

COLORADO TITLE SETTING BOARD

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IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION  
CLAUSE FOR INITIATIVE 2023-2024 #260

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**MOTION FOR REHEARING**

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On behalf of Dave Davia and Michael Fields, registered electors of the State of Colorado, the undersigned counsel hereby submit this Motion for Rehearing for Proposed Initiative 2023-2024 #260 (“Initiative #260”) pursuant to C.R.S. § 1-40-107, and as grounds therefore state as follows:

Initiative #260 impermissibly contains multiple separate subjects improperly coiled in the folds that would lead to voter surprise and impermissible logrolling. The single-subject requirement is designed to:

forbid . . . the practice of putting together . . . subjects having no necessary or proper connection, for the purpose of enlisting in support of the [initiative] the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits.

C.R.S. § 1-40-106.5(1)(e)(I); *see also In re Title, Ballot Title & Submission Clause for Proposed Initiative 2001-02 No. 43*, 46 P.3d 438, 442 (Colo. 2002) (the single subject rule helps avoid “voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision ‘coiled up in the folds’ of a complex initiative”); *In re Title, Ballot Title & Submission Clause, for 2007–2008, #17*, 172 P.3d 871, 875 (Colo. 2007) (“We must examine sufficiently an initiative’s central theme to determine whether it contains hidden purposes under a broad theme.”).

As stated by the proponents at the initial Title Board hearing on April 18, 2024, the single subject of Initiative #260 is “to create a supplemental state tax upon luxury residential real property to generate revenue for distribution to political subdivisions of the state in years in which statewide limitations have been placed upon the amount of growth of local property tax revenue.” Yet, Initiative #260 contains a hidden second subject that is neither necessarily nor properly connected to that stated single subject. *In re Matt of Title, Ballot Title and Submission Clause for 2019–2020 #315*, 500 P.3d 363, 367 (Colo. 2020) (quoting *In re 2015–2016 #73*, 369 P.3d at 568) (in deciding whether an initiative addresses a single subject, the relevant question is if its provisions are “necessarily and properly connected rather than disconnected or incongruous”); *accord In re Title, Ballot Title & Submission Clause for 2009–2010 #91*, 235 P.3d 1071, 1077 (Colo. 2010) (“[W]hen an initiative’s provisions seek to achieve purposes that bear no necessary or proper

connection to the initiative's subject, the initiative violates the constitutional rule against multiple subjects.”).

Because Initiative #260 strikes the prohibition in the Taxpayer's Bill of Rights (“TABOR”) against any new state real property tax, *see* Initiative § 3, it would broadly allow for any new state real property tax not just the *conditional* supplemental luxury residential real property tax being advanced by the measure. This addition is not necessarily or properly connected to the measure's central purpose. Because Section 2 of the measure adds language to the state constitution, striking the TABOR prohibition in Section 3 was not for the purpose of avoiding the requirement to collect signatures in every state senate district or for the purpose of preventing the threshold for passing the measure to be set at 55% of the vote. Indeed, if proponents had wanted to create constitutional permissibility for their conditional supplemental luxury residential real property tax, they could have simply added language to article X, section 20(8)(a) of the Colorado Constitution so that it reads: “No new state real property tax, *other than a conditional real property tax*, or local district income tax shall be imposed.” But proponents did not take that scalpel approach and instead used an ax. The result of that drafting choice is a hidden second subject that removing TABOR's prohibition on any new state real property tax.

Voters would be surprised to learn that by voting for a measure purporting to create a conditional supplemental luxury residential real property tax, they also would be opening the door to allowing any new state real property tax. Specifically, voters would be particularly surprised to learn that Initiative #260 would reinstate the state legislature's power to refer measures to the voters to enact new real property taxes because #260 removes that prohibition. Therefore, striking TABOR's prohibition against any new state real property tax is separate and distinct from allowing a conditional supplemental real property tax. *See In re 2009–2010 #91*, 235 P.3d at 1076 (quoting *In re Title, Ballot Title & Submission Clause, & Summary for 1997–1998 #64*, 960 P.2d 1192, 1196 (Colo. 1998)) (“[W]here an initiative advances separate and distinct purposes, ‘the fact that both purposes relate to a broad concept or subject is insufficient to satisfy the single subject requirement.’”) (alteration in original).

Highlighting why Initiative #260 contains multiple subjects is the significant logrolling risk it presents. The measure, as drafted, would (perhaps unintentionally) attempt to garner support from voters who want to impose a conditional supplemental property tax on luxury property, a proposal likely most Coloradans would agree to support, and those that want to repeal TABOR's prohibition on any new statewide real property tax, which reinstates the power of the legislature to enact new taxes in the form of new property taxes. Voters should not be faced with such a choice in one measure. *In re Proposed Initiative “Public Rights in Waters II”*, 898 P.2d 1076, 1079 (Colo. 1995) (explaining that a central purpose of the single-subject requirement is that it “precludes the joining together of multiple subjects

into a single initiative in the hope of attracting support from various factions which may have different or even conflicting interests”).

Therefore, these separate subjects, which voters would be surprised to learn are included among the measure’s features, deprive the Title Board of jurisdiction to set a title. Accordingly, the Objector respectfully requests that this Motion for Rehearing be granted, and a rehearing set pursuant to C.R.S. § 1-40-107(1).

Respectfully submitted this 25th day of April 2024.

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