

SUPREME COURT, STATE OF COLORADO 2 East 14 th Avenue Denver, CO 80203	
Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40- 107(2) Appeal from the Ballot Title Board	▲ COURT USE ONLY ▲
In the Matter of the Title, Ballot Title and Submission Clause for Proposed Initiative 2019-2020 #3 Petitioner WILLIAM M. BANTA V. Respondents CAROL HEDGES and STEVE BRIGGS and BALLOT TITLE SETTING BOARD	Case Number:
Petitioner Name: William M. Banta Address: 10631 E. Crestline Ave. Englewood, CO 80111 Phone Number: (303) 741-6700 E-mail: billbanta@msn.com	
PETITION FOR REVIEW OF FINAL DECISION OF BALLOT TITLE SETTING BOARD FOR PROPOSED INITIATIVE 2019-2020 #3	

William M. Banta ("**Petitioner**"), a registered elector of the State of Colorado, respectfully submits this Petition for

Review pursuant to Section 1-40-107(2) C.R.S. (2018) and asks the Court to: first, reverse the Ballot Title Setting Board's ("**Board**") August 21, 2019, designation of the Title, Ballot Title and Submission Clause for the above-captioned Proposed Initiative #3 and, second, remand the matter to the Board with instructions pointing out where the Board erred.

Statement of Case

A. Procedural History

On July 17, 2019, the Board designated the title to Proposed Initiative #3 as follows:

An amendment to the Colorado constitution concerning the repeal of the Taxpayer's Bill of Rights (TABOR), Article X, Section 20 of the Colorado constitution.

The Board similarly designated the ballot title and submission clause for Proposed Initiative #3.

Objecting to the title, ballot title and submission clause ("**Title**") as unfair and not expressing the true meaning and intent of the proposed constitutional amendment, on July 24, 2019, Petitioner filed a "Motion for Rehearing (William M.

Banta)" ("**Motion**"). At the rehearing, which was held on August 21, 2019, the Board denied Petitioner's Motion.

B. Jurisdiction

Pursuant to Section 1-40-107(2) C.R.S. (2018), the Court has jurisdiction to review, reverse, and remand the Board's designation and fixing of Title.

C. Record on Review

Attached hereto are certified copies of the documents and pleadings prescribed by Section 1-40-107(2) C.R.S. (2018), including a copy of the Motion for Rehearing (William M. Banta) dated July 24, 2019, which Petitioner specifically adopts and incorporates in this Petition by reference.

Argument

Contrary to Colorado statute and precedent, the Board's Title obscures the true meaning and intent of Proposed Initiative #3, which aims to eliminate Article X, Section 20 of

the Colorado Constitution in its entirety; to wit, doing away with the complete Taxpayer's Bill of Rights ("**TABOR**"). By hedging the Title as merely concerning the repeal of TABOR, the Board gives voters an idea that Proposed Initiative #3 has something to do with TABOR repeal; but the Board avoids informing voters of exactly what it is that Proposed Initiative #3 intends to do to TABOR.

Furthermore, the Title is silent about all of the constitutional rights, powers, immunities, privileges, and remedies that TABOR contains. To apply Justice Marquez's recent analogy to the Court's present review, consider whether it would be fair to fix a title for a hypothetical initiative repealing Colorado's entire Bill of Rights (Colo. Const. art. II) without informing voters that repeal would do away with:

[R]eligious freedom, free speech, protections against unreasonable searches and seizures, the right to bear arms, the prohibition against cruel and unusual punishment, and due process, among a host of other rights.

In the Matter of the Title, Ballot Title and Submission Clause for 2019-2020 #3, 2019 CO 57 at 14, 19SA25 (June 17, 2019).

For additional argument and authority, Petitioner respectfully refers the Court to the five-page Motion for

Rehearing (William M. Banta) dated July 24, 2019, a copy of which is certified and attached to this Petition.

Prayer for Relief

Petitioner respectfully requests that, after review, the Court reverse the Board and remand the action back to the Board with appropriate instructions along the lines Petitioner suggested the Motion for Rehearing (William M. Banta) filed and dated July 24, 2019.

RESPECTFULLY SUBMITTED this 28th day of August, 2019.

