

COLORADO TITLE SETTING BOARD

ELECTIONS/LICENSING  
SECRETARY OF STATE

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IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE  
FOR INITIATIVE 2013-2014 #39

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**MOTION FOR REHEARING**

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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 #39 and as grounds therefore states as follows:

**I. THE TITLE BOARD LACKS JURISDICTION BECAUSE THE MEASURE IS SO VAGUE THAT IT IS IMPOSSIBLE TO SET A TITLE THAT ACCURATELY REFLECTS THE TRUE PURPOSES OF THE MEASURE.**

The measure purports to establish a state-owned bank to further several possibly conflicting purposes, but the measure is fatally ambiguous with respect to several key provisions which preclude setting an adequate title:

(a) The measure purports to create a bank “owned by the state” but does not appear to confer any rights of ownership upon the state. The state would have no voting or other governance rights and no rights to dividends or residuals. Instead, the bank would be entirely self-regulated under the measure. The measure does not address issuance of stock or otherwise indicate the form of the state’s ownership. No title can accurately reflect the ownership of the bank under the measure.

(b) The measure purports to designate all “revenues and funds of the state” as capitalization for the bank, but simultaneously requires some of those funds to be held as deposits.<sup>1</sup> Deposits are liabilities of a bank that are payable upon demand and cannot constitute bank capital, which represents quasi-permanent investments in a bank typically only recoverable through the payment of dividends or the repurchase by the bank of its own stock; funds cannot simultaneously constitute capital and deposits. Nor is it discernable from the measure whether the capitalization requirement would allow state funds pledged as bank capital to be used for other purposes if that is legally possible, how long state funds must be invested as capital, or whether dividends or transfers to the state general fund would thereafter be pledged as bank capital. These aspects of the measure are so vague and ambiguous that no title can accurately reflect the nature of the fundamental conflict over the capitalization requirement or the effects it will have on all state revenues and funds.

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<sup>1</sup> The proponents intended that all state funds *must* be included among the capital of the bank, as demonstrated by changes they made relative to a similar measure they submitted last year, Initiative 2011–2012 #95, a true and correct copy of which is attached hereto as Exhibit A. *Compare* measure at § 7 (“capitalization of the bank shall include . . .”) with Ex. A, § 4 (“capitalization of the bank may include . . .”).

(c) The measure also requires the bank to be backed by the full faith and credit of the state, which must serve as “self-insurance” of the bank. If all state funds are pledged as capital in the bank, it is unclear how those funds could also be considered as insurance for the bank’s debts and obligations. No title can be set that will accurately reflect how deposits and other liabilities of the bank will be insured by the same funds that are designated as capital of the bank or held as deposits by the bank.

**II. 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. All of these effects are so significant and obvious that they cannot be considered merely incidental to the establishment of a state-owned bank, but must be considered purposes and subjects of the measure in their own right:

(a) The measure would supersede and impliedly repeal Article X, § 20, of the Colorado Constitution (TABOR) by allowing the state to issue multi-year debt without voter approval, transfer unrestricted revenues to the state general fund without refunding excess revenues to taxpayers, and retain excess revenue that would otherwise be in violation of the TABOR revenue limitations. Because a state bank could be established without generally authorizing the bank to raise unrestricted debt or exempting revenues from state budget and revenue limitations, the proponents must have intended this measure to provide a mechanism for the state to circumvent TABOR limitations, as demonstrated by comparing this measure to a similar measure the same proponents proposed last year. Initiative 2011–2012 #95 did not explicitly authorize the proposed bank to issue multi-year debt and did not authorize the bank to transfer unrestricted funds to the state general fund. Both of these provisions were added by the proponents to this year’s measure. *Compare* measure at §§ 3 & 8 *with* Ex. A § 3.

(b) Similarly, the measure would supersede and impliedly repeal Article XI, § 3 of the Colorado Constitution, which limits public debts and the undertaking of multi-year obligations.

(c) The measure would supersede and impliedly repeal 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 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.

(d) The measure would supersede and impliedly repeal 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.

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

(a) 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

neither the state nor the general public would necessarily have any say in the governance of the bank except through election of the board of directors, that neither the state nor the general public would necessarily be entitled to any dividends from the bank, that no transfers to the general fund would be required under the measure, or that taxpayers may in fact lose the right to refunds of excess revenues currently subject to TABOR.

(b) The phrase “loans to promote 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, but could also be issued to promote “sustainable development, commerce, industry, and agriculture in the state” and the bank would retain the power to foreclose any loans issued by the bank.

(c) 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.

(d) The phrase “authorizing the bank to . . . transfer funds to the state general fund” in the title is an impermissible catch-phrase that is likely to elicit public support for the measure without the public understanding that no such transfers would be required or guaranteed.

