

Supreme Court, State of Colorado
Colorado State Judicial Building
2 East 14th Avenue, Suite 400
Denver, CO 80203

ORIGINAL PROCEEDING PURSUANT TO
C.R.S. § 1-40-107(2), C.R.S. (2007).

Petitioner:
Steve C. Briggs, Objector

v.

Respondents:
Cliff Dodge and Amy Rathburn, Proponents

v.

Title Board:
William Hobbs, Daniel Domenico, and Jason Gelender

Attorneys for Petitioner:

Jason R. Dunn
BROWNSTEIN HYATT FARBER SCHRECK LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202-4432
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FILED IN THE
SUPREME COURT

MAY 13 2011

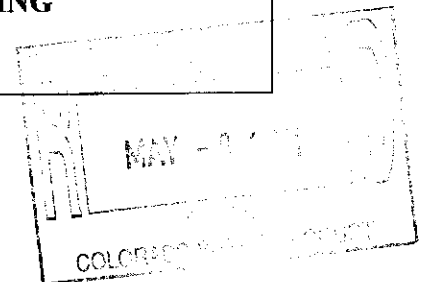
OF THE STATE OF COLORADO
SUSAN J. FESTAG, CLERK

▲ COURT USE ONLY ▲

Case Number:

11SA137

**PETITION FOR REVIEW OF FINAL ACTION OF
BALLOT TITLE SETTING BOARD CONCERNING
PROPOSED INITIATIVE 2011-2012 #21**



Petitioner Steve C. Briggs, respectfully petitions this court to review the title, ballot title, and submission clause set by the Ballot Title Setting Board for Proposed Initiative 2011-2012 #21 (“Initiative” or Initiative 21”).

I. PROCEDURAL HISTORY AND BOARD ACTION

Proponents Cliff Dodge and Amy Rathburn proposed Initiative 21, and the Board conducted its initial public hearing on April 20, 2011. Petitioner attended the hearing and challenged the Initiative, which is a copy of Senate Concurrent Resolution 11-001 (“SCR 11-001”) except that it adds four words, “or statutory tax increase.” This would increase the percentage of votes required to approve all tax increases under TABOR from fifty to sixty percent. Petitioner contended that with those additional four words the Initiative adds a separate subject in violation of the single subject requirement, contains two incongruous subjects, and is a surreptitious measure that will confuse and surprise the voters. The Board rejected the challenge and set a title, ballot title, and submission clause.

Petitioner timely filed a motion for rehearing. The Board held a hearing on the motion on May 4, 2011, and reaffirmed its decision. Petitioner the next day requested a certified copy of the record, which Petitioner received on Monday, May 9, 2011. This Petition for Review is timely, pursuant to C.R.S. §1-40-107(2).

II. ISSUES PRESENTED FOR REVIEW

1. Did the Title Board err in concluding that the Initiative contains only one subject when it combines a measure seeking to amend the general procedures for initiated and referred constitutional amendment with a measure seeking to amend the requirements for the specific subject of statutory tax increases?

2. Did the Title Board err in concluding that the Initiative does not combine incongruous subjects when one measure seeks to protect legislative authority from further limiting constitutional amendments, while the other measure seeks to constrict legislative authority to generate revenue through statutory tax increases?
3. Did the Title Board err in concluding that the Initiative does not combine incongruous subjects when one measure seeks to expand voter authority for initiated statutes while the other seeks to constrict voter authority for statutory tax increases?
4. Did the Title Board err in concluding that the Initiative does not combine incongruous subjects when the Initiative seeks to combine a widely supported referendum, which the Proponents publically oppose, with another measure, which Proponents support, thereby enlisting the first to secure enactment of the second?
5. Did the Title Board err in concluding that the Initiative is consistent with the intent of the single subject requirement when the Proponents copied verbatim a pending legislative referendum with one purpose but added four additional words with a contradictory purpose, creating a surreptitious measure intended to confuse and surprise voters?

III. DOCUMENTS SUBMITTED IN SUPPORT OF PETITION

In addition to a single certified copy of the record (including audio of both the April 20 and May 4 Title Board hearings) that has been filed with the original of this Petition, Petitioner submits the following documents:

- Exhibit 1: Initiative 21, with the titles and submission clause set by the Board.
- Exhibit 2: Petitioner's Motion for Rehearing.
- Exhibit 3: Ruling on Motion for Rehearing.
- Exhibit 4: Senate Concurrent Resolution 11-001, as introduced in the Senate
- Exhibit 5: Fact Sheet and List of Organizations Supporting SCR 11-001.
- Exhibit 6: News article regarding the Proponents opposition to SCR 11-001.
- Exhibit 7: Colorado Economic Futures Panel – Final Report (2005).

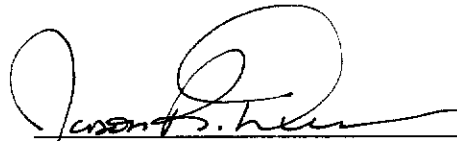
Exhibit 8: Colorado's Future Statewide Summary (April 10, 2010)

Petition notes that Exhibits 4 and 5 were submitted to the Title Board at the April 20, 2011 hearing but were not included by the Secretary of State in the certified copy of the record.

IV. RELIEF REQUESTED

Petitioner is requesting that the Supreme Court reverse the decision of the Board on the basis that the Initiative violates the single subject requirement, contains two incongruous measures, and uses its similarity to another measure to surreptitiously confuse and surprise voters.

Respectfully submitted this 9th day of May, 2011.



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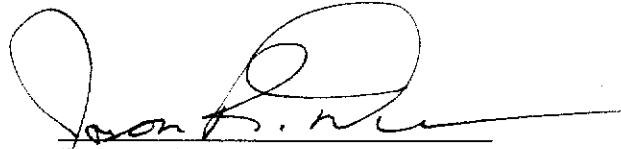
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Tel: 303.299.8228
Fax: 303.298.0940
Email: dwisor@shermanhoward.com

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of May, 2011, I mailed by U.S. Mail, postage pre-paid, a true and correct copy of the foregoing Petition for Review to the following:

Mario D. Nicolais, Esq.
Hackstaff Law Group
1601 Blake Street, Ste. 310
Denver, CO 80202

Maurice Knaizer, Esq.
Assistant Attorney General
1525 Sherman Street, 7th Floor
Denver, CO 80203



Jason R. Dunn

13585\2\1535533.1

Ballot Title Setting Board

Proposed Initiative 2011-2012 #21¹

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

An amendment to the Colorado constitution concerning statewide ballot measures, and, in connection therewith, increasing the number of votes needed to pass a statutory tax increase or a constitutional amendment from a majority to at least sixty percent of the votes cast unless the measure only repeals all or a portion of a measure approved before 2013; requiring a minimum number of petition signatures for an initiated statutory tax increase or constitutional amendment to be gathered from voters who reside in each congressional district; and, for three years after a referred or initiated statutory law becomes effective, increasing the required vote of each house of the general assembly to change, repeal, or supersede the law from a majority to at least a sixty percent vote.

