONDUCT ALL ELECTIONS FOR THE BOARD OF DIRECTORS OF THE BANK IN ACCORDANCE WITH THIS SUBSECTION 4.

(g) THE BANK SHALL COMMENCE OPERATIONS JANUARY 1, 2018.

(5) **Governance of sState bBank: mManagement, employees, and advisors:** (a) THE BOARD OF DIRECTORS SHALL RECEIVE ADVISORY INPUT ON THE GENERAL DIRECTION OF THE BANK FROM A NINE-MEMBER BOARD OF ADVISORS WHOSE MEMBERS REPRESENT A BROAD CROSS-SECTION OF THE STATE INCLUDING BUSINESS AND INDUSTRY, FARMING, FINANCE, EDUCATION, AND LABOR. OF THE NINE, AT LEAST TWO MUST BE OFFICERS OF BANKS WHOSE MAJORITY OF STOCK IS OWNED BY COLORADO RESIDENTS. AT LEAST ONE DIRECTOR MUST BE AN OFFICER OF A STATE-CHARTERED OR FEDERALLY CHARTERED FINANCIAL INSTITUTION. THE GOVERNOR SHALL APPOINT A CHAIRMAN, VICE CHAIRMAN, AND SECRETARY FROM THE ADVISORY BOARD OF DIRECTORS. ~~—THE GOVERNOR SHALL APPOINT THE~~ BOARD MEMBERS FOR STAGGERED TERMS OF FOUR YEARS EACH, EXCEPT FOR THE INITIAL APPOINTMENT WHICH SHALL PROVIDE FOUR-YEAR TERMS FOR FIVE MEMBERS AND TWO-YEAR TERMS FOR FOUR MEMBERS, SUBJECT TO CONFIRMATION BY A MAJORITY OF THE SENATE OF THE GENERAL ASSEMBLY OF THE STATE OF COLORADO. VARIOUS GROUPS WITHIN EACH AREA OF INTEREST MAY NOMINATE MEMBERS OF THE BOARD OF ADVISORS IN A MANNER TO BE DETERMINED BY THE GENERAL ASSEMBLY.

(b) AUTHORITY OF THE ADVISORY BOARD OF DIRECTORS. THE ADVISORY BOARD OF DIRECTORS TO THE BANK SHALL:

I. MEET REGULARLY WITH THE MANAGEMENT OF THE BANK TO REVIEW THE BANK'S OPERATIONS TO DETERMINE WHETHER RECOMMENDATIONS SHOULD BE CONSIDERED BY THE BOARD

RELATED TO IMPROVED MANAGEMENT PERFORMANCE, BETTER CUSTOMER SERVICE, AND OVERALL IMPROVEMENT IN INTERNAL METHODS, PROCEDURES, AND OPERATING POLICIES OF THE BANK.

II. MAKE RECOMMENDATIONS TO THE BOARD OF DIRECTORS OF THE BANK RELATING TO THE ESTABLISHMENT OF ADDITIONAL OBJECTIVES FOR THE OPERATION OF THE BANK.

III. MAKE RECOMMENDATIONS TO THE BOARD OF DIRECTORS CONCERNING THE APPOINTMENT OF OFFICERS OF THE BANK.

(c**b**) THE BOARD OF DIRECTORS SHALL ALSO RECEIVE REGULAR FINANCIAL REPORTS, NO LESS THAN ONCE A MONTH, FROM THE MANAGEMENT OF THE BANK. THE FINANCES OF THE BANK SHALL BE AUDITED ANNUALLY BY AN INDEPENDENT ACCOUNTING FIRM FREE FROM ANY CONFLICTS OF INTEREST WITH THE BANK OR STATE. THE BOARD SHALL MAKE ALL REPORTS AND THE AUDIT PUBLIC WHEN IT RECEIVES THEM. THE BOARD SHALL CHANGE AUDITORS AT LEAST EVERY THREE YEARS.

(d**e**) EXCEPT FOR THE PRESIDENT OF THE BANK, WHO SHALL BE APPOINTED BY THE BOARD OF DIRECTORS AND SERVE AT THEIR PLEASURE, THE MANAGEMENT AND EMPLOYEES OF THE BANK SHALL BE HIRED BY THE PRESIDENT ACCORDING TO THE STANDARDS OF THE STATE PERSONNEL SYSTEM. THE PRESIDENT SHALL ENDEAVOR TO HIRE THE BEST QUALIFIED PERSONS FROM AMONG THE CANDIDATES APPROVED BY THE STATE PERSONNEL SYSTEM AND THE BANK SHALL COMPENSATE THEM ACCORDINGLY BY SALARY. THE TITLES AND DUTIES OF THE REMAINING TOP FIVE OFFICIALS SHALL BE DETERMINED BY THE BOARD OF DIRECTORS. NO EMPLOYEE OF THE BANK SHALL RECEIVE COMPENSATION IN THE FORM OF COMMISSIONS, FEES, OR BONUSES, EXCEPT THAT THE BOARD MAY ESTABLISH A SYSTEM FOR AWARDING MODEST BONUSES FOR OUTSTANDING PERFORMANCE OF AN EMPLOYEE'S DUTIES IN SERVICE OF THE BANK'S ~~PURPOSES~~MISSION. THE PRESIDENT OF THE BANK MUST HAVE SUBSTANTIAL EXPERIENCE IN BANKING. THE MANAGEMENT OF THE BANK SHALL BE RESPONSIBLE FOR THE DAY-TO-DAY OPERATIONS OF THE BANK, WHICH SHALL FOLLOW THE GENERAL OBJECTIVES SET FORTH IN THIS SECTION AND, SUBSEQUENTLY, BY THE BOARD OF DIRECTORS.

(6) **Rules and Regulations of State Bank.** ~~-(a)~~ FOLLOWING THE COMMENCEMENT OF OPERATIONS ON JANUARY 1, 2018, THE INITIAL MANAGEMENT OF THE BANK, CONSISTING OF THE TOP FIVE OPERATING OFFICIALS OF THE BANK, INCLUDING THE PRESIDENT APPOINTED BY THE BOARD OF DIRECTORS AND THOSE HIRED BY THE PRESIDENT UNDER THE PROTOCOLS OF THE STATE PERSONNEL SYSTEM, SHALL BE CHARGED WITH DRAFTING THE RULES AND REGULATIONS OF THE BANK, SUBJECT TO CONSIDERATION OF RECOMMENDATIONS BY THE ADVISORY BOARD AND APPROVAL OF THE BOARD OF DIRECTORS OF THE BANK. THE PROPOSED RULES AND REGULATIONS APPROVED BY THE BOARD OF DIRECTORS SHALL BE SUBMITTED TO THE GENERAL ASSEMBLY FOR FINAL APPROVAL.

