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SUPREME COURT STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2017-2018 #126 ("Payday Loans") **Petitioner:** Bill Fritts, v. **Respondents:** Corrine Fowler and Reverend Dr. Annie M. Rice-Jones, and **Title Board:** Suzanne Staiert, Glen Roper, and Julie Pelegrin	▲ COURT USE ONLY ▲
Attorneys for Petitioner Bill Fritts Jason R. Dunn, #33011 Sarah M. Mercer, #39367 BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 Seventeenth Street, Suite 2200 Denver, CO 80202-4432 Tel: 303.223.1100; Fax: 303.223.1111 jdunn@bhfs.com; smercer@bhfs.com	Case No.: 18SA60

PETITIONER'S OPENING BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 4,155 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

For each issue raised by the appellant, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

In response to each issue raised, the appellee must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

/s/ Jason R. Dunn

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Petitioner Bill Fritts, registered elector of the State of Colorado, through his undersigned counsel, submits his Opening Brief in this original proceeding challenging the actions of the Title Board on Proposed Initiative 2017-2018 #126 (unofficially captioned "Payday Loans").

ISSUES PRESENTED FOR REVIEW BY PETITIONER

1. Whether the Title Board has jurisdiction on rehearing to return the fiscal impact statement and abstract to Legislative Council when they fail to meet statutory requirements.

2. Whether the abstract approved by the Title Board fails to comply with the requirements of section 1-40-105.5(3) and is otherwise misleading and prejudicial.

3. Whether the title is misleading and includes an impermissible catchphrase.

STATEMENT OF THE CASE

Petitioner brings this original proceeding pursuant to section 1-40-107(2) as an appeal from the Title Board's decision to deny Petitioner's

Motion for Rehearing and set title for Proposed Initiative 2017-2018 #126.

Proposed Initiative #126 seeks at least three changes to Colorado's Deferred Deposit Loan Act (the "Act").[1] First, the Proposed Initiative reduces the allowable annual percentage rate on short-term installment loans made pursuant to the Act from 45% to 36% per annum.[2] Second, the Proposed Initiative eliminates all other allowable finance charges on such loans.[3] Last, the Proposed Initiatives expands the type of conduct that constitutes unfair or deceptive practices under the Act.[4]

Proponents filed an original draft of the measure with the Legislative Council on January 23, 2018. A required review and comment hearing was held on February 6, 2018. Following the hearing, the Proponents filed an amended draft and a final draft of the Proposed Initiative with the Secretary of State on February 9, 2018.

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[1] C.R.S. § 5-3.1-101 *et seq.*

[2] Initiative § 2 (new loans), § 3 (renewed loans).

[3] *Id.* § 2 (eliminating origination and maintenance fees).

[4] *Id.* § 4.

On February 19, 2018, Legislative Council prepared and posted to its website its Initial Fiscal Impact Statement for Proposed Initiative #126, including a summary abstract that not only virtually mirrors the entirety of the impact statement but is a mere four sentences long:

> **State and Local Government Impact**
>
> The measure is not expected to impact state or local government revenue or expenditures. Under current law, the Department of Law already licenses payday lenders, conducts compliance examinations of their loans, and establishes rules for their operations.
>
> **Economic Impact**
>
> The measure will result in smaller interest payments paid by payday borrowers and received by payday lenders. To the degree borrowers spend marginally more money than lenders on goods and services, the measure may increase spending in the economy.

Ex. 1, Initial Fiscal Impact Statement.

The Title Board considered Proposed Initiative #126 on February 21, 2018, and determined that it had jurisdiction to set title. Petitioner subsequently filed a Motion for Rehearing (the "Motion") on February 28, 2018. In the Motion, Petitioner argued in part that the abstract as initially drafted failed to meet the statutory requirements because it fails to provide voters with any meaningful information about the

measure's economic impacts. Petitioner also argued that the title contains the impermissible catchphrases "payday lenders" and "payday loans."

At the rehearing on March 7, 2018, the Title Board denied Petitioner's argument regarding the abstract and, after substantial debate and a 2-1 vote, decided against correcting the title to remove the catchphrases. Petitioner subsequently filed a timely petition for review in this Court on March 14, 2018.

SUMMARY OF THE ARGUMENT

The decision of the Title Board was erroneous for three reasons. First, the fiscal impact statement and abstract fail to comply with the requirement of both section 1-40-105.5(2), requiring a meaningful fiscal analysis akin to fiscal notes provided for legislative proposals, and section 1-40-105.5(3), which requires a summary (the "abstract") of the fiscal impact statement to include, at a minimum, "a statement of the measure's economic benefits for all Coloradoans." Relatedly, the Title Board erroneously decided that despite its misgivings about whether the fiscal impact statement and abstract meet the statutory

requirements, it could not return them to Legislative Counsel for further analysis.

Second, the abstract is "misleading and prejudicial" under section 1-40-107(1)(a)(II)(B) because it uses the same impermissible "payday" catchphrases as the title, referring to borrowers and lenders pejoratively as "payday borrowers" and "payday lenders" and despite the fact that the loans are in no way a payday loan product. The Title Board had a somewhat lengthy debate about whether these phrases were impermissible catchphrases in the title, but after two of the members concluded that they could not come up with an acceptable alternative, they voted 2-1 to keep the "payday" terms.

Lastly, but perhaps most egregiously and in clear violation of statute and caselaw of this Court, for the same reasons as discussed above relative to the abstract, the title's inclusion of the catchphrases "payday loans" and "payday lenders" is impermissible because those terms not only will mislead voters about the nature of the loan products at issue but will almost surely create unfair bias in favor of the initiative.

Accordingly, the actions of the Title Board in denying the Motion should be reversed.

STANDARD OF REVIEW

When reviewing a challenge to a Title Board's decisions, this Court "employ[s] all legitimate presumptions in favor of the propriety of the Title Board's action." *Matter of Title, Ballot Title, and Submission Clause for 2013-2014 #89*, 328 P.3d 172, 176 (Colo. 2014); *In the Matter of the Title, Ballot Title and Submission Clause for 2017-2018 #4*, 2017 CO 57, ¶ 20.

The first issue raised here on appeal – whether the Title Board has jurisdiction on rehearing to return the fiscal impact statement and abstract to Legislative Council when both fail to meet legal requirements – has been raised by other recent appeals but has yet to be addressed by this Court. *See In the Matter of the Title, Ballot Title and Submission Clause for 2017-2018 #97,* (Case No. 18SA31).

ARGUMENT

I. THE TITLE BOARD HAS JURISDICTION TO RETURN THE FISCAL IMPACT STATEMENT AND ABSTRACT TO LEGISLATIVE COUNCIL WHEN THE THEY FAIL TO MEET LEGAL REQUIREMENTS.

During the rehearing on Proposed Initiative #126, Petitioner argued that the fiscal impact statement and abstract failed to meet even the most basic requirements of section 1-40-105.5.[5] The Title Board shared those concerns, indicating specifically that they "share [the] frustration" because they "don't know how to uphold [the statute] when [they] get nothing" of substance in the fiscal impact statement or abstract.[6] But despite those misgivings, the Title Board ultimately refused Petitioner's request to send the fiscal impact statement and abstract back to Legislative Council for an analysis that would meet the statutory requirements – and that would provide voters with at least some reasonable description of the measure's impacts – concluding,

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[5] Rehearing on Proposed Initiative #126 Before the Title Setting Board (Colo. Mar. 7, 2018) (statements of Jason Dunn) at 30:18, *available at* https://www.sos.state.co.us/pubs/info_center/audioArchives.html.

[6] *Id.* at 48:50 (statements of Suzanne Staiert).

instead, that it lacked the statutory authority to do so. That question of authority is an issue now raised here, and is also one currently pending before this Court in at least one other case.[7]

Despite the Title Board's erroneous conclusion to the contrary, the Board does in fact have the authority to send a fiscal impact statement back to Legislative Council if it believes the statement (and, a fortiori, the included abstract) fails to meet the statutory requirements of section 1-40-105.5. While there is admittedly no express statutory authority to do so, it is implicit in the language, purpose, and application of section 1-40-107.

Under that statute, any registered elector may challenge a measure's abstract at a rehearing when: (a) an estimate included in the abstract (which is taken directly from the fiscal impact statement) is incorrect; (b) the abstract is misleading or prejudicial; or (c) the abstract fails to comply with the requirements set forth in section 1-40-105.5.

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[7] *See In the Matter of the Title, Ballot Title and Submission Clause 2017-2018 #97*, (Case No. 18SA31).

In this case, members of the Title Board expressly stated that they found the fiscal impact statement inadequate[8] but were reluctant to modify the abstract because, in their view, they did not have an economist on staff or possess the technical ability to conduct an ad hoc economic analysis during a rehearing.[9] Seeing no alternative, and surrendering to the process they believed they were stuck with, they approved the abstract as written.