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 statewide ballot measures, and, in connection therewith, increasing the number of votes needed to pass a statutory tax increase or a constitutional amendment from a majority to at least sixty percent of the votes cast unless the measure only repeals all or a portion of a measure approved before 2013; requiring a minimum number of petition signatures for an initiated statutory tax increase or constitutional amendment to be gathered from voters who reside in each congressional district; and, for three years after a referred or initiated statutory law becomes effective, increasing the required vote of each house of the general assembly to change, repeal, or supersede the law from a majority to at least a sixty percent vote?

*Hearing April 20, 2011:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 3:00 p.m.*

¹Unofficially captioned "Ballot Measures" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

RECEIVED
MAR 25 2011

Colorado Secretary of State

BALLOT MEASURE VOTING REQUIREMENTS - INITIATIVE #21
- FINAL TEXT -

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

Section 1 (4) of article V of the constitution of the state of Colorado is amended, and the said section 1 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

Section 1. General assembly - initiative and referendum. (2.5) TO PROPOSE AN INITIATED CONSTITUTIONAL AMENDMENT OR STATUTORY TAX INCREASE ("TAX INCREASE" TO MEAN ANY ACTION INCLUDED IN SECTION 20(4) OF ARTICLE X OF THE CONSTITUTION OF THE STATE OF COLORADO, AS APPLIED TO THE COLORADO STATE GOVERNMENT) THAT IS SUBJECT TO A VOTE AT THE 2013 ODD-YEAR ELECTION OR A STATEWIDE ELECTION HELD THEREAFTER, THE MINIMUM NUMBER OF SIGNATURES BY REGISTERED ELECTORS WHO RESIDE IN EACH UNITED STATES CONGRESSIONAL DISTRICT IN COLORADO SHALL BE AN AMOUNT EQUAL TO SEVENTY PERCENT OF THE MINIMUM NUMBER OF THE TOTAL SIGNATURES REQUIRED FOR THE INITIATIVE PETITION PURSUANT TO SUBSECTION (2) OF THIS SECTION DIVIDED BY THE NUMBER OF UNITED STATES CONGRESSIONAL DISTRICTS IN COLORADO. FOR PURPOSES OF THIS SUBSECTION (2.5), THE NUMBER AND BOUNDARIES OF THE CONGRESSIONAL DISTRICTS SHALL BE THOSE IN EFFECT AT THE TIME THAT THE INITIATIVE PETITION IS FILED WITH THE SECRETARY OF STATE.

(4) (a) The veto power of the governor shall not extend to measures initiated by or referred to the people. All elections on measures initiated by or referred to the people of the state shall be held at the biennial regular general election, and all such measures shall become the law or a part of the constitution, when approved by a majority of the votes cast thereon OR, IF APPLICABLE, BY THE NUMBER OF VOTES REQUIRED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (4), and not otherwise, and shall take effect from and after the date of the official declaration of the vote thereon by proclamation of the governor, but not later than thirty days

after the vote has been canvassed. This section shall not be construed to deprive the general assembly of the power to enact any measure; EXCEPT THAT THE GENERAL ASSEMBLY SHALL NOT AMEND, REPEAL, OR OTHERWISE SUPERSEDE AN INITIATED OR REFERRED STATUTORY LAW THAT WAS APPROVED AT AN ELECTION AFTER THE 2012 GENERAL ELECTION FOR A PERIOD OF THREE YEARS FROM THE DATE THE LAW TAKES EFFECT UNLESS APPROVED BY A VOTE OF AT LEAST SIXTY PERCENT OF ALL THE MEMBERS ELECTED TO EACH HOUSE.

(b) (I) BEGINNING WITH THE 2013 ODD-YEAR ELECTION AND FOR ALL STATEWIDE ELECTIONS HELD THEREAFTER, AN INITIATED OR REFERRED CONSTITUTIONAL AMENDMENT OR STATUTORY TAX INCREASE SHALL NOT BECOME A PART OF THIS CONSTITUTION OR STATE STATUTE UNLESS APPROVED BY AT LEAST SIXTY PERCENT OF THE VOTES CAST THEREON, EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (b).

(II) EXCLUDING AN INITIATED OR REFERRED CONSTITUTIONAL AMENDMENT OR STATE STATUTE THAT REPEALS ANY PROVISION OF THE MEASURE THAT INCLUDED THIS PARAGRAPH (b), THE REQUIREMENT SET FORTH IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) SHALL NOT APPLY TO AN INITIATED OR REFERRED CONSTITUTIONAL AMENDMENT OR STATE STATUTE THAT IS LIMITED TO REPEALING, IN WHOLE OR IN PART, ONE OR MORE AMENDMENTS TO THIS CONSTITUTION OR STATE STATUTE APPROVED BY VOTERS PRIOR TO THE 2013 ODD-YEAR ELECTION.

Section 2 (1) of article XIX of the constitution of the state of Colorado is amended to read:

Section 2. Amendments to constitution - how adopted. (1) (a) Any amendment or amendments to this constitution may be proposed in either house of the general assembly, and, if the same shall be voted for by two-thirds of all the members elected to each house, such proposed amendment or amendments, together with the ayes and noes of each house thereon,

shall be entered in full on their respective journals. The proposed amendment or amendments shall be published with the laws of that session of the general assembly. At the next general election for members of the general assembly, the said amendment or amendments shall be submitted to the registered electors of the state for their approval or rejection, and such as are approved by a majority of those voting thereon OR BY THE NUMBER OF VOTES REQUIRED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (1), shall become part of this constitution.

(b) (I) BEGINNING WITH THE 2013 ODD-YEAR ELECTION AND FOR ALL STATEWIDE ELECTIONS HELD THEREAFTER, A REFERRED CONSTITUTIONAL AMENDMENT SHALL NOT BECOME A PART OF THIS CONSTITUTION UNLESS THE AMENDMENT IS APPROVED BY AT LEAST SIXTY PERCENT OF THE VOTES CAST THEREON, EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (b).

(II) EXCLUDING A REFERRED CONSTITUTIONAL AMENDMENT THAT REPEALS ANY PROVISION OF THE MEASURE THAT INCLUDED THIS PARAGRAPH (b), THE REQUIREMENT SET FORTH IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) SHALL NOT APPLY TO A REFERRED CONSTITUTIONAL AMENDMENT THAT IS LIMITED TO REPEALING, IN WHOLE OR IN PART, ONE OR MORE AMENDMENTS TO THIS CONSTITUTION APPROVED BY VOTERS PRIOR TO THE 2013 ODD-YEAR ELECTION.