/s/ William M. Banta
William M. Banta, Petitioner

CERTIFICATE OF SERVICE

I certify that on August 28, 2019, I served true and correct copies of the foregoing **PETITION FOR REVIEW OF FINAL DECISION OF BALLOT TITLE SETTING BOARD FOR PROPOSED INITIATIVE 2019-2020 #3** (including certified record) by mailing the copies via first class U.S. mail, postage pre-paid, to counsel for the Board and to counsel for the Proponents addressed as follows:

Philip J. Weiser, Esq.
Colorado Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203

Edward T. Ramey, Esq.
Tierney Lawrence LLC
225 East 16th Avenue, Suite 350
Denver, CO 80203

/s/ Sarah Meghan Borkowski



DATE FILED: August 29, 2019

STATE OF COLORADO

DEPARTMENT OF STATE CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, initial fiscal impact statement and abstract, amended fiscal impact abstract, motions for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2019-2020 #3 'State Fiscal Policy'".....

.....

IN TESTIMONY WHEREOF I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 28th day of August, 2019.

Jena Griswold

SECRETARY OF STATE



RECEIVED

8:24 A.M.

JAN 04 2019

S. WARD

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

Colorado Secretary of State

SECTION 1. In the constitution of the state of Colorado, **repeal** section 20 of article X.

Ballot Title Setting Board

Proposed Initiative 2019-2020 #3¹

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

An amendment to the Colorado constitution concerning the repeal of the Taxpayer's Bill of Rights (TABOR), Article X, Section 20 of the Colorado constitution.

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

Shall there be an amendment to the Colorado constitution concerning the repeal of the Taxpayer's Bill of Rights (TABOR), Article X, Section 20 of the Colorado constitution?

Hearing January 16, 2019:

Title setting denied on the basis that the measure does not constitute a single subject.

Hearing adjourned 1:35 PM.

Rehearing February 6, 2019:

Motion for Rehearing denied as to single subject; Motion for Rehearing regarding the fiscal impact abstract denied for lack of jurisdiction because the Board declined to set title.

Hearing adjourned 1:18 p.m.

Remand Hearing July 17, 2019:

Single subject approved; staff draft amended; titles set. The Board determined that the proposed initiative only repeals language from the state constitution. The requirement for approval by fifty-five percent of the votes cast does not apply to this initiative.

Hearing adjourned 1:23 p.m.

¹ Unofficially captioned "State Fiscal Policy" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

RECEIVED

JUL 24 2019

Colorado Secretary of State

S. WARD 9:11 A.M.

TITLE SETTING BOARD
Department of State
1700 Broadway, Suite 200
Denver, CO 80290

IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE
FOR INITIATIVE 2019-2020 #3

MOTION FOR REHEARING (WILLIAM M. BANTA)

WILLIAM M. BANTA ("Movant") a registered elector of the State of Colorado, respectfully submits this Motion for Rehearing.

Having appeared at the hearing upon remand that was held before the Title Setting Board ("Board") on July 17, 2019, Movant objects to the titles and submission clause ("Title") that the Board provided for Initiative 2019-2020 #3 ("Initiative #3"). Movant's basis for objection is that the Title is unfair and the Title does not fairly express the true meaning and intent of the proposed constitutional amendment. *Section 1-40-107 (1)(a)(I) C.R.S. (2018).*

The Board must set a title for Initiative #3 that correctly and fairly expresses the true intent and meaning of the would-be amendment. A title has to "unambiguously state the principle of the provision sought to be added, amended, or repealed." *Section 1-40-106 (3)(b) C.R.S. (2018).* The Board's Title reads as follows:

"An amendment to the Colorado constitution concerning the repeal of the Taxpayer's Bill of Rights (TABOR)."

This Title is an exceedingly cautious title for a law that will terminate a large number of constitutional rights held by the people of the State of Colorado. For it is the fact that proponents of Initiative #3 intend nothing less than the extinguishment of every right, power, immunity, privilege, and remedy stated in Colorado's Taxpayer's Bill of Rights.

That being said, the Board is responsible for what to call Initiative #3 by way of a title. Certainly TABOR is a complex measure. TABOR includes a wide variety of self-governing prerogatives for Colorado citizens, Colorado taxpayers, and Colorado voters.

