

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION
CLAUSE FOR INITIATIVE 2023-2024 #261

MOTION FOR REHEARING

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 #261 (“Initiative #261”) pursuant to C.R.S. § 1-40-107, and as grounds therefore state as follows:

Initiative #261 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 #261 is “to authorize the state to retain and spend excess state revenue as a voter-approved revenue change under TABOR to supplement or backfill local revenues lost in whole or in part as a result of a statewide limitation upon the amount of growth of property tax revenue.” This purpose is in direct contradiction to the Colorado Supreme Court’s holding in *In re Title, Ballot Title And Submission Clause, And Summary For 1997-98 #84*, 961 P.2d 456, 460 (Colo. 1998), which recognized that requiring the state to replace affected local revenue in a way that also has the result of mandating cuts in state programs constitutes two impermissible subjects.

Here, Initiative #261 allows the state to keep excess state revenues and requires that excess to be used to backfill local revenue loss, which prohibits the

state from making choices about how to use some, if not all, of the kept TABOR revenues. By protecting this amount of state funding solely to be used for local revenue backfill, the measure will necessarily force significant funding cuts to other state programs, just as Initiative #84 impermissibly did.

As a result, Initiative #261 presents significant risk of voter surprise. Voters would be particularly surprised to learn that in supporting a conditional protection of local revenues, which is seemingly innocuous, they would at the same time be voting to prohibit retained revenues for any other purpose. This fact is further obscured in the title which signals to voters that purpose of the measure is carried out by “permitting the state to retain and spend excess state revenue to offset any reduction in funding for local governmental services” when, in fact, the purpose of the measure is carried out by permitting the state to retain excess state revenue and *requiring* that revenue to be used solely to backfill local revenue. *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).

For these reasons, these separate subjects 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.

/s/ Sarah M. Mercer

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