HACKSTAFF LAW GROUP
Counselors. Advocates.

March 25, 2011

RECEIVED
MAR 25 2011
Colorado Secretary of State

Via E-mail: initiatives@sos.state.co.us

Scott Gessler, Secretary of State
State of Colorado
1700 Broadway, Suite 200
Denver, Colorado 80290

Re: *Proposed Ballot Measure Voting Requirements -- Initiative #21*

Dear Sec. Gessler,

I am submitting for Title Board review the above referenced proposed initiative. Included in this letter are the following: (1) Original Text Draft; (2) Amended Text Draft; (3) Final Text. This law firm represents the two ballot proponents, who are:

Aimee Rathburn
4321 S. Utica St.
Denver, CO 80236

Cliff Dodge
160 Poplar Street, Unit B
Denver, CO 80220

Please feel free to contact me if you have questions or if I may be of further assistance. I can be reached by email at mn@hackstafflaw.com or by telephone at (303) 534-4317.

Sincerely,

HACKSTAFF LAW GROUP, LLC



Mario D. Nicolais, II

1601 Blake Street, Suite 310, Denver, CO 80202 ph. 303.534.4317 fax. 303.534.4309

www.hackstafflaw.com

Page 1 of 1

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APR 25 2011

COPY

Colorado Secretary of State COLORADO TITLE BOARD

IN THE MATTER OF THE TITLE, BALLOT TITLE,
AND SUBMISSION CLAUSE FOR INITIATIVE 2010-2011 #21

MOTION FOR REHEARING

Petitioner Steve C. Briggs, a registered elector in the State of Colorado, submits this Motion for Rehearing and requests that the Title Board reverse its decision on April 20, 2011, to set a ballot title and submission clause for Initiative #21.

1. Initiative #21 contains more than one subject.

With the exception of four words, "or statutory tax increase," Initiative #21 properly addresses a single general subject: the procedures for enacting all initiatives and referenda, regardless of their subject matter, as set forth in Article V, § 1 of the Colorado Constitution. As its proponents conceded at the Title Hearing, except for those four words Initiative #21 is a copy of Senate Concurrent Resolution 11-001, which is pending in the General Assembly. If approved, SCR 11-001 will be referred to the people for the next general election. If enacted, SCR 11-001 will **increase** the protection of the legislative power vested in the general assembly.

By adding those four words, however, the proponents of Initiative #21 address an incongruous and specific subject: the manner in which the legislature may raise revenue, as set forth in the separate Article X, "Revenue." The initiative amends Article X, § 20, ¶4(a), commonly known as TABOR. If approved, Initiative #21 would appear on the ballot at the same time as SCR 11-001. If enacted, this TABOR amendment will **decrease** the protection of the legislative power vested in the general assembly.

Not only does Initiative #21 contain two different subjects, they are directly contradictory subjects. To understand fully the fundamental antagonism between the two separate measures in Initiative #21, it is necessary to understand their contradictory philosophies.

The Framers of our United States Constitution did not just create a constitutional democracy; they created a representative constitutional democracy. Recognizing the importance of this governmental structure, they provided in Article IV, § 4 as follows: **“Republican form of government – protection of states.** The United States shall guarantee to every state in this Union a republican form of government”

The Framers realized that a pure democracy can be extremely inefficient, at least on a state or federal level. There are simply too many citizens and too many, often complex, issues. They also realized that pure democracy unchecked could be its own source of mischief. As nineteenth century United States Senator John C. Calhoun later put it, “The Government of the absolute majority instead of the Government of the people is but the Government of the strongest interests; and when not efficiently checked, it is the most tyrannical and oppressive that can be devised.” Calhoun, “Against the Force Bill,” speech given on the Senate floor (Feb. 16, 1833); see generally Meriwether, Hemphill, and Wilson, eds., *The Papers of John C. Calhoun* (Columbia, SC: University of South Carolina Press, 1959).

James Madison early recognized the danger of a pure democracy, and that danger was no greater than in the area of taxation: “The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice. Every shilling with which they overburden the inferior number, is a shilling saved to their own pockets.” J. Madison, *Federalist Number 10* (Daily Advertiser, November 22, 1787). He therefore advocated for the republican, or representative, constitutional democracy described in our United States Constitution – with no exception for taxation.

Our State Constitution, in Article V, §1, has likewise created a representative form of government, as guaranteed in our United States Constitution. It vests the legislative power in the general assembly, which it exercises by enacting and changing our statutory laws. That power, however, is subject to the limitations contained in our state constitution. Thus Colorado, like the United States, is a representative constitutional democracy.

A constitution is a set of fundamental beliefs, traditions, and principles that sets forth the way a government is organized. It protects basic liberties by establishing limits on the power of those who enact statutes and administer the law. In contrast, statutes provide nuts and bolts solutions to current needs and problems, which may work in one generation or economic situation, but not the next. No characteristic of a constitution is more important than that it should be

amended only after much contemplation and discussion, and then only with the widespread consent of our citizens.

Yet our state constitution, in the same Article V, §1, contains an additional reservation on the authority of the legislature. The people have reserved the authority to propose laws and amendments to the constitution and to enact or reject the same at the polls, independent of the general assembly. Colorado has limited the General Assembly's legislative power by permitting our state constitution to be amended by a single, simple majority vote.

With the ballot initiative, the system of checks and balances inherent in our legislative process is bypassed. When used properly and sparingly, the ballot initiative provides a different kind of check on our representative form of government. However, experience has shown how easily this manner of amending our state constitution can be abused.

Of all fifty states, the Colorado Constitution is the easiest to amend through the initiative process. Because of this, special interest groups often use Colorado as a way to test the waters for their self-serving proposals. Constitutional initiatives have the same requirements as statutory initiatives, so most special interest groups use the initiative process to propose constitutional changes. These ballot initiatives, no matter how lengthy or complex, avoid the spotlight of careful debate in the general assembly and instead rely on slogans and sound bites in short television and radio commercials. Experience has shown that constitutional amendments are virtually impossible to change once they're passed.

From 1990 through 2010, there were 93 constitutional amendments on Colorado ballots. Almost \$180 million was contributed to campaigns about constitutional and statutory amendments. Additionally more than \$115 million was contributed to political committees, federal PACs, political party committees, 527 organizations, and small donor committees that weighed in on these constitutional measures. In the past ten years, Colorado voters have been asked to change the Constitution over issues like wildlife trapping, livestock regulations, and the qualifications for coroners and sheriffs.