To properly inform the voters of the meaning of such a repeal of their liberties, the Board must furnish a title that measures up to the subject, that publishes the intention of Initiative #3. Voters are entitled to know what is in their Taxpayer's Bill of Rights, or at least its main features, so they will know what is riding on their "yes" or "no" vote. *Section 1-40-106 (3)(b) C.R.S. (2018).*

As the Colorado Supreme Court pointed out in *In the Matter of the Title, Ballot Title and Submission Clause, and Summary Adopted February 3, 1993, Pertaining to the Proposed Election Reform*

Amendment, 852 P. 2d 28, 33 (Colo. 1993), the Board's duty is to produce a title enabling any voter, whether knowledgeable or not ("familiar or unfamiliar") with an initiative's purpose or subject, to determine whether to support or oppose the constitutional change.

Furthermore, in *In the Matter of the Title, Ballot Title and Submission Clause, and Summary Pertaining to the Sale of Table Wine in Grocery Stores Initiative Adopted on March 24, 1982*, 646 P. 2d 916, 919 (Colo. 1982), the Supreme Court stressed that the title must state the principle of the proposal and the intent behind the initiative. There the Court recognized the Board's "careful consideration" and utilization of language detailing certain effects of a proposed initiative, effects which the Board thought to be "of the utmost importance" for inclusion in the title. 646 P. 2d at 921.

Therefore, in light of Colorado Supreme Court precedent and the General Assembly's statutory requirements, Movant suggests a title that announces to voters the complete, correct, and true meaning of Initiative #3. And Movant submits the following title language for the Board to consider.

An amendment to the Colorado Constitution repealing the entire Taxpayer's Bill of Rights (Colorado Constitution, Article X, Section 20), which repeal will, among other things, have the effect of: ending the people's right

to vote on new state and local taxes; ending the people's right to vote on tax rate increases; ending the people's right to vote on increasing residential property tax assessment rates; ending the people's right to vote on state and local spending increases and residential property tax revenue increases; ending the people's right to refunds of excess government revenues; ending the constitutional requirement that state and local governments maintain emergency reserves; ending the constitutional requirement of a flat rate state income tax; ending the constitutional ban on new or increased real property transfer taxes; ending the constitutional ban on local income taxes and state real property taxes; and ending the constitutional ban on unfunded state mandates on local governments.

Finally, with respect to remand, there is no tension or conflict between the Colorado Supreme Court's June 17, 2019, single-subject holding and the Board fixing a proper title for Initiative #3. *In the Matter of the Title, Ballot Title and Submission Clause for 2019-2020 #3, 2019 CO 57, 19SA25 (June 17, 2019) ("2019 CO 57")*. In *2019 CO 57*, the Court expressly referred to TABOR's various topics related to "spending and revenue limits, elections, local responsibility for state-mandated programs, and emergency reserves." *2019 CO 57* at 8. While the Supreme Court held that Initiative #3 *qua* repeal is a single subject, the Court itself states that Initiative #3's purpose is in fact "repealing in its entirety a constitutional provision that contains multiple subjects." *2019 CO 57* at 13.

In conclusion, and especially given the constitutional rights at stake, any title for Initiative #3 should be forthright and focus voters' attention upon what the amendment seeks to extinguish; namely, all the constitutional rights of Coloradans set forth in Article X, Section 20. At a minimum, the title needs to disclose "the measure's salient features." 852 P. 2d at 32. Indeed, the Colorado Supreme Court instructs the Board that "if a choice must be made between brevity and a fair description of essential features of a proposal, the decision must be made in favor of full disclosure to the registered electors." *Id.*

RESPECTFULLY SUBMITTED this 24th day of July, 2019.

/s/William M. Banta

William M. Banta

10631 East Crestline Avenue

Englewood, CO 80111

Phone: (303) 741-6700

Email: billbanta@msn.com

From: [Douglas Bruce](#)
To: [Steven Ward](#)
Subject: REVISED MOTION FOR REHEARING
Date: Thursday, July 18, 2019 2:21:27 PM

> I am a registered Colorado elector. I move for a rehearing on the
>
> ballot title on initiative #3 that was set yesterday. I believe the
>
> rehearing date will be August 7. I request that the rehearing be
>
> scheduled no earlier than 10 a.m. I live in Colorado Springs and
>
> wish to avoid rush hour traffic.
>
>
> Please reply and indicate whether this email motion is sufficient.
>
> I can postal mail it if the title board requires a paper copy.