(b) THE RULES AND REGULATIONS SHALL ~~-COVER~~INCLUDING, BUT NOT BE LIMITED TO, THE FOLLOWING ISSUES: PROTECTION OF PUBLIC DEPOSITS, ADEQUACY OF CAPITALIZATION, LENDING CRITERIA, SECURITY FOR LOANS, ACCOUNTING STANDARDS APPLICABLE TO THE BANK, CRITERIA FOR INVESTMENTS, WHO MAY BE A DEPOSITOR AT THE BANK, POLICIES FOR MANAGEMENT OF LOANS, THE ISSUE AS TO WHETHER AND TO WHAT EXTENT, BASED UPON DIFFERENCES BETWEEN THE BANK AND PRIVATE BANKS, THE ADMINISTRATION AND ENFORCEMENT OF SUCH RULES AND REGULATIONS GOVERNING THE BANK SHOULD REMAIN UNDER THE AUTHORITY OF THE BANKING BOARD OR UNDER THE MANAGEMENT OF THE BOARD OF THE BANK, -WHETHER AND UNDER WHAT CONDITIONS THE BANK MAY EXTEND THE FULL FAITH AND CREDIT OF THE BANK TO OBLIGATIONS THAT IT ASSUMES, WHETHER THE BANK MAY GUARANTEE THE LOANS OF OTHER BANKS, AND ANY OTHER ISSUES RELEVANT TO THE ESTABLISHMENT AND OPERATION OF THE BANK SO AS TO ENSURE ITS FINANCIAL SOUNDNESS AND ITS ETHICAL MANAGEMENT TO SERVE THE PUBLIC INTEREST OF THE CITIZENS OF COLORADO.

(7) **Initial Operation of Bank.** WITHIN THREE MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION 22 OF ARTICLE X, THE GENERAL ASSEMBLY SHALL APPROPRIATE FUNDS TO ENABLE THE BANK TO PURCHASE OR LEASE LAND, PHYSICAL STRUCTURES, AND FURNISHINGS SUFFICIENT FOR THE BANK TO BEGIN LENDING OPERATIONS. AFTER THE BOARD OF DIRECTORS IS ELECTED, A PRESIDENT IS HIRED, AND ADVISORY BOARD IS SELECTED, THE PRESIDENT OF THE BANK, AFTER CONSULTATION WITH THE ADVISORY BOARD, AND WITH THE APPROVAL OF THE BOARD OF DIRECTORS, SHALL PURCHASE OR LEASE THE LAND, PHYSICAL STRUCTURES, AND FURNISHINGS NECESSARY TO ENABLE THE BANK TO CONDUCT ITS BUSINESS. THE BANK SHALL ESTABLISH ITS OFFICES WITHIN THE STATE OF COLORADO.

(8) **Capitalization of State Bank.** THE CAPITALIZATION OF THE BANK MAY INCLUDE ANY PROCEEDS FROM TAXES AND OTHER REVENUES AND FUNDS OF THE STATE, INCLUDING OTHER FUNDS SUCH AS MAY BE COLLECTED CURRENTLY FOR THE STATE BY OTHER BANKS, THAT ARE NOT OTHERWISE OBLIGATED, OTHER DEPOSITS IN ADDITION TO THOSE FROM THE STATE AS PERMITTED BY SOUND BANKING PRACTICES, AND FUNDS GENERATED BY REVENUE BONDS ISSUED BY THE BANK. ALL SPECIFICALLY ALLOCATED FUNDS AND OTHER ASSETS OF THE STATE NORMALLY HELD BY FINANCIAL INSTITUTIONS SHALL BE DEPOSITED AND HELD BY THE STATE BANK, INCLUDING MONEYS HELD BY OTHER BANKS FOR THE STATE OF COLORADO PRIOR TO THE ESTABLISHMENT OF THE BANK, WHICH SHALL BE TRANSFERRED TO THE BANK WITHIN TEN WORKING DAYS, OR IN ANY EVENT AS SOON AS PRACTICABLE AFTER THE BOARD OF DIRECTORS DECLARES THAT THE BANK IS READY TO RECEIVE THE TRANSFER OF FUNDS. THE TRANSFER OF FUNDS SHALL COMMENCE NO LATER THAN TWO YEARS FROM THE EFFECTIVE DATE OF THIS SECTION 22 OF ARTICLE X. THE BOARD OF DIRECTORS, UPON RECEIVING THE ADVICE AND RECOMMENDATIONS FROM THE MANAGEMENT OF THE BANK, SHALL DETERMINE THE MEANS FOR ADDITIONAL CAPITALIZATION AS REQUIRED TO MEET THE OBJECTIVES OF THE BANK AS SET FORTH IN THIS SECTION.

(9) **Effective date.** ~~THIS EFFECTIVE DATE OF THIS SECTION SHALL BE~~ EFFECTIVE JANUARY 1, 2017.

Proposed Constitutional Amendment for the State of Colorado

To Establish a Publicly-Owned State Bank
To be Numbered as Article X, Section 22

S. WARD 3:00 P.M.

RECEIVED

DATE FILED: May 3, 2016 11:58 PM

APR 08 2016

Be it Enacted by the People of the State of Colorado:

Colorado Secretary of State

SECTION 1. In the constitution of the state of Colorado, add section 22 to Article X as follows:

Section 22. State-owned bank. Statement of intent. (1)(a) THE STATE OF COLORADO DESIRES TO ESTABLISH A STATE-OWNED BANK AS A TABOR ENTERPRISE, IN ORDER TO STRENGTHEN ITS ECONOMY BY:

- KEEPING THE STATE'S DEPOSITS LOCAL IN ITS OWN STATE-OWNED BANK, WORKING FOR THE LOCAL ECONOMY;
- ELIMINATING INTEREST AND FEE EXPENSES ASSOCIATED WITH THE USE OF OUT-OF-STATE BANKS;
- PROVIDING AN ADDITIONAL SOURCE OF INCOME FOR THE STATE. ;
- PROTECTING COLORADO'S ECONOMY FROM THE SYSTEMIC RISKS OF BANKS THAT ARE TOO BIG TO FAIL, OF THE SORT THAT CAUSED THE 2008 GREAT RECESSION; AND
- PROTECTING THE STATE'S OWN DEPOSITS AND INVESTMENTS FROM CONFISCATION IN A "BAIL-IN" AS AUTHORIZED BY THE DODD-FRANK ACT OF 2010.

