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APR 23 2014

COLORADO TITLE SETTING BOARD

**ELECTIONS
SECRETARY OF STATE**

S. WARD 4:50 P.M.

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR INITIATIVE 2013-2014 #104

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 2013-2014 #104 and as grounds therefore states as follows:

I. THE TITLE BOARD LACKS JURISDICTION BECAUSE THE MEASURE IS SO VAGUE THAT IT CANNOT BE UNDERSTOOD.

1. The measure purports to establish a state-owned bank, but does not grant the state any of the traditional benefits of ownership. The state would have no right to control or govern the bank, would not have any right to dividends or residual profits, and would not be able to sell or transfer its assets.

2. Additionally, the measure contains multiple inconsistent internal cross-references. For example, subsections (1)(c) and (2)(a) both purport to define the “sole purpose” of the amendment, but each refers to a definition in a different subsection, neither of which actually contains a definition. Subsection (1)(c) refers to a definition in subsection (4), but subsection (4) contains no definitions. Likewise, subsection (2)(a) refers to a definition in subsection (3), which also contains no definitions.¹ Subsection (3) refers to itself as “subsection 4.” In addition, the term defined in subsection (2)(a) does not appear anywhere else in the measure.

II. THE MEASURE IMPERMISSIBLY CONTAINS MULTIPLE SEPARATE AND DISTINCT SUBJECTS IN VIOLATION OF THE CONSTITUTIONAL SINGLE-SUBJECT REQUIREMENT.

The stated purpose of the measure is the establishment of “a publicly owned state bank that effectively promotes the general welfare” But the measure actually contains multiple separate subjects including at least the following:

1. Establishing a state bank;
2. Providing a mechanism to raise revenues to promote the general welfare;
3. Restoring lost state services;

¹ It is not clear what term is supposed to be defined in these sections, though the most likely candidate appears to be the “general welfare of the citizens of the state of Colorado.” The measure does not contain a definition for that term anywhere.

4. Supporting the state economy;²
5. Superseding and impliedly repealing article X, § 20, of the Colorado Constitution (TABOR) by allowing the state to retain excess revenue that would otherwise be in violation of the TABOR revenue limitations and to issue multi-year debt without voter approval;
6. Superseding and impliedly repealing article XI, § 3 of the Colorado Constitution, which limits public debts and the undertaking of multi-year obligations;
7. Superseding and impliedly repealing article X, § 16 of the Colorado Constitution (the balanced budget requirement) by allowing the bank to issue debt without limitation to raise funds for the state without voter approval that would not be restricted by other provisions of law, and by allowing the state to benefit from debt that would not be included in the state budget;
8. Superseding and impliedly repealing article XI, § 1 of the Colorado Constitution (a prohibition against pledging the state's credit in favor of private entities) by explicitly authorizing the bank to issue debt backed by the full faith and credit of the state for the benefit of private enterprises; and
9. Superseding and impliedly repealing the Public Deposit Protection Act, C.R.S. §§ 11-10.5-101, *et seq.*

III. THE TITLE AS DRAFTED CONTAINS IMPERMISSIBLE CATCH-PHRASES AND FAILS TO DESCRIBE IMPORTANT ASPECTS OF THE MEASURE.

1. The phrase “publicly owned state bank” in the title is an impermissible catch-phrase that is likely to elicit public support for the measure without the public understanding that bank would not enjoy any of the traditional benefits of ownership. Neither the state nor the general public would have any say in the governance of the bank except through election of the board of directors, neither the state nor the general public would necessarily be entitled to any dividends from the bank, no transfers to the general fund would be required under the measure, and taxpayers will lose the right to refunds of excess revenues currently subject to TABOR.
2. The phrase “lend money for public purposes” in the title is an impermissible catch-phrase that is likely to elicit public support for the measure without the public understanding that the loans need not promote any public purpose at all.
3. 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 the public understanding that the phrase also means that all state funds would be pledged to cover any losses from a bank failure or default on any bank obligation, or that the state could be obligated to raise taxes or to incur multi-year debt to cover such losses.

² The proponents explicitly represented this as the purpose of the measure during review and comment. *See* Exhibit A attached hereto at 14, response to substantive question 20(f), Exhibit A is a document the proponents provided to legislative staff and incorporated into the record during the review and comment hearing.

4. The title fails to reflect the various separate subjects within the measure, including its implicit repeal of TABOR and other constitutional and statutory provisions.

5. The title fails to indicate that the state bank would have all of the powers and authority of state-chartered banks, including the receipt of private deposits and the power to foreclose on loans in default, as well as substantial powers beyond those traditionally associated with accepting deposits and lending activity, such as the power to invest in real estate and to manage 401k, IRA, and trust assets.

6. The title fails to reflect that the bank would be authorized to issue interest-free or subsidized loans.

7. The title fails to reflect that current public deposit protections would no longer apply and that funds held by the bank are at risk of loss with no collateral beyond the pledge of the state's credit.

8. The title fails to reflect adequately that the full faith and credit of the state would be pledged as insurance for *deposits* and other bank liabilities *without limitation*.

9. The title fails to reflect that state revenues and funds would become capital of the bank and would no longer be available to meet the needs of the state.

10. The title fails to reflect that the bank would be entirely self-regulated with no governmental oversight.

11. The title fails to reflect that the bank would be authorized to issue debt without any limitation as to the amount of debt to be issued.


12. The title fails to reflect what "capitalization" means within the context of the measure.

13. The title fails to mention that in removing funds from private institutions, the state would be required to breach contracts and incur costs of early withdrawal.