IN REPLY TO YOUR HELPFUL SUGGESTION, I SUPPLEMENT MY
MOTION WITH THE FOLLOWING AMPLIFICATION, WHICH I ASK
TO BE SUBMITTED TO THE TITLE BOARD, AND THAT A REHEARING
DATE BE SET ON THIS REVISED MOTION:

1. The ballot title set on July 17, 2019 is legally deficient. Ballot titles are required to state the major features of the proposal. #3 does not do so. It does not explain in common language WHAT legal protections are being repealed. Simply listing the legal citation and official name is beyond cryptic. Signers and voters are not expected to perform legal research based on that minimal information.
2. The purpose of the single subject rule is to DISCLOSE the meaning of the measure to the public. The main features must be in the ballot title.
3. The role of the title board is to perform its legal duty to

protect the public from voting incorrectly on ballot issues with features that are not openly disclosed ("hidden in the coils of a multi-subject proposal"). TABOR is indisputably a multi-subject proposal as a matter of law and supreme court holdings. Thus, its repeal changes multiple aspect of state constitutional law. This board cannot assume the average citizen knows all the features of TABOR. More than one million people have moved to Colorado since TABOR passed. It is an unknown part of a very lengthy constitution.

4. I support the alternative draft presented by Natalie Menten yesterday. In fact, I wrote it. I could not attend the board meeting because I had a governmental hearing in Colorado Springs at the same time. I offer that draft as a ballot title that would comply with ballot title law and this board's legal duty.

5. The ballot title accepted yesterday by a divided board is legally inadequate. It is "unfair and does not fairly express the true meaning and intent of the proposed" constitutional amendment. I challenge the ABSENCE of necessary wording to describe properly this most controversial section of the constitution, exceeding 1700 words. See 1-40-106.5 and 107 (III) (b) C.R.S. and annotated cases on those laws.

> Douglas Bruce
>
> (719) 550-0010
>
> Box 26018
>
> Colorado Springs CO 80936

RECEIVED

JUL 24 2019

J. WARD
4:21 P.M.

Colorado Secretary of State

BALLOT TITLE SETTING BOARD

IN THE MATTER OF PROPOSED INITIATIVE 2019-2020 #3

MOTION FOR REHEARING ON PROPOSED INITIATIVE 2019-2020 #3

On behalf of Carol Hedges and Steve Briggs, representatives of the proponents of Proposed Initiative 2019-2020 #3, undersigned counsel hereby submits this Motion for Rehearing on said Initiative pursuant to Section 1-40-107, C.R.S. (2018), and as grounds therefore states as follows:

I. Title, ballot title and submission clause.

At its hearing on remand from the Colorado Supreme Court on July 17, 2019, the Title Board set the following title and ballot title and submission clause for Proposed Initiative 2019-2020 #3:

Title: "An amendment to the Colorado constitution concerning the repeal of the Taxpayer's Bill of Rights (TABOR), Article X, Section 20 of the Colorado constitution."

Ballot title and submission clause: "Shall there be an amendment to the Colorado constitution concerning the repeal of the Taxpayer's Bill of Rights (TABOR), Article X, Section 20 of the Colorado constitution?"

The proponents respectfully object to these titles and submission clause. They do not fairly express the true meaning and intent of the proposed constitutional amendment. They also contain a "catch phrase" tailored to generate opposition to the measure in a political campaign while not contributing to – in fact, prejudicing and obfuscating – voter understanding of the issues presented and principle of the measure sought to be repealed.

The catch phrase in question is the reference to the measure sought to be repealed as "the Taxpayer's Bill of Rights" or "TABOR." This phrase (and secondarily its acronym) is drawn solely from the non-substantive section heading included within the text of Colo. Const. art. X, §20 by its drafters. In fact, it is not this section heading – but, rather, Colo. Const. art. X, §20 in its entirety – that the proponents seek to repeal. Appropriately, this catchy section heading did not appear in the ballot title of Colo. Const. art. X, §20, when submitted to and adopted by the voters in 1992. Nor should it appear in the title of the present initiative directed to repealing the same measure.