Of the 93 proposed constitutional amendments considered by voters, only 40 have been approved. Of those that have passed, some have resulted in complex and sometimes conflicting budget provisions, with far-reaching unintended consequences.

As a partial response to the abuse of the initiative process, our state constitution, in Article V, §5.5, and Article XIX, §2(3), now limits a proposed measure to one subject. The "subject" in this context is "the matter of concern

over which something is created," see Black's Law Dictionary (7th ed. 1999), or a "motive or cause." See Meriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/subject>.

The only commonality between SCR 11-001 and the proposed TABOR amendment is a required 60% vote. The Title Board focused on that one commonality in setting a title for Initiative 21. That commonality, however, is not a "single subject." Rather, that is the mechanism for addressing the subjects of two separate and unrelated measures. The first is the constitutional initiative and referendum procedures, regardless of subject matter. The "matter of concern," or "cause," is to **protect** legislative authority **generally**, consistent with the intent of the Framers of the United States Constitution. The other, the TABOR amendment, is a restriction on the power vested in our elected representatives on the **specific** subject of statutory tax increases. The "matter of concern," or "cause," is to **constrict** legislative authority **to generate tax revenue**. Requiring popular votes on taxes is the exact danger described by James Madison.

Initiative #21 not only combines two measures with two separate subjects, one general and one specific, it combines two measures with directly contradictory purposes. This is precisely what the single subject requirement prohibits.

2. Initiative #21 improperly treats two incongruous subjects in the same measure by putting together in one measure two subjects having no necessary and proper connection, for the purpose of enlisting in support of Initiative #21 the supporters of SCR 11-001.

The General Assembly has addressed two of the purposes for the single subject requirement, in C.R.S. §1-40-106.5(e). The first is to forbid the treatment of incongruous subjects in the same measure, "especially the practice of putting together in one measure subjects having no necessary or proper connection, for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits." "Incongruous" means "not harmonious;" "incompatible." See Meriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/incongruous>.

Because of two years of effort by a broad based, bipartisan coalition, SCR 11-001 enjoys widespread popular support. That support was built on the earlier support for Referendum O, which was narrowly defeated in the last general election. Initiative #21 copies SCR 11-001 as it was introduced in the Senate, but then adds four words, "or statutory tax increase," in Article V, §1, ¶¶ (2.5) and (4)(a).

This same coalition and their thousands of members who support SCR 11-001 by no means support, standing alone, an amendment of TABOR to constitutionally require 60% voter approval of any tax increase. To the contrary, most would strongly oppose such a measure, standing alone. Many would oppose such a measure, standing alone, because of the fiscal crisis already gripping the state. Others would strongly oppose the measure because of its restriction on our representative democracy. Still others would strongly oppose such a measure standing alone because, whatever the perceived merits, this kind of measure has no place in a state constitution.

Initiative #21 places voters in the position of having to support a new limitation on the specific subject of tax increases, thus **constricting** legislative authority to raise revenue, which they do not support, in order to enact the proposed change in our initiative and referendum process, regardless of subject, thus **protecting** legislative authority generally, which they do support. See Submission Clause for 2009-2010 No. 91, 235 P.3d 1071 (Colo. 2010) (“The prohibition against multiple subjects ‘discourages placing voters in the position of voting for some matter they do not support to enact that which they do support.’”). The Board’s action in setting a title for Initiative #21 thus directly contravenes this important statutory limitation on the subjects that can be addressed in one initiative.

3. Initiative #21 improperly invites confusion and surprise by imbedding four words on the specific subject of tax increases in a copy of SCR 11-001.

A second purpose for requiring a single subject is set forth in C.R.S. §1-40-106.5. That purpose is to prevent surreptitious measures, so as “to prevent surprise and fraud from being practiced upon the voters.”

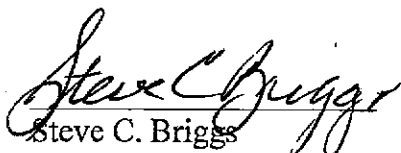
The coalition supporting SCR 11-001 has spent the last two years in community outreach and other meetings, receiving input on the wisdom and wording of the referendum. Because of these and other efforts over the last several years, the concept of amending the Colorado Constitution to make it more difficult to amend by initiative or referendum enjoys widespread support across the state and across the political spectrum. Any doubt about the intent behind Initiative #21 was clarified at the Title Board Hearing, when the proponents requested that even the Title submitted as a draft be edited so that it is identical to SCR 11-001 - other than for the addition of the four words in question.

Even if Initiative #21 could otherwise be somehow characterized as addressing one “subject,” by imbedding a “poison pill” of four words, “or statutory tax increase,” in a copy of SCR 11-001, Initiative #21 directly contravenes this important statutory proscription by creating an undue risk of

confusing and surprising the many voters who are generally aware of and support the concept of making it harder to amend the state constitution, but who are not familiar with the details of the wording. Voters may vote for neither measure or for both. In either event, the purpose of SCR 11-001 will have been circumvented. Such subterfuge is precisely what the constitutional prohibition against multiple subjects was designed to prevent. See Campbell v. Buckley, 203 F.3d 738 (10th Cir. 2000)(the single subject and title requirements serve to prevent a provision that would not otherwise pass from becoming law by “piggybacking’ it on a more popular proposal or concealing it in a long and complex initiative.”).

Petitioner requests that the Title Board recognize the true “subjects” of these two separate, contradictory measures and reverse its decision to set a ballot title and submission clause for Initiative #21.


Respectfully submitted,


Steve C. Briggs
Registered Elector

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2011, a true and correct copy of the foregoing Motion for Rehearing was emailed to the following, with a hard copy place in the United States mail, postage prepaid:

Mario D. Nicolais, Esq.
mn@hackstafflaw.com
Hackstaff Law Group
1601 Blake Street, Ste. 310
Denver, CO 80202


Steve C. Briggs

STATE OF COLORADO
Department of State
1700 Broadway
Suite 200
Denver, CO 80290



Scott Gessler
Secretary of State

William A. Hobbs
Deputy Secretary of State

SUMMARY OF BOARD ACTION

Initiative Title Setting Review Board

Wednesday, May 4, 2011, 2:00 p.m.

Secretary of State's Blue Spruce Conference Room

1700 Broadway, Suite 200

Denver, Colorado

The order for the day was:

- 1. 2011-2012 #21 – “Ballot Measures”* - Rehearing**
Commenced 2:05 p.m.; Motion for Rehearing denied; adjourned 3:04 p.m.

ALL AGENDA ITEMS WERE COMPLETED.

