

2020 General Election, Appellate Courts, Elections, Politics, Colorado, Policy, Tax
Ballot Measure to Repeal Tabor Hits Snag at Title Board Hearing
Jan 17, 2019

Client Alert

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In its first hearing for the 2019-2020 election cycle, the Colorado Title Board stalled an attempt to repeal the state's Taxpayer Bill of Rights (TABOR).

Portending a likely appeal to the Colorado Supreme Court, the Title Board on Jan. 16 denied title setting to Initiative #3, the first-ever attempt to repeal TABOR in its entirety. The Title Board consists of three members from the Secretary of State's office, the state Attorney General's office and the Office of Legislative Legal Services. Before a statewide initiative can appear on the ballot, it must first be filed with the Office of Legislative Legal Services for review and comment. Then it has to pass through the Title Board process.

TABOR, which Colorado voters passed in 1992, is a constitutional amendment that requires voter approval for tax increases and limits government spending. The Title Board denied title setting to Initiative #3 on the same basis that has thwarted prior attempts to amend or repeal TABOR. The Colorado Supreme Court has found in past cases that these kinds of measures constituted multiple subjects. All initiatives must contain only a single subject. The court has construed TABOR, which was in place before the single-subject requirement passed in 1994, as comprising multiple subjects.

Previous measures from past cycles differ from Initiative #3 in that they only sought partial repeal of TABOR. Initiative #3 contains only five words: "TABOR – Repeal (Full TABOR Repeal)." Initiative #3's proponents have the opportunity to appeal the Title Board's decision. If that fails, they may appeal directly to the Colorado Supreme Court.

The proponents also have filed numerous other versions of a full or partial TABOR repeal and may pursue them instead. Still, the Title Board's decision likely means the initiative's fate depends on the Colorado Supreme Court revisiting or distinguishing its prior opinions.

Colorado law limits odd-year elections to ballot initiatives dealing with state matters arising out of TABOR such as those proposing a new tax, a tax rate increase, an extension of an expiring tax or a tax policy change. All other proposed initiatives that are filed with the Office of Legislative Legal Services and the Secretary of State's office must wait for the 2020 ballot.

So far, 23 statewide ballot initiatives have been filed for the 2019-2020 election cycle. Users can find current information about Initiative #3's status and all other initiatives on Brownstein's Colorado Ballot Initiative Tracker.

Contact Sarah Mercer or David Meschke for more information or analysis.

This document is intended to provide you with general information about Colorado ballot initiatives. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

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