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ELECTION LAW ALERT

TABOR Notices -- Fair Game for Both Sides

The Colorado Court of Appeals today held that TABOR election notices, which summarize "relevant" citizen comments reflecting pro and con arguments about a tax or spending measure, must include pro comments submitted by opponents as well as con arguments submitted by proponents.

Under TABOR, election officials must summarize all "relevant" comments on either side of a measure in 500 words or less. In a Colorado Springs election, a supporter of a local transit measure submitted arguments that purported to be reasons to vote against that ballot proposal. In the opponents' view, these arguments were submitted in bad faith and did not reflect the central reasons for opposing the measure.

The Court refused to find that the comments submitted should not have been reflected in the published TABOR notice. It held that election officials are not charged with divining the intent or motives of a person submitting comments to determine what is - or is not - "relevant" under TABOR. Not only did the plaintiffs' position go well beyond the responsibilities established for election officials under TABOR, it "would present significant freedom of speech concerns with respect to the voters' right to submit comments, and could frustrate the purpose of the ballot issue notice by depriving the electorate of comments necessary to make an intelligent decision on a proposal." Acknowledging that there was a potential for election-season mischief, the Court noted that any cure must be accomplished by the legislature or the voters, not the judiciary.

If you have any questions about this decision or other election law matters, please contact Mark Grueskin (mgrueskin@ir-law.com), Ed Ramey (eramey@ir-law.com), or any other member of our Election Law Group.