(b) TRUE AND SUSTAINABLE PROSPERITY COMES IN LARGE PART FROM THE CREATION AND MANAGEMENT OF MONEY AND CREDIT IN THE PUBLIC INTEREST. THIS HAS BEEN REPEATEDLY DEMONSTRATED GLOBALLY AND HISTORICALLY, BEGINNING WITH THE PUBLIC CREDIT SYSTEMS OF MANY OF THE ORIGINAL THIRTEEN COLONIES OF THE UNITED STATES. TODAY IN THE U.S. WE HAVE THE MODEL OF THE BANK OF NORTH DAKOTA, WHICH PROTECTED THE STATE'S ECONOMY FROM RECESSION IN 2008-2009. GLOBALLY, HIGHLY SUCCESSFUL PUBLIC BANKING MODELS ARE FOUND IN GERMANY, SOUTH KOREA, JAPAN, COSTA RICA, AND MANY OTHER COUNTRIES; AND IN THE PAST, IN CANADA, FRANCE, AND AUSTRALIA, AMONG OTHERS.

(c) THE SOLE PURPOSE OF THIS AMENDMENT IS TO ESTABLISH A PUBLICLY-OWNED STATE BANK AS A TABOR ENTERPRISE THAT EFFECTIVELY PROMOTES THE GENERAL WELFARE OF THE CITIZENS OF THE STATE OF COLORADO, AS DEFINED IN SUBSECTION (4) OF THIS SECTION.

(2) Definitions. AS USED IN THIS SECTION:

(a) "SOUND BANKING PRACTICES" MEANS PRACTICES GENERALLY FOLLOWED BY PUBLIC NON-PROFIT BANKS, SUCH AS THE BANK OF NORTH DAKOTA, THAT ARE OPERATED IN THE PUBLIC INTEREST, AS OPPOSED TO THE FREQUENTLY QUESTIONABLE OR UNLAWFUL PRACTICES OF MAJOR PRIVATE FOR-PROFIT BANKS, WHICH ARE OPERATED PRINCIPALLY IN THE INTERESTS OF THEIR SHAREHOLDERS, WHICH OFTEN CONFLICT WITH THE PUBLIC INTEREST, AND THEREBY CREATE UNREASONABLE RISKS FOR THE ECONOMY OF THE UNITED STATES AND THE STATE OF COLORADO. FOR EXAMPLE, SOUND BANKING PRACTICES INCLUDE, BUT ARE NOT LIMITED TO, THE AVOIDANCE OF INVESTMENTS IN SPECULATIVE INSTRUMENTS SUCH AS DERIVATIVES, CREDIT DEFAULT SWAPS, INTEREST RATE SWAPS, COMMODITIES FUTURES, AND MORTGAGE BACKED SECURITIES.

(b) "SOUND FINANCIAL AND PUBLIC POLICY CONSIDERATIONS" MEANS CONSIDERATIONS FOCUSED ON THE PUBLIC INTEREST, SUCH AS THOSE ENUMERATED IN SUBSECTION (3), PARTICULARLY THOSE OF THE CITIZENS OF THE STATE OF COLORADO.

(c) "STATE PERSONNEL SYSTEM" REFERS TO THE SYSTEM ESTABLISHED UNDER SECTION 13 OF ARTICLE XII OF THE COLORADO CONSTITUTION.

(3) Establishment of State-owned Bank. (a) THE STATE OF COLORADO HEREBY ESTABLISHES A BANK TO BE OWNED BY THE STATE OF COLORADO AND OPERATED AS AN ENTERPRISE AS DEFINED IN COLORADO CONSTITUTION, ART. 10, §20 (A)(2). THE BANK IS AUTHORIZED TO LEND MONEY AT INTEREST OR AT NO INTEREST; TO PROMOTE SUSTAINABLE DEVELOPMENT, COMMERCE, INDUSTRY, AND AGRICULTURE IN THE STATE; TO PROMOTE HOME OWNERSHIP, MAINTENANCE AND CONSTRUCTION OF NEEDED INFRASTRUCTURE, EDUCATION, PUBLIC HEALTH AND SAFETY; AND OTHER PURPOSES THAT SUPPORT THE GENERAL WELFARE OF THE CITIZENS OF THE STATE OF COLORADO. THE BANK SHALL HAVE ALL THE POWERS AND AUTHORITY OF OTHER BANKS CHARTERED BY THE STATE OF COLORADO.

(b) THE BANK SHALL BE AUTHORIZED TO ISSUE REVENUE BONDS IN ORDER TO PROVIDE CAPITALIZATION AND/OR TO SUPPORT ANY OF ITS FACILITIES OR OPERATIONS.

(c) THE BANK SHALL CONSTITUTE AN ENTERPRISE FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION SO LONG AS IT RETAINS THE AUTHORITY TO ISSUE REVENUE BONDS AND EACH YEAR RECEIVES LESS THAN TEN PERCENT OF ITS TOTAL REVENUES IN GRANTS FROM ALL COLORADO STATE AND LOCAL GOVERNMENTS COMBINED. SO LONG AS IT CONSTITUTES AN ENTERPRISE PURSUANT TO THIS PARAGRAPH THE BANK SHALL NOT BE SUBJECT TO ANY PROVISIONS OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

(d) THE BANK MAY ACCEPT THE DEPOSITS OF ANY BUSINESS LAWFULLY OPERATING UNDER THE CONSTITUTION AND LAWS OF THE STATE OF COLORADO BUT WHICH DOES NOT HAVE A BANK OR FINANCIAL INSTITUTION IN THE STATE OF COLORADO IN WHICH IT MAY LAWFULLY DEPOSIT ITS MONEYS.

