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Colorado Secretary of State

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TITLE SETTING BOARD
Department of State
1700 Broadway, Suite 200
Denver, CO 80290

IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE
FOR INITIATIVE 2019-2020 #3

MOTION FOR REHEARING (WILLIAM M. BANTA)

WILLIAM M. BANTA ("Movant") a registered elector of the State of Colorado, respectfully submits this Motion for Rehearing.

Having appeared at the hearing upon remand that was held before the Title Setting Board ("Board") on July 17, 2019, Movant objects to the titles and submission clause ("Title") that the Board provided for Initiative 2019-2020 #3 ("Initiative #3"). Movant's basis for objection is that the Title is unfair and the Title does not fairly express the true meaning and intent of the proposed constitutional amendment. *Section 1-40-107 (1)(a)(I) C.R.S. (2018).*

The Board must set a title for Initiative #3 that correctly and fairly expresses the true intent and meaning of the would-be amendment. A title has to "unambiguously state the principle of the provision sought to be added, amended, or repealed." *Section 1-40-106 (3)(b) C.R.S. (2018).* The Board's Title reads as follows:

"An amendment to the Colorado constitution concerning the repeal of the Taxpayer's Bill of Rights (TABOR)."

This Title is an exceedingly cautious title for a law that will terminate a large number of constitutional rights held by the people of the State of Colorado. For it is the fact that proponents of Initiative #3 intend nothing less than the extinguishment of every right, power, immunity, privilege, and remedy stated in Colorado's Taxpayer's Bill of Rights.

That being said, the Board is responsible for what to call Initiative #3 by way of a title. Certainly TABOR is a complex measure. TABOR includes a wide variety of self-governing prerogatives for Colorado citizens, Colorado taxpayers, and Colorado voters.

To properly inform the voters of the meaning of such a repeal of their liberties, the Board must furnish a title that measures up to the subject, that publishes the intention of Initiative #3. Voters are entitled to know what is in their Taxpayer's Bill of Rights, or at least its main features, so they will know what is riding on their "yes" or "no" vote. *Section 1-40-106 (3)(b) C.R.S. (2018).*

As the Colorado Supreme Court pointed out in *In the Matter of the Title, Ballot Title and Submission Clause, and Summary Adopted February 3, 1993, Pertaining to the Proposed Election Reform*

Amendment, 852 P. 2d 28, 33 (Colo. 1993), the Board's duty is to produce a title enabling any voter, whether knowledgeable or not ("familiar or unfamiliar") with an initiative's purpose or subject, to determine whether to support or oppose the constitutional change.

Furthermore, in *In the Matter of the Title, Ballot Title and Submission Clause, and Summary Pertaining to the Sale of Table Wine in Grocery Stores Initiative Adopted on March 24, 1982*, 646 P. 2d 916, 919 (Colo. 1982), the Supreme Court stressed that the title must state the principle of the proposal and the intent behind the initiative. There the Court recognized the Board's "careful consideration" and utilization of language detailing certain effects of a proposed initiative, effects which the Board thought to be "of the utmost importance" for inclusion in the title. 646 P. 2d at 921.

Therefore, in light of Colorado Supreme Court precedent and the General Assembly's statutory requirements, Movant suggests a title that announces to voters the complete, correct, and true meaning of Initiative #3. And Movant submits the following title language for the Board to consider.

An amendment to the Colorado Constitution repealing the entire Taxpayer's Bill of Rights (Colorado Constitution, Article X, Section 20), which repeal will, among other things, have the effect of: ending the people's right

to vote on new state and local taxes; ending the people's right to vote on tax rate increases; ending the people's right to vote on increasing residential property tax assessment rates; ending the people's right to vote on state and local spending increases and residential property tax revenue increases; ending the people's right to refunds of excess government revenues; ending the constitutional requirement that state and local governments maintain emergency reserves; ending the constitutional requirement of a flat rate state income tax; ending the constitutional ban on new or increased real property transfer taxes; ending the constitutional ban on local income taxes and state real property taxes; and ending the constitutional ban on unfunded state mandates on local governments.

Finally, with respect to remand, there is no tension or conflict between the Colorado Supreme Court's June 17, 2019, single-subject holding and the Board fixing a proper title for Initiative #3. *In the Matter of the Title, Ballot Title and Submission Clause for 2019-2020 #3, 2019 CO 57, 19SA25* (June 17, 2019) ("2019 CO 57"). In 2019 CO 57, the Court expressly referred to TABOR's various topics related to "spending and revenue limits, elections, local responsibility for state-mandated programs, and emergency reserves." 2019 CO 57 at 8. While the Supreme Court held that Initiative #3 *qua* repeal is a single subject, the Court itself states that Initiative #3's purpose is in fact "repealing in its entirety a constitutional provision that contains multiple subjects." 2019 CO 57 at 13.