14. The title fails to reflect that the bank would not be obligated to pay any rate of return on state deposits and would have no incentive to do so.

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

Respectfully submitted this 23rd day of April, 2014.



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4 weeks ago Legislative Council Hearing, 3/27/14, on the Colorado public bank amendment (2014), Initiative #104



[http://1.bp.blogspot.com/-OGqvOQrE47g/UeM2rBGmi1I/AAAAAAAAAHo/K_DhzGdoRTA/s1600/Colorado-state-flag.jpg]

The following is a memorandum from the Colorado Legislative Council and the Office of Legislative Legal Services commenting on our proposed initiative for the 2014 ballot, along with our notes from which we based our oral responses on Thursday, March 27th, 2014.

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MEMORANDUM

March 25, 2014

TO: Earl Staelin and Robert Bows

EXHIBIT A

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2013-2014 #104, concerning the establishment of a state-owned bank

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment to the Colorado constitution appear to be:

1. To establish a state-owned bank in the state of Colorado;
2. To set the purposes of a state-owned bank;
3. To create rules governing the election of the bank's board of directors and for governance and management of the state-owned bank; and
4. To establish an advisory board for the state-owned bank.

Technical Comments

(These comments, regarding formatting and legal syntax, have been omitted.)

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Section 1 (5.5) of article V of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?

RESPONSE: The implementation of an effective publicly owned state bank.

2. What sources did the proponents rely on for the factual statements in subsection (1) of the proposed initiative?

RESPONSE: The writings of Benjamin Franklin, *Web of Debt* by Ellen Brown (2007), *The Lost Science of Money* by Stephen Zarlenga (2002), *Occupy Money* by Margrit Kennedy (2012), the website of the Bank of Canada, the website of the Bank of North Dakota, and various other sources.

3. Paragraph (a) of subsection (3) purports to define "sound banking practices" as those "generally followed by public non-profit banks, such as the Bank of North Dakota, ... , as opposed to the speculative and fraudulent practices of private for-profit banks,"

a. Are there other public non-profit banks from which the determination of what practices are "generally" followed might be derived? If so, what are they, and would you consider mentioning them in the text of the initiative?

RESPONSE: The cited paragraph says "generally followed," so the inference is that not every policy adopted by the Bank of North Dakota would necessarily be appropriate for Colorado's state owned bank. Since other state-owned banks in the U.S. have been shut down, due to pressure from the privately owned banks, at present there are no other domestic examples; however, the Reconstruction Finance Corporation operated as a lending institution from 1932 to 1957, and from 1933 to 1945 its lending operations, the largest in the world at the time, played a major role in pulling the United States out of the Great Depression and in funding World War II. Also, there are other public banks around the world that, despite the pressures from privately owned banks, are successful, including the Bank of Japan, the Japan Postal Bank, and the Kiwi Bank of New Zealand. Also, Canada and Australia had successful national public banks that kept the debt load very low, but were eventually forced to become private central banks, which have now generated massive debt for those nations.

b. What specific banking practices are included within this definition? Is any practice that is or may be adopted by the Bank of North Dakota, now or in the future, automatically appropriate for Colorado's state-owned bank? If not, what other examples might Colorado follow, or what standards should guide its practices?

RESPONSE: Specifically, "sound banking practices" refer to the reasons why the Bank of North Dakota, following the 2008 economic crash, did not suffer from the same problems as so many private banks. The principal practice was to avoid investing in speculative instruments created by the big banks. In this section, we say this: "FOR EXAMPLE, SOUND BANKING PRACTICES INCLUDE THE AVOIDANCE OF INVESTMENTS IN SPECULATIVE INSTRUMENTS SUCH AS DERIVATIVES, CREDIT DEFAULT SWAPS, INTEREST RATE SWAPS, COMMODITIES FUTURES, AND MORTGAGE BACKED SECURITIES."

c. Other than the reference to practices followed by public non-profit banks, the definition is stated in the negative, that is, it lists a number of current examples of things that "sound banking practices" do not include. Does this leave the door open to future practices that someone might consider "speculative and fraudulent" but that have not yet been tried?

RESPONSE: We definitely do not intend to open that door. We use the words "for example" in section 3(a) to show these are just examples. However, to make it clear that we intend to avoid opening that door, we propose adding the words "but are not limited to" after the word "include" in section 3(a). We assume that the creativity of the large private banks will continue to find new speculative instruments and investments that should be avoided by the new state-owned bank of Colorado. The statement of the lending purposes of the bank in section 3 is entirely upon the creation or maintenance of new goods and services to promote the general welfare of the citizens of Colorado, and not upon speculation of any kind.

In our response to the legislative council in July, 2013, we listed the following a number of frauds recently perpetrated by the private banking sector, in which there is a clear pattern: The context for this pattern of fraud was described in an article by Andy Coghlan and Debora

MacKenzie entitled: "Revealed – the capitalist network that runs the world," *New Scientist* magazine, October, 2011, <http://www.newscientist.com/article/mg21228354.500-revealed--the-capitalist-network-that-runs-the-world.html> [<http://www.newscientist.com/article/mg21228354.500-revealed--the-capitalist-network-that-runs-the-world.html>] . The article was based upon research by scientists that was published in MIT Technology Review, and in The Physics arXiv Blog, http://arxiv.org/PS_cache/arxiv/pdf/1107/1107.5728v2.pdf [http://arxiv.org/PS_cache/arxiv/pdf/1107/1107.5728v2.pdf]

"The idea that a few bankers control a large chunk of the global economy might not seem like news to New York's Occupy Wall Street movement and protesters elsewhere. But the study, by a trio of complex systems theorists at the Swiss Federal Institute of Technology in Zurich, is the first to go beyond ideology to empirically identify such a network of power. It combines the mathematics long used to model natural systems with comprehensive corporate data to map ownership among the world's transnational corporations (TNCs)."