The Title Board's authority to return the fiscal impact statement to Legislative Council stems from the Title Board's authority to review the abstract for inaccuracies under section 1-40-107; since the abstract merely summarizes the fiscal impact statement, the only way it can be inaccurate is if the underlying fiscal impact statement itself is also inaccurate. Thus, a challenge to the abstract's accuracy under section 1-40-107(1)(a)(II)(A) or (C) is in fact an authorized challenge to the

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[8] Rehearing on Proposed Initiative #126 Before the Ballot Title Board (Colo. Mar. 7, 2018) at 48:50 (statements of Suzanne Staiert) ("I share your frustration" because "I don't know how to uphold the provisions when we get nothing.").

[9] *Id*. at 1:05:13 (statements of Julie Pelegrin) ("I don't feel at all qualified to substitute my judgment for that of the fiscal analyst.").

fiscal impact statement itself. Here, a representative of the Legislative Council staff testified at the rehearing that not only was the proposal likely to impact lenders of these types of loans[10] – testimony which the Title Board could have used to modify the abstract – but also that Legislative Council could have, *but did not*, seek information from the loan industry about those impacts.[11] This unequivocally shows that Legislative Council failed to follow its statutory duty and that its analysis was cursory at best. Thus, in such situations where the Title Board lacks sufficient economic information to evaluate the abstract, its only option to ensure that the abstract complies with section 1-40-

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[10] *Id.* at 57:03 (statements of Legislative Council Staff) ("We did not do a full blown economic analysis.").

[11] *Id.* at 1:07:19 (statements of Legislative Council Staff) (describing that Legislative Council disregarded the industry report provided but did not do its own analysis).

105.5(3) is to return the measure to Legislative Council with instructions for additional analysis.[12]

Moreover, this is especially true when, as here, Petitioner did not have alternative testimony available due to the time constraints associated with the fast-moving initiative process that allows outside parties a mere seven days to present economic data to Legislative Council for consideration. [13] As such, the Title Board did not have the benefit of evidence or testimony to modify the abstract itself, and admitted that it lacked the technical expertise to modify the abstract on its own. Ultimately, the Title Board's unwillingness to modify the

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[12] At the rehearing, Petitioner argued in the alternative that the Title Board could simply hold the measure over until the next meeting and ask Legislative Council to conduct further analysis. The Title Board concluded that it did not have the authority to do so. *See, e.g., id.* at 1:04:40 (statements of Julie Pelegrin) ("I don't see any authority [for that]."). Should this Court conclude that the Title Board does not have the authority to formally send the fiscal impact statement back to Legislative Council, Petitioner requests that the Court clarify that nothing prevents the Title Board from simply holding the measure over to a future meeting while requesting that Legislative Council conduct further analysis at its discretion.

[13] *See* Legislative Council deadlines, *available at* https://leg.colorado.gov/sites/default/files/2018_instructions-fiscal-impact-estimate-ballot.pdf.

abstract and its hesitation to return it to Legislative Council resulted in the Title Board's knowing approval of a non-compliant abstract – one which can now only be remedied by appealing to this Court.[14]

Therefore, the only reasonable interpretation of the relevant statutes is that the Title Board has the authority to return the fiscal impact statement and abstract to Legislative Council for reconsideration. To find otherwise will deny the public the benefit of a robust and accurate abstract on which to properly assess a measure's fiscal impacts. Accordingly, the Petitioner asks the Court to hold that the Title Board has the authority to return initiatives to the Legislative Counsel and it was error for the Board to conclude otherwise.

[14] The Court, of course, may modify the fiscal abstract itself or remand the fiscal abstract to the Title Board with instructions to, in turn, return the fiscal abstract to Legislative Council for additional analysis.

II. THE ABSTRACT LACKS ANY USEFUL INFORMATION AND INCLUDES MISLEADING AND PREJUDICIAL CATCHPHRASES.

A. The abstract fails to provide an economic impact estimate or a statement of "the benefits of the measure to all Coloradans".

The requirement for a fiscal impact statement and abstract was the result of state legislation in 2015. The purpose of House Bill 15-1057 was to give voters information about the fiscal impact of a measure *earlier in the process* – prior to signing a petition – rather than having voters wait until the measure was certified for the ballot and the so-called Blue Book published just prior to the election.[15] To accomplish this, the legislature required that the signature petition form itself

[15] At House Bill 15-1057's March 25, 2015 hearing in the House Committee on State Affairs, Representatives Court and Delgrosso, the primary sponsors of the bill, unequivocally clarified what was to be included in an initial fiscal impact statement Representative Court explained that the bill's purpose was to put an initiative's fiscal impact, the information that goes in the Blue Book, out earlier before signatures were collected, stating this was "a matter of transparency and public information." *See* Hearing on H.B.15-1057 Before the H. Comm. on State Affairs, 1st Regular Sess., 70th Gen. Assembly (Colo. Mar. 25, 2015) (statements of Representatives Court and Delgrosso) at 51:44, *available at* http://coloradoga.granicus.com/MediaPlayer.php?view_id=23&clip_id=7764&meta_id=145903.

include a meaningful summary of the measure's fiscal and economic impacts, presumably to include changes to tax revenue, jobs, etc. Indeed, during the legislative process legislators amended the bill to require a full abstract be included in the petition rather than a two-sentence summary of the abstract, as was in the original version of the bill.[16]

Notwithstanding this clear legislative intent, the entirety of Legislative Council's economic impact analysis for Proposed Initiative #126 – a measure that will likely extinguish Colorado's short-term installment loan industry – is a mere *two* sentences:

> **Economic Impact**
>
> The measure will result in smaller interest payments paid by payday borrowers and received by payday lenders. To the degree borrowers spend marginally more money than

[16] Representative Delgrosso, in response to a question posed at that hearing as to whether the amendment would require the two-sentence summary or the full abstract on the petition's first page, explained that the first page of the petition would still include the full abstract to provide voters with more information on the measure's fiscal impacts. *Id.* at 58:40. The representative's response to another question, this time from a person testifying in opposition to the bill, confirmed that the abstract was meant to address both state and local economic impacts, just like fiscal notes created during the legislative process. *Id.* at 1:36:53.

> lenders on goods and services, the measure may increase spending in the economy.

Ex. 1.

Given such a minimal "analysis", there is little wonder that the abstract – i.e., the summary of that analysis – merely repeats the impact statement verbatim. Such a failure to comply with the statute warrants reversal of the Title Board with instruction to return the fiscal impact statement and abstract for redrafting.

Moreover, section 1-40-105.5(3)(b) requires the abstract to include "a statement of the measure's economic benefits for all Coloradans." But instead of providing a neutral assessment of the financial consequences to "all Coloradans" – i.e., impacts on jobs, real estate rental income from store closures, etc. – the abstract makes an unsubstantiated, blanket prediction that "the measure may increase spending in the economy." This vague generality fails to express the undeniable impact to the lenders of these loans and to their employees. Indeed, according to the Pew Charitable Trust, the 2010 legislative changes resulted in the shuttering over 200 stores, representing over

50% of the market.[17] Further, concluding without support (in the fiscal impact statement or otherwise) that smaller interest payments may result in increased spending is nothing more than a pure speculation, and mitigates the likely negative economic effect that will result from the loss of jobs and businesses. Indeed, the exact opposite is more likely to be true: if these loan products are no longer available, consumers who rely on them will have less money to spend in the economy.

Accordingly, at least some analysis is warranted regarding the financial consequences to lenders who offer borrowers these types of loans – especially job loss figures. Legislative Council could have, and still can, estimate such impacts by looking to annual industry data collected by the Department of Law,[18] as well as other available studies.[19] The data required to make these calculations is available. All Legislative Council Staff need do is find and utilize it to create its

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[17] Ex. 2, Pew Charitable Trusts, "Trial, Error, and Success in Colorado's Payday Lending Reforms" (Dec. 2014).

[18] Ex. 3, Department of Law, "2016 Deferred Deposit/Payday Lending Annual Report."

[19] Ex. 4, Colorado Payday Advance Industry Report, "Economic Impact Study" (Jan. 2009).

estimates, whether that data originates from the Department of Law, or elsewhere. But the obligation to do so is theirs, and while proponents and opponents are free to submit information, the responsibility to gather a meaningful quantum of relevant data and to conduct a reasonable analysis remains with Legislative Council. It simply declined to do so here.

Therefore, the Title Board's decision to approve the measure's abstract without change was in error. This simply was not a case where it was difficult or impossible to provide quantitative estimates. *C.f., In the Matter of the Title, Ballot Title and Submission Clause for 2017–2018 #4*, 2017 CO 57, ¶¶ 23–24 (affirming the Title Board's approval of an abstract where "legislative council testified that it is simply not possible to provide quantitative estimates"). Instead, this appeal provides this Court with the opportunity to clarify that where quantitative estimates are not only possible but also readily available, Legislative Council's failure to provide them and the Title Board's failure to require them is reversible error.

