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ELECTIONS
SECRETARY OF STATE

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR INITIATIVE 2011-2012 #94

MOTION FOR REHEARING

On behalf of Don Childears, a registered elector of the State of Colorado, the undersigned counsel hereby submits this Motion for Rehearing on Initiative 2011-2012 #94 and as grounds therefore states as follows:

I. The Title Board lacks jurisdiction to set a title because the measure failed to comply with Article V, § 1(8) of the Colorado Constitution and C.R.S. § 1-40-105(4).

As expressed by the legislative staff during the Review and Comment hearing on April 6, 2012, and again by members of the Title Board on April 18, the inclusion in the measure of extensive language before the "Be it enacted" clause violates both the Constitution and statute, and is sufficient basis for returning the measure to legislative staff for a second Review and Comment hearing after the measure has been corrected.

II. The Title Board lacks jurisdiction to set a title because substantial changes were made to the measure after the review and comment hearing in violation of C.R.S. § 1-40-105(2).

Following the initial Review and Comment hearing on April 6, 2012, the proponents made a variety of changes to the measure, several of which were not in response to any questions or comments made by legislative staff, including:

(a) adding the phrase "at no interest" to new paragraph (1). This changes the requirement in the original draft that if a banks elects to loan money, it must do so "at interest". Under the amended version, the bank still has the discretion to loan money, but now also has the option of doing so at interest or at no interest; and

(b) changing the authority of a political subdivision to deposit public revenues and funds in its own bank "except as limited by the legally established purposes of the government of the political subdivision " to "except as expanded or limited by the General Assembly", thereby shifting the limiting authority from the political subdivision to the General Assembly and authorizing the General Assembly to also expand that political subdivision's authority to deposit public revenues and funds in its own bank.

III. The measure impermissibly contains at least five separate and distinct subjects in violation of the single-subject requirement.

While the primary purpose of authorizing certain political subdivisions of the state to establish and operate a bank, several other unrelated subjects are impermissibly woven into the measure, including:

- (a) amending Article X, § 20, of the Colorado Constitution (TABOR) by allowing political subdivisions to engage in multi-year fiscal obligations;
- (b) amending TABOR to no longer require a public vote to impose a tax increase should a bank fail and additional tax revenues be needed to cover the related losses;
- (c) voiding the Public Deposit Protection Act, C.R.S. § 11-10.5-101 through -112 and 11-47-101 through -120 (see question #5 of the review and comment memo); and
- (d) voiding or amending the prohibition in Article XI of the Colorado Constitution prohibiting a political subdivision from pledging its credit.

IV. The title as drafted contains an impermissible catch-phrase and fails to accurately describe important aspects of the measure.

- (a) the phrase "full faith and credit" is an impermissible catch-phrase that is likely to elicit public support for the measure without public understanding that such phrase also means the political subdivision is obligating the general treasuries of the entity to cover any losses due to a bank failure, which could be significant and require the entity to incur multi-year debt to cover such losses;
- (b) the title erroneously states that the measure "allows" a political subdivision to self-insure when self-insurance will be required and unavoidable under the measure;
- (c) the title fails to reflect that the measure will eliminate or supersede the Public Deposit Protection Act, C.R.S. § 11-10.5-101, et. seq.; and
- (d) the title fails to reflect that a bank may have substantial powers beyond those traditionally associated with accepting deposits and lending activity, such as to invest in real estate and to manage 401k and IRA assets.

Accordingly, the Objector respectfully requests that this matter be set for rehearing pursuant to C.R.S. § 1-40-107(1).

Respectfully submitted this 25th day of April, 2012.

A handwritten signature in blue ink, appearing to read "Jason R. Dunn", is written over a horizontal line.

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