* Unofficial caption assigned by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

Main Number (303) 894-2200
TDD (303) 869-4867
Fax (303) 869-4861

Web Site
E-mail

www.sos.state.co.us
elections@sos.state.co.us

Ballot Title Setting Board

Proposed Initiative 2011-2012 #21¹

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

An amendment to the Colorado constitution concerning statewide ballot measures, and, in connection therewith, increasing the number of votes needed to pass a statutory tax increase or a constitutional amendment from a majority to at least sixty percent of the votes cast unless the measure only repeals all or a portion of a measure approved before 2013; requiring a minimum number of petition signatures for an initiated statutory tax increase or constitutional amendment to be gathered from voters who reside in each congressional district; and, for three years after a referred or initiated statutory law becomes effective, increasing the required vote of each house of the general assembly to change, repeal, or supersede the law from a majority to at least a sixty percent vote.

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 statewide ballot measures, and, in connection therewith, increasing the number of votes needed to pass a statutory tax increase or a constitutional amendment from a majority to at least sixty percent of the votes cast unless the measure only repeals all or a portion of a measure approved before 2013; requiring a minimum number of petition signatures for an initiated statutory tax increase or constitutional amendment to be gathered from voters who reside in each congressional district; and, for three years after a referred or initiated statutory law becomes effective, increasing the required vote of each house of the general assembly to change, repeal, or supersede the law from a majority to at least a sixty percent vote?

Hearing April 20, 2011:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 3:00 p.m.

Hearing May 6, 2011:

Motion for Rehearing denied.

Hearing adjourned 3:04 p.m.

¹ Unofficially captioned "Ballot Measures" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. R11-0301.01 Ed DeCecco

SCR11-001

SENATE SPONSORSHIP

Shaffer B. and Spence, Kopp, Brophy, Heath, Jahn, King S., Morse, Roberts, Schwartz, Steadman, Tochtrop, White

HOUSE SPONSORSHIP

Murray and Court, McNulty, Acree, Barker, Baumgardner, Becker, Brown, Casso, Conti, Coram, Duran, Ferrandino, Fields, Fischer, Gardner D., Hamner, Hullinghorst, Kagan, Kefalas, Kerr A., Labuda, Lee, Levy, Liston, Massey, McCann, McKinley, Miklosi, Pace, Peniston, Priola, Riesberg, Ryden, Schafer S., Scott, Solano, Sonnenberg, Soper, Summers, Swerdfeger, Todd, Tyler, Vigil, Williams A., Wilson

Senate Committees

State, Veterans & Military Affairs

House Committees

SENATE CONCURRENT RESOLUTION 11-001

101 SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF
102 COLORADO AN AMENDMENT TO THE COLORADO CONSTITUTION
103 CONCERNING BALLOT MEASURES, AND, IN CONNECTION
104 THEREWITH, INCREASING THE NUMBER OF VOTES NEEDED TO
105 PASS A CONSTITUTIONAL AMENDMENT FROM A MAJORITY TO AT
106 LEAST SIXTY PERCENT OF THE VOTES CAST; ALLOWING A
107 CONSTITUTIONAL AMENDMENT PASSED PRIOR TO 2013 TO BE
108 REPEALED BY A MAJORITY OF THE VOTES CAST; ADDING A
109 REQUIREMENT THAT A MINIMUM NUMBER OF PETITION
110 SIGNATURES FOR A CITIZEN-INITIATED CONSTITUTIONAL
111 AMENDMENT BE GATHERED FROM VOTERS WHO RESIDE IN EACH
112 COLORADO CONGRESSIONAL DISTRICT; AND INCREASING THE
113 REQUIREMENT FROM A MAJORITY TO A TWO-THIRDS VOTE OF

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

101
102
103

THE STATE LEGISLATURE TO CHANGE, REPEAL, OR SUPERSEDE
A CITIZEN-INITIATED LAW FOR THREE YEARS AFTER IT BECOMES
EFFECTIVE.

Resolution Summary

(Note: This summary applies to this resolution as introduced and does not reflect any amendments that may be subsequently adopted. If this resolution passes third reading in the house of introduction, a resolution summary that applies to the reengrossed version of this resolution will be available at <http://www.leg.state.co.us/billsummaries>.)

This concurrent resolution makes the following changes to the state constitution related to ballot measures:

- An initiated or referred constitutional amendment must be approved by at least 60% of the votes cast thereon in order to become part of the constitution. Currently, a majority vote is necessary to pass such an amendment.
 - The increased vote requirement does not apply to an amendment that is limited to repealing, in whole or in part, one or more constitutional amendments approved by voters prior to the 2013 odd-year election; except that an amendment to repeal any provision included in this concurrent resolution requires 60% voter approval.
 - A portion of the signatures for a petition for an initiated constitutional amendment must be geographically distributed throughout the state based on a formula that requires a minimum number of the total required signatures to be from each congressional district in the state. The minimum number of the total signatures required for such a petition is equal to 5% of the votes cast in the previous election for the secretary of state, and currently there is no requirement for geographic distribution of those signatures.
 - A 2/3 vote of all members elected to each house of the general assembly is required to amend, repeal, or supersede an initiated law that was approved at an election after the 2012 general election for a period of 3 years from the date the law takes effect. Currently, initiated laws can be changed by a majority vote of such members.
-

1 *Be It Resolved by the Senate of the Sixty-eighth General Assembly*
2 *of the State of Colorado, the House of Representatives concurring herein:*

3 **SECTION 1.** At the next election at which such question may be
4 submitted, there shall be submitted to the registered electors of the state
5 of Colorado, for their approval or rejection, the following amendment to
6 the constitution of the state of Colorado, to wit:

7 Section 1 (4) of article V of the constitution of the state of
8 Colorado is amended, and the said section 1 is further amended BY THE
9 ADDITION OF A NEW SUBSECTION, to read:

10 **Section 1. General assembly - initiative and referendum.**

11 (2.5) TO PROPOSE AN INITIATED CONSTITUTIONAL AMENDMENT THAT IS
12 SUBJECT TO A VOTE AT THE 2013 ODD-YEAR ELECTION OR A STATEWIDE
13 ELECTION HELD THEREAFTER, THE MINIMUM NUMBER OF SIGNATURES BY
14 REGISTERED ELECTORS WHO RESIDE IN EACH UNITED STATES
15 CONGRESSIONAL DISTRICT IN COLORADO SHALL BE AN AMOUNT EQUAL TO
16 SEVENTY PERCENT OF THE MINIMUM NUMBER OF THE TOTAL SIGNATURES
17 REQUIRED FOR THE INITIATIVE PETITION PURSUANT TO SUBSECTION (2) OF
18 THIS SECTION DIVIDED BY THE NUMBER OF UNITED STATES
19 CONGRESSIONAL DISTRICTS IN COLORADO. FOR PURPOSES OF THIS
20 SUBSECTION (2.5), THE NUMBER AND BOUNDARIES OF THE CONGRESSIONAL
21 DISTRICTS SHALL BE THOSE IN EFFECT AT THE TIME THAT THE INITIATIVE
22 PETITION IS FILED WITH THE SECRETARY OF STATE.