B. The abstract contains impermissible catchphrases that are misleading and prejudicial.

Section 1-40-107(1)(a)(II)(B) allows any objector to challenge an abstract on the grounds that it is misleading or prejudicial. While this Court has not yet opined on what language will qualify as such, it seems clear that language constituting an impermissible catchphrase for purposes of reviewing the adopted ballot title must also be misleading and prejudicial in the abstract. As detailed more fully in Section III below discussing the title, the use of "payday lenders" and "payday borrowers" in the abstract is both misleading and prejudicial. It is simply not an accurate description of the six-month installment loan product offered under the Deferred Deposit Loan Act after that statute, since it was heavily amended in 2010, and is therefore undeniably misleading. A more accurate term would have been, for example, "short-term installment loan". Moreover, outside the small number of people that use these loan products or work in the industry, the term "payday loan" or similar terms likely carries negative

connotations with the average voter, and thus is prejudicial under section 1-40-107(1)(a)(II)(B).

As such, if the measure is not otherwise returned to the Title Board for reasons discussed above, it should be returned with instruction to amend the abstract to eliminate the use of the "payday" terms.

III. THE TITLE INCLUDES IMPERMISSIBLE "PAYDAY" CATCHPHRASES.

The title set by the Title Board for Proposed Initiative #126 reads:

> An amendment to the Colorado Revised Statues concerning limitations on payday lenders, and, in connection therewith, reducing allowable charges on payday loans to an annual percentage rate of no more than thirty-six percent.

This Court has made clear that phrases in a ballot title that "work in favor of a proposal without contributing to voter understanding" must be avoided. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000, No. 258(A)*, 4 P.3d 1094, 1100 (Colo. 2000). The words chosen by the Title Board "should not prejudice electors to

vote for or against the proposed initiative merely by virtue of those words' appeal to emotion." *Id*.

Here, the Title Board was split on the use of the "payday" catchphrases in the title, voting 2-1 not to alter the title language at the rehearing. Perhaps tellingly, Proponents argued vigorously to keep "payday lenders" and "payday loans" in the title on the grounds that the terms are common parlance and are used by the industry itself, even going to the time and expense of creating and submitting photographs from around Colorado of business signage using such language. And while it may be true that businesses in the industry advertise using that language, the reality is that not only are the phrases arguably pejoratives to those voters who don't either work in the industry or are its customers, but the words simply do not even accurately describe the loan product, which has not been a "payday loan" since major revisions to the Deferred Deposit Loan Act in 2010.[20]

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[20] Even the federal Consumer Financial Protection Bureau distinguishes Colorado's short-term installment loan regime from the payday lending scheme Proponents want voters to believe it is: "At least 11 States and jurisdictions that previously had authorized payday loans

With regard to the latter point, the "payday" component of these types of loans was outlawed completely in Colorado as part of a comprehensive regulatory overhaul of the industry in 2010. Under that legislation, the allowable loan product was changed from the typical payday loan whereby the lender provides a very short-term loan (i.e., two weeks) that is payable after the borrower's next payday (typically given in exchange for a post-dated check or bank withdrawal authorization) to a more traditional short-term installment loan whereby the loan term may be *no shorter than* six months.[21] More specifically, the legislation struck the provision mandating that "[t]he due date [of the loan] shall be set on or after the consumer's next payday or the date the consumer is scheduled to receive benefits, a

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have taken steps to restrict or eliminate payday lending. . . . In 2010, Colorado's legislature banned short-term single payment balloon loans in favor of longer-term, six-month loans." Bureau of Consumer Financial Protection, "Payday, Vehicle Title, and Certain High-Cost Installment Loans," 12 CFR Part 104, pp. 45-46, *available at* http://files.consumerfinance.gov/f/documents/201710_cfpb_final-rule_payday-loans-rule.pdf.

[21] Ex. 5, House Bill 10-1351.

commission, or any other payment."[22] That language was replaced with a requirement that "[t]he minimum loan term shall be six months from the loan transaction date."[23] Thus, to use the term "payday" to describe these traditional short-term installment loans that have existed in Colorado under the Act for the better part of a decade is wholly inaccurate.[24] They now operate more like a traditional car loan or mortgage than the "payday loans" that existed in Colorado before 2010.

Further, such language improperly works in favor of the Proposed Initiative without contributing to voter understanding. This is so because of the negative connotation associated with "payday lending" that would occur without consideration for the specific type of short-term installment lending that now occurs under Colorado's law as a

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[22] *Id.* §3.

[23] *Id.*

[24] Ironically, while the Act did not contain any use of the word "payday" prior to 2010 when it was arguably a "payday loan" statute, the 2010 changes making it no longer such a scheme added in (perhaps for obvious reasons) several references to "payday loans". Such references are simply gratuitous non sequiturs, and should not serve as a basis for language in the ballot title or justification as to why they are not catchphrases.

direct result of the reforms undertaken by the General Assembly in 2010; reforms that are now championed by consumer advocates as preserving access to small-dollar loans while reducing harm to consumers.[25] Although the lenders of these short-term installment loans might refer to themselves and these types of loans as "payday" – it is one thing to use that term in marketing to potential customers who use the products and quite another to use the term when describing the Proposed Initiative to voters who may have a negative view of the industry based on general misperceptions.

Accordingly, the use of the "payday" terms in the title serves no other purpose than to act an inaccurate catchphrase in order to obtain voter support. As such, the Court should return the ballot title to the Title Board with instruction to use alternative language such as short-term installment loan.

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[25] *See* Ex. 2.

CONCLUSION

Petitioner respectfully asks this Court to reverse the Title Board's denial of the motion for rehearing and rule that:

1. the Title Board has jurisdiction on rehearing to return the abstract to Legislative Council when the abstract fails to meet legal requirements;
2. the abstract fails to meet the requirements of section 1-40-105.5 and is otherwise misleading and prejudicial, and
3. the ballot title includes impermissible catchphrases.

Respectfully submitted this 3rd day of April 2018.

BROWNSTEIN HYATT FARBER SCHRECK LLP

/s/ Jason R. Dunn
Jason R. Dunn
Sarah M. Clark

Attorneys for Petitioner Bill Fritts

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2018, I electronically filed a true and correct copy of the foregoing **PETITIONER'S OPENING BRIEF** via the Colorado Courts E-Filing System which will send notification of such filing and service on all listed below:

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16647500

Exhibit 1

Colorado Legislative Council Staff

Initiative # 126

INITIAL FISCAL IMPACT STATEMENT

Date: February 19, 2018 **Fiscal Analyst:** Todd Herreid (303-866-3521)

LCS TITLE: PAYDAY LOANS

Fiscal Impact Summary	FY 2018-19	FY 2020-21	FY 2021-22
State Revenue			
State Expenditures			

Note: This *initial* fiscal impact estimate has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff may revise this estimate for the Blue Book Voter Guide if new information becomes available.

Summary of Measure

Under current law, a lender may impose a finance charge for each deferred deposit loan (or payday loan) up to 20 percent of the first $300 lent plus 7.5 percent of any amount lent in excess of $300. A lender may also charge a monthly maintenance fee for each outstanding loan, not to exceed $7.50 per $100 loaned, up to a maximum of $30 per month and impose an additional annual interest charge of 45 percent. This measure limits the finance charge to a maximum annual percentage rate of 36 percent and eliminates all other financing charges and fees associated with payday lending. The measure also broadens language that constitutes unfair or deceptive trade practices for payday lending activity.

Background

Deferred deposit or payday loans are small, unsecured loans that must be repaid quickly. Payday loans in Colorado are limited by law to $500 or less, and are due to the lender with a minimum repayment term of six months. In 2016, about 207,000 individuals in Colorado obtained 414,284 payday loans from the state's 180 licensed lenders. Over $166 million in loans were made during 2016. The average payday loan was about $392 in 2016, with a 129 percent average annual percentage rate.

State and Local Government Impact

Limiting the maximum annual percentage rate on payday loans to 36 percent and eliminating the additional financing charges and maintenance fees is expected to have no state or local fiscal impact. Currently, the Department of Law licenses payday lenders, conducts compliance examinations of their loans, and establishes rules for payday lenders. The department also investigates and litigates cases involving payday lenders under current law. If the measure is approved by voters, examinations will be modified to reflect the new rates established by statute and new rules will be promulgated by the department. However, existing resources are sufficient to continue to litigate these types of cases in the future and the department already receives money for rulemaking. Therefore, no further state or local government expenditures are required.

