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**COLORADO STATE TITLE SETTING BOARD**

Colorado Secretary of State

IN RE: BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE 2015-2016 #127  
("ESTABLISHMENT OF A STATE-OWNED BANK")

BARBARA M A WALKER, Objector.

**MOTION FOR REHEARING**

Pursuant to C.R.S. § 1-40-107, Objector, Barbara M.A. Walker, a registered elector of the State of Colorado, through her legal counsel, Coan, Payton & Payne, LLC, submits this Motion for Rehearing of the Title Board's April 20, 2016, decision to set the title of Initiative 2015-2016 #127 (the "Initiative") and states as follows:

**I. THE TITLE BOARD LACKS JURISDICTION BECAUSE THE INITIATIVE DOES NOT CONTAIN A SINGLE SUBJECT.**

The Initiative violates the single subject requirement. See Colo. Const. art. V, § 1 (5.5). The stated purpose of the Initiative is to establish a state-owned bank as a TABOR enterprise, but the Initiative actually contains multiple separate subjects. Therefore, the Title Board ("Board") lacks jurisdiction to set a title. See C.R.S. § 1-40-106.5. The subjects in the Initiative include at least the following:

- A. Establishing the state bank as an enterprise exempt from the requirements of TABOR;
- B. Setting the purpose of the state bank;
- C. Creating rules governing the election of the bank's board of directors;
- D. Creating rules for governance and management of the bank;
- E. Authorizing the bank to issue revenue bonds;

- F. By requiring State funds, held on deposit with FDIC insurance and Public Deposit Protection Act collateralization protection to be moved into an unregulated and uninsured bank, superseding Article X, § 20 (4)(b) of the Colorado Constitution, (“TABOR”) which requires separate voter approval prior to the creation of any multiple-fiscal year direct or indirect debt or other financial obligation whatsoever without adequate present cash reserves that are pledged irrevocably;
- G. Superseding the Public Deposit Protection Act, C.R.S. §§ 11-105-101 et seq.;
- H. Superseding Article X, § 12 of the Colorado Constitution, which allows the General Assembly to provide by law for the safekeeping and management of public funds in the custody of the State Treasurer and assigning responsibility for public funds to the State Treasurer;
- I. By authorizing the bank to issue debt backed by the full faith and credit of the State, superseding Article XI, § 1 of the Colorado Constitution, which prohibits the pledging of the State’s credit or faith, in any manner, directly or indirectly to any person, company or corporation, public or private.
- J. Superseding Article XI, § 3 of the Colorado Constitution, which prohibits the State from contracting debt by loan;
- K. Superseding Article X, § 16 of the Colorado Constitution, which prohibits the General Assembly from making any appropriation whereby the expenditure of the State shall exceed the total tax then provided for by law and applicable for the appropriation;
- L. Superseding C.R.S. § 11-101-101 et seq., otherwise known as the Colorado Banking Code, which requires that state banks be supervised and regulated in a fair and consistent manner;
- M. Superseding C.R.S. § 11-103-201 et seq., which requires state banks to have adequate capital;
- N. Superseding C.R.S. § 11-103-301 et seq., which requires state banks to be chartered;
- O. Superseding C.R.S. § 11-103-603 which requires the directors of state banks to obtain fidelity bonds on all active officers and employees to indemnify the bank for losses sustained by it as the result of dishonesty, fraud or criminal conduct.

**II. THE TITLE AND SUBMISSION CLAUSE FAIL TO DESCRIBE IMPORTANT ASPECTS OF THE INITIATIVE AND DO NOT ADEQUATELY DESCRIBE THE TRUE MEANING AND INTENT OF THE INITIATIVE.**

Contrary to the statutory requirements of C.R.S. §§ 1-40-106,-107 for a ballot title that is not confusing, not misleading and reflective of the intent of the proponents, the Board has erred by setting a title that **does not disclose** to voters:

- A. That it is highly probable that the bank will not qualify for exemption as a TABOR “enterprise” receiving less than 10% of its revenue from the State;
- B. That the Initiative requires that the bank’s “sound banking practices” be modeled after the practices of the Bank of North Dakota;
- C. That the Initiative authorizes the bank to lend at interest or no interest;
- D. That the Initiative authorizes the bank to issue revenue bonds without any voter or legislative consent;
- E. That the Initiative will make it impossible for the State Treasurer to fulfill his or her Constitutional responsibilities;
- F. That the Initiative requires that the General Assembly appropriate funds for the bank to purchase or lease land, physical structures and furnishings and for the bank’s board elections without any limit on amount of funds;
- G. That the Initiative requires that the Secretary of States’ Office provide an automated online process for candidates for the Board of Directors to list their qualifications (Section 4 (d)) and requires the Secretary of State to be responsible for holding “run off” elections (Section 4 (e));
- H. That voters will have no control over the operation of the bank;
- I. That the State Banking Board and State Banking Commission will have no control over the operation of the bank;
- J. That State funds will be used to operate the bank, but that the State and individual voters may see no real benefit from the establishment of the bank;
- K. That the bank will not be FDIC insured.

Furthermore, contrary to the statutory requirements of C.R.S. §§ 1-40-106,-107, for a ballot title that is not confusing, not misleading and reflective of the intent of the proponents, the Board has erred by setting a Title that is **misleading** and confusing in several aspects.

- A. The Title states that the public bank would be authorized “to lend money for public purposes” without defining “public purposes.” The term “public purpose” implies that funds would be loaned by the bank to better the public good, when in reality, the bank may loan money to private individuals for private use such as “home ownership” and “commerce” (Section 3). Public means relating to the government or state such as public buildings and services provided for everyone to use. This use of “public purpose” in the Title is misleading to voters.
- B. The use of the term “state bank” in the Title implies that the bank would chartered by the State, regulated by the State and FDIC insured. However, the bank would not be chartered by the State, nor would it be regulated by the State and it would not be FDIC insured. It is misleading that the Title does not advise voters that the bank would not be chartered by the State, that the bank would not be governed by the State and that the bank would not be FDIC insured.
- C. By stating that the Initiative would allow “the bank to issue revenue bonds *to capitalize itself*,” the Title implies that the bank would have an ability to raise capital. However, it is highly likely that the bank would not be capitalized prior to the State funds being transferred to the bank. In no way can deposits be considered capital for a bank. It is misleading to not disclose that the bank would not be capitalized prior to accepting deposits and may never be appropriately capitalized.
- D. The Title states that the bank would be allowed to “issue revenue bonds to capitalize itself and to support its facilities and operations.” The Title does not reflect that the proponents’ intention is to also capitalize the bank with “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...” (Section 8.) Not only is the plan for capitalization confusing and likely unachievable, it is confusing and misleading that the Title does not reflect the proponents’ true intentions regarding capitalization – that the capitalization would not just come from revenue bonds.
- E. The Title states that the Initiative requires “all assets of the State held by other financial institutions to be transferred to the bank.” It is misleading that the Title does not reflect that those State assets will be transferred from FDIC insured, State chartered, State regulated and appropriately capitalized financial institutions into an unregulated, uninsured, unchartered, bank that has not been capitalized. The Title should advise voters of the risk to the State funds.

### III. ADDITIONAL MATTERS – DEFINED TERMS INTENDED TO CONFUSE

- A. The Initiative provides a definition (Section 2(b)) for “Sound Financial and Public Policy Considerations” that is never used within the Initiative. This definition is contained in the Initiative to confuse and mislead voters that the bank will have an obligation to make sound financial and public policy considerations, when, in fact, it will not.
  
- B. The Initiative 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...” (Section 2(a).) This definition is misleading. The Bank of North Dakota is the only publicly owned bank in the United States and it is currently experiencing difficulty. In addition, it is inaccurate to state that for-profit banks have “speculative and fraudulent practices.” This definition is clearly meant to incite voters and is not based upon fact.

Accordingly, the Objector respectfully requests that the Board set Initiative #127 for rehearing pursuant to C.R.S. § 1-40-107 (1).

Respectfully submitted this 27<sup>th</sup> day of April, 2016.



Deanne R. Stodden  
Coan, Payton & Payne, LLC  
999 18<sup>th</sup> Street, Suite S1500  
Denver, CO 80202  
(303) 861-8888

Attorneys for Barbara M.A. Walker