23 (4) (a) The veto power of the governor shall not extend to
24 measures initiated by or referred to the people. All elections on measures
25 initiated by or referred to the people of the state shall be held at the
26 biennial regular general election, and all such measures shall become the
27 law or a part of the constitution, when approved by a majority of the votes

1 cast thereon OR, IF APPLICABLE, BY THE NUMBER OF VOTES REQUIRED
2 PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (4), and not otherwise,
3 and shall take effect from and after the date of the official declaration of
4 the vote thereon by proclamation of the governor, but not later than thirty
5 days after the vote has been canvassed. This section shall not be
6 construed to deprive the general assembly of the power to enact any
7 measure; EXCEPT THAT THE GENERAL ASSEMBLY SHALL NOT AMEND,
8 REPEAL, OR OTHERWISE SUPERSEDE AN INITIATED LAW THAT WAS
9 APPROVED AT AN ELECTION AFTER THE 2012 GENERAL ELECTION FOR A
10 PERIOD OF THREE YEARS FROM THE DATE THE LAW TAKES EFFECT UNLESS
11 APPROVED BY A VOTE OF TWO-THIRDS OF ALL THE MEMBERS ELECTED TO
12 EACH HOUSE.

13 (b) (I) BEGINNING WITH THE 2013 ODD-YEAR ELECTION AND FOR
14 ALL STATEWIDE ELECTIONS HELD THEREAFTER, AN INITIATED
15 CONSTITUTIONAL AMENDMENT SHALL NOT BECOME A PART OF THIS
16 CONSTITUTION UNLESS THE AMENDMENT IS APPROVED BY AT LEAST SIXTY
17 PERCENT OF THE VOTES CAST THEREON, EXCEPT AS OTHERWISE PROVIDED
18 IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (b).

19 (II) EXCLUDING AN INITIATED CONSTITUTIONAL AMENDMENT THAT
20 REPEALS ANY PROVISION OF THE MEASURE THAT INCLUDED THIS
21 PARAGRAPH (b), THE REQUIREMENT SET FORTH IN SUBPARAGRAPH (I) OF
22 THIS PARAGRAPH (b) SHALL NOT APPLY TO AN INITIATED CONSTITUTIONAL
23 AMENDMENT THAT IS LIMITED TO REPEALING, IN WHOLE OR IN PART, ONE
24 OR MORE AMENDMENTS TO THIS CONSTITUTION APPROVED BY VOTERS
25 PRIOR TO THE 2013 ODD-YEAR ELECTION.

26 Section 2 (1) of article XIX of the constitution of the state of
27 Colorado is amended to read:

1 **Section 2. Amendments to constitution - how adopted.**

2 (1) (a) Any amendment or amendments to this constitution may be
3 proposed in either house of the general assembly, and, if the same shall
4 be voted for by two-thirds of all the members elected to each house, such
5 proposed amendment or amendments, together with the ayes and noes of
6 each house thereon, shall be entered in full on their respective journals.

7 The proposed amendment or amendments shall be published with the
8 laws of that session of the general assembly. At the next general election
9 for members of the general assembly, the said amendment or amendments
10 shall be submitted to the registered electors of the state for their approval
11 or rejection, and such as are approved by a majority of those voting
12 thereon OR BY THE NUMBER OF VOTES REQUIRED PURSUANT TO
13 PARAGRAPH (b) OF THIS SUBSECTION (1), shall become part of this
14 constitution.

15 (b) (I) BEGINNING WITH THE 2013 ODD-YEAR ELECTION AND FOR
16 ALL STATEWIDE ELECTIONS HELD THEREAFTER, A REFERRED
17 CONSTITUTIONAL AMENDMENT SHALL NOT BECOME A PART OF THIS
18 CONSTITUTION UNLESS THE AMENDMENT IS APPROVED BY AT LEAST SIXTY
19 PERCENT OF THE VOTES CAST THEREON, EXCEPT AS OTHERWISE PROVIDED
20 IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (b).

21 (II) EXCLUDING A REFERRED CONSTITUTIONAL AMENDMENT THAT
22 REPEALS ANY PROVISION OF THE MEASURE THAT INCLUDED THIS
23 PARAGRAPH (b), THE REQUIREMENT SET FORTH IN SUBPARAGRAPH (I) OF
24 THIS PARAGRAPH (b) SHALL NOT APPLY TO A REFERRED CONSTITUTIONAL
25 AMENDMENT THAT IS LIMITED TO REPEALING, IN WHOLE OR IN PART, ONE
26 OR MORE AMENDMENTS TO THIS CONSTITUTION APPROVED BY VOTERS
27 PRIOR TO THE 2013 ODD-YEAR ELECTION.

1 **SECTION 2.** Each elector voting at said election and desirous of
2 voting for or against said amendment shall cast a vote as provided by law
3 either "Yes" or "No" on the proposition: "Shall there be an amendment
4 to the Colorado constitution concerning ballot measures that increases the
5 number of votes needed to pass a constitutional amendment from a
6 majority to at least sixty percent of the votes cast; and that allows a
7 constitutional amendment passed prior to 2013 to be repealed by a
8 majority of the votes cast; and that adds a requirement that a minimum
9 number of petition signatures for a citizen-initiated constitutional
10 amendment be gathered from voters who reside in each Colorado
11 congressional district; and that increases the requirement from a majority
12 to a two-thirds vote of the state legislature to change, repeal, or supersede
13 a citizen-initiated law for three years after it becomes effective?"

14 **SECTION 3.** The votes cast for the adoption or rejection of said
15 amendment shall be canvassed and the result determined in the manner
16 provided by law for the canvassing of votes for representatives in
17 Congress, and if a majority of the electors voting on the question shall
18 have voted "Yes", the said amendment shall become a part of the state
19 constitution.



Support SCR 11-001

SCR 11-001, introduced by Senate President Shaffer and Senator Spence and Representatives Murray and Court, is a referred measure that asks voters to protect the Colorado Constitution by:

- ✓ Increasing the number of votes needed to pass a constitutional amendment from a majority to at least 60% of the votes cast. (Does not affect the simple majority voting requirement for initiated statutory changes.)
- ✓ Requiring that a minimum number of petitions signatures for a citizen initiated constitutional amendment be gathered from voters who reside in each Colorado congressional district. (Does not affect the signature requirements for citizen-initiated statutory changes.)
- ✓ Allowing current constitutional amendments to be repealed with the same simple-majority by which they were voted in. (Requires a 60% super majority vote to repeal constitutional amendments passed after 2012.)
- ✓ Protecting approved citizen-initiated statutory changes by requiring two-thirds vote of the legislature to amend that law during the first three years after adoption.

