

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 #181 (“Voter Approval of Tax
Measures”)

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
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▲ COURT USE ONLY ▲

Supreme Court Case No.

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

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 #181 (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

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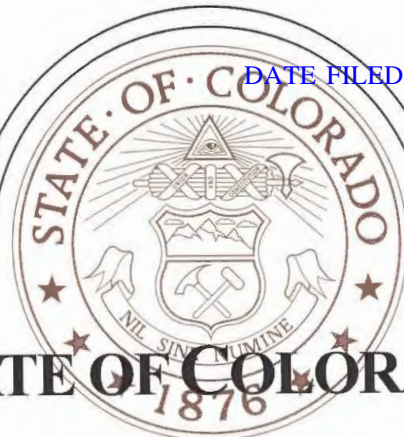
CERTIFICATE OF SERVICE

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 26^h day of February, 2020, as follows:

Edward T. Ramey, #6748
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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 #181 'Voter Approval of Tax Measures'"

..... **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

4:48 P.M.

Colorado Secretary of State

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR
INITIATIVE 2019-2020 #181

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 #181 - Voter Approval of Tax Measures, pursuant to Section 1-40-107, C.R.S., and as grounds therefore states as follows:

I. INITIATIVE #181 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 the those who do not fall within “the lowest ninety percent of income.”

II. THE TITLE SET IS MISLEADING AND UNNECESSARILY CONFUSING DUE TO THE USE OF A DOUBLE NEGATIVE

The Title set for Initiative #181 begins with the language “An amendment to the Colorado constitution requiring prior voter approval” However, the Initiative is not requiring prior voter approval, but is, in fact, disposing of currently required prior voter approval due to the fact that the “unless” clause is the new feature. The title set should not mimic the structure of the measure by containing a double negative, but should make clear to voters what the actual change in the law is by positive language.

III. THE TITLE BOARD LACKS JURISDICTION BECAUSE MISLEADING LANGUAGE IN THE PROPOSED MEASURE RESULT IN A CONFUSING MEASURE.

The Title Board should deny jurisdiction to consider this measure because 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 Initiative would dispose of the requirement of prior voter approval when the projected tax revenue “from all new tax measures is five percent or less of the fiscal year spending in the last complete fiscal year” and the projected tax revenue “from all tax measures in the last five fiscal measures is ten percent or less of the fiscal year spending in the last complete fiscal year.”

The second proviso seems to mean that voter approval would be required unless we were in the extremely unlikely position that all tax revenue (as it does not refer to all new tax measures) would be less than ten percent of the state's spending in the last fiscal year. The definitions segment attempts to address this confusing possibility by stating that “projected revenue in a fiscal year from all tax measures in the last five fiscal years” does not mean what it states but instead is restricted to “the revenue the state projects that all tax measures to take effect in that fiscal year and took effect in the preceding four fiscal years.” This attempt to define words to have meanings other than their own clear meanings is confusing and renders the initiative misleading.

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

Voters need to be aware that this Constitutional amendment conflicts with and, by implication, would replace and repeal 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

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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 #181

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 #181 ("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. Eliminates 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 title fails to explain that the Initiative provides an exception to Article X, Section 20 of the Colorado Constitution and allows revenue increases through the enactment of policy changes that currently require voter approval or are otherwise prohibited. The title is misleading because it should notify voters that the Initiative alters the existing voter approval requirement, and it 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
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Ballot Title Setting Board

Proposed Initiative 2019-2020 #181¹

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

1 An amendment to the Colorado constitution requiring prior voter approval for a new state
2 tax or state tax rate increase unless the new tax or rate increase, alone or in combination with all
3 other new state taxes and state tax rate increases, will not generate revenue above amounts
4 determined as set forth in the amendment.

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

5 Shall there be an amendment to the Colorado constitution requiring prior voter approval
6 for a new state tax or state tax rate increase unless the new tax or rate increase, alone or in
7 combination with all other new state taxes and state tax rate increases, will not generate revenue
8 above amounts determined as set forth 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 3:54 p.m.

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

RECEIVED

S. WARD
12:49 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. Limitation on tax increases - definitions.

(1) Required elections. (a) THE STATE MUST HAVE VOTER APPROVAL IN ADVANCE FOR A TAX MEASURE TO BECOME LAW, EXCEPT AS PROVIDED IN SUBSECTION (1)(b) OF THIS SECTION.

(b) VOTER APPROVAL IN ADVANCE IS NOT REQUIRED IF:

(I) THE STATE'S PROJECTED REVENUE IN A FISCAL YEAR FROM ALL NEW TAX MEASURES IS FIVE PERCENT OR LESS OF THE FISCAL YEAR SPENDING IN THE LAST COMPLETE FISCAL YEAR; AND

(II) THE STATE'S PROJECTED REVENUE IN A FISCAL YEAR FROM ALL TAX MEASURES IN THE LAST FIVE FISCAL YEARS IS TEN PERCENT OR LESS OF THE FISCAL YEAR SPENDING IN THE LAST COMPLETE FISCAL YEAR.

(2) Election provisions. A TAX MEASURE THAT MUST HAVE VOTER APPROVAL SHALL BE DECIDED IN A STATE GENERAL ELECTION OR A STATE ELECTION HELD ON THE FIRST TUESDAY IN NOVEMBER OF ODD-NUMBERED YEARS.