Economic Impact

The measure will result in smaller financing charges paid by payday borrowers and received by payday lenders. To the degree borrowers spend marginally more money on goods and services than lenders, the measure may result in additional spending in the economy.

Effective Date

The measure takes effect on February 1, 2019 if approved by voters at the 2018 general election.

Departments Contacted

Law

Abstract of Initiative 126: PAYDAY LOANS

This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of February, 2018, identifies the following impacts:

The abstract includes estimates of the fiscal impact of the initiative. If this initiative is to be placed on the ballot, Legislative Council Staff will prepare new estimates as part of a fiscal impact statement, which includes an abstract of that information. All fiscal impact statements are available at www.ColoradoBlueBook.com and the abstract will be included in the ballot information booklet that is prepared for the initiative.

State and Local Government Impact

The measure is not expected to impact state or local government revenue or expenditures. Under current law, the Department of Law already licenses payday lenders, conducts compliance examinations of their loans, and establishes rules for their operation.

Economic Impact

The measure will result in smaller interest payments paid by payday borrowers and received by payday lenders. To the degree borrowers spend marginally more money than lenders on goods and services, the measure may increase spending in the economy.

Exhibit 2

A brief from THE PEW CHARITABLE TRUSTS | Dec 2014

Trial, Error, and Success in Colorado's Payday Lending Reforms

Overview

Payday loans typically carry annual percentage rates of 300 to 500 percent and are due in a lump sum, or balloon payment, on the borrower's next payday, usually about two weeks later. These loans are advertised as quick fixes for unexpected expenses, but repaying them consumes more than a third of an average borrower's paycheck, leading to repeated borrowing for an average of five months of the year. Some states have recognized that these loans are harmful and have enacted laws to protect consumers, with varying degrees of success.

In Colorado, a 2007 law that attempted to reform the payday lending industry failed to achieve policymakers' goals of reducing harm to payday borrowers while preserving access to small-dollar credit. The law preserved lump-sum lending, allowing lenders to make four consecutive balloon-payment loans but then requiring them to offer borrowers an installment plan. This approach inadvertently preserved a business model in which lenders' and borrowers' interests were not aligned: Profitability still relied on income from loans that greatly exceeded most borrowers' ability to repay without re-borrowing. As a result, according to regulators, many lenders moved to protect their profits by deterring or preventing borrowers from using an installment plan. Short-term, balloon-payment loans thus continued to dominate the market, and the law failed to protect consumers as intended, with outcomes for borrowers changing only slightly.

Colorado lawmakers learned from that experience and enacted new legislation in 2010 requiring all loans to be repayable over time at lower rates.[1] Data released by the Colorado Attorney General's Office in December 2014 indicate that this law led to more affordable loan payments, fewer defaults, and lower prices for payday loans; increased efficiency at payday lending stores; and ensured that credit remained widely available.[2] (See Table 1.)

As the federal Consumer Financial Protection Bureau and policymakers in other states take action in response to the harm caused by payday lending, they can learn the following from Colorado's experience:

1. Allowing lenders to make several lump-sum loans before being required to offer affordable installment payments did not align their profitability with borrowers' ability to repay and therefore resulted in minimal changes to the market.
2. Requiring affordable installments for all loans successfully aligned lenders' profitability with borrowers' ability to repay and led to a viable business model for lenders while delivering better outcomes for consumers, with virtually no reduction in access to credit.

Table 1

Payday Lending in Colorado Did Not Change Substantially Until Lump-Sum Loans Were Eliminated in 2010

State payday lending market, pre- and post-reform, 2006, 2009, and 2013

	Before 2007 reform	After 2007 reform	After 2010 reform
	Lump-sum loans only	4 lump-sum loans before repayment plan	Installment loans only
Borrowers' total spending on loan fees	$105.7 million	$95.1 million	$54.8 million
Share of loans taken out the same day as a previous loan was repaid	64.5%	61.2%	36.7%
Share of biweekly income consumed per loan payment	34%	38%	4%
Market efficiency (borrowers per store)	438	554	1,102

Notes: "Before 2007 reform" refers to 2006 data, "after 2007 reform" refers to 2009 data, and "after 2010 reform" refers to 2013 data. The 2007 law structure remained in place until enactment of the 2010 law, which replaced the lump-sum loan with one that is repayable over at least six months.

Sources: Colorado Office of the Attorney General, 2007, 2010, and 2014; Administrator of the Colorado Uniform Consumer Credit Code, 2007, 2010, and 2014

Conventional payday lending relies on repeated borrowing

The typical payday loan is a lump-sum, or balloon-payment, loan that is due in full on the borrower's next payday. Because storefront payday lenders have high fixed costs and relatively few customers at each location, they cannot make a profit unless customers renew or re-borrow repeatedly. For consumers, the key driver of repeat borrowing is financial distress caused by unaffordable balloon payments (i.e., balances that must be paid in full on the due date, usually triggering borrowers to take out another loan). National data show that 67 percent of borrowers use seven or more loans per year, accounting for 90 percent of lenders' revenue, and most of those loans occur in rapid succession as customers borrow to help cover shortfalls created by previous balloon payments.[3] State data show similar outcomes.[4] In other words, lenders cannot make balloon-payment loans profitably if borrowers are limited to low-frequency use.

> "The interests of the business and the interests of the individual were moving in opposite directions [under the 2007 law]. We wanted one that bent those curves back a little bit by saying the businesses do better when the person actually has a route out of debt as opposed to a route deeper in debt."
>
> Mark Ferrandino, *speaker of the Colorado House of Representatives*

2007 reform fails

Before 2007, Colorado borrowers faced the same problems with payday loans that consumers in 35 other states are experiencing today: A balloon payment, typically due two weeks after the loan was made, consumed more than one-third of an average borrower's paycheck. As a result, people could not afford basic expenses without borrowing again, so they renewed or quickly re-borrowed the loans, remaining in debt for an average of more than five months of the year and spending more on fees than they originally received in credit.

In 2007, Colorado lawmakers sought to help borrowers by requiring lenders to offer a no-cost installment plan for repayment to anyone who took out at least a fourth consecutive balloon-payment loan,[5] with "consecutive" defined as within five calendar days of repaying a previous loan. Lenders responded by establishing practices to prevent customers from using installment plans:

> "The payment plan law resulted in significant changes to the policies and procedures of most payday lenders in Colorado. The majority of payday lenders have implemented new operating policies. These include 'cooling-off' or 'waiting' periods after a third consecutive payday loan or after every payday loan. These policies restrict a consumer from reaching the required four consecutive loans trigger before a payment plan must be offered."[6]

At least half of all lenders employed this technique or other practices to discourage use of installment plans or prevent borrowers from becoming eligible for them.[7] As a result, only 4.6 percent of loans were converted to installment plans under the 2007 law.[8] Borrowers used almost as many loans after the reform as they did before and spent nearly as much on fees.[9] The number of loans taken out the same day that a previous loan was repaid also declined only slightly, indicating consumers' continued inability to both repay and cover expenses without borrowing again.[10] (See Table 2.)

In 2007, Colorado lawmakers attempted to retain the lump-sum loan but provide an installment plan as an "off-ramp" for those who could not afford the balloon payments and used four or more loans. The law's crucial flaw was not recognizing that the business model of balloon-payment loans relies on repeated borrowing, with heavy usage the rule and not the exception.

The legislation did not align lenders' success with borrowers' ability to repay, and this dissonance explains its failure. By attempting to preserve the balloon-payment loan while requiring lenders to provide an option that would offer a pathway out of debt, Colorado's 2007 law put payday stores' revenue under immense pressure, which in turn led to widespread circumvention by lenders. If borrowers used the installment plans, lenders' revenue would plummet and the business model would fail. If lenders prevented use of the installment plans, borrowers would struggle to retire their debt.

Table 2

Requiring Installment Plans Upon a 4th Lump-Sum Loan Had a Limited Impact on Borrowing

Outcomes for payday loans before and after the 2007 law

	Before 2007 reform	After 2007 reform	Change
	Lump-sum loans only	4 lump-sum loans before repayment plan	
Total annual number of loans	1,801,134	1,565,481	-13%
Total spending on loans	$105.7 million	$95.1 million	-10%
Payday lending stores	661	505	-24%
Share of loans that were renewals or same-day loans	64.5%	61.2%	-5%
Loans per borrower	9.38	7.84	-16%

Notes: The "cooling-off" periods introduced by lenders as a result of the 2007 reform may have led borrowers to obtain loans from other lenders while their initial lender would not serve them. Colorado did not have a centralized database that recorded borrowers' usage across lenders, as some states do. So to the extent that consumers used multiple lenders, they would appear as multiple borrowers in the data. For example, a person who used 12 loans per year from one lender before the law change might now alternate between two lenders, taking out three loans in a row from each to avoid the new cooling-off periods and still use a total of 12 loans. This person would look like two borrowers using six loans each, instead of one using 12. To the extent this happened, the apparent decline in loans per borrower may be overstated. The reform took effect on July 1, 2007. Data from before the reform are results from 2006, and data from after the reform are from 2009. In inflation-adjusted terms, $105.7 million in 2006 dollars is equivalent to $112.5 million in 2009 dollars.

