

<p>SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Petition for Review Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2019-2020 #179 (“Concerning State Tax Policy”)</p> <p>Petitioner: TYLER SANDBERG</p> <p>v.</p> <p>Respondents/Proponents: CAROL HEDGES and STEVE BRIGGS, Proponents,</p> <p>and</p> <p>Title Board: THERESA CONLEY, JASON GELENDER, and DAVID POWELL</p>	<p>Supreme Court Case No.</p>
<p>Attorneys for Petitioner: Gwendolyn A. Benevento, #34190 Maven Law Group 1800 Glenarm Pl., Suite 950 Denver, CO 80202 Telephone: 303-218-7150 Email: gbenevento@mavenlawgroup.com</p>	<p>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2019-2020 #179 (“CONCERNING STATE TAX POLICY”)</p>

Tyler Sandberg (“Petitioner”), a registered Colorado elector of the State of Colorado through his undersigned counsel, respectfully

petitions this Court pursuant to C.R.S. § 1-40-107(2) to review the actions of the Ballot Title Setting Board (“Title Board”) with respect to the title, ballot title, and submission clause for Proposed Initiative 2019-2020 #179 (the “Proposed Initiative”) See Exhibit 1.

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative

Title Board held a hearing on February 5, 2020, where it determined that the Proposed Initiative contained a single subject as required by Colo. Const. art. V, §1(5.5) and C.R.S. § 1-40-106.5 and set a title. (Ex. 1) On February 12, 2020, Petitioner filed a Motion for Rehearing stating that the Proposed Initiative does not contain a single subject, and that its title was unfair and misleading in contravention of C.R.S. § 1-40-106(3)(b). *Id.* Title Board held a rehearing on February 19, 2020, at which time it denied Petitioner’s Motion for Rehearing. (Ex. 1).

B. Jurisdiction

Petitioner is entitled to a review by the Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioner timely filed the Motion for Rehearing with the Title Board and timely filed this Petition for

Review. *See* C.R.S. § 1-40-107(1) and (2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of the final petition with the titles and submission clause, the abstract, the determination of whether the petition repeals in whole or in part a constitutional provision, and the motion for rehearing and of the ruling thereon. Petitioner believes that the Title Board erred in denying the Motion for Rehearing.

GROUND FOR REVIEW

The Proposed Initiative is so ambiguous that a single subject cannot be stated in the title and it contains more than a single subject in violation of Colo. Const. art. V, §1(5.5) and C.R.S. § 1-40-106.5 and that its title is unfair and misleading in contravention of C.R.S. § 1-40-106(3)(b).

PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the title set by the Title Board for the Proposed Initiative are legally flawed. Petitioner requests the Court to reverse the actions of the Title Board and order the Proposed Initiative be returned to the Proponents.

Respectfully submitted this 26th day of February, 2020.

/s/Gwendolyn A. Benevento

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Attorneys for Petitioner

CERTIFICATE OF SERVICE

This is to certify that I caused the within filing to be served by Colorado Courts E-Filing E-Service, email and United States Mail this 26th day of February, 2020, as follows:

Edward T. Ramey, #6748
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/s/ Gwendolyn A. Benevento



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, fiscal impact statement and abstract, motions for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2019-2020 #179 'Concerning State Tax 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 24th day of February, 2020.

Jena Griswold

SECRETARY OF STATE



RECEIVED

S. WARD
4:46 P.M.

COLORADO TITLE SETTING BOARD

Colorado Secretary of State

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR
INITIATIVE 2019-2020 #179

MOTION FOR REHEARING

On my own behalf, as a registered elector of the State of Colorado, the undersigned hereby submits this Motion for Rehearing for Initiative 2019- 2020 #179 - Concerning State Tax Policy, pursuant to Section 1-40-107, C.R.S., and as grounds therefore states as follows:

**I. INITIATIVE #179 IMPERMISSIBLY CONTAINS MULTIPLE
SEPARATE AND DISTINCT SUBJECTS IN VIOLATION OF THE
SINGLE SUBJECT REQUIREMENT**

The current title indicates that the subject of the measure “concerns the establishment of constitutional principles to guide the state tax system.” However, the measure actually contains multiple separate subjects including at least the following:

A. Establishing a new and undefined entitlement

Both the measure and the title state that taxpayers are “entitled” to a fair and just tax system. The use of this legal term of art creates “a right to receive a value or benefit.” *West's Encyclopedia of American Law, edition 2 (2008)*. The legal ramifications of the use of this term are not made clear to voters either in the measure or in the title.