The above article is based on research by Stefania Vitali, James B. Glattfelder, and Stefano Battiston (complex systems theorists at Swiss Federal Institute of Technology, Zurich), "The network of global corporate control," MIT Technology Review, The Physics arXiv Blog, http://arxiv.org/PS_cache/arxiv/pdf/1107/1107.5728v2.pdf [http://arxiv.org/PS_cache/arxiv/pdf/1107/1107.5728v2.pdf]

This power structure is further iterated in "Federal Reserve Directors: A Study of Corporate and Banking Influence. Staff Report, Committee on Banking, Currency and Housing, House of Representatives, 94th Congress, 2nd Session, August 1976." The report is 127 pages. <http://www.scribd.com/doc/46627723/Federal-Reserve-Directors-A-Study-of-Corporate-and-Banking-Influence-Staff-Report-Committee-on-Banking-Currency-and-Housing-House-of-Representative> [<http://www.scribd.com/doc/46627723/Federal-Reserve-Directors-A-Study-of-Corporate-and-Banking-Influence-Staff-Report-Committee-on-Banking-Currency-and-Housing-House-of-Representative>]

This control enables manipulation of currency, mortgages, bonds, and commodities, and the economies and political entities in which these assets are regulated and traded.

The following articles illustrate this pattern of fraud and speculation:

Why the Senate Won't Touch Jamie Dimon: How JPMorgan Props Up US Debt <http://truth-out.org/news/item/9876-the-jpmorgan-derivatives-propping-up-us-debt-why-the-senate-wont-touch-jamie-dimon> [<http://truth-out.org/news/item/9876-the-jpmorgan-derivatives-propping-up-us-debt-why-the-senate-wont-touch-jamie-dimon>]

Even before the Fed initiated its POMO (Permanent Open Market Operations) injections of outright treasury buys in a program euphemistically titled "Quantitative Easing 2" (a.k.a printing money out of thin air) the Fed's daily zero percent loans of taxpayer money to Goldman Sachs and J.P. Morgan were used almost exclusively to buy stocks -- and then sell them again within minutes or even seconds. <http://www.opednews.com/articles/THE-U-S-STOCK-MARKET-IS-R-by-lila-york-101227-303.html> [<http://www.opednews.com/articles/THE-U-S-STOCK-MARKET-IS-R-by-lila-york-101227-303.html>]

Hidden purchases of U.S. Treasury bonds <http://georgewashington2.blogspot.com/2009/09/is-treasury-faking-foreign-purchases-of.html> [<http://georgewashington2.blogspot.com/2009/09/is-treasury-faking-foreign-purchases-of.html>] Rigging of LIBOR: Barclays Settles Regulators' Claims Over Manipulation of Key Rates <http://dealbook.nytimes.com/2012/06/27/barclays-said-to-settle-regulatory-claims-over-benchmark-manipulation/> [<http://dealbook.nytimes.com/2012/06/27/barclays-said-to-settle-regulatory-claims-over-benchmark-manipulation/>]

The rigging of the municipal bond market: <http://www.rollingstone.com/politics/news/the-scam-wall-street-learned-from-the-mafia-20120620#ixzz1yS3rPeCP> [<http://www.rollingstone.com/politics/news/the-scam-wall-street-learned-from-the-mafia-20120620#ixzz1yS3rPeCP>] Baltimore sues Wall Street over bond rigging: <http://www.baltimoresun.com/news/opinion/editorial/bs-ed-libor-20120716,0,968211.story> [<http://www.baltimoresun.com/news/opinion/editorial/bs-ed-libor-20120716,0,968211.story>]

Oakland sues Goldman Sachs over interest rate swaps (derivatives) that it bought for protection and lost while the market was manipulated <http://www.forbes.com/sites/halahtouryalai/2012/07/11/city-of-oakland-taps-occupy-wall-street-to-take-on-goldman-sachs/> [<http://www.forbes.com/sites/halahtouryalai/2012/07/11/city-of-oakland-taps-occupy-wall-street-to-take-on-goldman-sachs/>] Philadelphia sues banks, alleging antitrust violations <http://www.law.com/jsp/pa/PubArticlePA.jsp?hubtype=ThisWeek&id=1202612875031&slreturn=20130629162925> [<http://www.law.com/jsp/pa/PubArticlePA.jsp?hubtype=ThisWeek&id=1202612875031&slreturn=20130629162925>]

Computerized Front Running: Another Goldman-Dominated Fraud. (How the banks' computer read incoming orders and jump ahead of them to skim profits (from our pension funds, mutual funds, and 401ks) http://www.webofdebt.com/articles/computerized_front_running.php [http://www.webofdebt.com/articles/computerized_front_running.php]

After a fraud is discovered, banks, their corporations, and the governments under their influence collude on settlements for which they are fined mills on the dollar; then the pattern is repeated:

LIBOR investigation labeled whitewash before it begins. Labor MP launches own investigation. <http://www.guardian.co.uk/business/2012/jul/13/libor-scandal-banking-inquiry-whitewash> [<http://www.guardian.co.uk/business/2012/jul/13/libor-scandal-banking-inquiry-whitewash>]

Interest rate swaps: A fraud bigger than LIBOR <http://www.rollingstone.com/politics/news/everything-is-rigged-the-biggest-financial-scandal-yet-20130425> [<http://www.rollingstone.com/politics/news/everything-is-rigged-the-biggest-financial-scandal-yet-20130425>]

