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FEB 13 2019

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COLORADO TITLE SETTING BOARD

Colorado Secretary of State

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION
CLAUSE FOR INITIATIVE 2019-2020 #22

MOTION FOR REHEARING

On behalf of Shawn Martini, a registered elector of the State of Colorado, the undersigned counsel hereby submits this Motion for Rehearing for Initiative 2019-2020 #22 pursuant to Section 1-40-107, C.R.S., and as grounds therefore states as follows:

I. INITIATIVE #22 IMPERMISSIBLY CONTAINS MULTIPLE SEPARATE AND DISTINCT SUBJECTS IN VIOLATION OF THE SINGLE-SUBJECT REQUIREMENT.

The current title indicates that the subject of the measure is to increase state taxes by changing the severance tax rate on oil and gas. The measure actually contains multiple separate subjects including at least the following:

a. Increasing severance tax rates.

The increase in severance tax rates is the purported central purpose of the measure, as indicated by the first part of the title: “a change to the Colorado Revised Statutes concerning the severance tax on oil and gas extracted in the state...”

b. Eliminating spending limits under Colo. Const. art X, § 20 (“TABOR”).

Voter authorization for the elimination of the TABOR spending limit for new taxes created by the initiative is not “dependent or connected” to the subject of applying a severance tax increase and is not “necessary” to carry out the tax increase. The tax rates could be increased without requiring or affecting the function of TABOR refunds to the people. See *In re Title, Ballot Title and Submission Clause for 2005-2006 No. 74*, 136 P.3d 237 (Colo. 2006) (the application of time limits for 1) tax measures and 2) voter-authorized relief from spending limits are separate subjects) and *Matter of Title, Ballot Title, Submission Clause, Summary for 1997-98 No. 84*, 961 P.2d 456 (Colo. 1998) (initiatives have two separate subjects when they provided for 1) state tax cuts and 2) mandatory restrictions in state programs). Eliminating the TABOR spending limit is a separate subject and should prevent the Title Board from setting title for this measure.

c. Eliminating a credit against the severance tax based on property tax paid by producers (as stated in the title).

Eliminating a tax credit is not “dependent upon or connected” to the purpose of raising tax rates. See *Matter of Title, Ballot Title and Submission Clause, and Summary with Regard to a Proposed Petition for an Amendment to Constitution of State of Colo. Adding Subsection (10) to Sec. 20 of Art. X (Amend Tabor 25)*, 900 P.2d 121 (Colo. 1995) (“Revenue changes” is not a single subject where the initiative proposed a tax credit that was not “dependent upon or connected” to procedures for adopting future initiatives). This is a separate subject and should prevent the Title Board from setting title for this measure.

II. THE TITLE BOARD LACKS JURISDICTION BECAUSE ERRORS AND MISLEADING LANGUAGE IN THE PROPOSED MEASURE RESULT IN A CONFUSING MEASURE.

The Title Board should deny jurisdiction to consider this measure because it fails to meet drafting requirements of simplicity and clarity and will confuse voters. See C.R.S. § 1-40-105(3) (“To the extent possible, drafts shall be worded with simplicity and clarity and so that the effect of the measure will not be misleading or likely to cause confusion among voters.”).

The measure states in Section 2 that in section 39-29-105, C.R.S., it would “amend (1)(b); and add (1)(c) and (3).” Section 2 provides an amendment to subsection (1)(b) and adds a new subsection (1)(c) (but not (3)). There are issues with this section that would mislead or confuse voters.

a. Unnecessary and meaningless language.

The new text added in subsection (1)(b) bisects the first sentence of the existing provision making the first sentence in this proposed section a meaningless and confusing phrase: “In addition to any other tax, there shall be levied, collected, and paid for each taxable year commencing on or after January 1, 2000.”

b. Amended Text is Not Identified.

Most of the added text in the new subsection (1)(c) is properly capitalized to demonstrate what language is being added by the measure. However, the new tax rates, which are the central feature of the measure, are not capitalized or otherwise indicated as new text. Because some of the new text is not in capital letters, unlike the text for the other changes the measure makes to existing statutes, a voter would incorrectly believe that these key percentage rates already exist in statute. This inconsistent drafting on added language critical to voters’ decision whether or not to support or oppose the measure, would mislead and cause confusion for voters.

Independently and collectively these drafting errors would have the effect of “misleading” and causing “confusion” for voters and the Title Board should deny jurisdiction to set title for this measure.

III. THE TITLE IS MISLEADING, INCLUDES A PROVISION NOT IN THE MEASURE, AND CONTAINS AN IMPERMISSIBLE CATCHPHRASE.

a. The title is misleading because it fails to clearly communicate the actual percentage of the tax increase.

The title states that the measure will “increase the severance tax rates by 5 percentage points.” This description of the measure’s central feature fails to adequately convey the actual tax rate increase because this description does not provide the voter with any context of the value of “5 percentage points.”

Because the impact of a tax rate increase of “5 percentage points” is relative to the existing tax rate, and the title does not provide information relevant to the existing tax rate, providing “percentage points” does not communicate the size of the tax increase to voters. To demonstrate the scope of this misleading statement, the change of “5 percentage points” likely appears minimal to a voter but in fact it represents an actual increase in severance tax rates by 100% to 350%. The scope and of the tax rate increase is central to the measure but is presented in a manner that is not understandable to voters.

Instead, the title should state that the measure will increase “the severance tax rates by 100% to 350%.” Such a statement is necessary to ensure the measure will not be misleading or likely to cause confusion among voters.

b. The title includes a provision that is not in the measure.

The title states that the measure includes “eliminating a credit against the severance tax based on property tax paid by producers.” There appears to be no provision in the measure that would eliminate such a credit. The “connection between the title and the initiative must be so obvious as that ingenious reasoning, aided by superior rhetoric, will not be necessary to understand it.” *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 25*, 974 P.2d 458, 462 (Colo. 1999) (citation omitted). The title, as drafted, includes a provision that is not included in the actual measure, and therefore this phrase should be stricken from the title.

c. The title contains an impermissible catchphrase.

The phrase “...negative health impacts proximately caused by oil and gas production” is an impermissible catchphrase. The phrase is unsubstantiated by any facts, is designed to appeal to voters’ emotions, and should not be permitted. The title “should not prejudice electors to vote for or against the proposed initiative merely by virtue of those words’ appeal to emotion.” *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000, No.258(A)*, 4 P.3d 1094, 1100 (Colo. 2000).

The phrase assumes that negative health effects from oil and gas production exist. See *In re Title, Ballot Title, Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 650 (Colo. 2010) (noting that phrases that mask basic policy questions underlying an initiative are impermissible catchphrases). “Slogans are catch phrases tailored for political campaigns—brief striking phrases for use in advertising or promotion,” and “[t]hey encourage prejudice in favor of the issue and, thereby, distract voters from consideration of the proposal’s merits.” *In re # 258(A)*, 4 P.3d at 1100 (noting that the Court “determine[s] the existence of a catch phrase or slogan in the context of contemporary political debate”). The phrase encourages prejudice in favor of the issue and must be stricken from the title.

CONCLUSION

Accordingly, the Objector respectfully requests that this Motion for Rehearing be granted and a rehearing set pursuant to Section 1-40-107(1), C.R.S.

Respectfully submitted this 13th day of February, 2019.

/s/ Jonathan Anderson

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