(f) ALL PROVISIONS OF THIS SECTION 22 ARE SELF-EXECUTING AND SEVERABLE AND SUPERSEDE CONFLICTING STATE CONSTITUTIONAL, STATE STATUTORY, STATE CHARTERED, OR OTHER STATE OR LOCAL PROVISIONS.

(4) Governance of state bank: elected officials: THE BOARD OF DIRECTORS OF THE BANK CONSISTS OF SEVEN MEMBERS WHO SHALL BE ELECTED AS FOLLOWS:

(a) THE SEVEN BOARD MEMBERS SHALL EACH REPRESENT A DISTRICT WHOSE BOUNDARIES SHALL BE THE SAME AS THE SEVEN CONGRESSIONAL DISTRICTS FROM WHICH COLORADO'S SEVEN CONGRESSPERSONS ARE ELECTED. IF THE NUMBER OF REPRESENTATIVES FROM COLORADO SHOULD CHANGE TO AN EVEN NUMBER IN THE FUTURE, THE NUMBER OF DISTRICTS FROM WHICH MEMBERS WILL BE ELECTED FROM WILL CHANGE ACCORDINGLY, AND THE GOVERNOR WILL APPOINT ONE ADDITIONAL BOARD MEMBER MAKING UP THE NEW ODD TOTAL NUMBER. BEFORE NEW ELECTIONS ARE HELD USING NEW DISTRICT BOUNDARIES, BOARD MEMBERS WILL FINISH OUT THE REMAINING TWO YEARS OF THEIR FOUR YEAR TERM, BUT THE OTHER BOARD MEMBERS WILL BE REPLACED BY ELECTIONS FROM THE NEW DISTRICTS.

(b) THE INITIAL ELECTION SHALL BE HELD ON THE FIRST TUESDAY IN NOVEMBER, 2017 IN CONJUNCTION WITH THE GENERAL ELECTION, AND INCLUDE CANDIDATES FOR ALL SEVEN DISTRICTS, THREE OF WHOM SHALL BE ELECTED FOR AN INITIAL TERM OF TWO YEARS AND FOUR OF WHOM SHALL BE ELECTED FOR A TERM OF FOUR YEARS. THEREAFTER, THE TERM OF EACH MEMBER SHALL BE FOR FOUR YEARS. EACH ELECTION HELD AFTER THE INITIAL ELECTION SHALL ALSO BE HELD ON THE FIRST TUESDAY IN NOVEMBER IN ODD-NUMBERED YEARS IN CONJUNCTION WITH THE GENERAL ELECTION.

(c) A CANDIDATE MUST BE A CITIZEN OF THE STATE OF COLORADO FOR AT LEAST FOUR YEARS BEFORE HE OR SHE CAN DECLARE THEIR CANDIDACY AND MUST BE A RESIDENT OF THEIR DISTRICT FOR TWO YEARS PRIOR TO THE DEADLINE FOR CANDIDATE REGISTRATION.

(d) TO BE INCLUDED ON THE BALLOT, CANDIDATES MUST REGISTER WITH THE SECRETARY OF STATE'S OFFICE, WHICH SHALL PROVIDE AN AUTOMATED ONLINE PROCESS THAT INCLUDES THE OPPORTUNITY FOR EACH CANDIDATE TO LIST THEIR QUALIFICATIONS AND REASONS WHY THEY WANT TO SERVE.

(e) IN THE EVENT THAT NO CANDIDATE WITHIN A DISTRICT RECEIVES A MAJORITY OF VOTES FROM THAT DISTRICT, THE SECRETARY OF STATE SHALL SET A RUN-OFF ELECTION BETWEEN THE TWO CANDIDATES RECEIVING THE MOST VOTES. THE RUN-OFF ELECTION MUST BE HELD WITHIN THIRTY DAYS AFTER THE RESULT OF THE INITIAL ELECTION IS CERTIFIED.

(f) THE GENERAL ASSEMBLY SHALL APPROPRIATE FUNDS AS NECESSARY TO CONDUCT THE ELECTIONS PROVIDED FOR IN THIS SUBSECTION. FUNDS APPROPRIATED FOR THE ELECTION SHALL NOT BE DEEMED TO BE PART OF THE REVENUE OF THE BANK. THE SECRETARY OF STATE SHALL SET AND CONDUCT ALL ELECTIONS FOR THE BOARD OF DIRECTORS OF THE BANK IN ACCORDANCE WITH THIS SUBSECTION 4.

(g) THE BANK SHALL COMMENCE OPERATIONS JANUARY 1, 2018.

(5) Governance of State Bank: Management, employees, and advisors: (a) THE BOARD OF DIRECTORS SHALL RECEIVE ADVISORY INPUT ON THE GENERAL DIRECTION OF THE BANK FROM A NINE-MEMBER BOARD OF ADVISORS WHOSE MEMBERS REPRESENT A BROAD CROSS-SECTION OF THE STATE INCLUDING BUSINESS AND INDUSTRY, FARMING, FINANCE, EDUCATION, AND LABOR. OF THE NINE, AT LEAST TWO MUST BE OFFICERS OF BANKS WHOSE MAJORITY OF STOCK IS OWNED BY COLORADO RESIDENTS. AT LEAST ONE DIRECTOR MUST BE AN OFFICER OF A STATE-CHARTERED OR FEDERALLY CHARTERED FINANCIAL INSTITUTION. THE GOVERNOR SHALL APPOINT A CHAIRMAN, VICE CHAIRMAN, AND SECRETARY FROM THE ADVISORY BOARD OF DIRECTORS. . THE GOVERNOR SHALL APPOINT THE BOARD MEMBERS FOR STAGGERED TERMS OF FOUR YEARS EACH, EXCEPT FOR THE INITIAL APPOINTMENT WHICH SHALL PROVIDE FOUR-YEAR TERMS FOR FIVE MEMBERS AND TWO-YEAR TERMS FOR FOUR MEMBERS, SUBJECT TO CONFIRMATION BY A MAJORITY OF THE SENATE OF THE GENERAL ASSEMBLY OF THE STATE OF COLORADO. VARIOUS GROUPS WITHIN EACH AREA OF INTEREST MAY NOMINATE MEMBERS OF THE BOARD OF ADVISORS IN A MANNER TO BE DETERMINED BY THE GENERAL ASSEMBLY.