The Colorado Supreme Court has repeatedly cautioned that “catch phrases or slogans in the title . . . should be carefully avoided by the [Title] Board.” *In re Title, Ballot Title & Submission Clause for Initiative 1999-2000 #258(A) (Garcia v. Chavez)*, 4 P.3d 1094, 1100 (Colo. 2000). The Court has noted that catch phrases “may form the basis of a slogan for use by those who expect to carry out a campaign for or against an initiated constitutional amendment” – *Id.*, quoting *In re Title, Ballot Title & Submission Clause for Initiative 1999-2000 #227 & #228 (Sarchet v. Hobbs)*, 3 P.3d 1, 6 (Colo. 2000) – and “encourage prejudice . . . and, thereby, distract voters from consideration of the proposal’s merits.” *Id.* The fact that the catch phrase or slogan in question is derived from the text of the measure to be adopted or repealed does not alter the direction that “the Title Board is not free to include this wording in the titles if, as here, it constitutes a catch phrase.” *Id.*

Inclusion of or reference to the phrase “Taxpayer’s Bill of Rights” (or “TABOR”) in the title indisputably and prejudicially suggests that the measure at issue seeks to repeal and eliminate “rights” currently held by Colorado’s taxpayers – indeed an entire “bill of rights” replete with all that connotes. It adopts a slogan – rife with inevitable prejudicial effect in a campaign – as the official state-sanctioned label for the measure at issue. Nothing could be more contrary to the Supreme Court’s guidance.

As important, the phrase and its acronym are wholly misleading and confusing. Colo. Const. art. X, §20 is not a “bill” or enumeration of “rights” – it is in fact an elaborate set of absolute prohibitions, mandates, and structural restrictions upon the ability of the voters and their elected representatives to formulate and adopt fiscal policy. Subsection (8)(a) wholly prohibits a variety of revenue producing options, with or without voter approval and irrespective of voter/taxpayer preferences, and thus wholly eliminates “rights” theretofore available to voters (including taxpayers). Rather than confer “rights,” subsection (5) mandates minimum levels of emergency reserves, and subsection (6) constrains the permissible sources and uses of emergency revenue. Subsection (9) eviscerates state mandates irrespective of statewide voter support. Subsection (4) structurally alters (and adds significant public expense to) the process by which the people may operate through their elected representatives to formulate and adopt policies concerning taxation and public debt – while conferring no new “rights” upon taxpayers and voters not already possessed through their powers of initiative and referendum under Colo. Const. art. V, §1. Subsection (7) constrains the ability of the people’s elected representatives even to retain and utilize revenue duly received – for any purposes – without again imposing an election upon voters already constitutionally empowered to require one if they wish. The purpose and principle underlying Colo. Const. art. X, §20 is not and has never been to create or enumerate “rights” for taxpayers; it is and has been to constrain those rights and alter the process by which they are exercised with the recited goal to “reasonably restrain most the growth of government” – subsection (1). This is very different from conferring “rights” – let alone a “bill of rights.”

The concern expressed by the Title Board at the initial hearing on July 17, 2019, was to formulate a title that is both brief – as required by C.R.S. §1-40-106(3)(b) – and yet sufficient to clearly inform the voters of the provision sought to be repealed. The proponents suggested that

identifying the provision to be repealed simply as “Article X, Section 20 of the Colorado constitution” would best accomplish that, without resort to catch phrases or potentially confusing acronyms of catch phrases.

If the Board wishes to go further, however, attention should be directed to the true intent and meaning of Initiative #3, which – as discussed at the initial hearing – is to restore the ability of the people’s elected representatives to determine the source and amount of revenue and expenditures. This informs the voters of the purpose of the provision. As the Court concluded in *In re Title, Ballot Title & Submission Clause for 2015-2016 #156 (Robinson v. Dierking)*, 2016 CO 56 (Colo. 2016), “In sum, the clear title requirement seeks to accomplish two overarching goals: prevent voter confusion and ensure that the title adequately expresses the initiative’s intended purpose.” With this in mind, an appropriate title could read:

An amendment to the Colorado constitution restoring the ability of the people’s elected representatives to determine the source and amount of revenue and expenditures by repealing Article X, Section 20 of the Colorado constitution.

Should the Board believe that more is required, something along the following lines may meet that concern:

An amendment to the Colorado constitution repealing Article X, Section 20, to remove categorical prohibitions, restrictions, mandates, and preliminary voter approval requirements upon the ability of state and local elected representatives to adopt policies concerning the source, amount, and use of revenue and debt.

