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*By Steven Ward at 1:55 pm, Apr 08, 2020*

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

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Kelly Brough, Objector,

vs.

Mike Spalding and Chip Creager, Proponents.

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**MOTION FOR REHEARING ON INITIATIVE 2019-2020 #299  
("Petitions")**

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Kelly Brough ("Objector"), a registered elector of the State of Colorado, through her undersigned counsel, submits this Motion For Rehearing on Initiative 2019-2020 #299 ("#299"), pursuant to C.R.S. § 1-40-107, and states:

The Board set the following ballot title and submission clause for Initiative 2019-2020 #299 on April 1, 2020:

*Shall there be an amendment to the Colorado constitution concerning initiative and referendum petitions, and, in connection therewith, allowing petitioning of all Colorado governments; changing requirements, procedures, and deadlines for: 1) circulating petitions and qualifying petitions for the ballot, including elimination of the requirement that signatures for constitutional amendments be gathered from all parts of the state, 2) protesting petitions, including changing the venue and accelerating the protest process, and 3) informing voters of petition contents, including referring voters to pro and con websites; requiring petition titles of no more than 60 words; limiting the number of bills that the general assembly may exempt from referendum; repealing the requirement that an initiative to add language to the Colorado constitution be approved by 55%, rather than 50%, of the voters; allowing laws enacted by initiative to be changed only by another initiative; exempting petitions from municipal home-rule provisions; and repealing all conflicting laws?*

**A. The titles are legally flawed because they fail to inform voters of certain central elements of the measure.**

The titles would fail to inform voters of the following central elements of the measure:

- 1) The measure would eliminate the right of rehearing before the title board. *See* #299, sec. 1(1)(requiring protests to ballot titles to be filed within two days after title is set and in the supreme court *only* (emphasis in original)); *see also* #299, sec. 5 (repealing all conflicting laws). The titles' "changing requirements, procedures and deadlines"

- and “repealing all conflicting laws” language provides inadequate notice for a change of this magnitude.
- 2) The measure would reduce the number of signatures necessary to place a ballot measure on the ballot by more than 10% (from the current 124,632 requirement to only 110,000). *See* <https://www.sos.state.co.us/pubs/elections/Initiatives/signatureRequirements.html> and #299, sec. 1(2). The titles’ “changing requirements, procedures and deadlines” language provides inadequate notice for a change of this magnitude.
  - 3) The measure would essentially eliminate the requirement that petition circulators properly complete an affidavit verifying compliance with applicable law by prohibiting the invalidation of petition names and signatures as a consequence for completing the affidavit incorrectly. *See* #299, sec. 1(2). The titles’ “changing requirements, procedures and deadlines” and “repealing all conflicting laws” language provides inadequate notice for a change of this magnitude.
  - 4) The measure would eliminate name and signature protests to district court and instead requires all protests to begin in the supreme court. *See* C.R.S. § 1-40-118(1) and #299, sec. 1(3). The titles’ “changing requirements, procedures and deadlines” language provides inadequate notice for a change of this magnitude.
  - 5) The measure would allow any measure, not just TABOR measures, to be placed on odd-year ballots. *See Colo. Const. art. V, sec. 1(2) and #299, sec. 1(4)*. The titles’ “changing requirements, procedures and deadlines” language provides inadequate notice for a change of this magnitude.
  - 6) The measure would limit the power of the General Assembly by requiring voter approval for statutory changes on the same “topic” as a successful referendum. *See* #299, sec. 2. This change is not mentioned in the titles.

**B. The Title Board should not have set a title for #299 because the measure’s treatment of the single subject requirement of current law is inconsistent and renders the measure so vague, unclear and incomprehensible that the measure’s meaning cannot be ascertained.**

The measure’s treatment of the single subject requirement of current law is inconsistent and impossible to comprehend or understand. “[I]f the Board cannot comprehend a proposed initiative sufficiently to state its single subject clearly in the title, it necessarily follows that the initiative cannot be forwarded to the voters.” *In the Matter of the Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #25, 974 P.2d 458, 465* (Colo. 1999).

In particular, the measure would repeal art. V, sec. 1(5.5) of the Colorado constitution, which prohibits measures containing more than one subject. *See* #299, sec. 5. Then the measure makes reference to “protests...to enforce the state single subject rule, which remains in effect.” *Id.* at sec. 1(1). It is impossible to resolve this contradiction. The measure both repeals the single subject rule and notes that it stays in effect. If the single subject rule in fact “remains in effect” then what requirement is actually going to result from an adoption of this proposal? Certainly not the one set forth in Art. V, Sec. 1(5.5)—that one would be expressly repealed.

What is particularly perplexing about this contradiction is that it has been repeatedly pointed out to proponents in the review and comment process and in their appearances before this board, yet they have refused to be explicit about the law that is being proposed to voters. Are proponents trying to have their cake and eat it too? Are they trying to convince the board to approve a title that does not reference the repeal of the single subject rule, only to argue during a campaign and/or after passage that the single subject rule was expressly repealed by the measure? It is difficult to know, but their refusal to address a problem that has been repeatedly addressed raises questions.

Certainly, our courts will be called upon to resolve this blatant contradiction if #299 passes. If the courts determine that the measure does, in fact, repeal the single subject rule, then under the current titles, voters will have voted on the measure without notice of this critical change in law. Moreover, if the measure repeals the single subject requirement, then it certainly violates the current single subject rule by mingling procedural and substantive provisions. *See In re Title, Ballot Title and Submission Clause for 2003-2004 #21, #22, #32 and #33*, 76 P.3d 460, 462 (finding a second subject where a measure combines procedural and substantive changes to existing law). Under the circumstances, the single subject of #299, if there is one, cannot be ascertained and the measure cannot be forwarded to the voters.

The measure is simply too incomprehensible to go forward to the voters and the board should decline to set a title for it.

Accordingly, the Objector respectfully requests that a rehearing be set pursuant to C.R.S. § 1-40-107.

Respectfully submitted this 8<sup>th</sup> day of April, 2020.

s/ Thomas M. Rogers III  
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**CERTIFICATE OF SERVICE**

I, Erin Holweger, hereby affirm that a true and accurate copy of the **Motion For Rehearing on Initiative 2019-2020 #299**, was sent this 8<sup>th</sup> day of April, 2020 by U.S. Mail, postage prepaid, to proponents at:

Mike Spalding  
18 Buckthorn Drive  
Littleton, CO 80127

Chip Creager  
3056 Newton Street  
Denver, CO 80211

*s/ Erin Holweger* \_\_\_\_\_