(b) THE BOARD OF DIRECTORS SHALL ALSO RECEIVE REGULAR FINANCIAL REPORTS, NO LESS THAN ONCE A MONTH, FROM THE MANAGEMENT OF THE BANK. THE FINANCES OF THE BANK SHALL BE AUDITED ANNUALLY BY AN INDEPENDENT ACCOUNTING FIRM FREE FROM ANY CONFLICTS OF INTEREST WITH THE BANK OR STATE. THE BOARD SHALL MAKE ALL REPORTS AND THE AUDIT PUBLIC WHEN IT RECEIVES THEM. THE BOARD SHALL CHANGE AUDITORS AT LEAST EVERY THREE YEARS.

(c) EXCEPT FOR THE PRESIDENT OF THE BANK, WHO SHALL BE APPOINTED BY THE BOARD OF DIRECTORS AND SERVE AT THEIR PLEASURE, THE MANAGEMENT AND EMPLOYEES OF THE BANK SHALL BE HIRED BY THE PRESIDENT ACCORDING TO THE STANDARDS OF THE STATE PERSONNEL SYSTEM. THE PRESIDENT SHALL ENDEAVOR TO HIRE THE BEST QUALIFIED PERSONS FROM AMONG THE CANDIDATES APPROVED BY THE STATE PERSONNEL SYSTEM AND THE BANK SHALL COMPENSATE THEM ACCORDINGLY BY SALARY. THE TITLES AND DUTIES OF THE REMAINING TOP FIVE OFFICIALS SHALL BE DETERMINED BY THE BOARD OF DIRECTORS. NO EMPLOYEE OF THE BANK SHALL RECEIVE COMPENSATION IN THE FORM OF COMMISSIONS, FEES, OR BONUSES, EXCEPT THAT THE BOARD MAY ESTABLISH A SYSTEM FOR AWARDED MODEST BONUSES FOR OUTSTANDING PERFORMANCE OF AN EMPLOYEE'S DUTIES IN SERVICE OF THE

BANK'S MISSION. THE PRESIDENT OF THE BANK MUST HAVE SUBSTANTIAL EXPERIENCE IN BANKING. THE MANAGEMENT OF THE BANK SHALL BE RESPONSIBLE FOR THE DAY-TO-DAY OPERATIONS OF THE BANK, WHICH SHALL FOLLOW THE GENERAL OBJECTIVES SET FORTH IN THIS SECTION AND, SUBSEQUENTLY, BY THE BOARD OF DIRECTORS.

(6) Rules and Regulations of State Bank. FOLLOWING THE COMMENCEMENT OF OPERATIONS ON JANUARY 1, 2018, THE INITIAL MANAGEMENT OF THE BANK, CONSISTING OF THE TOP FIVE OPERATING OFFICIALS OF THE BANK, INCLUDING THE PRESIDENT APPOINTED BY THE BOARD OF DIRECTORS AND THOSE HIRED BY THE PRESIDENT UNDER THE PROTOCOLS OF THE STATE PERSONNEL SYSTEM, SHALL BE CHARGED WITH DRAFTING THE RULES AND REGULATIONS OF THE BANK, SUBJECT TO CONSIDERATION OF RECOMMENDATIONS BY THE ADVISORY BOARD AND APPROVAL OF THE BOARD OF DIRECTORS OF THE BANK.

(7) Initial Operation of Bank. WITHIN THREE MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION 22 OF ARTICLE X, THE GENERAL ASSEMBLY SHALL APPROPRIATE FUNDS TO ENABLE THE BANK TO PURCHASE OR LEASE LAND, PHYSICAL STRUCTURES, AND FURNISHINGS SUFFICIENT FOR THE BANK TO BEGIN LENDING OPERATIONS. AFTER THE BOARD OF DIRECTORS IS ELECTED, A PRESIDENT IS HIRED, AND ADVISORY BOARD IS SELECTED, THE PRESIDENT OF THE BANK, AFTER CONSULTATION WITH THE ADVISORY BOARD, AND WITH THE APPROVAL OF THE BOARD OF DIRECTORS, SHALL PURCHASE OR LEASE THE LAND, PHYSICAL STRUCTURES, AND FURNISHINGS NECESSARY TO ENABLE THE BANK TO CONDUCT ITS BUSINESS. THE BANK SHALL ESTABLISH ITS OFFICES WITHIN THE STATE OF COLORADO.

(8) Capitalization of State Bank. THE CAPITALIZATION OF THE BANK MAY INCLUDE ANY PROCEEDS FROM TAXES AND OTHER REVENUES AND FUNDS OF THE STATE, INCLUDING OTHER FUNDS SUCH AS MAY BE COLLECTED CURRENTLY FOR THE STATE BY OTHER BANKS, THAT ARE NOT OTHERWISE OBLIGATED, OTHER DEPOSITS IN ADDITION TO THOSE FROM THE STATE AS PERMITTED BY SOUND BANKING PRACTICES, AND FUNDS GENERATED BY REVENUE BONDS ISSUED BY THE BANK. ALL SPECIFICALLY ALLOCATED FUNDS AND OTHER ASSETS OF THE STATE NORMALLY HELD BY FINANCIAL INSTITUTIONS SHALL BE DEPOSITED AND HELD BY THE STATE BANK, INCLUDING MONEYS HELD BY OTHER BANKS FOR THE STATE OF COLORADO PRIOR TO THE ESTABLISHMENT OF THE BANK, WHICH SHALL BE TRANSFERRED TO THE BANK WITHIN TEN WORKING DAYS AFTER THE BOARD OF DIRECTORS DECLARES THAT THE BANK IS READY TO RECEIVE THE TRANSFER OF FUNDS. THE TRANSFER OF FUNDS SHALL COMMENCE NO LATER THAN TWO YEARS FROM THE EFFECTIVE DATE OF THIS SECTION 22 OF ARTICLE X. THE BOARD OF DIRECTORS, UPON RECEIVING THE ADVICE AND RECOMMENDATIONS FROM THE MANAGEMENT OF THE BANK, SHALL DETERMINE THE MEANS FOR ADDITIONAL CAPITALIZATION AS REQUIRED TO MEET THE OBJECTIVES OF THE BANK AS SET FORTH IN THIS SECTION.

