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S. WARD

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Colorado Secretary of State

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION
CLAUSE FOR INITIATIVE 2015-2016 #127

MOTION FOR REHEARING

On behalf of Don Childears, registered elector of the State of Colorado, the undersigned counsel hereby submits this Motion for Rehearing for Initiative 2015-2016 #98 pursuant to C.R.S. § 1-40-107, and as grounds therefore states as follows:

- I. **THE TITLE BOARD LACKS JURISDICTION BECAUSE THE PROPONENTS MADE SUBSTANTIVE CHANGES THAT WERE NOT RESPONSIVE TO THE REVIEW AND COMMENT HEARING.**

For the Review and Comment Hearing on Initiative #98, the Legislative Council Staff provided a series of substantive comments and questions. In Question 5, the staff asked for clarification as to whether a subsection of the measure was written with the marijuana industry in mind. The question reads:

Subsection (3)(d) of the proposed initiative states that the state bank may accept deposits of any business lawfully operating under the constitution and laws of Colorado but which does not have a bank or financial institution in the state which may lawfully accept deposit of its moneys. Do the proponents intend for this language to permit the state bank to accept deposits from the marijuana industry in Colorado?

In response, the Proponent stated at the Review and Comment Hearing that “[marijuana] was the idea” and that the provision was written because the marijuana industry in Colorado needs a “lawful place to deposit [its] money.”¹ The staff accepted this answer and no person asked any follow-up questions; it received the clarification it needed. At no point during the hearing did the Proponent or the staff discuss removing that subsection. Thus, the measure as proposed had a significant feature of providing banking services to a major industry in Colorado that generates millions of dollars in revenue every year, and that to date has no ability to lawfully bank in this State.

¹ Audio for the Review and Comment Hearing can be found on the Colorado General Assembly's website at <http://www.leg.state.co.us/clics/cslFrontPages.nsf/Audio?OpenPage> by clicking on “Other Committees,” “Review & Comment Hearings,” and the link for “Initiative 2015-2016 #127 Review and Comment Hearing.” The audio for question 5 begins at 18:18 of the recording.

Nonetheless, the Proponent removed that subsection in its Amended Draft for Initiative #98. While section 1-40-105(2) permits proponents of initiatives to amend the petition in response to some or all of the staff's comments, the subsection permits a "substantial amendment" only in "direct response" to staff comments. If the amendment is not in direct response, then the amended petition must be resubmitted for comment. *Id.*

Proponent's removal of the subsection was, at best, an *indirect* response to the staff's question. More likely, it was made strategically and independent of the staff's question. Because nobody at the hearing commented on removing that subsection or questioned its inclusion—the comments related only to its *meaning*—that subsection's removal was not made in "*direct response*" to the staff's comments. Thus, the amended petition should have been resubmitted for a new review and comment. Because it was not, the Title Board lacks jurisdiction under section 1-40-105(2) to set title to this measure as amended.

II. THE TITLE BOARD LACKS JURISDICTION BECAUSE THE MEASURE IS SO VAGUE THAT 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, including the right to control or govern the bank, the right to dividends or residual profits, and the ability to sell or transfer its assets. In short, it is not a "state-owned" bank.
2. The measure states that its purpose is to promote public health, safety, and other purposes for the general welfare of Colorado citizens but does not provide with any detail how this purpose will be fulfilled.
3. The measure states that the bank will be a TABOR enterprise, but it is unclear how, under any circumstance, the bank will function as an enterprise by receiving less than 10% of its revenue from the State.
4. The measure states that the governor shall appoint the members of the Board of Advisors. The measure also states that at least some of those board members are "subject to confirmation by a majority of the Senate." However, as a result of the measure's unclear phrasing, it is ambiguous whether senate confirmation applies to all appointed board members, board members from the governor's initial appointment of board members, or only the four board members with two-year terms from the governor's initial appointment of board members.
5. The measure states that the initial management of the bank will draft the bank's rules and regulations, which includes "whether or under

what conditions the bank may extend the full faith and credit of the bank," but fails to provide any specifics as to what is meant by extending "full faith and credit."

6. The measure discusses capitalization but fails to define what it means by "other funds" not "otherwise obligated," and does not specify who or what determines the desired level of capital for the bank.
7. The measure states that the bank shall be audited by an independent accounting firm free from any conflicts of interest with the bank or the State. However, it is doubtful whether any accounting firm could be independent because the State, through the Department of Regulatory Agencies' State Board of Accountancy, regulates all Certified Public Accountants ("CPAs") doing business in the state, including out-of-state CPAs.
8. The measure contains an incomprehensible cross-reference. Section (1)(c) sets forth the "sole purpose" of the measure and contains a supposed cross-reference to a definition in subsection (3), but is unclear whether the definition is for the "general welfare of the citizens of the state of Colorado," the "sole purpose of this amendment," or something else. Regardless, subsection (3) contains explanations, not definitions.

III. INITIATIVE #127 IMPERMISSIBLY CONTAINS MULTIPLE SEPARATE AND DISTINCT SUBJECTS IN VIOLATION OF THE SINGLE-SUBJECT REQUIREMENT.

The stated purpose of the measure is the establishment of "a publicly owned state bank as an enterprise exempt from the requirements of the Taxpayer's Bill of Rights" 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. Superseding and impliedly repealing the Public Deposit Protection Act, C.R.S. §§ 11-10.5-101, *et seq.* The Act's purpose is to serve Colorado taxpayers by "ensur[ing] the preservation and protection of all public funds held on deposit by a bank" and "the expedited repayment of such funds in the event of default and subsequent liquidation of a bank which holds such deposits." This purpose is not "necessarily or properly connected" to Initiative #127's purposes, which include

keeping the state's deposits local and eliminating interest and fee expenses pertaining to the use of out-of-state banks.

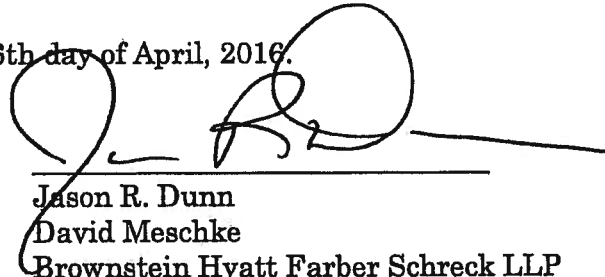
IV. THE TITLE AS DRAFT IS MISLEADING AS DOES NOT FAIRLY AND CORRECTLY EXPRESS THE TRUE MEANING OF THE MEASURE BECAUSE IT CONTAINS IMPERMISSIBLE CATCH-PHRASES AND FAILS TO DESCRIBE IMPORTANT ASPECTS OF THE MEASURE.

1. The phrase "publicly owned state bank" in the title is an impermissible catchphrase that is likely to elicit public support for the measure without the public understanding that the State 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, and no transfers to the general fund would be required under the measure.
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 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.
4. The title fails to reflect that the bank would be authorized to issue interest-free or subsidized loans.
5. 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.
6. The title fails to reflect that the bank would be entirely self-regulated with no governmental oversight beyond the General Assembly's approval of the proposed rules and regulations.
7. 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.

8. The title fails to fully represent "capitalization" of the bank as stated in the measure.
9. The title fails to mention that in removing funds from private institutions, the state may be required to breach contracts and incur costs of early withdrawal.
10. 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 Objectors respectfully request that this Motion for Rehearing be granted and a rehearing set pursuant to C.R.S. § 1-40-107(1).

Respectfully submitted this 26th day of April, 2016.



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