(e) 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.

(f) The title fails to reflect that the bank would be authorized to issue interest-free loans.

(g) The title fails to reflect that deposits would not be required to be federally insured, and that the full faith and credit of the state would be pledged as insurance for deposits and other bank liabilities, possibly without limitation.

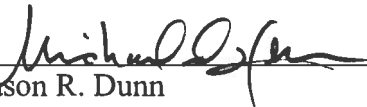
(h) The title fails to reflect that all state revenues and funds would be pledged as capital of the bank, while theoretically per the amendment some state funds will also be held as deposits in the bank.

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

(j) The title fails to reflect that the bank would be authorized to issue debt without any legal limitation.

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

Respectfully submitted this 8th day of May, 2013.

  
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# **EXHIBIT A**

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S-WARD

**ELECTIONS/LICENSING  
SECRETARY OF STATE**

Proposed Constitutional Amendment for the State of Colorado  
To Establish a State-Owned Bank  
To be Numbered as Article X, Section 23

WHEREAS, since 1919 the People of North Dakota have owned and benefited from the successful operation of the Bank of North Dakota, the specific purpose of which has been to provide an in-state repository for the holding, management, and distribution of the fees and taxes collected from the operation of the government of North Dakota; and

WHEREAS, the Bank of North Dakota is limited in its scope and purpose to: make funds available for state, city, and county government operations, to benefit the People and communities of North Dakota, and to provide correspondent banking services for chartered members; and

WHEREAS, the People of North Dakota have significantly benefited from the Bank of North Dakota which has paid the state treasurer more than three hundred twenty-five (\$325,000,000) from bank profits over the past ten years; and

WHEREAS, the Bank of North Dakota is attributed with being the cause for the North Dakota economy topping the list of state economies year after year, and with being the only State that has had a continuous budget surplus since before the financial crisis of 2008; and while the rest of America has been enduring a recession, the state of North Dakota has enjoyed the largest budget surplus in its history; and

WHEREAS, the Bank of North Dakota is attributed with being the cause why in 2011 the People of North Dakota saw almost five hundred million (\$500,000,000) returned to them in income and property tax cuts and will enjoy a 30% decrease in tax liability when combining 2009-2011 tax cuts; and

WHEREAS, the Bank of North Dakota is attributed with being the cause why North Dakota has the lowest foreclosure rate, the lowest credit card default rate, and the lowest unemployment rate of any State (3.3%) in the nation; and

WHEREAS, banks in the state of Colorado are failing at a rate five times greater than banks in other parts of the United States; and

WHEREAS, small businesses in the state of Colorado have experienced great difficulties in obtaining necessary capital as a result of the recession that began in 2008 and which result from the monetary policies of the national banking system under the control of the Federal Reserve System; and

WHEREAS, the Bank of North Dakota consolidates the handling of all state funds, while in Colorado various economic development and home ownership programs have limited authority, which may be more efficient if consolidated within one agency;

Be it Enacted by the People of the State of Colorado:

In the constitution of the state of Colorado, add section 23 to Article X as follows:

(1) ESTABLISHMENT OF STATE-OWNED BANK. THE STATE OF COLORADO HEREBY ESTABLISHES A BANK TO BE OWNED BY THE STATE OF COLORADO. THE BANK IS AUTHORIZED TO LEND MONEY AT INTEREST OR AT NO INTEREST TO PROMOTE 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 FOR THE GENERAL WELFARE OF THE CITIZENS OF THE STATE OF COLORADO. THE BANK SHALL HAVE ALL THE POWERS AND AUTHORITY OF OTHER BANKS CHARTERED BY THE STATE OF COLORADO; EXCEPT THAT THE BANK WILL NOT TAKE DEPOSITS OF INDIVIDUAL CITIZENS, CORPORATIONS, AND OTHER PRIVATE LEGAL ENTITIES. THE DEBTS AND OBLIGATIONS OF THE BANK ARE BACKED BY THE FULL FAITH AND CREDIT OF THE STATE OF COLORADO. THE REVENUE AND INCOME OF SUCH A BANK SHALL NOT BE LIMITED, NOR SHALL EXPENDITURES AND MANAGEMENT OF ITS REVENUE, INCOME, AND ASSETS BE RESTRICTED, EXCEPT UPON SOUND FINANCIAL AND PUBLIC POLICY CONSIDERATIONS. ALL PROVISIONS OF THIS SECTION ARE SELF-EXECUTING AND SEVERABLE AND SUPERSEDE CONFLICTING STATE CONSTITUTIONAL, STATE STATUTORY, STATE CHARTERED, OR OTHER STATE OR LOCAL PROVISIONS.