The proponents also respectfully submit that additional commentary or enumerations of detail in the title would inevitably create – rather than eliminate – voter confusion, obfuscate “the principle of the provision sought to be . . . repealed” – C.R.S. §1-40-106(3)(b) – and result in a ponderous and hopelessly convoluted and unclear title. “Indeed, overly detailed titles and submission clauses could by their very length tend to confuse voters.” *In re Proposed Initiative Concerning ‘State Personnel System,’* 691 P.2d 1121, 1124 (Colo. 1984). “The Board must use its discretion to determine whether it can fairly delineate or describe the law or constitutional provision to be repealed without unduly expanding the title . . . and without jeopardizing the impartiality of the designations that ultimately will be placed before the electorate.” *In re Title, Ballot Title & Submission Clause for Proposed Constitutional Amendment under Designation ‘Pregnancy,’* 757 P.2d 132, 137 (Colo. 1988). “There is no requirement that the provisions of the section to be repealed must be set out in the title and ballot title and submission clause.” *Id.* at 136. Further, “the Board is not required to state the effect that an initiative may have on other constitutional provisions.” *In re Title, Ballot Title & Submission Clause for Proposed Initiative on Water Rights,* 877 P.2d 321, 328 (Colo. 1994).

II. Fiscal impact abstract.

The Proponents also are not satisfied with, and respectfully request reconsideration of, the abstract prepared by the Director of Research of the Legislative Council of the General Assembly with regard to Proposed Initiative 2019-2020 #3. The Proponents submit that commentary in the abstract regarding an expected economic impact of shifting a portion of the state's economy from the private sector to the public sector, as well as a corresponding reduction in household and business spending or saving, is wholly speculative regarding unknowable state and local legislative responses to the restoration of their core constitutional responsibilities, incorrect, misleading, and prejudicial.

First, the effect of repealing Colo. Const. art. X, §20, is wholly dependent upon future fiscal policy decisions and actions of the people's elected representatives at both the state and local level – as well as the voters' authorization, approval of, and response to those actions together with their direct participation in the policy making process as expressed at the polls, through public involvement in the legislative process at all levels of government, and through their own use of their rights of initiative and referendum – together with relevant and presently unknowable developments and trends in the local, state, and national economies. The restoration to the state and local legislative bodies of fiscal policy options presently constrained or subjected to expensive and repeated structural hurdles does not indicate which, if any, of those options may be adopted or when and under what circumstances that may happen.

Additionally, under the "State expenditures" section of the abstract, the reference to a reduction in "refunds to taxpayers" should only address "mandated refunds to taxpayers." The last sentence should also fairly note that lawmakers may also decrease spending.

It is critical to note that this repeal measure is silent on tax, spending, or fiscal policy. It is purely a measure that restores the structural relationship between the voters and their elected representatives as it existed prior to the adoption of Colo. Const. art. X, §20 in 1992. To assume the policy direction of future decisions in the context of decision-making authority that would be shared and result from a continuing interplay between voters and their elected representatives, is pure speculation. We respectfully ask that the abstract be rewritten to reflect that fact. In particular, the Economic Impact section of the abstract should be clear that future fiscal policy decisions cannot be determined at this stage.

Respectfully submitted this 24th day of July, 2019.

s/Edward T. Ramey

Edward T. Ramey, #6748

Tierney Lawrence LLC

225 East 16th Avenue, Suite 350

Denver, CO 80203

Telephone: 720-242-7585

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Attorneys for Representatives of Proponents

Representatives of Proponents:

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Ballot Title Setting Board

Proposed Initiative 2019-2020 #3¹

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

An amendment to the Colorado constitution concerning the repeal of the Taxpayer's Bill of Rights (TABOR), Article X, Section 20 of the Colorado constitution.

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

Shall there be an amendment to the Colorado constitution concerning the repeal of the Taxpayer's Bill of Rights (TABOR), Article X, Section 20 of the Colorado constitution?

Hearing January 16, 2019:

Title setting denied on the basis that the measure does not constitute a single subject.

Hearing adjourned 1:35 PM.

Rehearing February 6, 2019:

Motion for Rehearing denied as to single subject; Motion for Rehearing regarding the fiscal impact abstract denied for lack of jurisdiction because the Board declined to set title.

Hearing adjourned 1:18 p.m.

Remand Hearing July 17, 2019:

Single subject approved; staff draft amended; titles set. The Board determined that the proposed initiative only repeals language from the state constitution. The requirement for approval by fifty-five percent of the votes cast does not apply to this initiative.

Hearing adjourned 1:23 p.m.

Rehearing August 7, 2019:

Rehearing did not occur because the designated representatives did not attend. The Board voted to reschedule the rehearing for its next meeting on August 21, 2019.