(9) Effective date. THE EFFECTIVE DATE OF THIS SECTION SHALL BE JANUARY 1, 2017.

RECEIVED

APR 26 2016

S.WARD

10:20 A.M.

Colorado Secretary of State

COLORADO TITLE SETTING BOARD

DATE FILED: May 3, 2016 11:58 PM

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION
CLAUSE FOR INITIATIVE 2015-2016 #127

MOTION FOR REHEARING

On behalf of Don Childears, registered elector of the State of Colorado, the undersigned counsel hereby submits this Motion for Rehearing for Initiative 2015-2016 #98 pursuant to C.R.S. § 1-40-107, and as grounds therefore states as follows:

- I. **THE TITLE BOARD LACKS JURISDICTION BECAUSE THE PROPONENTS MADE SUBSTANTIVE CHANGES THAT WERE NOT RESPONSIVE TO THE REVIEW AND COMMENT HEARING.**

For the Review and Comment Hearing on Initiative #98, the Legislative Council Staff provided a series of substantive comments and questions. In Question 5, the staff asked for clarification as to whether a subsection of the measure was written with the marijuana industry in mind. The question reads:

Subsection (3)(d) of the proposed initiative states that the state bank may accept deposits of any business lawfully operating under the constitution and laws of Colorado but which does not have a bank or financial institution in the state which may lawfully accept deposit of its moneys. Do the proponents intend for this language to permit the state bank to accept deposits from the marijuana industry in Colorado?

In response, the Proponent stated at the Review and Comment Hearing that "[marijuana] was the idea" and that the provision was written because the marijuana industry in Colorado needs a "lawful place to deposit [its] money."¹ The staff accepted this answer and no person asked any follow-up questions; it received the clarification it needed. At no point during the hearing did the Proponent or the staff discuss removing that subsection. Thus, the measure as proposed had a significant feature of providing banking services to a major industry in Colorado that generates millions of dollars in revenue every year, and that to date has no ability to lawfully bank in this State.

¹ Audio for the Review and Comment Hearing can be found on the Colorado General Assembly's website at <http://www.leg.state.co.us/clics/cslFrontPages.nsf/Audio?OpenPage> by clicking on "Other Committees," "Review & Comment Hearings," and the link for "Initiative 2015-2016 #127 Review and Comment Hearing." The audio for question 5 begins at 18:18 of the recording.

Nonetheless, the Proponent removed that subsection in its Amended Draft for Initiative #98. While section 1-40-105(2) permits proponents of initiatives to amend the petition in response to some or all of the staff's comments, the subsection permits a "substantial amendment" only in "direct response" to staff comments. If the amendment is not in direct response, then the amended petition must be resubmitted for comment. *Id.*

Proponent's removal of the subsection was, at best, an *indirect* response to the staff's question. More likely, it was made strategically and independent of the staff's question. Because nobody at the hearing commented on removing that subsection or questioned its inclusion—the comments related only to its *meaning*—that subsection's removal was not made in "*direct response*" to the staff's comments. Thus, the amended petition should have been resubmitted for a new review and comment. Because it was not, the Title Board lacks jurisdiction under section 1-40-105(2) to set title to this measure as amended.

II. THE TITLE BOARD LACKS JURISDICTION BECAUSE THE MEASURE IS SO VAGUE THAT CANNOT BE UNDERSTOOD.

1. The measure purports to establish a state-owned bank, but does not grant the state any of the traditional benefits of ownership, including the right to control or govern the bank, the right to dividends or residual profits, and the ability to sell or transfer its assets. In short, it is not a "state-owned" bank.
2. The measure states that its purpose is to promote public health, safety, and other purposes for the general welfare of Colorado citizens but does not provide with any detail how this purpose will be fulfilled.
3. The measure states that the bank will be a TABOR enterprise, but it is unclear how, under any circumstance, the bank will function as an enterprise by receiving less than 10% of its revenue from the State.
4. The measure states that the governor shall appoint the members of the Board of Advisors. The measure also states that at least some of those board members are "subject to confirmation by a majority of the Senate." However, as a result of the measure's unclear phrasing, it is ambiguous whether senate confirmation applies to all appointed board members, board members from the governor's initial appointment of board members, or only the four board members with two-year terms from the governor's initial appointment of board members.
5. The measure states that the initial management of the bank will draft the bank's rules and regulations, which includes "whether or under

what conditions the bank may extend the full faith and credit of the bank," but fails to provide any specifics as to what is meant by extending "full faith and credit."

6. The measure discusses capitalization but fails to define what it means by "other funds" not "otherwise obligated," and does not specify who or what determines the desired level of capital for the bank.
7. The measure states that the bank shall be audited by an independent accounting firm free from any conflicts of interest with the bank or the State. However, it is doubtful whether any accounting firm could be independent because the State, through the Department of Regulatory Agencies' State Board of Accountancy, regulates all Certified Public Accountants ("CPAs") doing business in the state, including out-of-state CPAs.
8. The measure contains an incomprehensible cross-reference. Section (1)(c) sets forth the "sole purpose" of the measure and contains a supposed cross-reference to a definition in subsection (3), but is unclear whether the definition is for the "general welfare of the citizens of the state of Colorado," the "sole purpose of this amendment," or something else. Regardless, subsection (3) contains explanations, not definitions.

III. INITIATIVE #127 IMPERMISSIBLY CONTAINS MULTIPLE SEPARATE AND DISTINCT SUBJECTS IN VIOLATION OF THE SINGLE-SUBJECT REQUIREMENT.

The stated purpose of the measure is the establishment of "a publicly owned state bank as an enterprise exempt from the requirements of the Taxpayer's Bill of Rights" But the measure actually contains multiple separate subjects including at least the following:

1. Establishing a state bank;
2. Providing a mechanism to raise revenues to promote the general welfare;
3. Superseding and impliedly repealing the Public Deposit Protection Act, C.R.S. §§ 11-10.5-101, *et seq.* The Act's purpose is to serve Colorado taxpayers by "ensur[ing] the preservation and protection of all public funds held on deposit by a bank" and "the expedited repayment of such funds in the event of default and subsequent liquidation of a bank which holds such deposits." This purpose is not "necessarily or properly connected" to Initiative #127's purposes, which include

keeping the state's deposits local and eliminating interest and fee expenses pertaining to the use of out-of-state banks.


