

SUPREME COURT, STATE OF COLORADO
2 East 14th Avenue
Denver, CO 80203

Petition for Review
Pursuant to Colo. Rev. Stat. § 1-40-107(2)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative
2019-2020 #180 (“Voter Approval of Certain
Tax Increases”)

Petitioner: TYLER SANDBERG

v.

Respondents/Proponents: CAROL HEDGES
and STEVE BRIGGS,
Proponents,

and

Title Board: THERESA CONLEY, JASON
GELENDER, and DAVID POWELL

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

▲ COURT USE ONLY ▲

Supreme Court Case No.

**PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE
SETTING BOARD CONCERNING PROPOSED INITIATIVE 2019-2020
#180 (“VOTER APPROVAL OF CERTAIN TAX INCREASES”)**

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 #180 (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). (Ex. 1). 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 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

GWENDOLYN A. BENEVENTO,
#34190
Maven Law Group
1800 Glenarm Place, Suite 950
Denver, CO 80202
Telephone: 303-218-7150
gbenevento@mavenlawgroup.com
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
Tierney Lawrence LLC
225 East 16th Avenue, Suite 350
Denver, CO 80203
eramey@tierneylawrence.com
Attorneys for Proponents

Michael Kotlarczyk, #43250
Assistant Attorney General
Public Officials Unit
Colorado Attorney General's Office
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, Colorado 80203
mike.kotlarczyk@coag.gov
Attorneys for Title Board

/s/ Gwendolyn A. Benevento



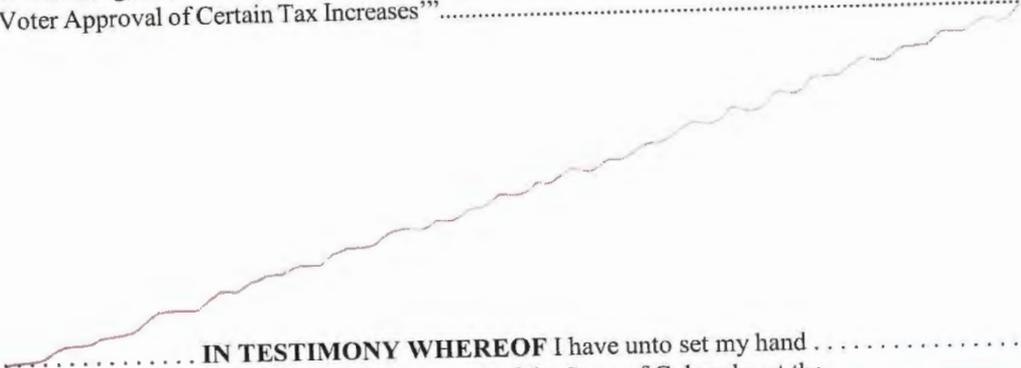
STATE OF COLORADO

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 #180 'Voter Approval of Certain Tax Increases'"



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
4:47 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 #180

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 #180 - Concerning State Tax Policy, pursuant to Section 1-40-107, C.R.S., and as grounds therefore states as follows:

I. INITIATIVE #180 ATTEMPTS TO SURREPTITIOUSLY REPEAL AND REPLACE SIGNIFICANT PORTIONS OF THE COLORADO CONSTITUTION.

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 all districts, including the state itself, “must have voter approval in advance” for among other items “any new tax, [or] tax rate increase.” Colo. Const. Art. X, Sec. 20 (4)(a). The matching language in the proposed measure restricts itself to “taxpayers whose income is in the lowest ninety percent of income.” The Colorado Constitution currently contains no such limitation. The effect of inserting such a conflicting restriction in our constitution would be subject to the interpretation that it nullifies at least some of the rights contained in TABOR for those who do not fall within “the lowest ninety percent of income.”

II. THE TITLE BOARD LACKS JURISDICTION BECAUSE 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.

In addition, the measure fails to clearly enumerate how those whose income are not in “the lowest ninety percent of income” will be affected.