Rehearing August 21, 2019:

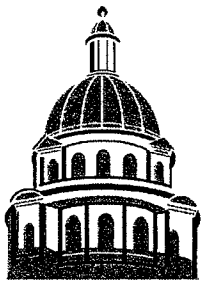
Motion for Rehearing filed by proponents granted only to the extent that the Board made changes to the fiscal impact abstract; denied in all other respects.

Motion for Rehearing (Bruce) denied.

Motion for Rehearing (Banta) denied.

Hearing adjourned 2:53 p.m.

¹ Unofficially captioned "State Fiscal Policy" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

Initiative 3

INITIAL FISCAL IMPACT STATEMENT

Date: January 15, 2019

Fiscal Analyst: Greg Sobetski (303-866-4105)

LCS TITLE: STATE FISCAL POLICY

***Disclaimer.** This initial fiscal impact statement has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff may revise this estimate for the ballot information booklet (Blue Book) if new information becomes available.*

Summary of Measure

This measure repeals Article X, Section 20, of the Colorado Constitution. This section is titled "The Taxpayer's Bill of Rights" and often called "TABOR".

Background

Article X, Section 20, of the Colorado Constitution restricts the authority of state and local government legislative bodies to make certain fiscal decisions. It requires state and local governments to obtain approval from voters in order to establish new taxes, raise tax rates, or create multiyear debt, and sets parameters for these elections. It also prohibits certain types of new taxes, including a state property tax, local income taxes, and the taxation of income at different rates.

Article X, Section 20, also establishes limits on the amounts of revenue that the state and local governments are permitted to retain and spend or save.

Assumptions

Most of the effects of the measure are indeterminate because they depend on subsequent decisions by policy makers. By repealing constitutional restrictions on revenue and spending, the measure may allow the state and local governments to raise tax rates or impose new taxes without voter approval and to authorize higher levels of government spending. This fiscal impact statement does not make assumptions about what subsequent policy changes would be made if current constitutional restrictions were no longer to exist. Further, for some governments, current constitutional provisions are codified in statute, regulation, or ordinance, which would continue to bind local policy makers unless and until these provisions are amended or repealed.

State Revenue

The measure has no direct impact on state revenue. Indirect impacts on revenue are indeterminate as discussed in the Assumptions section of this fiscal impact statement.

State Expenditures

The measure reduces state expenditures for refunds to taxpayers in all future years for which a refund obligation would otherwise be refunded, and reduces workload for state agencies responsible for administering current constitutional provisions. Other impacts on state expenditures are indeterminate for the reasons given in the Assumptions section of this fiscal impact statement.

TABOR refunds. Current state law includes mechanisms to refund revenue collected in excess of the constitutional limit to taxpayers. Under the measure, the constitutional limit would no longer apply, and these refund mechanisms would no longer be used to refund revenue.

It is assumed that the measure would apply beginning in FY 2020-21. Under the December 2018 Legislative Council Staff forecast, the state is not expected to collect excess revenue during FY 2020-21. For this reason, the measure is not expected to reduce the amount set aside for a refund obligation that would otherwise be generated during this year.

A forecast of state revenue subject to the limit is not available beyond FY 2020-21. For years when excess revenue otherwise would have been collected, the measure eliminates the requirement that this revenue be set aside to pay refunds in the following fiscal year, allowing increased expenditures or savings at the discretion of the General Assembly.

Administration. Under current law, the Division of Taxation in the Department of Revenue is responsible for the administration of TABOR refunds. In future years when TABOR refunds would otherwise occur, the measure will cause a reduction in workload for the processing and review of refund payments. The timing of workload reductions depends on economic and revenue conditions for years beyond the current forecast period. To the extent that reductions in personnel allocations are required, these are assumed to be handled through the annual budget process.

Various state agencies responsible for accounting, tracking, reporting, or projecting state revenue subject to the constitutional limit will experience workload reductions if the limit no longer applies. These include Legislative Council Staff, the Office of the State Auditor, the Office of the State Controller in the Department of Personnel and Administration, the Department of the Treasury, and the Office of State Planning and Budgeting. For Legislative Council Staff, reductions in staff time are expected to manifest in FY 2022-23 after accounting for the period immediately after the measure's effective date, when research and analysis of the measure's effects are expected to drive workload. To the extent that reductions in personnel allocations are required, these are assumed to be handled through the annual budget process.