IV. THE TITLE AS DRAFT IS MISLEADING AS DOES NOT FAIRLY AND CORRECTLY EXPRESS THE TRUE MEANING OF THE MEASURE BECAUSE IT CONTAINS IMPERMISSIBLE CATCH-PHRASES AND FAILS TO DESCRIBE IMPORTANT ASPECTS OF THE MEASURE.

1. The phrase "publicly owned state bank" in the title is an impermissible catchphrase that is likely to elicit public support for the measure without the public understanding that the State would not enjoy any of the traditional benefits of ownership. Neither the state nor the general public would have any say in the governance of the bank except through election of the board of directors, neither the state nor the general public would necessarily be entitled to any dividends from the bank, and no transfers to the general fund would be required under the measure.
2. The phrase "lend money for public purposes" in the title is an impermissible catch-phrase that is likely to elicit public support for the measure without the public understanding that the loans need not promote any public purpose at all.
3. The title fails to indicate that the state bank would have all of the powers and authority of state-chartered banks, including the receipt of private deposits and the power to foreclose on loans in default, as well as substantial powers beyond those traditionally associated with accepting deposits and lending activity, such as the power to invest in real estate and to manage 401k, IRA, and trust assets.
4. The title fails to reflect that the bank would be authorized to issue interest-free or subsidized loans.
5. The title fails to reflect that state revenues and funds would become capital of the bank and would no longer be available to meet the needs of the state.
6. The title fails to reflect that the bank would be entirely self-regulated with no governmental oversight beyond the General Assembly's approval of the proposed rules and regulations.
7. The title fails to reflect that the bank would be authorized to issue debt without any limitation as to the amount of debt to be issued.

8. The title fails to fully represent "capitalization" of the bank as stated in the measure.
9. The title fails to mention that in removing funds from private institutions, the state may be required to breach contracts and incur costs of early withdrawal.
10. The title fails to reflect that the bank would not be obligated to pay any rate of return on state deposits and would have no incentive to do so.

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

Respectfully submitted this 26th day of April, 2016.



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Ballot Title Setting Board

Proposed Initiative 2015-2016 #127¹

Hearing April 20, 2016:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 4:16 p.m.

Rehearing April 28, 2016:

Motion for Rehearing filed by Childears granted. Title Setting denied - substantial amendment after legislative staff review and comment meeting, contrary to CRS 1-40-105(2), C.R.S.

Hearing adjourned 1:59 p.m.

¹ Unofficially captioned "Establishment of State-Owned Bank" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

RECEIVED

S. WARD

APR 27 2016

3:28 P.M.

COLORADO STATE TITLE SETTING BOARD

Colorado Secretary of State

IN RE: BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE 2015-2016 #127
("ESTABLISHMENT OF A STATE-OWNED BANK")

BARBARA M A WALKER, Objector.

MOTION FOR REHEARING

Pursuant to C.R.S. § 1-40-107, Objector, Barbara M.A. Walker, a registered elector of the State of Colorado, through her legal counsel, Coan, Payton & Payne, LLC, submits this Motion for Rehearing of the Title Board's April 20, 2016, decision to set the title of Initiative 2015-2016 #127 (the "Initiative") and states as follows:

I. THE TITLE BOARD LACKS JURISDICTION BECAUSE THE INITIATIVE DOES NOT CONTAIN A SINGLE SUBJECT.

The Initiative violates the single subject requirement. See Colo. Const. art. V, § 1 (5.5). The stated purpose of the Initiative is to establish a state-owned bank as a TABOR enterprise, but the Initiative actually contains multiple separate subjects. Therefore, the Title Board ("Board") lacks jurisdiction to set a title. See C.R.S. § 1-40-106.5. The subjects in the Initiative include at least the following:

- A. Establishing the state bank as an enterprise exempt from the requirements of TABOR;
- B. Setting the purpose of the state bank;
- C. Creating rules governing the election of the bank's board of directors;
- D. Creating rules for governance and management of the bank;
- E. Authorizing the bank to issue revenue bonds;

- F. By requiring State funds, held on deposit with FDIC insurance and Public Deposit Protection Act collateralization protection to be moved into an unregulated and uninsured bank, superseding Article X, § 20 (4)(b) of the Colorado Constitution, ("TABOR") which requires separate voter approval prior to the creation of any multiple-fiscal year direct or indirect debt or other financial obligation whatsoever without adequate present cash reserves that are pledged irrevocably;
- G. Superseding the Public Deposit Protection Act, C.R.S. §§ 11-105-101 et seq.;
- H. Superseding Article X, § 12 of the Colorado Constitution, which allows the General Assembly to provide by law for the safekeeping and management of public funds in the custody of the State Treasurer and assigning responsibility for public funds to the State Treasurer;
- I. By authorizing the bank to issue debt backed by the full faith and credit of the State, superseding Article XI, § 1 of the Colorado Constitution, which prohibits the pledging of the State's credit or faith, in any manner, directly or indirectly to any person, company or corporation, public or private.
- J. Superseding Article XI, § 3 of the Colorado Constitution, which prohibits the State from contracting debt by loan;
- K. Superseding Article X, § 16 of the Colorado Constitution, which prohibits the General Assembly from making any appropriation whereby the expenditure of the State shall exceed the total tax then provided for by law and applicable for the appropriation;
- L. Superseding C.R.S. § 11-101-101 et seq., otherwise known as the Colorado Banking Code, which requires that state banks be supervised and regulated in a fair and consistent manner;
- M. Superseding C.R.S. § 11-103-201 et seq., which requires state banks to have adequate capital;
- N. Superseding C.R.S. § 11-103-301 et seq., which requires state banks to be chartered;
- O. Superseding C.R.S. § 11-103-603 which requires the directors of state banks to obtain fidelity bonds on all active officers and employees to indemnify the bank for losses sustained by it as the result of dishonesty, fraud or criminal conduct.

