Initiative 2009-2010 #19
May 20, 2009

Title Board
State of Colorado

As a registered elector, I request a rehearing on 2009-2010 #19 for the reasons stated at the first hearing.

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Filed @ TB 5-20-09

PROBLEMS WITH INITIATIVE 2009-2010 #19

--C.R.S. 1-40-104 requires designating TWO persons. But the filing of #19 with this title board designated FIVE people. It is thus an illegal filing. No provision of law allows this board to arbitrarily remove "excess representatives." There is no authority for proponents who show up to delete names of others who did not. Once an illegal filing occurs, it cannot be made legal retroactively. Further, #19 says "The proponents... include:" which imply there may be still others beyond the five listed. That is also illegal.

--Did proponents met legal requirements to file drafts marked original/revised/ final with the board? 1-40-105(4) C.R.S. requires that. Even if all three were submitted as required, with highlighting, the major changes require a new hearing.

--The original two-sentence "text" is TOTALLY different than what was filed here as "FINAL TEXT." The second sentence of the original text has completely disappeared here. The first sentence was just random words, with no placement in the constitution or statutes, no enactment clause, no numbering, no clarity, and many other problems.

--Normal staff practice is to give a new initiative number to each revision, yet this was filed with the title board as #19. It cannot be #19 because it has been so radically changed. They are misusing the old number to evade review of the new text. This is fraud on the public, which has a right to the hearing.

--Ed de Cecco ("de Checko") of Legislative Legal Services said no new version was filed with LLS after #19's hearing on May 4th, and therefore no letter exists waiving a review and comment hearing. Such hearing is required by Article V, section 1 (5) of the constitution. There has been NO SUCH HEARING on the initiative draft before you. THAT is illegal, too.

--The statutory process must also be followed to indicate there are no further questions (because all changes were discussed at the public meeting). 1-40-105 (2) C.R.S. says if there is any "substantial amendment" not in response to direct questions, "the amended petition SHALL be resubmitted to the directors for comment...If the directors have no additional comments concerning the amended petition, they MAY so notify the proponents in writing, and, in such case, a hearing on the amended petition...is not required." They DID NOT resubmit their massively

amended petition, and no waiver letter was filed, so they EVADED public review and staff analysis on whether to hold another public hearing.

--1-40-105 (3) C.R.S. requires the draft be "worded with simplicity and clarity" and not "cause confusion among voters." This draft is unintelligible, so this board cannot set a title because it cannot be understood by this board or general citizens. You cannot set a title for a text you can't understand.

--Upon rejection of this petition, proponents must start over. The measure cannot be on the 2009 ballot anyway because it is not a matter that can be the subject of an off-year election; it is not a tax or debt issue on which TABOR REQUIRES a vote. Per the legislative finding of SB 09-228, presumed constitutional, no vote to weaken statutory spending limits is required. Legislators concluded that from the supreme court ruling on the Ritter property tax increase case. One can't even tell if TABOR is involved at all, since the one TABOR mention in the draft of #19 is GONE. Also, you cannot set a later title for 2009's election; this is the last day per 1-40-106 (1) C.R.S. (last sentence).

--The "FINAL TEXT" also has a subsection (1) but with no subsection (2). That CONTRADICTS the staff advice in its question 7, and is not in "direct response" per 1-40-105 (2) C.R.S., but in direct DEFIANCE. A similar result occurs with the enactment clause that the CONSTITUTION (Article V, section 1 (8)) and staff (in question 1) both require to be in upper and lower case letters, not all CAPITALS. The title of their new section 22 is also in ALL CAPITALS, unlike current practice.

--The text does not define "general fund." If its definition is not in the constitution and can currently be changed at any time by statute, what does this constitutional text do that a later statute cannot undo by a change in definition? It is NOT clear.

--The text's phrase "not currently obligated by existing constitutional provisions" was not part of the original draft, and its meaning has not been analyzed and discussed in a comment-and-review hearing required by the constitution.

--The text does not identify limits being "weakened" under TABOR's section 20 (1). Is it only the Arveschoug-Bird limit? Also, does this repeal or weaken SB 09-228, if SB 09-228 is approved by the governor in coming weeks? Is this petition trying to approve SB 09-228, which it believes to be currently UNconstitutional under TABOR as lacking voter approval? Can a petition approve an UNconstitutional statute? SB 0228 sets a different limit than current law. Will that be approved or

repealed? This title board can't set a title if it doesn't know what the measure does.

--Since limits can be weakened by a voter-approved statute, why is this proposed for the constitution? It appears to give the general assembly "discretion," but takes away the power of future general assemblies to USE that discretion to establish a new appropriations limit. That appears to be two different purposes, and thus TWO SUBJECTS. They are not only NOT necessarily or properly connected, they are CONTRADICTORY. That violates Article V, section 1 (5.5) and 1-40-106.5 C.R.S. It also violates 1-40-106 (2)(b) C.R.S. (last sentence) which requires this board's titles "shall unambiguously state THE principle of the provision sought to be added..." That means there can be only one principle involved, not two or three conflicting ones.

--In (1)(a), the submitted text addresses the power of the general assembly to establish limits on itself. That was not included in the original draft, and contradicts that original intent. There was no public hearing on this contradictory purpose. It is also AMBIGUOUS. It says, "Nothing in this subsection shall empower the general assembly to establish limitations..." The general assembly has that inherent power now; is it being removed? The text says only that "this subsection" shall not empower them. Is that a total prohibition, or just explanation of what THIS petition does NOT empower? How can a petition state what it is NOT DOING? Is that a separate subject? What in the prior sentence would require such an explanation? Nothing.

--The text goes from allowing unlimited appropriation in (1), to forbidding limits on appropriation (maybe) in (1)(a), to saying in (1)(b) they can REDUCE their current appropriations. Allowing more spending, banning limits on more spending (maybe), and allowing more saving (the opposite of spending)--is there a single purpose? NO.

--Under (1)(a), would a statutory limit on appropriation be allowed, since future legislatures have the power to change existing statutes? Or would it become illegal to pass a law that a general assembly would have the burden to repeal to avoid its limits? This is ANOTHER subject of limiting the inherent power to legislate, in addition to allowing unlimited general fund spending, not empowering limits, and a reserve fund.

--Is the "reserve fund" under (1)(b) something that can be made limited access, so the general assembly cannot empty it at any time? If not, how is that a reserve fund? How does it relate to spending, appropriating, the lack of limits, the ban on future limits?

I ask this title board to rule it lacks jurisdiction and that #19 has multiple fatal legal flaws in its content and its procedural errors.