Sources: Colorado Office of the Attorney General, 2007 and 2010; Administrator of the Colorado Uniform Consumer Credit Code,, 2007 and 2010

2010 reform succeeds

Colorado lawmakers were determined to solve the payday loan problems plaguing their state even after the failure of the 2007 effort. They also wanted to preserve access to small-dollar loans and give lenders a chance to stay in business while reducing harm to consumers. Their solution was a reform, enacted in 2010, that required all payday loans to be repayable over at least six months, reduced total permissible fees, and disallowed front-loading of charges. This structure meant that lenders had to earn their revenue evenly over time without recourse to lump-sum renewal fees.

The 2010 payday loan law enables borrowers to repay loans in installments that consume an average of 4 percent of their biweekly income, rather than the 38 percent they would need to make a balloon payment.[11] All payments reduce principal, so that no debt remains on the loan's end date. Borrowers are permitted to prepay loans without penalty at any time, and 74 percent of loans are repaid before the sixth month.[12] The average loan is repaid after just over three months. The average annualized interest rate is 115 percent—still high, but the lowest rate of any state where payday loan stores operate.[13] (See Table 3.)

Table 3

Loan Payments Became Affordable Under the 2010 Law

Comparative outcomes for payday loans in Colorado, 2009 and 2013

	Before 2010 reform	After 2010 reform
	4 lump-sum loans before repayment plan	Installment loans only
Maximum loan size	$500	$500
Average loan duration (including loans repaid early)	18.91 days	98.62 days
Average annual percentage rate	319%	115%
Share of a borrower's biweekly income taken up by the next loan payment	38%	4%
Cost to borrow $500 for 2 weeks	$75	~ $10
Cost to borrow $500 for 6 months	$975	$290
Amortization (payments reduce principal over time)	No	Yes

Note: "Before 2010 reform" refers to 2009 data, and "after 2010 reform" refers to 2013 data.

Sources: Colorado Office of the Attorney General, 2010 and 2014

It is noteworthy that 18 percent of loans are repaid in full in the first month.[14] This proportion is similar to the share of conventional payday loan customers in other states who do not follow the typical pattern of repeated borrowing and instead use only one or two balloon-payment loans per year. Under Colorado's 2010 law, this minority that can afford to repay loans quickly continues to do so, regardless of the loan structure, which indicates that these borrowers have not been adversely affected from the loss of lump-sum loans. Meanwhile, most consumers have taken advantage of the longer repayment term.

Effect on borrowers

Since enactment of the reforms, Colorado's borrowers spend 42 percent less annually on payday loans but receive more days of credit. And requiring more affordable payments has had other positive effects as well: a 23 percent decline in defaults per borrower and a 48 percent decrease in lender-charged bounced-check fees. Before the law, 61 percent of loans were taken out the same day that another one was paid back, largely because borrowers could not afford to repay loans and still cover basic expenses. That figure has declined by 40 percent. (See Table 4.)

Table 4

Renewals and Negative Effects Declined Under the 2010 Colorado Reform

Comparative outcomes for payday loans, 2009 and 2013

	Before 2010 reform	After 2010 reform	Change
	4 lump-sum loans before repayment plan	Installment loans only	
Average loan size	$368	$393	7%
Total dollars spent	$95.1 million	$54.8 million	-42%
Defaults per borrower	0.493	0.379	-23%
Lender-charged bounced-check fees	$960,201	$497,611	-48%
Share of loans that were renewals or taken out the same day	61.2%	36.7%	-40%

Notes: In inflation-adjusted terms, $368.09 in 2009 dollars is equivalent to $399.69 in 2013 dollars, $95.1 million in 2009 dollars is equivalent to $103.3 million in 2013 dollars, and $960,201 in 2009 dollars is equivalent to $1,042,643 in 2013 dollars. "Before 2010 reform" refers to 2009 data. The post-2010 figures on share of loans that were renewals or taken out the same day are taken from the most recent examiners' report, which covers calendar year 2012; other data from "after 2010 reform" refer to 2013 data.

Sources: Colorado Office of the Attorney General, 2010 and 2014; Bureau of Labor Statistics, 2014

Effect on the market

In the years since Colorado's 2010 reforms, payday loan businesses have become more efficient and have served more customers at lower prices. The law's transparent pricing, realistic loan durations, and lower price limits have produced a market in which lenders succeed if borrowers repay loans as scheduled. Lenders are no longer dependent on renewals and repeated borrowing to operate profitable businesses.

> Colorado's [2010] law is better for borrowers and viable for lenders."
>
> *Colorado Attorney General John Suthers and former Governor Bill Ritter, McClatchy-Tribune News Service op-ed, April 22, 2014*

The average payday loan store in Colorado served only 554 unique borrowers per year in 2009 (fewer than two per day) but now serves 1,102 per year. During this period of consolidation, half of payday loan stores closed, but those that remain are more efficient. (See Table 5.) Further, the incomes and demographics of these stores' customers did not change substantially after the law passed, indicating that the reforms did not price low-income borrowers out of the market and that payday loan credit remains widely available to Coloradans with damaged credit histories.[15]

Table 5

Payday Lending Stores Are More Efficient Under Colorado's 2010 Reform

Comparative outcomes for payday loans, 2009 and 2013

	Before 2010 reform	After 2010 reform	Change
	4 lump-sum loans before repayment plan	Installment loans only	
Number of stores	505	235	-53%
Number of borrowers	279,570	259,000	-7%
Borrowers per store	554	1,102	99%
Loan revenue per store	$188,292	$233,027	24%
Borrowers' average annual income	$29,496	$31,668	7%
Borrowers' median annual income	$26,388	$27,024	2%

Notes: In inflation-adjusted terms, $29,496 in 2009 dollars is equivalent to $32,029 in 2013 dollars, and $26,388 in 2009 dollars is equivalent to $28,654 in 2013 dollars, indicating that, after the law changed, borrowers do not earn higher incomes. The post-2010 figures on borrowers' incomes are taken from the most recent examiners' report, which covers calendar year 2012; "after 2010 reform" refers to 2013 data. "Before 2010 reform" refers to 2009 data. The increase in loan revenue per store should not be understood to imply an increase in profitability. The figure of 235 stores is based on licensees reported by Colorado regulators as of Dec. 31, 2013. The regulators' report of 2013 activity published a figure of 260 store locations. The difference is due primarily to the exclusion in this analysis of corporate offices located outside Colorado that are registered with the state but do not make loans.

Sources: Colorado Office of the Attorney General, 2010 and 2014; Administrator of the Colorado Uniform Consumer Credit Code, 2010 and 2014

Key takeaways

Colorado lawmakers' 2007 effort to reform the payday lending industry did not achieve their goal of reducing harm to borrowers while preserving access to small-dollar credit. The successful 2010 reform addressed the flaws in the 2007 law by entirely replacing balloon payments with affordable installment payments. The Colorado experience can help the Consumer Financial Protection Bureau and other policymakers avoid the pitfalls associated with trying to preserve balloon-payment loans by considering the following:

1. Allowing lenders to make several lump-sum loans before being required to offer affordable installment payments did not align their profitability with borrowers' ability to repay and therefore resulted in minimal changes to the market.
2. Requiring affordable installments for all loans successfully aligned lenders' profitability with borrowers' ability to repay and led to a viable business model for lenders while delivering better outcomes for consumers, with virtually no reduction in access to credit.

In the coming months, federal policymakers should use their historic opportunity to eliminate the problems caused by lump-sum payments by requiring all loans to have affordable installment payments. The lessons from Colorado show that this approach benefits borrowers and is feasible for lenders.

Endnotes

1 Administrator of the Colorado Uniform Consumer Credit Code, *Colorado Payday Lending Demographic and Statistical Information: July 2000 Through December 2011* (2012), http://www.coloradoattorneygeneral.gov/sites/default/files/uploads/Demo%20%26%20Stat%20Info%202000-2011_0.pdf. The 2010 law requires a six-month minimum loan term. Virtually all loan contracts—99.9 percent—are scheduled to be repaid in regular installments. The number of installments varies depending on the loan contract and payment schedule.

2 Colorado Office of the Attorney General, *2009 Deferred Deposit Lenders Annual Report* (2010), http://www.coloradoattorneygeneral.gov/sites/default/files/uploads/uccc/annual_reports/2009DDLComposite.pdf; and Colorado Office of the Attorney General, 2013 Deferred Deposit Lenders Annual Report (2014), http://www.coloradoattorneygeneral.gov/sites/default/files/uploads/2013%20DDL%20Composite%20FINAL_0.pdf.