Local Government Impact

The measure is expected to increase local government revenue and decrease local government expenditures for refunds beginning in FY 2020-21.

The current constitutional revenue limit applies to all local governments. As a means of refunding excess revenue through property taxes, certain counties, municipalities, and special districts have imposed temporary reductions in their mill levies. In these jurisdictions, mill levies are set to return to their full approved values when the taxing entity's revenue limit is eliminated. Where mill levies increase automatically, jurisdictions will collect additional revenue under the measure than under current law, and will have additional funds available to spend or save in future years.

The discussion of contingent impacts in the Assumptions section above also applies to local jurisdictions. Under the measure, city councils, boards of county commissioners, and leadership boards of special districts will be empowered to enact new taxes or raise tax rates without voter approval unless otherwise constrained by local ordinance or other provisions of state law. This fiscal impact statement assumes that these outcomes depend on policy decisions to be made subsequent to the measure's adoption, and therefore does not treat these potential contingencies as direct impacts of the measure.

Economic Impact

The measure empowers state and local government entities to raise revenue through policies that are currently prohibited, or through policies that currently require voter approval. The specific effects of this change will depend on decisions made by governments in the future. To the extent that state and local governments increase revenue and spending as a result of the measure, taxpayers will pay higher taxes and fees resulting in less household and business income to spend or save elsewhere in the economy. Higher spending on public services, including health care, education, social services, infrastructure, and public safety, will increase demand for some private goods and services. Demand for goods and services sold by other private industries will be reduced to the extent that governments offer these services, or to the extent that households and businesses have less income to spend on these products.

Direct impacts are expected to occur in local jurisdictions where mill levies are currently reduced as necessary to accommodate the revenue limit or to issue refunds. Property taxes will increase to varying extents in these jurisdictions. Property tax increases will allow for increased government spending and reduce disposable income for homeowners and for businesses owning nonresidential property, correspondingly reducing household and business consumption and/or saving. Increased property taxes may also diminish property values in affected jurisdictions, and may slow rates of migration to these areas.

Technical Note

Because this measure is assumed to appear before voters at the 2020 General Election, the constitutional revenue limit is assumed to remain in effect through FY 2019-20. Under the December 2018 Legislative Council Staff forecast, the state government is expected to collect an estimated \$189.0 million in excess of the limit for FY 2019-20. This fiscal impact statement assumes that this amount will be refunded to taxpayers in FY 2020-21 on income tax returns for tax year 2020, as required under current law. However, if refunds are not made after the measure is passed, the amount of state General Fund revenue available to be spent or saved in FY 2020-21 would increase by \$189.0 million.

Effective Date

If approved by voters at the 2020 general election, this measure takes effect upon proclamation of the Governor, no later than 30 days after the official canvass of the vote is completed.

State and Local Government Contacts

Counties
Information Technology
Law
Local Affairs
Office of State Planning and Budgeting
Personnel
Revenue
Special Districts
Treasurers

Education
Judicial
Legislative Council Staff Economists
Municipalities
Office of Legislative Legal Services
Property Tax
School Districts
State Auditor
Treasury

Abstract of Initiative 3: STATE FISCAL POLICY

The abstract includes estimates of the fiscal impact of the proposed 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.

This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of January 2019, identifies the following impacts:

State revenue. The measure has no direct impact on state revenue, but will allow state lawmakers to raise revenue without voter approval in future years.

State expenditures. The measure reduces state expenditures for refunds to taxpayers in all future years for which a refund obligation would otherwise be refunded, and reduces workload for state agencies responsible for administering the constitutional provisions repealed in the measure. It will also allow state lawmakers to increase spending above the limit currently imposed in the constitution.

Local government impact. The measure is expected to increase local government revenue and decrease local government expenditures for refunds to taxpayers beginning in FY 2020-21.

Economic impacts. The measure is expected to increase revenue and spending for state and local governments over the long term, shifting a portion of the state's economy from the private sector to the public sector. Government spending for public goods and services, including for example health care, education, social services, infrastructure, and public safety, will increase. Household and business spending or saving will be correspondingly reduced.

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Economic impacts. The measure is expected to increase revenue and spending for state and local governments over the long term, shifting a portion of the state's economy from the private sector to the public sector. If government spending for public goods and services, including for example health care, education, social services, infrastructure, and public safety, increases, as expected, household and business spending or saving will be correspondingly reduced.