

RECEIVED

MAY 28 2008

BEFORE THE TITLE SETTING BOARD OF COLORADO
SECRETARY OF STATE

In the Matter of Initiative 2007-08 #125 (Education Funding), Nicole S. Hanlen and
Lynda K. Neff, Proponents

MOTION FOR REHEARING

On behalf of the proponents, the undersigned moves for rehearing as follows:

1. On May 21, 2008, the Title Board met and adopted a title for Initiative #125. The Board correctly found that the title met the single-subject requirement. The title set, however, is inaccurate, misleading, and confusing, and should be modified.
2. First, the phrase “requiring that any revenue that the state would otherwise be required to refund pursuant to the constitutional limit on state fiscal year spending (Taxpayer’s Bill of Rights) be transferred instead to the state education fund,” is misleading and confusing. That phrase, particularly the use of the terms “refund” and “Taxpayer’s Bill of Rights,” may well mislead voters into erroneously believing that their state income tax refunds may be diverted to the state education fund—something the measure does not do. In addition, the reference to the Taxpayer’s Bill of Rights is unprecedented in Colorado ballot titles. To the best of proponents’ knowledge, never before has the Title Board used the term “Taxpayer’s Bill of Rights” (or “TABOR”) in setting a title. Instead, the Board has either referred to the specific constitutional provision (article X, section 20) or referred generally to revenue and spending limits. *See* Ballot Title for Amendment 35 (2004 election) (“section 20 of article X of the Colorado Constitution); Ballot Title for Amendment 33 (2003 election) (“exempting net proceeds and license fees from . . . all restrictions on spending, revenues, and appropriations”); Ballot Title for Amendment 26 (2001 election) (“exempting the authority from constitutional revenue and spending limitations”); Ballot Title for Amendment 23 (2000 election) (“exempting appropriations . . . from constitutional and statutory limitations”). The phrase used in the title for #125 not only departs from past Title Board practice, but also creates the danger that voters will be misled into erroneously believing the “Taxpayer’s Bill of Rights” is something other than article X, section 20 of the state constitution.
3. Moreover, the term “Taxpayer’s Bill of Rights” is an impermissible “catch phrase.” A “catch phrase” consists of words that could form the basis of a slogan for use by those who expect to carry out a campaign for or against an initiated constitutional amendment. *In the Matter of the Title, Ballot Title and Submission Clause and Summary for 1999-2000 #227 and #228*, 3 P.3d 1, 6 (Colo. 2000). The use of catch phrases should be carefully avoided by the Title Board. *In the Matter of the Title, Ballot Title and Submission Clause and Summary for 1999-2000 #258(A)*, 4 P.3d 1094, 1100 (Colo. 2000). “This rule recognizes that the particular words chosen by the Title Board should

not prejudice electors to vote for or against the proposed initiative merely by virtue of those words' appeal to emotion." *Id.* Including the term "Taxpayer's Bill of Rights" puts in place words that can form the basis of a slogan against the initiative, contrary to the supreme court's direction. *See id.* If the term is allowed to stay in the title, the Board will have set a precedent for allowing self-serving catch phrases in future ballot titles. Such catch phrases should be avoided. *See id.* For example, 2007-08 #41 (Amendment 47) is entitled "The Colorado Right to Work Amendment." But the title set for that measure properly does not contain the catch phrase "right to work." If, however, the phrase "Taxpayer's Bill of Rights" is allowed to remain in the title for initiative #125, there would be no justification for excluding the catch phrase "right to work" in the ballot title for Amendment 47 or similar future measures. The supreme court, however, requires the Board to avoid catch phrases when setting titles. Therefore, the catch phrase "Taxpayer's Bill of Rights" should be stricken from the title.

4. The simplest and shortest way to fix this flawed phrase is to rewrite it to read, "requiring that any revenue in excess of the constitutional limit on state fiscal year spending be transferred to the state education fund." This revision remedies the catch-phrase problem and avoids the danger of confusing and misleading the voters.

5. Second, the phrase "for the 2010-11 state fiscal year and each state fiscal year thereafter, creating a state education fund savings account in the state education fund," is both incorrect and redundant. Under the measure, the state education fund savings account would be created immediately, and would be funded beginning in the 2009-10 state fiscal year. *See Proposed Art. IX, Section 17(6).* Thus, the phrase "for the 2010-11 state fiscal year and each state fiscal year thereafter," is inaccurate and should be eliminated. In addition, the phrase "state education fund savings account in the state education fund" is redundant, and should be shortened to "savings account in the state education fund."

6. Finally, the ballot title is simply too long, and its length in itself is likely to make it confusing for voters (and in fact may cause many voters to simply not read it). At 248 words, it is much longer than necessary. Proponents suggest the Board adopt the following revision, which accurately states the title but shortens it to 205 words:

"An amendment to the Colorado constitution concerning the manner in which the state funds public education from preschool through the twelfth grade, and, in connection therewith, requiring that revenue in excess of the constitutional limit on state fiscal year spending be transferred to the state education fund; eliminating the requirement that, for the 2011-12 state fiscal year and each state fiscal year thereafter, the statewide base per pupil funding for public education from preschool through the twelfth grade and the total state funding for all categorical programs increase annually by at least the rate of inflation; creating a savings account in the state education fund; requiring that a portion of the state income tax revenue that is deposited in the state education fund be credited to the savings account in certain circumstances; requiring a two-thirds majority vote of the general assembly to use the moneys in the savings account; establishing the purposes for which moneys in the savings account may be spent; establishing a maximum amount that

may be in the savings account in any state fiscal year; and allowing the general assembly to transfer moneys from the general fund to the state education fund, so long as certain obligations for transportation funding are met.”

Respectfully submitted this 29th day of May, 2008.

ISAACSON ROSENBAUM P.C.



Blain D. Myhre
633 17th Street, Suite 2200
Denver, Colorado 80202
Phone: (303) 292-5656
Fax: (303) 292-3152

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of May 2008, a true and correct copy of the foregoing **Motion for Rehearing** was sent via e-mail to the following:

Hon. Douglas Bruce
taxcutter@msn.com