3 Consumer Financial Protection Bureau, *Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings* (2013), http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

4 Veritec Solutions LLC, "Florida Trends in Deferred Presentment" (2010); Veritec Solutions LLC, "Oklahoma Trends in Deferred Deposit Lending" (2011), http://www.ok.gov/okdocc/documents/2011_10_OK%20Trends_Final_Draft.pdf.

5 Colorado Uniform Consumer Credit Code 5-3.1-108(5), C.R.S.

6 Administrator of the Colorado Uniform Consumer Credit Code, *Payday Lending Demographic and Statistical Information: July 2000 Through December 2008* (2010), 14, https://www.coloradoattorneygeneral.gov/sites/default/files/uploads/uccc/DDLASummary2008rev.pdf.

7 Colorado Office of the Attorney General, *2009 Deferred Deposit Lenders Annual Report*.

8 Administrator of the Colorado Uniform Consumer Credit Code, *Payday Lending Demographic and Statistical Information: July 2000 Through December 2009* (2010), 14, http://www.coloradoattorneygeneral.gov/sites/default/files/uploads/DDLASummary2009corr_0.pdf. Other states, such as Florida, Michigan, and Oklahoma, that have allowed lenders to make lump-sum loans and required them to offer installment plans in limited circumstances have seen an even smaller share of loans converted to installment plans. In Washington, where borrowers may request a no-cost installment plan at any time, 10 to 13 percent of loans have been converted.

9 Colorado Office of the Attorney General, *2006 Deferred Deposit Lenders Annual Report* (2007); and Colorado Office of the Attorney General, *2009 Deferred Deposit Lenders Annual Report*.

10 Administrator of the Colorado Uniform Consumer Credit Code, *Payday Lending Demographic and Statistical Information: July 2000 Through December 2009*; and Administrator of the Colorado Uniform Consumer Credit Code, *Payday Lending Demographic and Statistical Information: July 2000 Through December 2006* (2007), http://www.thebell.org/PUBS/other/2007/CUCCCpaydaystats.pdf.

11 Colorado Uniform Consumer Credit Code 5-3.1-101 et seq.

12 Colorado Office of the Attorney General, *2013 Deferred Deposit Lenders Annual Report*.

13 The Pew Charitable Trusts, "How State Rate Limits Affect Payday Loan Prices" (April 2014), http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs/content-level_pages/fact_sheets/StateRateLimitsFactSheetpdf.pdf.

14 Colorado Office of the Attorney General, *2013 Deferred Deposit Lenders Annual Report*.

15 Administrator of the Colorado Uniform Consumer Credit Code, *Payday Lending Demographic and Statistical Information: July 2000 Through December 2009*; and Administrator of the Colorado Uniform Consumer Credit Code, *Payday Lending Demographic and Statistical Information: July 2000 Through December 2012* (2014), http://www.coloradoattorneygeneral.gov/sites/default/files/uploads/uccc/Colorado%20Payday%20Lending%202012.pdf; and The Pew Charitable Trusts, *Payday Lending in America: Policy Solutions* (2013), 20, http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2013/PewPaydayPolicySolutionsOct2013pdf.pdf.

For further information, please visit:

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Exhibit 3

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2016 DEFERRED DEPOSIT/PAYDAY LENDERS ANNUAL REPORT

This is a composite of all reports submitted to the Administrator of the Uniform Consumer Credit Code pursuant to §§ 5-2-304(2) and 5-3.1-115, C.R.S., from licensed deferred deposit/payday lenders. This information has not been independently verified.

Number of licensed locations reporting data for 2016[1] 180

		NUMBER		AMOUNT FINANCED
1. Deferred deposit/payday loans made, arranged, or taken by assignment in 2016	No.	414,284	$	166,353,683
2. Deferred deposit/payday loans outstanding as of December 31, 2016	No.	142,967	$	44,155,219
3. Deferred deposit/ payday loans rescinded by 5 p.m. the next business day per § 5-3.1-106(2), C.R.S.	No.	1,156	$	386,464
4. Deferred deposit/payday loans refinanced or renewed	No.	0	$	0
		NUMBER		DOLLAR AMOUNT
5. Total defaulted deferred deposit/payday loans in 2016[2]	No.	96,952	$	39,135,333
a. Total loans recovered/collected			$	12,970,602
b. Total loans charged off			$	13,952,578
c. Total NSF fees collected			$	702,413
6. Total number of individual consumers to whom deferred deposit/payday loans were made in 2016[3]	No.	207,220		
a. Consumers with 6 or less new or refinanced loans	No.	201,569		
b. Consumers with 7 to 12 new or refinanced loans	No.	4,905		
c. Consumers with 13 or more new or refinanced loans	No.	746		

[1] This number consists of 31 individual companies – some with multiple licensed locations.
[2] Includes finance charges.
[3] The numbers overstate the total to the extent that consumers have loans from more than one company.

	FINANCE CHARGE	AMOUNT FINANCED	
7. Contracted deferred deposit/payday loan data[4]			
a. Average contracted finance charge (all fees) and amount financed	$ 248.71	$ 400.33	
i. Average contracted origination/acquisition fee	$ 64.91		
ii. Average contracted 45% interest	$ 55.34		
iii. Average contracted monthly maintenance fee	$ 128.46		
b. Average contracted loan term		190.95	days
c. Average contracted annual percentage rate		186.391	APR

	FINANCE CHARGE	AMOUNT FINANCED	
8. Actual deferred deposit loan fees & terms upon payoff[4]			
a. Average actual finance charges (all fees) and amount financed upon payoff	$ 119.46	$ 392.00	
i. Average actual origination/acquisition fee	$ 37.81		
ii. Average actual 45% interest	$ 32.29		
iii. Average actual monthly maintenance fee	$ 49.36		
b. Average actual loan term		97.16	days
c. Average actual annual percentage rate		129.468	APR

		NUMBER
9. Deferred deposit/payday loans paid in full during 2016	No.	288,069
a. Paid in full within 1 month of origination	No.	61,717
b. Paid in full within 1-2 months of origination	No.	49,628
c. Paid in full within 2-3 months of origination	No.	37,521
d. Paid in full within 3-4 months of origination	No.	37,820
e. Paid in full within 4-5 months of origination	No.	33,392
f. Paid in full in excess of 5 months of origination	No.	67,991

10. Deferred deposit/payday loan installment options	
a. % licensees offering loans payable in a single installment	0%
b. % licensees offering loans payable in multiple installments	100%

[4] Weighted averages derived from the averages submitted by each company.

COLORADO PAYDAY ADVANCE INDUSTRY REPORT

Exhibit 4

ECONOMIC IMPACT STUDY JANUARY 2009

Study Confirms Economic Contributions of Payday Advance Industry

High-Quality Jobs, Millions in Payroll and Tax Revenues Just Part of Payday Advance Benefits

A recent study conducted by economic research firm Colorado Strategies (headed by former director of the Office of State Planning and Budgeting Henry Sobanet) shows that Colorado's payday advance industry provides major benefits to the state's economy, and that the loss of the industry would exacerbate the state's growing economic and fiscal crises.

ECONOMIC VALUE OF PAYDAY ADVANCE INDUSTRY TO COLORADO

- Direct Payroll/1666 Full-Benefit Jobs = $44,000,000
- Lease Revenue Paid to Landlords = $20,000,000
- Loan Volume = $639,000,000+
- Unemployment Compensation Liability = $13,000,000
- Value of Payroll Multiplier = $70,000,000

"The takeaway on the study is clear as day," said Ron Rockvam, President of the Colorado Financial Service Centers Association (COFISCA). "Coloradans need every job and every credit option they can get. Proponents of 'predatory regulation' designed to wipe out the payday industry put thousands of jobs and millions of dollars in economic value at risk when we can least afford it."

Jobs provided by payday advance operators are nearly all full-time/full-benefit (including health care) positions. The economic study identified an academically validated multiplier that when applied to the payday lending industry puts the total value of the payroll in Colorado at $70,000,000.

The loan volume of $639,000,000 represents a significant amount of credit introduced into Colorado's economy that flows directly to businesses of all types and sizes throughout the state. The loss of this revenue means consumers are forced to utilize less desirable credit choices (overdraft fees, late fees, etc.) or forego necessary expenses altogether. Depriving consumers of ready access to this sizable amount of credit means Colorado's economy overall would take a serious hit.

In addition to jeopardizing major economic benefits, so-called "reforms" aimed at eliminating the industry in Colorado would cause serious additional negative consequences to state and local governments.