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
Attorney at Law, #20998
720 Kipling St. #12
Lakewood, CO 80215
303/946-2299
grsop@msn.com

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 #180

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 #180 ("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.

The Initiative has at least two distinct and separate purposes:

- A. Requires voter approval for only for a certain class of state income tax rates and rate increases; and
- B. Overrides the requirements in Article X, Section 20 of the Colorado Constitution requiring voter approval of new state taxes and state tax rate increases in any other circumstance.

II. The Initiative title is unclear and misleading.

This Initiative title does not make clear that the proposed requirement already exists in Article X, Section 20 of the Colorado Constitution, therefore the title is misleading because it purports to establish a new voter approval requirement. The title should refer to Article X, Section 20 of the Colorado Constitution.

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

Gwendolyn Benevento, 34190
1800 Glenarm Place, Suite 950
Denver, CO 80202
303-218-1750
gbenevento@mavenlawgroup.com

Ballot Title Setting Board

Proposed Initiative 2019-2020 #180¹

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

1 An amendment to the Colorado constitution requiring voter approval of new state taxes
2 and state tax rate increases that apply to taxpayers whose income is in the lowest 90% of income
3 for Colorado taxpayers.

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

4 Shall there be an amendment to the Colorado constitution requiring voter approval of new
5 state taxes and state tax rate increases that apply to taxpayers whose income is in the lowest 90%
6 of income for Colorado taxpayers?

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 3:37 p.m.

¹ Unofficially captioned “**Voter Approval of Certain Tax Increases**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

2019-2020 #180 - Final

RECEIVED

S.WARD
12:48P.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. VOTER APPROVAL OF CERTAIN TAX INCREASES.

(1) VOTER APPROVAL REQUIRED. VOTER APPROVAL IS REQUIRED FOR ANY NEW STATE TAX OR STATE TAX RATE INCREASE THAT APPLIES TO TAXPAYERS WHOSE INCOME IS IN THE LOWEST NINETY PERCENT OF INCOME.

(2) DETERMINATION OF NEED FOR VOTER APPROVAL. IN DETERMINING WHETHER A NEW STATE TAX OR STATE TAX RATE INCREASE REQUIRES VOTER APPROVAL, THE STATE SHALL USE INCOME DATA FROM THE COLORADO DEPARTMENT OF REVENUE.

Initiative # 180



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: VOTER APPROVAL OF CERTAIN TAX INCREASES

***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 requires voter approval for any new state tax or state tax rate increase that applies to taxpayers whose income is in the lowest 90 percent of income, and requires that the state use income data from the Department of Revenue to determine whether a new state tax or state tax rate increase requires voter approval.

Assessment of No Fiscal Impact

This measure is assessed as having no fiscal impact. The constitution already requires the state to obtain voter approval in advance for any new state tax or state tax rate increase. It is assumed not to change the authority of the state government to impose taxes.

Based on this assessment, the measure is assessed as having no 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 180: VOTER APPROVAL OF CERTAIN TAX INCREASES

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. It is assumed not to change the authority of the state government to impose taxes.

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

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

Ballot Title Setting Board

Proposed Initiative 2019-2020 #180¹

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

An amendment to the Colorado constitution requiring voter approval of new state taxes and state tax rate increases that apply to taxpayers whose income is in the lowest 90% of income for Colorado taxpayers.

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 requiring voter approval of new state taxes and state tax rate increases that apply to taxpayers whose income is in the lowest 90% of income for Colorado taxpayers?

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 3:37 p.m.

Rehearing February 19, 2020:

Motion for Rehearing (Sopkin) denied in its entirety.

Motion for Rehearing (Sandberg) denied in its entirety.

Hearing adjourned 1:08 p.m.

¹ Unofficially captioned “**Voter Approval of Certain Tax Increases**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.