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Colorado Secretary of State

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE BALLOT TITLE AND SUBMISSION CLAUSE FOR
INITIATIVE 2019-2020 #268 (“Policy Changes Pertaining to State Income Taxes”)

MOTION FOR REHEARING

On behalf of Tyler Sandberg, a registered elector of the State of Colorado, the undersigned counsel hereby submits this Motion for Rehearing of the Title Board’s February 12, 2020, decision to set the title of 2019-2020 Initiative #268 (“Proposed Initiative”), pursuant to C.R.S. §1-40-107, and as grounds therefore states as follows:

I. The Initiative impermissibly contains multiple separate and distinct subjects in violation of the constitutional single-subject requirement.

A. Central Purpose

There are at least two distinct subjects in the Proposed Initiative:

- Repealing the constitutional flat income tax rate and imposing a graduated income tax system to require those with larger incomes to pay a greater percentage in income taxes; and
- Creating a new AMT on corporations to ensure that corporations doing business in Colorado pay a minimum amount of state income tax.

1. The Central Purpose of the Proposed Initiatives is a Statutory Change “Concerning a Graduated State Income Tax” and the Corporate AMT is Not Properly Within this Single Subject

The initiative’s central purpose has been misconstrued. Proponents and the current title state that the single subject is “concerning an increase in the state income tax,” however, by its terms the initiative decreases the state individual income tax for some citizens while increasing it for others. Therefore, “concerning an increase in the state income tax” is not an accurate description of the single subject. The single subject of similar initiatives #251, 253, 255 267, 269, and 271 proposed by the Proponents is “concerning a graduated state income tax,” however, that subject was not proposed for this title because this Proposed Initiative includes a change to the corporate alternative minimum tax (“AMT”), requiring the statement of a broader single subject in an attempt to fit additional and unrelated provisions within a single subject. This is an attempt to characterize the Proposed Initiative under an overarching theme, but it does not save the Proposed Initiative, which contains separate and unconnected purposes, from violating the single subject rule. *See In re Title, Ballot Title, Submission Clause for 2009-2010 No. 45, 234 P.3d 642, 646 (Colo. 2010).*

The purpose of this Initiative is to establish a graduated individual income tax. And critically, the proposed AMT is not a graduated tax for corporations. Establishing a corporate minimum tax is a wholly different subject from the provisions creating a graduated individual income tax system by decreasing and increasing tax rates based on income category. The single subject requirements “prohibit initiatives from containing two or more separate and discrete subjects that are not dependent upon or necessarily connected with each other.” *In re Title, Ballot Title and Submission Clause, for 2007-2008, #17*, 172 P.3d 871, 873 (Colo. 2007) (citations omitted). While the graduated individual tax and corporate AMT provisions may, depending on the circumstances of a given tax year, have the same outcome of increasing overall state tax receipts, that is not the purpose of either one.

2. If the Central Purpose of the Proposed Initiative is a Statutory Change “Concerning an Increase in the State Income Tax,” the Corporate AMT Provision is Not Properly Within this Single Subject

Even if the Title Board maintains that the proper single subject is “concerning an increase in the state income tax,” the corporate AMT provision does not increase the state income tax level for corporations. Establishing a corporate AMT exempts certain corporations from the current state income tax law and imposes an alternative method for determining the corporation’s tax burden to guarantee a minimum income tax payment. The state corporate income tax is imposed under C.R.S. § 32-22-301, and the rate is not increased or otherwise amended by the Proposed Initiative. Rather, a new proposed section, C.R.S. § 32-22-301.1, creates a separate and distinct method of taxation that runs parallel to the current corporate income tax structure. Corporations will have to determine their tax burden under the regular corporate income tax, compare to the AMT, and pay the higher of the two. The Proposed Initiative does nothing to increase taxes paid by corporations that exceed the AMT level. In addition, by creating the new alternative tax system, the corporate AMT limits or eliminates the deductions, credits, and other tax preferences that may be available to a corporation under the regular corporate income tax structure. Therefore, the corporate AMT provision does not fit within the single subject of “concerning an increase in the state income tax.”

These multiple subjects represent distinct and different purposes in violation of the single subject requirement of Colo. Const. art. V § 1(5.5) and C.R.S. § 1-40-106.5.

B. Logrolling

Corporate and individual tax policies are intrinsically distinct, and the anticipated economic effects of corporate and graduated individual taxation differ significantly. The Proposed Initiative may, for example, attract a “yes” vote from voters who support a graduated income tax but who otherwise might not support a corporate AMT if it were proposed separately. *See In Matter of Title, Ballot Title*, 374 P.3d 460 (Colo. 2016), and *see Matter of Title, Ballot Title, Submission Clause, and Summary Adopted April 5, 1995, by Title Board Pertaining to a Proposed Initiative Public Rights in Waters II*, 898 P.2d 1076 (Colo. 1995) (single-subject requirement precludes joining together of multiple subjects into single initiative in hope of attracting support from various factions which may have different or even conflicting interests). The single-subject requirement for state initiative is intended to ensure that each proposal for

change is considered on its own merits. *Matter of Title, Ballot Title and Submission Clause, Summary Clause for 1997-1998 No. 74*, 962 P.2d 927 (Colo. 1998); and *Bruce v. City of Colorado Springs*, 252 P.3d 30 (Colo. App. 2010).

The Proposed Initiative combines the creation of a graduated income tax with the establishment of a corporate AMT, which violates the single subject requirement and could unfairly mislead voters.

II. Conclusion

Accordingly, the Objector respectfully requests 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 February, 2020.

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