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# Colorado Supreme Court Gives OK to Ballot Measure to Repeal TABOR

The Colorado Supreme Court provided a big victory on Monday to proponents of a citizen-initiated statewide ballot measure that would ask voters whether to repeal a provision in the Colorado Constitution known as the Taxpayer Bill of Rights, or TABOR.

In a 5-2 decision, the court reversed the title board and held that the ballot measure, Initiative 2019-2020 #3, satisfies the state's single-subject requirement, thus opening the door for the proponents to put the question before voters should they be able to collect a sufficient number of signatures.

Enacted by Colorado voters in 1992, TABOR, among other things, prohibits tax increases without voter approval, restricts the amount of tax revenue that can be kept and spent without voter approval, and requires that non-TABOR ballot measures be voted on in even-numbered years.

Referencing prior court precedent, the title board had determined that the ballot measure impermissibly concerns more than a single subject because TABOR itself is comprised of multiple subjects, even though the language of the measure is a single sentence: "In the constitution of the state of Colorado, repeal section 20 of article X [TABOR]."

The majority opinion, written by Justice Gabriel, reexamined prior court decisions and disagreed. Scrutinizing the purpose of the ballot measure rather than the purpose of TABOR, the majority concluded: "The initiative could not be written more simply or directly. It essentially asks voters a single question: should TABOR be repealed in full?" The majority then deduced that because the purpose of the measure was straightforward, the ills that plague initiatives with multiple subjects, such as proponents combining multiple subjects in one measure to attract a "yes" vote from voters who might vote "no" on one or more of the subjects if proposed separately, were not present.

The majority also distinguished its decision from the court's prior case law that had suggested that if a constitutional provision contains multiple subjects and an initiative proposes to repeal the entire underlying provision, then the initiative contains multiple subjects. The majority reasoned that because the facts previously presented to the court concerned a ballot measure that would have repealed and reenacted several provisions of TABOR, the holding of that case is not a blanket holding that controls whether the full repeal of TABOR proposed by this ballot measure meets the single-subject requirement.

In addition, the majority noted that affirming the title board's decision would make it "exceptionally difficult" and "prohibitively expensive" to repeal TABOR because it would have to be done "in a piecemeal fashion," likely deterring would-be proponents from pursuing and exercising their constitutional right of the citizen initiative power.

However, as explained by Justice Márquez in the dissenting opinion joined by Justice Boatright, TABOR itself served as an impetus for voter adoption of the single-subject requirement for citizen initiatives. Appearing on the ballot in 1994, the very next general election cycle after voters enacted TABOR, the single-subject requirement was expressly summarized to voters as a protection against future initiatives as broad as TABOR. Accordingly, the dissent characterizes the majority as an ironic holding that would again allow all of TABOR to be placed on the ballot, “directly contrary” to the intent of the single-subject requirement.

In the wake of the court’s decision, the title board adjourned on Wednesday into executive session to receive legal advice on Initiative 2019-2020 #3. The likely next step is for the title board to schedule the measure for a title hearing, which could occur at the title board’s next regularly scheduled meeting on July 3.

For their part, the proponents have indicated that they will weigh whether to gather signatures and place the question before voters in 2020. If proponents decide instead to try to place the measure on the 2019 ballot, the deadline for submitting the required 124,632 signatures for the 2019 ballot is August 5. It would join another TABOR-related ballot measure, Proposition CC, which the state legislature referred to November’s ballot during the 2019 session. If approved by voters, the proposition would indefinitely suspend the TABOR provision requiring the state to refund revenue in excess of a constitutionally determined cap to taxpayers. The state could then keep and spend that excess revenue on three predetermined areas, including K-12, higher education, and transportation funding. Initiative #3, if approved by voters, would go even further.

For more information on the court’s decision, download Sarah Mercer and David Meschke’s discussion in the Brownstein Podcast Series [here](#).

For information on other Colorado ballot measures, visit Brownstein’s Ballot Initiative Tracker [here](#).

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