50 states' attorneys general pretend to resist MERS settlement and then settle for mills on the dollar. This fraud began with sub-prime mortgages, which were then securitized, banded together, and sold as legitimate investments. When the economy was brought down, these securitized mortgages were virtually worthless, and were repurchased for pennies on the dollar, or illegally seized by banks through rigged foreclosures. The MERS scam also allowed the

banks to avoid filing fees to the counties, thereby illegally depriving the counties of billions of dollars. On top of all of this, there are legitimate legal grounds for claiming that the chain of title to 70 million mortgages has been broken. http://www.huffingtonpost.com/2012/01/12/attorney-general-foreclosure-settlement-eric-schneiderman-beau-biden_n_1202643.html

[http://www.huffingtonpost.com/2012/01/12/attorney-general-foreclosure-settlement-eric-schneiderman-beau-biden_n_1202643.html]

Top Justice Department Officials Work for the banks they are responsible for regulating <http://www.reuters.com/article/2012/01/20/us-usa-holder-mortgage-idUSTRE80J0PH20120120>
[<http://www.reuters.com/article/2012/01/20/us-usa-holder-mortgage-idUSTRE80J0PH20120120>]

Stern words and a pea-sized fine for Google <http://www.nytimes.com/2013/04/23/business/global/stern-words-and-pea-size-punishment-for-google.html> [<http://www.nytimes.com/2013/04/23/business/global/stern-words-and-pea-size-punishment-for-google.html>] (Fine equals two minutes of annual profit or 0.0002%)

Speculation: The same pattern is repeated for commodities

How Goldman Sachs manipulates the aluminum market: A Shuffle of Aluminum, but to Banks, Pure Gold <http://www.nytimes.com/2013/07/21/business/a-shuffle-of-aluminum-but-to-banks-pure-gold.html> [<http://www.nytimes.com/2013/07/21/business/a-shuffle-of-aluminum-but-to-banks-pure-gold.html>]

JPMorgan Agrees to Pay \$410 Million in Power Market Manipulation Case <http://dealbook.nytimes.com/2013/07/30/jpmorgan-to-pay-410-million-in-power-market-manipulation-case/> [<http://dealbook.nytimes.com/2013/07/30/jpmorgan-to-pay-410-million-in-power-market-manipulation-case/>]

Wall St. Exploits Ethanol Credits, and Prices Spike <http://www.nytimes.com/2013/09/15/business/wall-st-exploits-ethanol-credits-and-prices-spike.html> [<http://www.nytimes.com/2013/09/15/business/wall-st-exploits-ethanol-credits-and-prices-spike.html>]

d. Would the charging of interest above current market rates constitute a "speculative and fraudulent" practice? Would the charging of a late payment penalty on a loan, or a transaction fee for withdrawals through an ATM, be "speculative and fraudulent"? How does this definition resolve those questions?

RESPONSE: In the LIBOR scandal, interest rates were rigged to be higher than natural market forces would cause them to be. That would be an example of fraudulently charging a higher interest rate. But if the market interest rates were fairly set, and if, for example, a bank charged a customer more than this going rate, because of the customer's credit rating, then, no, this would not be fraudulent. Reasonable late penalties on a loan, or noted transaction fees on withdrawals from ATMs, would not be "speculative and fraudulent," because they are legal and non-actionable.

4. In paragraph (c) of subsection (3), what is the definition of "public interest"?

RESPONSE: The term "public interest" as used in subsection (3)(c) refers to subsection 4, which enumerates a number of the purposes to be supported by lending operations of the bank, such as: "TO PROMOTE SUSTAINABLE DEVELOPMENT, COMMERCE, INDUSTRY, AND AGRICULTURE IN THE

STATE AND TO PROMOTE HOME OWNERSHIP, MAINTENANCE AND CONSTRUCTION OF NEEDED INFRASTRUCTURE, EDUCATION, PUBLIC HEALTH AND SAFETY, AND OTHER PURPOSES THAT SUPPORT THE GENERAL WELFARE OF THE CITIZENS OF THE STATE OF COLORADO."

5. The term "any limitations imposed by any state constitutional, state statutory, state chartered, or other state or local provisions" (subsection (3) (d); emphasis added) does not appear in the measure. The emphasized clause could be removed, however, leaving the remainder of the phrase, which is used in subsection (4). Would you consider changing the definition accordingly? What is meant by the term "state chartered"? Is this meant to refer to state bank charters issued under section 11-102-104 (5.5) (a), Colorado Revised Statutes?

RESPONSE: Our apologies for not changing this particular wording, which appeared in previous versions in subsection 9. We would propose substituting "ALL PROVISIONS OF THIS SUBSECTION ARE SELF-EXECUTING AND SEVERABLE AND SUPERSEDE CONFLICTING STATE CONSTITUTIONAL, STATE STATUTORY, STATE CHARTERED, OR OTHER STATE OR LOCAL PROVISIONS," which appears in subsection 4.

And yes, "state chartered" is meant to refer to state bank charters issued under section 11-102-104 (5.5) (a), Colorado Revised Statutes.

6. The definition in (3) (d) contains a clause (" ... the sole purpose of which ...") that appears more appropriate as part of the "statement of intent" in subsection (1). Would you consider moving this language from the definition section to the "statement of intent" portion of the measure?

RESPONSE: Yes.

