

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR INITIATIVE 2010-2011 #19

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MOTION FOR REHEARING

ELECTIONS
SECRETARY OF STATE

On behalf of Petitioner Common Sense Policy Roundtable, a Colorado non-profit organization, the undersigned counsel submits this Motion for Rehearing in the above referenced matter, and as grounds therefore states as follows:

I. The proposed measure contains two or more unrelated subjects.

The proposed measure violates the single-subject requirement by including several subjects that have distinct and separate purposes and are not dependent or properly connected with each other. Specifically, the proposed measure violates single subject under the following legal basis:

A. The proposed measure would: (i) increase the state income tax rate; and (ii) raise the state sales tax rate. These are separate subjects for the following reasons:

1. **The proposed measure contains separate and unconnected tax reforms under a broad title.** The proposed measure would raise the state income tax rates for individuals and corporations as well as raise the state sales tax rate, all of which the Proponents have tried to include under the broad title of "Increasing State Taxes." The Colorado Supreme Court has held that "grouping the provisions of a proposed initiative under a broad concept that potentially misleads voters will not satisfy the single subject requirement." *In re Proposed Initiative 1996-4*, 916 P.2d 528, 533 (Colo. 1996). Unconnected tax reforms, across multiple tax structures cannot fit under a broad and general title: "Limiting government spending is too broad and general a concept to satisfy the single subject requirement..." *Id* at 539. In parallel, the proposed measure violates single subject by including unconnected income and state sales tax increases under a broad and general title to increase state taxes and such a grouping may mislead voters.
2. **The proposed measure applies inconsistent tax reforms across multiple tax structures.** The Colorado Supreme Court has ruled that tax reforms can only be applied across multiple tax structures if the underlying tax reform is uniform in content and application: "Although the Initiative applies the tax credit to more than one tax, the single purpose of the Initiative is the implementation of a tax credit. All six taxes are *connected to the same tax credit* and are bound by the *same limitations*...the Initiative relates to a *single*

definite object or purpose and does not impermissibly encompass multiple unrelated subjects.” (*In re TABOR 32*, 908 P.2d 125, 129 (Colo. 1995) (emphasis added). The proposed measure applies separate rate increases for income and sales tax. The rate increase for state income taxes is from 4.63% to 5%, and the rate increase for state sales and use tax is from 2.9% to 3%. In conflict with the *TABOR 32* holding, the proposed measure applies tax rate increases across multiple tax structures that are clearly not “connected” to the same rate or “bound by the same limitations.”

B. The proposed measure would: (i) raise state taxes; and (ii) modify existing public education funding. These are separate subjects for the following reasons:

The proposed measure provides that expenditures from existing revenues for PK-12 and higher education “shall be in an amount not less than the amount appropriated for fiscal year 2011-12, for the costs of public education from preschool through twelfth grade and public post-secondary education.” This provision (the “*Existing Revenue Minimum Funding Provision*”) sets a new and inflexible minimum funding level for PK-12 and higher education based on existing state revenues.

- 1. If PK-12 enrollment drops, the proposed measure would replace Colorado’s existing per pupil count funding model with a fixed annual appropriation model.** Under the Public School Finance Act of 1994 (as amended), Colorado currently funds public education on a per-pupil funding basis. *C.R.S. §22-54-104*. State appropriations for PK-12 education are largely based on the number of students multiplied by the total per-pupil funding amount. *Id.* The proposed measures’ Existing Revenue Minimum Funding Provision would establish a minimum funding level for existing state resources unaffected by PK-12 enrollment decreases. If PK-12 enrollment drops, the proposed measure would still require funding equal to the fixed fiscal year 2010-11 funding level. Colorado would no longer set an appropriate funding level based on the per-pupil count and would be compelled to fund PK-12 education at an annual fixed amount that does not take into account the number of students requiring education funding. If PK-12 student enrollment drops, the Existing Revenue Baseline Provision would require state appropriations for PK-12 education at a fixed annual appropriation amount rather than an amount based on the per-pupil count. This situation would dramatically alter the per-pupil funding model set forth in the Public School Finance Act of 1994 (as amended). The question of whether to modify Colorado’s public education funding model is a distinct and separate subject unconnected to the question of whether to raise state taxes.