(3) Term definitions. WITHIN THIS SECTION:

(a) "FISCAL YEAR SPENDING" MEANS ALL STATE EXPENDITURES AND RESERVE INCREASES, EXCEPT THOSE FROM GIFTS, FEDERAL FUNDS, COLLECTIONS FOR ANOTHER GOVERNMENT, PENSION CONTRIBUTIONS BY EMPLOYEES AND PENSION FUND EARNINGS, RESERVE TRANSFERS OR EXPENDITURES, DAMAGE AWARDS, OR PROPERTY SALES.

(b) "PROJECTED REVENUE IN A FISCAL YEAR FROM ALL NEW TAX MEASURES" MEANS THE REVENUE THAT THE STATE PROJECTS ALL TAX MEASURES TO TAKE EFFECT IN THAT FISCAL YEAR WILL GENERATE IN THE NEXT COMPLETE FISCAL YEAR.

(c) "PROJECTED REVENUE IN A FISCAL YEAR FROM ALL TAX MEASURES IN THE LAST FIVE FISCAL YEARS" MEANS THE REVENUE THE STATE PROJECTS THAT ALL TAX MEASURES TO TAKE EFFECT IN THAT FISCAL YEAR, TOGETHER WITH THOSE THAT CONTINUE IN EFFECT IN THAT FISCAL YEAR AND TOOK EFFECT IN THE PRECEDING FOUR FISCAL YEARS, WILL GENERATE IN THE NEXT COMPLETE FISCAL YEAR.

(d) "TAX MEASURE" MEANS A NEW STATE TAX OR STATE TAX RATE INCREASE.



Legislative
Council Staff
Nonpartisan Services for Colorado's Legislature

Initiative # 181

INITIAL FISCAL IMPACT STATEMENT

Date: February 4, 2020

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

LCS TITLE: VOTER APPROVAL OF TAX MEASURES

***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 amends the Colorado Constitution to specify that voter approval in advance is not required for a new state tax or tax rate increase unless:

- the combined increase in revenue attributable to all such changes taking effect in a given fiscal year is estimated to exceed 5 percent of the state government's total fiscal year spending for the preceding year; or
- the combined increase in revenue attributable to all such changes taking effect in the last five years is estimated to exceed 10 percent of the state government's total fiscal year spending for the preceding year.

The new provision does not apply to local governments.

Assumptions

Most of the effects of the measure are indeterminate because they depend on subsequent decisions to be made by policy makers. The measure allows the state government to raise tax rates or impose new taxes without voter approval provided that the estimated additional revenue does not exceed certain thresholds. This fiscal impact statement does not make assumptions about what subsequent policy changes will be made in response to the measure's enactment.

State Revenue

The measure has no direct impact on state revenue; however, the measure allows state lawmakers to increase revenue through the enactment of policy changes that currently require voter approval or are otherwise prohibited. Indirect impacts on revenue are indeterminate as discussed in the Assumptions section of this fiscal impact statement. Any indirect increase in state tax revenue would be subject to the state TABOR revenue limit.

State Expenditures

To the extent that state tax revenue is increased in years when revenue exceeds the state TABOR limit, state expenditures for TABOR refunds will correspondingly increase. In years when state revenue does not exceed the TABOR limit, the state government will have more money available to spend or save.

Economic Impact

The measure empowers the state government to raise revenue through policies that currently require voter approval. The specific effects of this change will depend on decisions made by the state government in the future. To the extent that the state enacts new taxes or tax rate increases as a result of the measure, taxpayers will have less household or business income to spend or save elsewhere in the economy. Higher spending on state 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 the state government offers these services, or to the extent that households and businesses have less income to spend on these products.

Taxpayer Impacts

The measure broadens the authority of the state government to implement tax policies that currently require voter approval. The impacts on taxpayers are indeterminate and will depend on future decisions to be made by policy makers.

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

Legislative Council Staff Economics Section

Abstract of Initiative 181: VOTER APPROVAL OF TAX MEASURES

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:

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. To the extent that state tax revenue is increased, the amount of money available for the state to spend, save, or refund to taxpayers if required under TABOR will correspondingly increase.

Economic impacts. The measure is expected to increase revenue and spending for the state government 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.

Taxpayer impacts. The impacts on taxpayers are indeterminate and will depend on future decisions to be made by policy makers.

Ballot Title Setting Board

Proposed Initiative 2019-2020 #181¹

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

An amendment to the Colorado constitution requiring prior voter approval for a new state tax or state tax rate increase unless the new tax or rate increase, alone or in combination with all other new state taxes and state tax rate increases, will not generate revenue above amounts determined as set forth 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 requiring prior voter approval for a new state tax or state tax rate increase unless the new tax or rate increase, alone or in combination with all other new state taxes and state tax rate increases, will not generate revenue above amounts determined as set forth 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 3:54 p.m.

Rehearing February 19, 2020:

Motion for Rehearing (Sopkin) denied in its entirety.

Motion for Rehearing (Sandberg) denied in its entirety.

Hearing adjourned 1:16 p.m.

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