Colorado voters considered ninety-three constitutional amendments from 1990 through 2010. Of these proposals, fifty-three amendments received less than 50%. Of the forty amendments that received more than 50%, twenty received more than 60% of the vote.

Almost \$180 million has been spent in campaign contributions to issue committees between 2000 and 2010.

"Citizen initiatives become constitutional amendments too easily in Colorado." – Canon City Daily Record, 1-18-11

"Colorado's constitution originally set a high standard for amendments. Raising the bar helps maintain the integrity of the document and keeps it from becoming a collection of rules better made through the legislative process." – Longmont Times Call, 1-16-11

"The situation needs to be fixed before someone conjures up some other crazy, government-crippling measures to put on the ballot that could be worse than Amendments 60 and 61 and Proposition 101." – The Denver Post, 11-7-10

For more information, please contact
Brock Herzberg (303.945.1076) or Landon Gates (970.218.0284)
with Capitol Focus.

Organizations supporting SCR 11-001:

AARP Colorado
Action 22
American Council of Engineering Companies of Colorado
Associated General Contractors of Colorado
Aurora Chamber of Commerce
Club 20
Colorado Apartment Association
Colorado Association of Commerce and Industry
Colorado Association of Mechanical & Plumbing Contractors
Colorado Corn Growers Association
Colorado Association of School Boards
Colorado Bar Association
Colorado Cleantech Industry Association
Colorado Competitive Council
Colorado Concern
Colorado Contractors Association
Colorado Dairy Farmers
Colorado Egg Producers
Colorado Farm Bureau
Colorado Forum
Colorado's Future
Colorado Judicial Institute
Colorado Livestock Association
Colorado Municipal Bond Dealers Association
Colorado Municipal League
Colorado Oil and Gas Association
Colorado Pork Producers Council
Colorado Professional Fire Fighters
Colorado Ready Mixed Concrete Association
Colorado Restaurant Association
Colorado State Grange
Colorado Stone, Sand and Gravel Association
Denver Metro Chamber of Commerce
Douglas County Business Alliance –
 Castle Rock Chamber of Commerce
 Castle Rock Economic Development Council
 Highlands Ranch Chamber of Commerce
 Lone Tree Chamber of Commerce
Parker Economic Development Council
Grand Junction Area Chamber of Commerce
Green Industries of Colorado
Independent Bankers of Colorado
Jefferson County Business Lobby
Land Title Guarantee Company
League of Women Voters of Colorado
Metro North Chamber of Commerce
NAIOP – The Commercial Real Estate Development Association
Northern Colorado Legislative Alliance
 Fort Collins Chamber of Commerce
 Greeley Chamber of Commerce
 Loveland Chamber of Commerce
 Northern Colorado Economic Development Corporation
Progressive 15
South East Business Partnership
Xcel Energy

PRINCIPLES FOR PROGRESS:
SHAPING THE ECONOMIC FUTURE OF COLORADO

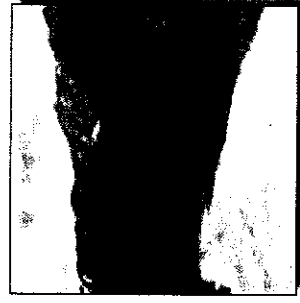
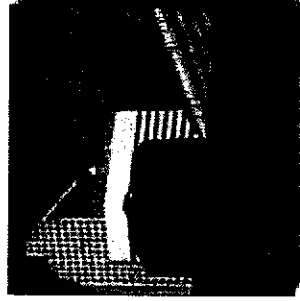
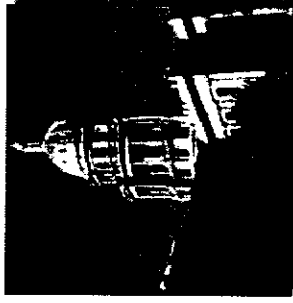
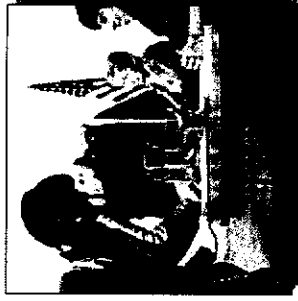
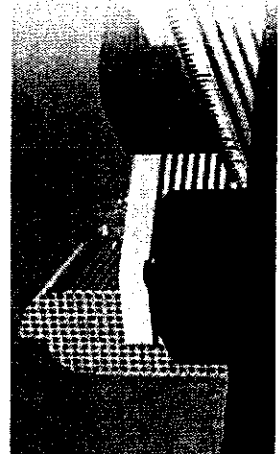


TABLE OF CONTENTS

LETTER FROM THE CHANCELLOR.....1
OVERVIEW FROM THE PANEL CHAIR.....2-7
THE REPORT8-22
SUMMARY OF RECOMMENDATIONS 12-13
THE ROAD AHEAD23
PANEL MEMBERS24

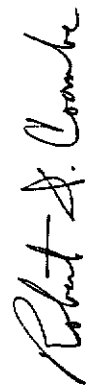


LETTER FROM THE
UNIVERSITY OF DENVER
CHANCELLOR

For more than a year now, the Colorado Economic Futures Panel has worked diligently to analyze the state's difficult fiscal situation. Sixteen accomplished business and civic leaders from across Colorado, acting as a nonpartisan task force and assisted by a talented research staff, have examined the state's fiscal structure. They scrutinized expenditures for major state and local government functions and agencies, including public (K-12) and higher education, health care, human services, corrections, transportation, courts and capital construction. This is the Panel's final report. In it, you will read of their serious concerns and comprehensive recommendations.

The University of Denver established the Colorado Economic Futures Panel and hosted its work in the belief that, as an independent institution, we are in a unique position to invest in the state that has been home to the University since our founding in 1864. Supporting the Panel's work at this critical time in Colorado's history has been an expression of our institutional commitment to work for the public good, and our belief that together we will surmount the challenges we face.

The Colorado Economic Futures Panel has completed its work. What comes of its findings and recommendations depends on the will and resolve of our leaders and the citizens of Colorado—indeed, all of us.



Robert D. Coombe
Chancellor, University of Denver

PRINCIPLES FOR PROGRESS:

SHAPING THE ECONOMIC FUTURE OF COLORADO



Overview from the Panel Chair

REPORT OF THE COLORADO ECONOMIC FUTURES PANEL

The economic future of Colorado will be written in the choices we make.