(over)

NEGATIVE IMPACTS OF LOSS OF PAYDAY INDUSTRY ON REVENUES

- **Increased unemployment claims and thus benefit payments from the State Unemployment Insurance fund**
- **Reduced solvency in the State Unemployment Insurance Fund**
- **Lower tax revenue at all levels of government**
- **Increased commercial property vacancy rates**

The study utilized comprehensive data collected from over 340 of the 555 payday advance stores in the state (as of the last quarter of 2008) as well as the most recent (2007) Deferred Deposit Lender's Annual Report issued by state Office of Attorney General. Colorado Strategies examined a variety of factors in assessing the impact of the payday advance industry, using standardized statistical methods. Some of the figures used in this report represent the upper ranges of figures sited in the Economic Study.

The economic study was sponsored by a coalition of payday advance companies with operations throughout Colorado.

A Comparative Analysis of 2007-2008 Activity in the Colorado Deferred Deposit Lending Industry

Prepared by
Henry Sobanet, President
November 2009

ColoradoStrategies
Insight | Solutions | Results
www.coloradostrategies.com

This report is in response to a request from the Community Financial Services Association of America (CFSA) and the Colorado Financial Service Centers Association (COFiSCA) for an analysis of loan activity from Colorado Deferred Deposit Lenders (DDL) or "payday advance" industry in Colorado. We used the responses to the Colorado Uniform Consumer Credit Code DDL Annual Reports for 2007 and 2008.

The purpose of the study was to interpret and compare pertinent data from 2008 individual company filings with a comparison to the 2007 filings from the same companies to understand how the industry performed and to identify trends. Respondent companies represent a significant sampling for the DDL industry in Colorado.

Colorado Strategies received responses from 27 operators, representing 408 licenses in 2007. There were some inconsistencies with a few respondents. Those that we were not able to rectify were excluded from the analysis. Thus, Table 1 at the end of the memorandum represents a comparison of 2007 and 2008 data from those respondents with consistent data. Given that we received a high response rate from the largest operators, we are confident in the *general direction* of the percent changes in the categories, but there could be some variation in the *magnitude* of the percent changes when the Colorado State Office of the Attorney General tabulates the final results.

Summary Statistics

Colorado Strategies analyzed and compiled responses to Questions 1, 3, 8, and 9 from the 2007 and 2008 annual reports. These questions encompass the most pertinent data regarding trends in the payday advance industry including: store count, loan volume and amount, loan terms, and the effectiveness of the Extended Payment Plan program. All of the comparative statistics for 2008 are based on the respondents' reported performance in 2007. We did not compare the 2008 respondents' reported performance with the summary 2007 report as prepared by the State Office of the Attorney General.

Based on the number of stores reported for 2007 (408), the respondents in this study represented 66% of the 618 stores reported by the State Office of the Attorney General in the 2007 UCCC DDL Annual Report. The 2008 data from the respondents to this study indicate a drop of 35 stores (8.6%).

Question 1: Loan volume and number. Despite the number of stores dropping by 8.6%, loan volume (total dollars) was down only 1.4% and the number of loans was down 3.3%. Because the number of loans fell by a greater percentage than total dollars, the average loan size actually increased by 1.9%. (See discussion of Question 3 for more explanation and discussion.)

Question 3: Averages. The averages in the table represent simple averages of all the reported data and are not weighted by each respondent's size. (This is the same methodology used by the Attorney General's Office.) Using the data from Question 1, we find that the average loan size in 2007 was $373.10; in 2008 it was $380.32, an

increase of 1.9%. The average Annual Percentage Rate shows a decrease of 3.2% and the average loan term increased by one day (3.9%)

Question 8: Consumers with loans. The number of consumers to whom DD loans were made in 2008 increased by 8.5%. However, there were dramatic changes in the sub-categories of this question. The number of consumers with 6 or less loans increased by 20% and the number of consumers with 13 or more loans **decreased by 44%.** Meanwhile, consistent with this reporting, for 2008, the average number of loans per customer decreased to 4.51 from 5.06, an 11% drop (calculated via Question 1 and Question 9).

Question 9: Extended Payment Plan. With respect to Question 9, we find that there was a substantial increase in use of the Extended Payment Plan in 2008. Based on information provided to Colorado Strategies, the 2007 data represented approximately one quarter of EPP availability. Specifically, the number of consumers eligible to receive an EPP notice increased 78.5%, the number of consumers entering into an EPP agreement increased 89.7%, and the number of consumers successfully completing a plan agreement increased 175.9%. So, while the growth rates in EPP are substantial, they do not represent the expected growth if they were annualized. (We note that seasonal variation in loan activity for loans may affect this expectation). Meanwhile, two respondents effectively reported zero activity in EPP for both years.

Conclusion

Based on the respondents' data, there has been some measure of consolidation in the Colorado DDL industry as evidenced by a nearly nine percent drop in the number of active stores. However, loan volume and number did not drop by a commensurate amount. In addition, the average loan size increased slightly. The results of this survey show that through 2008 the demand for DDL services remained steady; indeed the total number of consumers to whom loans were made increased 8.5%. To the extent policy changes have tried to reduce the frequency of use of the payday loan product, we see a substantial decline in the number of consumers with 13 or more loans in a given year; respondents reported a 44% drop in this category. Also, respondents reported a nearly 90 percent increase in the number of consumers in 2008 entering into a EPP agreement .

Table 1: Summary of Respondents' Data

DATA - line item #'s from DDL Annual Reports-Colorado	2007	2008	Percent Change
STORE COUNT			
Top: Total # of Active Licenses as of 12/31	408	373	-8.6%
LOAN VOLUME, AMOUNT, APR, TERMS			
Q #1: Total DDL's Made, arranged or taken by assignment in given year			
Number	1,071,192	1,035,670	-3.3%
Dollar Amount	$ 399,656,591	$ 393,887,943	-1.4%
Q# 3: DDL's:			
b. Average loan amount & finance charge			
Avg. Loan Amount	$ 351.11	$ 357.11	1.7%
Avg. Finance charge	$ 59.24	$ 58.94	-0.5%
c. Average annual percentage rate (APR)	340	329	-3.2%
d. Average loan term (average number of days)	20	21	3.9%
CONSUMERS WITH LOAN #'s			
Q # 8: Total # of consumers to whom DDL's were made in given year	211,791	229,840	8.5%
Q # 8 a: Number of consumers with 6 or less loans in given year	139,597	167,574	20.0%
Q # 8 b: Number of consumers with 7 to 12 loans in given year	48,989	49,258	0.5%
Q # 8 c: Number of consumers with 13 or more loans in given year	23,208	12,998	-44.0%
CONSUMERS & EFFECTIVENESS OF EPP			
Q # 9 a.: Total # of Consumers eligible to receive Payment Plan Notice	52,033	92,895	78.5%
Q # 9 c: Total # of Consumers entering into a Payment Plan Agreement	32,491	61,625	89.7%
Q # 9 e: Total # of Consumer successfully completing a Payment Plan Agreement	17,318	47,776	175.9%

Exhibit 5

DATE FILED: April 3, 2018 5:14 PM

An Act

HOUSE BILL 10-1351

BY REPRESENTATIVE(S) Ferrandino, Apuan, Curry, Gagliardi, Hullinghorst, Kerr A., McCann, Merrifield, Miklosi, Pace, Pommer, Ryden, Scanlan, Solano, Tyler, Vigil, Frangas, Carroll T.;
also SENATOR(S) Romer, Carroll M., Foster, Keller, Morse, Heath.

CONCERNING THE MAXIMUM AUTHORIZED INTEREST RATE FOR A PAYDAY LOAN.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. The general assembly finds and declares that payday lenders are charging more than an average of three hundred percent interest annually and that excessive interest rates can lead Colorado families into a debt trap of repeat borrowing. Therefore, it is the intent of the general assembly to limit the maximum authorized interest rate for a payday loan charged to a consumer by a lender to a maximum rate of forty-five percent per year.

SECTION 2. The introductory portion to 5-3.1-102 (3) and 5-3.1-102 (5) (a), Colorado Revised Statutes, are amended, and the said 5-3.1-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

5-3.1-102. Definitions. As used in this article, unless the context otherwise requires:

(1.5) "ANNUAL PERCENTAGE RATE" MEANS AN ANNUAL PERCENTAGE RATE AS DETERMINED PURSUANT TO SECTION 107 OF THE FEDERAL "TRUTH IN LENDING ACT", 15 U.S.C. SEC. 1601 ET SEQ. ALL FINANCE CHARGES SHALL BE INCLUDED IN THE CALCULATION OF THE ANNUAL PERCENTAGE RATE.

(3) "Deferred deposit loan" OR "PAYDAY LOAN" means a consumer loan whereby the lender, for a fee, finance charge, or other consideration, does the following:

(5) (a) "Lender" means any person who offers, or makes a deferred deposit loan, who arranges a deferred deposit loan for a third party, or who acts as an agent for a third party, regardless of whether the third party is exempt from licensing under this article or whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party, THROUGH ANY METHOD INCLUDING MAIL, TELEPHONE, INTERNET, OR ANY ELECTRONIC MEANS.