**B. Requiring that the tax system meet the impossible goal of being competitive
with the tax systems in other states**

As there are fifty (50) other states with widely varying tax systems it is impossible to determine how any tax system could be competitive with all of them. Seven (7) states have no state income tax. Among the states that do have income taxes the rates vary from a low of 2.9% (Nevada) to 13.3% (California). In addition, the income taxes are levied in some states on wage and salary income, and in others on only dividend and interest income. Finally, some states tax corporate income and some do not.

The term competitive is subject to several contradictory meanings. Would our system be competitive in its simplicity and ease of understanding? Would it be competitive in fairness? Would it be competitive as regards corporations or individuals or both? Would it be competitive in the amount of revenue raised? Either this aspiration to be competitive with all of these different approaches means nothing at all, or else its meaning is completely subjective and undetermined.

C. Through broad and vague language surreptitiously repealing and replacing crucial provisions of Article X, Section 20 of the Colorado Constitution (“TABOR”)

The Colorado Constitution currently contains Article X, Section 20, commonly known as the “Taxpayer’s Bill of Rights” or TABOR. This contains a requirement that the law be interpreted in the manner that shall “reasonably restrain most the growth of government.” Colo. Const. Art. X, Sec. 20(1). The broad language in the proposed measure would require instead that taxpayers shall be subject to such taxes as “are necessary to provide the revenue to satisfy” an ensuing list of items.

In summary, while the broad language of this measure appears to be only aspirational, it in fact attempts to achieve a number of completely separate goals which would significantly change Colorado law and fail to meet the single subject requirement.

II. THE TITLE BOARD LACKS JURISDICTION BECAUSE ERRORS AND MISLEADING LANGUAGE IN THE PROPOSED MEASURE RESULTS IN A CONFUSING MEASURE.

The Title Board should deny jurisdiction to consider this measure because, as explained above, it fails to meet drafting requirements of simplicity and clarity and will confuse voters. See C.R.S. § 1-40-105(3) (“To the extent possible, drafts shall be worded with simplicity and clarity and so that the effect of the measure will not be misleading or likely to cause confusion among voters.”). The broad language used conceals from voters the significant changes it would bring to Colorado law.

III. THE TITLE CONTAINS AN IMPERMISSIBLE CATCHPHRASE

Both the measure and the title contain an impermissible catchphrase. The phrase “fair and just tax system” has no concrete meaning and is designed to appeal to voters’ emotions, and should not be permitted. In re Title, Ballot Title and Submission Clause, and Summary 1999-2000, No. 258(A), 4 P.3d 1094, 1100 (Colo. 2000).

IV. THE TITLE FAILS TO CONVEY TO VOTERS THE EFFECTS OF THE MEASURE

Voters need to be informed that this measure would create a new entitlement with undisclosed effects at the constitutional level. Voters should be aware of the impossible subjectivity of determining how our tax system could be competitive with all other states' tax systems. Voters need to be aware that this Constitutional amendment conflicts with and would repeal and replace significant taxpayer protections that currently exist in Colorado law.

CONCLUSION

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

Respectfully submitted this 12th day of February, 2020.

/s/ Rebecca R. Sopkin
Rebecca R. Sopkin
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RECEIVED

S. WARD
1:56 P.M.

Colorado Secretary of State

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE BALLOT TITLE AND SUBMISSION CLAUSE FOR
INITIATIVE 2019-2020 #179

MOTION FOR REHEARING

On behalf of Tyler Sandberg, a registered elector of the State of Colorado, the undersigned counsel hereby submits this Motion for Rehearing of the Title Board's February 5, 2020, decision to set the title of 2019-2020 Initiative #179 ("Initiative"), pursuant to C.R.S. § 1-40-107, and as grounds therefore states as follows:

- I. **The Initiative contains multiple subject in violation of the single-subject requirements.**
 - A. The Initiative has several distinct and separate purposes:
 1. The Initiative requires a new state tax system that bases tax collection on undefined terms that cannot be measured.
 2. The Initiative affects state taxes of any kind (income tax, sales tax, property tax, etc.) on all taxpayers (including individuals and corporations).
 3. The Initiative affects local taxes of any kind (income tax, sales tax, property tax, etc.) on all taxpayers (including individuals and corporations).
 4. Requiring that the tax system shall be predictable, flexible, and competitive with other state tax systems and that taxpayers shall be subject to taxes to provide a certain indeterminate level of public support could necessitate any number of changes to tax allocations, tax deductions, and tax rates.
 5. The language conflicts with Article X, Section 20 of the Colorado Constitution.

- II. **The Initiative title is unclear and misleading.**
 - A. This Initiative does not have a central purpose that can be summarized in the title and the provisions of the Initiative are too vague to for the Title Board to be able to advise the electorate of the central purpose of the initiative.
 - B. The purposes of this Initiative are so unclear that setting this title would be misleading and cause voter confusion about the effect of a "yes" or "no" vote.
 - C. The proponents and current title state that the Initiative's purpose is the "establishment of constitutional principles to guide the state tax system," yet the language of the Initiative goes beyond establishing principles. The Initiative provides constitutional directives ("shall" is used repeatedly) that

unquestionably require compliance with the new law. Although we do not yet understand the standards presented by this new law, the fact that it will affect existing statutes and preceding constitutional laws that do not conform to the standards is evident. Presenting this Initiative to voters as merely some “guiding principles” is misleading, if not deceptive. Specifically, the Objector challenges the following wording fails to convey the mandatory nature of the directives : “the establishment of constitutional principles to guide the state tax system,” and “establishing a policy goal that each taxpayer pay the same percentage of income in total state and local taxes.”

III. The Initiative contains an impermissible catchphrase.

The phrase “fair and just tax system” refers to a graduated income tax system by those who support such system, and “fair and just tax system” is a catch phrase within the context of contemporary political debate.

IV. The Fiscal Impact Statement and Abstract fail to comply with the requirements of Section 1-40-105.5 and are misleading.

The fiscal impact statement and abstract are expressly and improperly based on an assumption about the possible effects of the Initiative. The assumption is that the Initiative does not change the applicability of any current state or local taxes or taxing authority. There is no explanation of why, given the clearly stated directives throughout this measure, that it is assumed to do nothing and have no fiscal impact. The fiscal impact statement is flawed because the Initiative itself is so vague and confusing that the potential fiscal impacts of the Initiative are impossible to define and hinder the ability to create a fiscal impact statement that provides the information required by statute. The fiscal impact statement and abstract are misleading.

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

Respectfully submitted this 12th day of February, 2020.

MAVEN LAW GROUP

/s/ Gwendolyn Benevento

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Ballot Title Setting Board

Proposed Initiative 2019-2020 #179¹

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

1 An amendment to the Colorado constitution concerning the establishment of constitutional
2 principles to guide the state tax system, and in connection therewith, declaring that taxpayers are
3 entitled to a fair and just tax system; establishing a policy goal that each taxpayer pay the same
4 percentage of income in total state and local taxes; and requiring the tax system to be predictable,
5 flexible, and competitive with other state tax systems and to generate sufficient revenue to fund
6 priorities specified in the amendment.

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

7 Shall there be an amendment to the Colorado constitution concerning the establishment of
8 constitutional principles to guide the state tax system, and in connection therewith, declaring that
9 taxpayers are entitled to a fair and just tax system; establishing a policy goal that each taxpayer
10 pay the same percentage of income in total state and local taxes; and requiring the tax system to
11 be predictable, flexible, and competitive with other state tax systems and to generate sufficient
12 revenue to fund priorities specified in the amendment?

Hearing February 5, 2020:

Single subject approved; staff draft amended; titles set.

The Board determined that the proposed initiative adds language to the state constitution. The requirement for approval by fifty-five percent of the votes cast applies to this initiative.

Hearing adjourned 3:08 p.m.

¹ Unofficially captioned “**Concerning State Tax Policy**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

2019-2020 #179 - Final

RECEIVED

S. WARD

12:47 P.M.

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, article X, add section 22 as follows:

SECTION 22. FAIR AND JUST TAX SYSTEM. TAXPAYERS ARE ENTITLED TO A FAIR AND JUST TAX SYSTEM. THE TAX SYSTEM SHALL BE PREDICTABLE, WHILE BEING SUFFICIENTLY FLEXIBLE TO RESPOND TO CHANGES IN THE ECONOMY AND THE NEEDS OF THE COMMUNITY. THE TAX SYSTEM SHALL BE COMPETITIVE WITH THE TAX SYSTEMS IN OTHER STATES. THE GOAL OF TAX POLICY SHALL BE THAT, TO THE EXTENT PRACTICABLE, EACH TAXPAYER SHALL PAY THE SAME PERCENTAGE OF INCOME IN TOTAL TAXES. TAXPAYERS SHALL BE SUBJECT TO SUCH TAXES AS ARE NECESSARY TO PROVIDE THE REVENUE TO SATISFY CONSTITUTIONAL REQUIREMENTS; ESTABLISH JUSTICE; ENSURE SAFETY AND SECURITY; PROMOTE THE GENERAL WELFARE OF INDIVIDUALS, FAMILIES, AND COMMUNITIES; AND PROTECT THE ENVIRONMENT AND NATURAL RESOURCES.



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

INITIAL FISCAL IMPACT STATEMENT

Date: February 4, 2020

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

LCS TITLE: CONCERNING STATE TAX 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

The measure creates a constitutional entitlement to a fair and just tax system. It requires that the tax system be predictable, flexible, and competitive with tax systems in other states. It establishes a goal that each taxpayer pay the same percentage of income in total taxes to the extent possible, and requires that taxpayers be subject to such taxes as are necessary to provide revenue to meet certain objectives.

Assessment of No Fiscal Impact

This measure is assessed as having no fiscal impact. The measure may encourage later enactment, amendment, or repeal of certain taxes; however, it is assumed not to change the applicability of any current state or local taxes or the authority of state or local governments to impose taxes.

Based on this assessment, the measure is assessed as having no direct economic or taxpayer impact.

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.

Abstract of Initiative 179: CONCERNING STATE TAX 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 February 2020, identifies the following impacts:

Assessment of no fiscal impact. This measure is assessed as having no fiscal impact. The measure may encourage later enactment, amendment, or repeal of certain taxes; however, it is assumed not to change the applicability of any current state or local taxes or the authority of state or local governments to impose taxes.

Economic impacts. The measure is assessed as having no direct economic impacts.

Taxpayer impacts. The measure is assessed as having no direct taxpayer impacts.

Ballot Title Setting Board

Proposed Initiative 2019-2020 #179¹

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

An amendment to the Colorado constitution concerning the state tax system, and in connection therewith, establishing a policy goal that each taxpayer pay the same percentage of income in total state and local taxes; and requiring the tax system to be predictable, flexible, and competitive with other state tax systems and to generate sufficient revenue to fund priorities specified in the amendment.

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 state tax system, and in connection therewith, establishing a policy goal that each taxpayer pay the same percentage of income in total state and local taxes; and requiring the tax system to be predictable, flexible, and competitive with other state tax systems and to generate sufficient revenue to fund priorities specified in the amendment?

Hearing February 5, 2020:

Single subject approved; staff draft amended; titles set.

The Board determined that the proposed initiative adds language to the state constitution. The requirement for approval by fifty-five percent of the votes cast applies to this initiative.

Hearing adjourned 3:08 p.m.

Rehearing February 19, 2020:

Motion for Rehearing (Sopkin) denied except to the extent that the Board made changes to the titles.

Motion for Rehearing (Sandberg) denied except to the extent that the Board made changes to the titles.

Hearing adjourned 12:15 p.m.

¹ Unofficially captioned “Concerning State Tax Policy” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.