7. Colorado law currently provides a system for the protection of deposits of public moneys in financial institutions. Eligible public depositories must meet minimum requirements of Colorado law and have a designation as a public depository from the Colorado banking board and the commissioner of financial services in order to receive deposits of public moneys. See sections 11-10.5-101 through 11-10.5-112 and 11-47-101 through 11-47-120, Colorado Revised Statutes. Regarding this system:

a. What do the proponents intend with respect to Colorado's existing regulatory structure for public depositories if the proposed initiative is enacted by the people? Would the state-owned bank created by the proposed measure have to follow the laws protecting public deposits?

RESPONSE: No. However, we believe the structure of the bank and safeguards for responsible lending and the avoidance of lending for speculative purposes, and the fact that the bank is backed by the full faith and credit of the state would be sufficient protection for such deposits, just as it is with the Bank of North Dakota. (see http://banknd.nd.gov/about_BND/pdfs/faqs.pdf [http://banknd.nd.gov/about_BND/pdfs/faqs.pdf]

b. Can the system continue to exist in its current form, or would it be necessary for the General Assembly to change the system to account for the operation of a bank owned by the state?

RESPONSE: Probably the system could continue in its current form, but it would not apply to the state-owned bank.

8. Current Colorado law requires all financial institutions operating in the state to have federal deposit insurance coverage. This underpins Colorado's public deposit protection system, which requires

collateralization of public deposits in addition to federal deposit insurance coverage to avoid losses in the event of insolvency of a financial institution. With respect to the protection of deposits in the state-owned bank created under the proposed initiative:

a. How will the "full faith and credit of the state of Colorado" back up deposits in the state-owned bank? Should there be a limit on how much money is available to cover losses on any given account? For example, the FDIC currently limits coverage to \$250,000 per account.

RESPONSE: The state is not now required to insure its tax revenues, fees, etc., with the FDIC; nor would it be required to do so if it operated d/b/a a bank. The use of the FDIC would be meaningless, since the state's funds far exceed the FDIC maximums.

b. The Bank of North Dakota predates the FDIC and has never chosen or been required to join the FDIC. Do the proponents know whether Colorado or federal financial institution regulators will allow the creation and operation of a state-owned bank that is not a member of the FDIC?

RESPONSE: The Federal Deposit Insurance Corporation (FDIC) is privately owned in the same way that the Federal Reserve System is privately owned. The FDIC's principle function is, in the event of privately owned bank failures, to transfer the remaining assets of the failed privately owned banks to other privately owned banks. Further, following the 2013 crisis in Cyprus, bail-ins, i.e. the taking by the bank of a portion of its depositors' deposits, became official policy in the EU and appears to have become official policy in the U.S.:

"A joint paper by the U.S. federal Deposit Insurance Corporation (FDIC) and the Bank of England (BOE) dated December 10, 2012 shows, that these plans have been long in the making, that they originated with the G20 Financial Stability Board in Basel, Switzerland, and that the result will be to deliver clear title to the banks of depositor funds ..." --Financial analyst Jim Sinclair quoted by Michael Maloof in WorldNetDaily, "[Americans warned bank 'bail-ins' coming--Experts say institutions will grab deposits without warning](http://www.wnd.com/2013/09/americans-warned-bank-bail-ins-coming/)" [<http://www.wnd.com/2013/09/americans-warned-bank-bail-ins-coming/>], " 09/27/2013

Sinclair points out that while few depositors are aware of it, banks legally own the depositors' funds as soon as they are put in the bank, that is, the notion that the FDIC will be fully insuring deposits is erroneous. Given the wording of this proposed amendment, the publicly owned state bank would be required to avoid the FDIC. Whether or not federal regulators would argue that a state d/b/a as a bank would be required to subscribe to the FDIC is unknown.

c. Will the requirements of the Taxpayer's Bill of Rights (TABOR), article X, section 20 of the Colorado constitution, be an obstacle to the full faith and credit of the state of Colorado backing the deposits of the state-owned bank because the state is not an enterprise and does not have the ability to levy taxes without voter approval? Do the proponents intend for the definition of "any limitations imposed by any state constitutional, state statutory, state chartered, or other state or local provisions" definition in paragraph (d) of subsection (3) of the proposed measure to resolve any conflicts with TABOR?

RESPONSE: Yes, the proponents intend for the definition of "any limitations imposed by any state constitutional, state statutory, state chartered, or other state or local provisions" in paragraph (d) of subsection (3) of the proposed measure to resolve any conflicts with TABOR. Further, we believe that

TABOR does not apply to the state-owned banks revenues or expenditures because its revenues are not derived from taxes and involve no additional cost to taxpayers.

9. Banking in the United States has generally, with certain exceptions for the operation of the First and Second Banks of the United States early in our history, the federal reserve system, and limited efforts by certain states to create their own banks in the early 19th century, been conducted as a private business activity. Even when the Bank of North Dakota was created, the state of North Dakota acknowledged it was creating an entity that would be conducting a private activity. See www.banknd.nd.gov; G. Edward Griffin, *The Creature from Jekyll Island: A Second Look at the Federal Reserve* (Amer. Media, 3rd edition, May 1998). In fact, at the same election where North Dakota voters approved creation of the bank, they also approved North Dakota entering into the grain storage/elevator business. The Colorado constitution contains a variety of provisions that prohibit Colorado and its local governments from operating or participating in private businesses. For example, article XI of the Colorado constitution generally prohibits the state and local governments from lending or pledging their credit and owning private businesses. Article XI allows local governments to contract debt only after voter approval. Likewise, article X prohibits the state and local governments from contracting multi-year debt without voter approval. Banks are essentially debtors to their creditor depositors. With respect to these issues:

RESPONSE: We do not agree with the first sentence. The First and Second Banks of the United States were predominantly private owned and controlled, i.e, they were not public banks. The Federal Reserve System is also a 100% privately owned system of banks and is largely controlled by the large private banks that own it, with limited accountability to the government or public. The original 13 colonies of the United States printed their own money and some had their own public banks, and flourished under this system until 1764 when the English Parliament prohibited the colonies from continuing to conduct such activities. The negative effects of this prohibition upon the economies of the colonies were so severe that Benjamin Franklin considered that the chief cause of the Revolution. The Continental Congress also printed its own money to fund the Continental Army. The British banks extensively counterfeited this currency and also drove down its value through speculation, the same tactics they use today when attacking currencies. During President Lincoln's tenure, the U.S. Treasury issued real U.S. dollars, called Greenbacks, without borrowing from private banks, and did so again briefly when President Kennedy revived Silver Certificates. Since the founding of the United States, there have been 140 years of privately controlled central banking and 137 years without privately controlled central banking. If the colonial years are counted, the number of years of without privately controlled central banking exceeds the number of years with privately owned central banking.

The history of the United States (as well as other nations around the world) is a history of private banks using any means necessary to suppress public banking and replace it with private banking and private currencies.

We would also point out that private banking by the large banks today has turned into a business model largely based upon is fraud, and its principal purpose has been to transfer major portions of the money supply and resources from the hands of ordinary citizens and governments into the hands of the owners of these large banks.

It is also incorrect to state that private banks are "debtors to their creditors depositors," since the banks have recently made it clear that they can seize these deposits. See:

The Battle of Cyprus: The Long-planned Deposit Confiscation Scheme
<http://www.opednews.com/articles/The-Battle-of-Cyprus-The-by-ellen-brown-130323-684.html>
[<http://www.opednews.com/articles/The-Battle-of-Cyprus-The-by-ellen-brown-130323-684.html>]

Derivatives Managed by Mega-Banks Threaten Your Bank Account. All Depositors, Secured and Unsecured, May Be at Risk
<http://www.globalresearch.ca/derivatives-managed-by-mega-banks-threaten-your-bank-account-all-depositors-secured-and-unsecured-may-be-at-risk/5330700> [<http://www.globalresearch.ca/derivatives-managed-by-mega-banks-threaten-your-bank-account-all-depositors-secured-and-unsecured-may-be-at-risk/5330700>]

Depositors Beware: Bail-In Is Now Official E.U. Policy
<http://www.occupy.com/article/depositors-beware-bail-now-official-eu-policy#sthash.DftxLX42.dpuf> [<http://www.occupy.com/article/depositors-beware-bail-now-official-eu-policy#sthash.DftxLX42.dpuf>]

We would also note that it is unnecessary to amend article X, since section (22) enables the publicly owned state bank, with voter approval, to capitalize itself, through bonds if necessary.

Finally, we would say that the limitation on the state engaging in private business is selectively interpreted and enforced. For example, the Colorado Department of Transportation is involved in road repair, which is an activity also done by private businesses. (It's worth noting that there are various sovereign functions that the U.S. Constitution specifically enumerates in Article I, Section 8 that are functions of the state, including roads, money, armed services, and postal services.) If such a provision, as you state it, were carried to the extreme, the state would have to turn over all its operations to the banks and their corporations. Again, it should be noted that private, for-profit banks do not provide the services of a publicly owned state bank. Finally, history has shown the publicly owned banks are operated more responsibly and create greater financial stability than privately owned banks. (see *The Lost Science of Money* by Stephen Zarlenga (2002) and *The Public Bank Solution* by Ellen Brown (2013)).

a. Would the proponents consider amending article XI of the Colorado constitution to conform with the authority of the state to own and operate a bank, as granted in the proposed initiative?

RESPONSE: As noted above, this is unnecessary.

b. Would the proponents consider amending article X as necessary to permit the creation of multiple fiscal year obligations by the state-owned bank created under this proposed initiative?

RESPONSE: We do not believe this is necessary.

10. The Bank of North Dakota has no formal regulatory oversight of its activities other than informational audits provided to the North Dakota Financial Services Commissioner. Do the proponents intend for there to be any regulatory oversight over the state-owned bank created under the proposed initiative?

RESPONSE: In addition to the independent annual audit, which will be made public, the bank will provide reports of its operations to its board at least once a month, which shall also be reported publicly. Finally, the electorate can replace the board.

11. Subsection (4) states that the bank may lend money "at interest or at no interest."

a. Do you intend to place any limits on the interest rate that the bank may charge? If so, would the limits vary depending on who the recipient of the loan is? And by what standard, if any, would the limits be set -- for example, would the existing state usury laws apply?

RESPONSE: This will be determined by the board of directors and management of the bank, but the general practice of publicly owned banks is to charge interest rates that are at or below market rates for private banks. In North Dakota, this practice is used as an incentive to support certain economic objectives, as well as assisting in the recovery after natural disasters.

b. Do you intend to place any limits on who may receive a loan from the bank?

RESPONSE: This will be determined by the board of directors and management of the bank.

12. In paragraph (a) of subsection (5), is it your intent that the districts set by the state legislature will remain in place in perpetuity? Does the legislature have any authority to modify the boundaries of these districts through a redistricting process?

RESPONSE: We would suggest adding the following sentence to that subsection: "THESE DISTRICTS SHALL BE REVISITED EVERY 10 YEARS THEREAFTER, WITH ADJUSTMENTS MADE ACCORDING TO THE SAME CONSIDERATIONS."

13. Under current Colorado law, statewide general elections are held on the first Tuesday in November in even-numbered years. Odd-year elections are only allowed if the matter on the ballot concerns a state matter arising under section 20 of article X of the Colorado constitution. Current law does not permit the election of candidates at odd-year statewide general elections. See section 20 of article X of the Colorado constitution, part 2 of article 4 of title 1, Colorado Revised Statutes, and section 1-41-102, Colorado Revised Statutes. Is it the proponents' intent to circumvent these provisions with regard to the election of directors in odd-year elections?

RESPONSE: We believe that "circumvent" is the wrong term. The amendment is simply providing an exception to that law.

14. Paragraph (b) of subsection (5) is confusing in its references to "said two districts" and "said three districts." It appears that the intent is to stagger the members' terms. This intent could be more clearly expressed by following the example used in paragraph (a) of subsection (6) of the proposed initiative. See also section 10-22-105 (1) (b), Colorado Revised Statutes, ("[o]f the members first appointed ... four of the governor's appointees shall serve for a term of two years and the remaining governor's appointee and other initial appointees shall serve for a term of four years. Thereafter, the terms of the members shall be for four years").

RESPONSE: We are amenable to and have made this change.

15. Subsection (5) does not state that candidates for the board of directors are nonpartisan, or that political parties may not endorse candidates for these positions. Do you intend to allow these elections to be partisan?

RESPONSE: Candidates may be independent or members of a political party. There is no restriction; however, all candidates must follow the same registration/nomination procedure vis-a-vis the Secretary of State, as prescribed in the amendment.

16. Is it your intent in paragraph (g) of subsection (5) that the board of directors of the bank will have less than two months to establish the bank following their election?

RESPONSE: In response to your concern, we would suggest changing this sentence in subsection 8 to add the highlighted words below as follows: "SPECIFICALLY ALLOCATED FUNDS AND OTHER ASSETS OF THE STATE NORMALLY HELD BY FINANCIAL INSTITUTIONS SHALL BE DEPOSITED AND HELD BY THE STATE BANK, INCLUDING MONEYS HELD BY OTHER BANKS FOR THE STATE OF COLORADO PRIOR TO THE ESTABLISHMENT OF THE BANK, WHICH SHALL BE TRANSFERRED TO THE BANK WITHIN TEN WORKING DAYS AFTER THE BOARD OF DIRECTORS DECLARE THAT THE BANK IS READY TO RECEIVE THE TRANSFER OF FUNDS."

17. Under subsection (6) (a), what constitutes "advisory input" from the board of advisors? How do the proponents intend the board of advisors to work in conjunction with the board of directors? What level of control or authority would the advisors hold over the directors and the operations or management of the bank?

RESPONSE: The advisory board's recommendations are exactly that--advisory; in themselves, they possession no power to determine rules and regulations, other than by persuasion.

18. Paragraph (c) of subsection (6) contains the clause: "[T]he management and Employees of the bank shall be hired according to the standards of the state personnel system, which [sic] shall endeavor to hire the best qualified persons"

a. When a modifying phrase or clause appears in a sentence, it is presumed to modify the last antecedent before it. See technical comment 10 above. Therefore, it appears that the clause "which shall endeavor to hire the best qualified persons" modifies either "the state personnel system" or "standards of the state personnel system." This creates an impossibility, because the state personnel system and its standards are both inanimate; neither can "endeavor" to do anything.

RESPONSE: In response to your comment, we have made the following corrections: "EXCEPT FOR THE PRESIDENT OF THE BANK, WHO SHALL BE APPOINTED BY THE BOARD OF DIRECTORS AND SERVE AT THEIR PLEASURE, THE MANAGEMENT AND EMPLOYEES OF THE BANK SHALL BE HIRED BY THE PRESIDENT ACCORDING TO THE STANDARDS OF THE STATE PERSONNEL SYSTEM. THE PRESIDENT SHALL ENDEAVOR TO HIRE THE BEST QUALIFIED PERSONS FROM AMONG THE CANDIDATES APPROVED BY THE STATE PERSONNEL SYSTEM AND THE BANK SHALL COMPENSATE THEM ACCORDINGLY BY SALARY."

b. Do the proponents wish to convey a duty upon someone to "endeavor to hire the best qualified persons"? Would you consider rewording paragraph (c) so that it is clear who will have a duty to hire qualified persons?

RESPONSE: Yes, see above.

c. Is the reference to the "state personnel system" intended to refer to the system established under section 13 of article XII of the Colorado constitution? If so, would the proponents consider including a cross reference to the constitutional provision or including "state personnel system" in the definitions subsection and defining the term by referencing the system established in the constitutional provision?

RESPONSE: Yes, we have added the following to subsection 3: "(e) "STATE PERSONNEL SYSTEM" REFERS TO THE SYSTEM ESTABLISHED UNDER SECTION 13 OF ARTICLE XII OF THE COLORADO CONSTITUTION."

19. Subsection (7) states that the rules and regulations of the bank are to be drafted by the managers of the bank and approved by its board of directors, "subject to consideration of recommendations by the advisory board."

a. Is it your intent that the general assembly have no say in the rules and regulations of the bank? If so, how does this procedure differ from the operation of banks that support a "small group of financiers," as stated in subsection (3) (a)?

RESPONSE: The amendment states that the bank is to be operated in the public interest, as we defined in our earlier response. The general assembly has become unduly responsive to the interests of the large banks and their corporate allies, rather than those of the people of the state of Colorado. It is our intent to provide the framework for the bank so that it remains responsible to the people.

b. If the board (or 3 of the 5 members of the board, constituting a controlling group) were to act in a way that violated the principles stated in this initiative, how do you anticipate the situation should be addressed? Do you wish to give citizens standing to enforce those principles through a private lawsuit in court? Would the general assembly have the authority to establish a recall procedure or other means of relief legislatively?

RESPONSE: The board of directors of the bank would be subject to current laws and procedures regarding lawsuits and recall. We do not intend to include provisions for lawsuits or recall procedure at this time.

c. Would the adoption of rules be subject to the "State Administrative Procedure Act," article 4 of title 24, Colorado Revised Statutes?

RESPONSE: No, the state-owned bank is not a rule-making body. Its rules will be for its own self-governance.

d. Do the proponents intend for the general assembly to have any control or veto power over these rules? If not, how would you address the contention that the delegation of authority to this small group of individuals, in derogation of the general assembly's plenary authority over taxing, spending, and appropriations under article V of the Colorado constitution, conflicts with article V or with the due process principles discussed in *Cottrell v. Denver*, 636 P.2d 703, 709 (Colo. 1981)?

RESPONSE: The general assembly would not have veto power. The bank does not engage in taxation, spending, or appropriations. It is also worth noting that Art. II, Section 1 of the constitution of the state of Colorado states: "In order to assert our rights, acknowledge our duties, and proclaim the principles upon which our government is founded, we declare: All political power is vested in and derived from the people; all government, of right, originates from the people, is founded upon their will only, and is instituted solely for the good of the whole."

20. Under subsection (8), regarding capitalization of the state bank: a. Who determines the amount of "taxes and other revenues and funds of the state" that are needed to capitalize the state bank?

RESPONSE: The board of directors in consultation with management and in consideration of sound banking practices.

b. Section 33 of article V of the Colorado constitution specifies that "No moneys in the state treasury shall be disbursed therefrom except upon appropriations made by law" Do the proponents intend that the general assembly would appropriate state moneys to capitalize the state bank?

RESPONSE: No. The governing law in this case will be this amendment, once it passes. It authorizes the board to determine the amount of state funds available for capitalization, and, in light of these findings, to issue an amount of bonds necessary to provide adequate additional capitalization.

c. What "other funds" are "collected currently for the state" by other banks, and how are they "collected"? Do you intend for the state bank to take over the "collection" of these funds, and if so, when?

RESPONSE: This will be elucidated by the board of directors and management of the bank. The phrase to which you refer is more completely expressed as "SUCH AS MAY BE COLLECTED CURRENTLY FOR THE STATE BY OTHER BANKS," which means that there may or may not be funds collected by banks. We expect that most, if not all funds are collected by the state, the process for which is already in place. If there are funds collected by other banks, the state-owned bank will then be responsible for this collection.

d. Regarding the second sentence, which begins "Specifically allocated funds ... ," do the proponents intend that all assets of the state that are held by or invested by private financial institutions be transferred to the state bank? Is this feasible within 10 working days after the bank starts operating?

RESPONSE: We have changed the wording (see answer to 16) regarding the start up of the bank. Based on this change, we believe that all these funds can be transferred in 10 business days.

e. In the first sentence, reference is made to "funds generated by bonds," suggesting that the state bank is authorized to issue bonds. Is that the intent? If so, the proponents may want to include an affirmative statement to that effect.

RESPONSE: The bank is a d/b/a of the state. In response to your suggestion, we have made the following change in subsection 8: "THE CAPITALIZATION OF THE BANK MAY INCLUDE ANY PROCEEDS FROM TAXES AND OTHER REVENUES AND FUNDS OF THE STATE, INCLUDING OTHER FUNDS SUCH AS MAY BE COLLECTED CURRENTLY FOR THE STATE BY OTHER BANKS, THAT ARE NOT OTHERWISE OBLIGATED, OTHER DEPOSITS IN ADDITION TO THOSE FROM THE STATE AS PERMITTED BY SOUND BANKING PRACTICES, AND FUNDS GENERATED BY BONDS, **ISSUED BY THE BANK AS A D/B/A OF THE STATE**, IF DEEMED NECESSARY BY THE BOARD OF DIRECTORS OF THE BANK IN ORDER TO GENERATE SUFFICIENT CAPITALIZATION OF THE BANK, AS DEFINED IN SUBSECTION (3) OF THIS AMENDMENT, SUBJECT TO SOUND BANKING PRACTICES AND THE RULES AND REGULATIONS OF THE STATE BANK."

f. Is the state bank a "district" under TABOR and thereby subject to the spending limits specified in section 7 of TABOR? If the state bank is intended to be excluded from TABOR, does it satisfy the definition of "enterprise" under section 2 (d) of TABOR?

RESPONSE: The bank is a d/b/a of the state and would be exempt from TABOR as specified in the amendment. The exemption is necessary for the bank to function effectively and to achieve its purpose to adequately support Colorado's economy.

21. The proposed initiative does not give anyone authority to acquire property for the bank. Who will be responsible for acquiring land, physical structures, and furnishings for the bank? Is the bank's primary office required to be in Colorado?

RESPONSE: In response to this question, we have revised the initiative to include a new subsection 7, which requires the General Assembly to "APPROPRIATE FUNDS TO ENABLE THE BANK TO PURCHASE OR LEASE LAND, PHYSICAL STRUCTURES, AND FURNISHINGS SUFFICIENT FOR THE BANK TO BEGIN LENDING OPERATIONS," and for the president of the bank to purchase such. We have also revised the proposed initiative to provide that the bank's primary offices shall be located in Colorado.

Posted 4 weeks ago by RABows

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