SECTION 3. 5-3.1-103, Colorado Revised Statutes, is amended to read:

5-3.1-103. Written agreement requirements. Each deferred deposit loan transaction and renewal shall be documented by a written agreement signed by both the lender and consumer. The written agreement shall contain the name of the consumer; the transaction date; the amount of the instrument; the annual percentage rate charged; a statement of the total amount of finance charges charged, expressed both as a dollar amount and an annual percentage rate; and the name, address, and telephone number of any agent or arranger involved in the transaction. In addition, the written agreement shall include all disclosures required by section 5-3-101 (2). The written agreement shall set a date upon which the instrument may be deposited or negotiated. There shall be no ~~minimum~~ MAXIMUM loan term or minimum finance charge. ~~The maximum loan term shall not be more than forty days after the loan transaction date, and the maximum finance charge shall not exceed the finance charge set forth in section 5-3.1-105. The due date shall be set on or after the consumer's next payday or the date the consumer is scheduled to receive benefits, a commission, or any other~~

~~payment; or after an income event for the consumer unless the consumer voluntarily requests a shorter loan term, the consumer's request is documented in a written statement signed and dated by the consumer and is separate from the loan agreement, the written statement is retained by the lender, and the loan cannot be renewed and shall be paid in cash or its equivalent.~~ THE MINIMUM LOAN TERM SHALL BE SIX MONTHS FROM THE LOAN TRANSACTION DATE. THE LENDER SHALL ACCEPT PREPAYMENT FROM A CONSUMER PRIOR TO THE LOAN DUE DATE AND SHALL NOT CHARGE THE CONSUMER A PENALTY IF THE CONSUMER OPTS TO PREPAY THE LOAN. A lender may hold an instrument and delay completion of the transaction beyond the loan due date without any additional written agreement or new disclosure, but the lender may not charge any additional fees for holding the instrument or delaying the completion of the transaction.

SECTION 4. 5-3.1-105, Colorado Revised Statutes, is amended to read:

5-3.1-105. Authorized interest rate. A lender may charge a finance charge for each deferred deposit loan OR PAYDAY LOAN that may not exceed twenty percent of the first three hundred dollars loaned plus seven and one-half percent of any amount loaned in excess of three hundred dollars. Such charge shall be deemed fully earned as of the date of the transaction. THE LENDER MAY ALSO CHARGE AN INTEREST RATE OF FORTY-FIVE PERCENT PER ANNUM FOR EACH DEFERRED DEPOSIT LOAN OR PAYDAY LOAN. IF THE LOAN IS PREPAID PRIOR TO THE MATURITY OF THE LOAN TERM, THE LENDER SHALL REFUND TO THE CONSUMER A PRORATED PORTION OF THE ANNUAL PERCENTAGE RATE BASED UPON THE RATIO OF TIME LEFT BEFORE MATURITY TO THE LOAN TERM. IN ADDITION, THE LENDER MAY CHARGE A MONTHLY MAINTENANCE FEE FOR EACH OUTSTANDING DEFERRED DEPOSIT LOAN, NOT TO EXCEED SEVEN DOLLARS AND FIFTY CENTS PER ONE HUNDRED DOLLARS LOANED, UP TO THIRTY DOLLARS PER MONTH. THE MONTHLY MAINTENANCE FEE MAY BE CHARGED FOR EACH MONTH THE LOAN IS OUTSTANDING THIRTY DAYS AFTER THE DATE OF THE ORIGINAL LOAN TRANSACTION. The lender shall charge only those charges authorized in this article in connection with a deferred deposit loan.

SECTION 5. 5-3.1-106 (1), Colorado Revised Statutes, is amended to read:

5-3.1-106. Maximum loan amount - right to rescind. (1) A

lender shall not lend an amount greater than five hundred dollars nor shall the amount financed exceed five hundred dollars by any one lender at any time to a consumer. ~~No instrument held as a result of a deferred deposit loan shall exceed five hundred seventy-five dollars.~~ NOTHING IN THIS SUBSECTION (1) SHALL PRECLUDE A LENDER FROM MAKING MORE THAN ONE LOAN TO A CONSUMER SO LONG AS THE TOTAL AMOUNT FINANCED DOES NOT EXCEED FIVE HUNDRED DOLLARS AT ANY ONE TIME AND THERE IS AT LEAST A THIRTY-DAY WAITING PERIOD BETWEEN LOANS.

SECTION 6. 5-3.1-108 (2) and (5), Colorado Revised Statutes, are amended to read:

5-3.1-108. Renewal - new loan - consecutive loans - payment plan - definitions. (2) Upon renewal of a deferred deposit loan, the lender may assess AN additional finance ~~charges~~ CHARGE not to exceed ~~twenty~~ AN ANNUAL PERCENTAGE RATE OF FORTY-FIVE percent. ~~of the first three hundred dollars loaned plus seven and one-half percent of any amount loaned in excess of three hundred dollars.~~ If the deferred deposit loan is renewed prior to the maturity date, the lender shall refund to the consumer a prorated portion of the finance charge based upon the ratio of time left before maturity to the loan term.

(5) ~~(a) At the time of origination of a fourth consecutive deferred deposit loan made to a consumer by a lender or an affiliate of the lender, and at the time of origination of any subsequent consecutive deferred deposit loans, the lender shall offer the consumer in writing the option to participate in a voluntary payment plan.~~

~~(b) To convert a deferred deposit loan into a payment plan, the consumer shall return to the lender's point of sale location and request a payment plan prior to the close of business on the business day prior to the maturity date of the loan.~~

~~(c) The payment plan shall provide the consumer with the option to pay off the existing debt, both the principal and the fee, in at least six equal payments that coincide with the consumer's periodic pay dates or the date the consumer is scheduled to receive benefits. The payments made pursuant to the voluntary payment plan shall be applied directly to the existing debt, and the lender shall not charge the consumer any additional fee for participation in the payment plan.~~

~~(d) The lender shall provide a written copy of the payment plan agreement to the consumer. The lender shall be prohibited from engaging in collection activities while the consumer continues to make payments in accordance with the payment plan. The lender or affiliate of the lender is prohibited from making any additional deferred deposit loans to the consumer prior to the consumer's completion of the payment plan.~~

~~(e) The lender may require the consumer to provide a post-dated check or electronic authorization for funds transferred for each payment due under the payment plan. If any check or electronic authorization accepted by the lender is dishonored, the lender may not charge the consumer a fee for the dishonored instrument.~~

~~(f) If the consumer fails to make payments in accordance with a payment plan under paragraph (a) of this subsection (5), the lender is entitled to take action as allowed under this article to collect the remaining funds due and may charge the consumer a one-time default fee of twenty-five dollars.~~

~~(g) For the purposes of this subsection (5):~~

~~(I) "Affiliate" means any entity owned by a lender, an entity that owns the lender, an entity that is under common ownership with the lender, or an entity that is a person related to the lender.~~

~~(II) "Consecutive deferred deposit loan" means a deferred deposit loan made by a lender within five calendar days after the repayment of a previous deferred deposit loan by renewal or otherwise.~~

~~(III) "Lender's point of sale location" means:~~

~~(A) The lender's store where the consumer originated the loan;~~

~~(B) Another store operated by the lender in this state; or~~

~~(C) A web site, telephone number, or other remote location where the consumer originated the loan.~~

~~(IV) "Person related to" shall have the same meaning as in section 5-1-301 (34) (b).~~

SECTION 7. 5-3.1-121, Colorado Revised Statutes, is amended to read:

5-3.1-121. Unfair or deceptive practices. (1) No person shall engage in unfair or deceptive acts, practices, or advertising in connection with a deferred deposit loan.

(2) A PERSON VIOLATES THE REQUIREMENTS OF THIS ARTICLE BY ENGAGING IN ANY ACT THAT LIMITS OR RESTRICTS THE APPLICATION OF THIS ARTICLE, INCLUDING MAKING LOANS DISGUISED AS PERSONAL PROPERTY, PERSONAL SALES, AND LEASEBACK TRANSACTIONS OR BY DISGUISING LOAN PROCEEDS AS CASH REBATES FOR THE PRETEXTUAL INSTALLMENT SALE OF GOODS AND SERVICES.

SECTION 8. Act subject to petition - effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.

(2) The provisions of this act shall apply to loans made or renewed on or after the applicable effective date of this act.

Terrance D. Carroll SPEAKER OF THE HOUSE OF REPRESENTATIVES	Brandon C. Shaffer PRESIDENT OF THE SENATE
Marilyn Eddins CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES	Karen Goldman SECRETARY OF THE SENATE

APPROVED_____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO