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COLORADO TITLE SETTING BOARD

ELECTIONS
SECRETARY OF STATE

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR INITIATIVE 2011-2012 #95

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 #95 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.

(b) changing the mandatory requirement that the capitalization of the bank "shall" include all tax and other revenues and funds of the state, to the permissive "may" include such sources.

III. The measure impermissibly contains multiple separate and distinct subjects in violation of the constitutional single-subject requirement.

While the primary purpose of the measure appears to be the establishment of a state-owned bank, several other unrelated subjects are impermissibly woven into the measure, including:

(a) 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);

(b) superseding Article X, § 20, of the Colorado Constitution (TABOR) to allow the state to retain excess revenue that would otherwise be in violation of the TABOR revenue limitations;

(c) superseding TABOR by requiring the state to impose a tax increase should the state bank fail and additional funding be necessary to comply with the requirement that the full faith and credit of the state back the bank; and

(c) voiding the prohibition in Article XI of the Colorado Constitution prohibiting the state from pledging public funds for private business.

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" in the title is an impermissible catch-phrase that is likely to elicit public support for the measure without public understanding that such phrase also means that the state is obligating its general treasuries to cover any losses due to the bank failing, which could be significant and require the entity to incur multi-year debt to cover such losses;

(b) the title fails to adequately describe that the state would be authorized to engage in the practice of banking;

(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.



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