II. THE TITLE AND SUBMISSION CLAUSE FAIL TO DESCRIBE IMPORTANT ASPECTS OF THE INITIATIVE AND DO NOT ADEQUATELY DESCRIBE THE TRUE MEANING AND INTENT OF THE INITIATIVE.

Contrary to the statutory requirements of C.R.S. §§ 1-40-106,-107 for a ballot title that is not confusing, not misleading and reflective of the intent of the proponents, the Board has erred by setting a title that **does not disclose** to voters:

- A. That it is highly probable that the bank will not qualify for exemption as a TABOR "enterprise" receiving less than 10% of its revenue from the State;
- B. That the Initiative requires that the bank's "sound banking practices" be modeled after the practices of the Bank of North Dakota;
- C. That the Initiative authorizes the bank to lend at interest or no interest;
- D. That the Initiative authorizes the bank to issue revenue bonds without any voter or legislative consent;
- E. That the Initiative will make it impossible for the State Treasurer to fulfill his or her Constitutional responsibilities;
- F. That the Initiative requires that the General Assembly appropriate funds for the bank to purchase or lease land, physical structures and furnishings and for the bank's board elections without any limit on amount of funds;
- G. That the Initiative requires that the Secretary of States' Office provide an automated online process for candidates for the Board of Directors to list their qualifications (Section 4 (d)) and requires the Secretary of State to be responsible for holding "run off" elections (Section 4 (e));
- H. That voters will have no control over the operation of the bank;
- I. That the State Banking Board and State Banking Commission will have no control over the operation of the bank;
- J. That State funds will be used to operate the bank, but that the State and individual voters may see no real benefit from the establishment of the bank;
- K. That the bank will not be FDIC insured.

Furthermore, contrary to the statutory requirements of C.R.S. §§ 1-40-106,-107, for a ballot title that is not confusing, not misleading and reflective of the intent of the proponents, the Board has erred by setting a Title that is misleading and confusing in several aspects.

- A. The Title states that the public bank would be authorized "to lend money for public purposes" without defining "public purposes." The term "public purpose" implies that funds would be loaned by the bank to better the public good, when in reality, the bank may loan money to private individuals for private use such as "home ownership" and "commerce" (Section 3). Public means relating to the government or state such as public buildings and services provided for everyone to use. This use of "public purpose" in the Title is misleading to voters.
- B. The use of the term "state bank" in the Title implies that the bank would be chartered by the State, regulated by the State and FDIC insured. However, the bank would not be chartered by the State, nor would it be regulated by the State and it would not be FDIC insured. It is misleading that the Title does not advise voters that the bank would not be chartered by the State, that the bank would not be governed by the State and that the bank would not be FDIC insured.
- C. By stating that the Initiative would allow "the bank to issue revenue bonds to *capitalize itself*," the Title implies that the bank would have an ability to raise capital. However, it is highly likely that the bank would not be capitalized prior to the State funds being transferred to the bank. In no way can deposits be considered capital for a bank. It is misleading to not disclose that the bank would not be capitalized prior to accepting deposits and may never be appropriately capitalized.
- D. The Title states that the bank would be allowed to "issue revenue bonds to capitalize itself and to support its facilities and operations." The Title does not reflect that the proponents' intention is to also capitalize the bank with "proceeds from taxes and other revenues and funds of the State, including other funds such as may be collected currently for the State by other banks that are not otherwise obligated, other deposits in addition to those from the State..." (Section 8.) Not only is the plan for capitalization confusing and likely unachievable, it is confusing and misleading that the Title does not reflect the proponents' true intentions regarding capitalization – that the capitalization would not just come from revenue bonds.
- E. The Title states that the Initiative requires "all assets of the State held by other financial institutions to be transferred to the bank." It is misleading that the Title does not reflect that those State assets will be transferred from FDIC insured, State chartered, State regulated and appropriately capitalized financial institutions into an unregulated, uninsured, unchartered, bank that has not been capitalized. The Title should advise voters of the risk to the State funds.

III. ADDITIONAL MATTERS – DEFINED TERMS INTENDED TO CONFUSE

- A. The Initiative provides a definition (Section 2(b)) for “Sound Financial and Public Policy Considerations” that is never used within the Initiative. This definition is contained in the Initiative to confuse and mislead voters that the bank will have an obligation to make sound financial and public policy considerations, when, in fact, it will not.
- B. The Initiative purports to define “sound banking practices” as those “generally followed by public non-profit banks, such as the Bank of North Dakota...as opposed to the speculative and fraudulent practices of private for-profit banks....” (Section 2(a).) This definition is misleading. The Bank of North Dakota is the only publicly owned bank in the United States and it is currently experiencing difficulty. In addition, it is inaccurate to state that for-profit banks have “speculative and fraudulent practices.” This definition is clearly meant to incite voters and is not based upon fact.

Accordingly, the Objector respectfully requests that the Board set Initiative #127 for rehearing pursuant to C.R.S. § 1-40-107 (1).

Respectfully submitted this 27th day of April, 2016.



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Ballot Title Setting Board

Proposed Initiative 2015-2016 #127¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning the establishment of a publicly owned state bank as an enterprise exempt from the requirements of the Taxpayer's Bill of Rights, and, in connection therewith, authorizing the bank to lend money for public purposes; requiring all assets of the state held by other financial institutions to be transferred to the bank; creating a seven-member board of directors elected from each state congressional district to manage the bank and a nine-member advisory board appointed by the governor to advise the board of directors; allowing the bank to issue revenue bonds to capitalize itself and to support its facilities and operations; requiring independent annual audits of the bank's finances; and specifying that the amendment supersedes conflicting constitutional, state, and local laws.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning the establishment of a publicly owned state bank as an enterprise exempt from the requirements of the Taxpayer's Bill of Rights, and, in connection therewith, authorizing the bank to lend money for public purposes; requiring all assets of the state held by other financial institutions to be transferred to the bank; creating a seven-member board of directors elected from each state congressional district to manage the bank and a nine-member advisory board appointed by the governor to advise the board of directors; allowing the bank to issue revenue bonds to capitalize itself and to support its facilities and operations; requiring independent annual audits of the bank's finances; and specifying that the amendment supersedes conflicting constitutional, state, and local laws?

Hearing April 20, 2016:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 4:16 p.m.

¹ Unofficially captioned "Establishment of State-Owned Bank" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.