(2) GOVERNANCE OF STATE BANK: THE BOARD OF DIRECTORS OF THE BANK SHALL BE COMPRISED OF THE GOVERNOR, ATTORNEY GENERAL, AND ATTORNEY GENERAL OF THE STATE, PLUS FOUR OTHERS TO BE CHOSEN BY HOLDERS OF THE OFFICES FIRST MENTIONED ABOVE AND WHO REPRESENT COLORADO'S FINANCIAL, BUSINESS, AGRICULTURE, AND LABOR SECTORS. AT LEAST TWO OF THESE SEVEN MEMBERS MUST HAVE EXECUTIVE EXPERIENCE MANAGING BANKS, THE MAJORITY OF THE STOCK OF WHICH IS OWNED BY RESIDENTS OF THIS STATE. THE TERMS OF THE ADDITIONAL FOUR BOARD MEMBERS SHALL BE SET BY THE GENERAL ASSEMBLY. THE BOARD OF DIRECTORS SHALL RECEIVE INPUT ON THE GENERAL DIRECTION OF THE BANK FROM A NINE-MEMBER BOARD OF ADVISORS WHOSE MEMBERS REPRESENT A BROAD CROSS-SECTION OF THE STATE, INCLUDING BUSINESS AND INDUSTRY, FARMING, TECHNOLOGY, FINANCE, SMALL BUSINESS, EDUCATION, LABOR, AND EMPLOYMENT, TO BE APPOINTED BY THE GOVERNOR, SUBJECT TO CONFIRMATION BY A MAJORITY OF THE SENATE OF THE GENERAL ASSEMBLY OF THE STATE OF COLORADO. MEMBERS OF THE BOARD OF ADVISORS SHALL BE NOMINATED BY VARIOUS GROUPS WITHIN EACH AREA OF INTEREST IN A MANNER TO BE DETERMINED BY THE GENERAL ASSEMBLY. THE TERMS OF THE ADDITIONAL FOUR MEMBERS OF THE BOARD OF ADVISORS SHALL BE SET BY THE GENERAL ASSEMBLY. THE BOARD OF DIRECTORS SHALL ALSO RECEIVE REGULAR FINANCIAL REPORTS, NO LESS THAN ONCE A MONTH, FROM THE MANAGEMENT OF THE BANK. THE FINANCES OF THE BANK SHALL BE AUDITED ANNUALLY BY AN INDEPENDENT ACCOUNTING FIRM FREE FROM ANY CONFLICTS OF INTEREST WITH THE BANK OR STATE. EXCEPT FOR THE PRESIDENT OF THE BANK, WHO SHALL BE APPOINTED BY THE BOARD OF DIRECTORS, THE MANAGEMENT AND EMPLOYEES OF THE BANK SHALL BE HIRED ACCORDING TO THE STANDARDS OF THE STATE PERSONNEL SYSTEM, WHICH SHALL ENDEAVOR TO HIRE THE BEST QUALIFIED PERSONS AND COMPENSATE THEM ACCORDINGLY. THE PERSON APPOINTED AS PRESIDENT MUST HAVE SUBSTANTIAL EXPERIENCE IN BANKING. THE MANAGEMENT OF THE BANK SHALL BE RESPONSIBLE FOR THE DAY-TO-DAY OPERATIONS OF THE BANK, WHICH SHALL FOLLOW THE GENERAL OBJECTIVES SET BY THE BOARD OF DIRECTORS.

(3) RULES AND REGULATIONS OF STATE BANK. AFTER PASSAGE OF THIS AMENDMENT, THE INITIAL MANAGEMENT OF THE BANK, CONSISTING OF THE TOP FIVE OFFICIALS OF THE BANK, SHALL BE CHARGED WITH DRAFTING THE RULES AND REGULATIONS OF THE BANK, SUBJECT TO APPROVAL BY ADVISORY BOARD, THE BOARD OF DIRECTORS OF THE BANK, AND THE COLORADO GENERAL ASSEMBLY AND SIGNED BY THE GOVERNOR, IN ACCORDANCE WITH THE RULES OF THE LEGISLATURE. PRIOR TO SUCH APPROVAL THE RULES AND REGULATIONS PROMULGATED BY THE SAID OFFICIALS SHALL BE EFFECTIVE.

**(4) CAPITALIZATION OF STATE BANK:** THE CAPITALIZATION OF THE BANK MAY INCLUDE ALL TAX AND OTHER REVENUES AND FUNDS OF THE STATE, SUBJECT TO SOUND BANKING PRACTICES. SPECIFICALLY ALLOCATED FUNDS AND OTHER ASSETS OF THE STATE NORMALLY HELD BY FINANCIAL INSTITUTIONS SHALL BE DEPOSITED AND HELD BY THE BANK.