2. **The proposed measure goes beyond “maintenance of effort” for PK-12 funding by modifying the existing minimum funding requirement set forth in Amendment 23.** Amendment 23 to the Colorado Constitution already requires annual increases to PK-12 funding. *Colorado Constitution*, Article IX, §17(5). Therefore, Amendment 23 already provides a “maintenance of effort” protection for the proposed measures new taxes that are dedicated to PK-12 education. The proposed measure sets a parallel minimum funding level for PK-12 education that is not necessary for “maintenance of effort” and precludes the General Assembly and Governor from exercising existing authority to reduce appropriations to PK-12 education for exceptional circumstances. Namely, Amendment 23 includes a provision that authorizes the General Assembly and Governor to temporarily suspend the annual PK-12 minimum funding level if state revenues fall below statutory defined levels. *Id.* This provision provides the General Assembly and Governor with a temporary scope of authority to adjust general fund appropriations for PK-12 in response to budgetary crisis. The proposed measure effectively removes this critical provision of Amendment 23 by requiring a minimum funding level for PK-12 regardless of a lack of state revenues. The question of whether to modify Amendment 23’s minimum funding level is a distinct and separate subject unconnected to the question of whether to raise state taxes.

3. **The proposed measure creates a new minimum funding level for higher education, based on existing revenues.** The question of whether to set minimum funding levels for state higher education is an important public policy matter that has been considered by the Colorado General Assembly and state voters. The proposed measure creates, for the first time, a minimum funding level for state higher education institutions. The question of whether to establish a minimum state funding level for higher education funding, based on existing state revenues, is a distinct and separate subject unconnected to the question of whether to raise state taxes.

4. **The proposed measure would result in mandatory reductions in state spending on other programs.** In fiscal year 2010-2011, PK-12 and higher education funding accounts for approximately 54.9% of the Colorado General Fund. *Colorado General Assembly, Budget in Brief Fiscal Year 2010-11.* Existing Colorado General Fund obligations for federally mandated programs account for approximately 20% of the Colorado General Fund. The proposed measure precludes the General Assembly and the Governor from funding public education below fiscal year 2010-2011 levels. This could result in a total of 74.9% of the Colorado General Fund being locked up, 54.9% locked up by the proposed measure in addition to the 20% already locked up for federally mandated programs. If state revenues drop, as they have this current fiscal year, the unavoidable result would be mandatory reductions to state programs funded from the remaining 25.1% of the Colorado General Fund. Placing the entire burden of all budgetary cuts on only one-quarter of the entire Colorado General Fund would result in significant reductions or complete defunding of important state programs. The question of whether to

implement mandatory reductions in other state programs is a separate subject: “First, the initiatives provide for tax cuts. Second, the initiatives impose mandatory reductions in state spending on state programs. These two subjects are distinct and have separate purposes.” *In re 1997-1998 #84*, 961 P.2d 456, 460 (Colo. 1998). The question of whether to impose significant mandatory reductions on non-education state spending and programs is a distinct and separate subject unconnected to the question of whether to raise state taxes.

II. The title fails to convey impacts to state spending.

As set forth in Section 1(B)(4) of this Motion, the proposed measure could result in mandatory spending reductions on other state programs. This impact on state programs must be included in the title and summary: “In particular, the titles and summary fail to convey to voters the initiative’s likely impact on state spending on state programs. Therefore, we hold that the titles and summary may not be presented to the voters as currently written.” *In re 1999-2000-#37*, 977 P.2d 845 (Colo. 1999).

III. The title is misleading.

1. By conflating changes to the state individual and corporate income tax rates with the state sales tax rate the title is too broad and does not adequately provide voters with a single subject on which to decide;

2. The title does not adequately inform voters of the material changes to the Public School Finance Act of 1994 (as amended) and the per-pupil funding basis if the proposed measure is adopted;

3. The title does not adequately inform voters of decreases in state spending on other state programs that would likely result if the proposed measure is adopted.

Because the proposed measure contains multiple subjects, the Title Board lacks jurisdiction to set titles. To the extent the Title Board determines that it does have jurisdiction, the title as set does not convey all of the proposed measure’s implication and is misleading. Accordingly, the Petitioner requests that the Motion for Rehearing be granted and the Title Board reject the proposed measure, or, alternatively, amend the titles in such a manner as to reflect the concerns expressed above.

Respectfully submitted this 13th day of April, 2011.



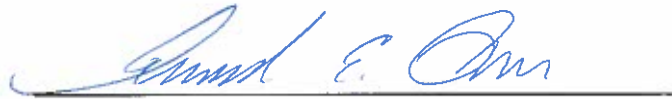
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CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2011, a true and correct copy of the foregoing MOTION FOR REHEARING was **emailed** to the following with a hard copy placed in the United States mail, postage prepaid:

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A handwritten signature in blue ink, reading "Edward E. Omer", is written over a horizontal line.

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