The outcome is not preordained and the stakes are high. The quality of life in Colorado is built on the foundation of the state's economy. In years to come, economic and fiscal decisions made by elected officials and voters will affect the state's success in attracting new businesses and creating jobs, navigating in a highly competitive global economy and maintaining reasonable tax levels.

These public decisions will shape nearly all aspects of life in Colorado. The quality of education, roads, mass transit, water, public health, open space, environmental protection, public safety, corrections, social services and the administration of justice all are affected by economic and fiscal policy decisions. Finding ways to make such decisions effectively has been the focus of the Colorado Economic Futures Panel (CEFP).

The Colorado Economic Futures Panel began its work with a detailed examination of the fiscal and economic characteristics of the state as a whole. As the Panel studied a broad range of issues, it became apparent that rebuilding public trust and improving the processes used for public decision-making and governance are fundamental to the long-term economic success of the state. These processes form the framework for decisions that will shape the economic future of Colorado.

Rebuilding public trust and improving the processes used for public decision-making and governance are fundamental to the long-term economic success of the state. These processes form the framework for decisions that will shape the economic future of Colorado.

No one, including the Panel, knows exactly what decisions Coloradans will face in the future. We do know, however, that the only certainty is change and that difficult and complex public policy choices inevitably lie ahead. We also are quite certain that, in a highly competitive world, the margin for error is small, and timely action is essential. To shape a successful economic future for Colorado, fiscal policy decisions will need to be made wisely, based on sound information, and capable of adjustment when conditions change, as they surely will.

In creating what we hope will be a roadmap for decision-making and governance, the Panel does not intend to tell elected representatives and citizens *what* decisions to make in the future. Rather, our focus is on *how* to build public trust and improve the processes of decision-making in a way that will enhance the economic future and quality of life in Colorado.

SUMMARY OF FINDINGS

Any study of the state must begin by recognizing that Colorado is a place of great promise, with much to celebrate. Overall, Colorado is a high-income state with relatively low tax levels and an educated citizenry. It is a state with a diverse and growing population. It is a place of breathtaking physical beauty. All that, and more, is the Colorado of today.

But what about the Colorado of tomorrow? After a year of study, the Colorado Economic Futures Panel has concluded that the promise of Colorado is in peril. Without fundamental changes to the processes of fiscal policymaking and governance, the Panel believes that the Colorado of tomorrow may be at much greater risk than is apparent on the surface today.

The threat comes not only from the immediate fiscal crises that make headlines and occupy the attention of public officials and the media. Rather, and more fundamentally, the risk comes from underlying procedural, systemic

and other factors that shape the way in which problems are understood and decisions are made. These are the drivers that determine the degree to which Colorado governments and institutions are able to meet the needs of citizens and respond to the inevitable changes that lie in our future. These are the forces that will shape the economic future of Colorado.

Over the course of its study, the Panel concluded that to create a sound economic future, and thus a favorable quality of life, four conditions are desirable. These are, in effect, principles for the progress of Colorado. They are:

- 1 An informed, flexible process for making public decisions;
- 2 A strong and effective system of representative government;
- 3 A renewal of public trust through increased government accountability;
- 4 A competitive fiscal policy based on information, shaped by an investment perspective and grounded in equity.

In relation to these principles, the Panel has identified several major impediments to effective public decision making and developed a number of recommendations. The procedural roadblocks to developing sound fiscal and economic policy in Colorado include: *A tangled, haphazard fiscal policy process; the weakening of representative government; and an erosion of public trust.*

UNTANGLING FISCAL POLICY

A most serious issue facing Colorado is its tangled fiscal policy process. Central to the problem is the practice of making fiscal policy by public referendum through amendments to the Colorado Constitution. It is a haphazard approach where citizens are asked to make major fiscal decisions in isolation, based on one-sided "facts" provided by proponents and opponents. Making fiscal policy by referendum is a process where over-simplification

Making fiscal policy by referendum is a process where over-simplification and under-analysis are the established norms; where conflicting policies and unintended consequences are the logical outcomes.

and under-analysis are the established norms; where conflicting policies and unintended consequences are the logical outcomes.

In Colorado, creating fiscal policy is a process that can be initiated by the legislature, an in-state or out-of-state interest group or anyone else. The signature threshold to place a measure on the ballot in Colorado is lower than other states, and proponents can hire people to obtain signatures. There is no requirement to inform voters in a thoughtful and balanced way about the long-term implications of the proposal. Proponents and opponents need only present their own points of view.

While newspapers and other media may try to provide analysis, their work is often overwhelmed by 30-second sound bites, last minute barrages of pre-recorded telephone calls to voters and mountains of electioneering mail. The marketing system for public policymaking by constitutional amendment is biased against providing voters with anything resembling complete disclosure.

Once a policy has been established by this idiosyncratic process it is, effectively, cast in concrete. No one, not even duly elected officials, can change the policy except by going through another cumbersome election process, which can take years, as well as millions of dollars, to complete. The policy can't be changed—even if it doesn't work as intended. It can't be adjusted to recognize unintended consequences or the existence of other, conflicting policies. It can't be amended to meet new circumstances such as a constantly changing economic landscape or competition from other states or nations.

The result is the worst of all worlds—a random decision-making process that denies citizens meaningful information and then produces results that are extremely difficult to change. In a highly competitive world, this process of decision-roulette is unlikely to result in a winning number for Colorado

citizens or businesses. For these reasons the Panel recommends that *future fiscal policies not be placed in the Colorado Constitution* but be enacted statutorily where they can more easily be adjusted as changing conditions require.

The decision-making straitjacket created by placing fiscal policies in the constitution is so dangerous that the Panel further recommends that existing *fiscal limitations and mandates be removed from the constitution*, as difficult as that process may be, and reestablished by statute. This might be done through a process of sunsetting existing constitutional provisions and converting them to statutes, either by constitutional convention or other appropriate means.

The Panel believes that the Colorado Constitution should contain only the fundamental rules of governance and, like the U.S. Constitution, should not be easy to change. Therefore the CEFP recommends *more rigorous standards to amend the Colorado Constitution*.

Although the Panel believes that the Colorado Constitution should not be easy to amend, and is not the proper vehicle for fiscal policy, the Panel does believe that the right of citizen initiative and referendum should be protected. The issue here is, of course, one of balance. Citizens must have the right to initiate action when necessary, but the process should not be so easy as to encourage inappropriate use.

STRENGTHENING REPRESENTATIVE GOVERNMENT

The practice of establishing fiscal policy by constitutional amendment has weakened representative government in Colorado by taking the most important fiscal decisions out of the hands of elected officials. We have put the state on autopilot, locked into a long-term course based on ideas of