COLORADO TITLE SETTING BOARD

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IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE 2023-2024 #269

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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 #269 ("Initiative #269") pursuant to C.R.S. § 1-40-107, and as grounds therefore state as follows:

The Title Board lacks jurisdiction to set a title because the proposed measure is too confusingly and vague to set title and also impermissibly contains multiple separate and distinct subjects in violation of the single-subject requirement. 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.").

## I. Initiative #269's erroneous citation to the "Public School Finance Act of 1994" deprives the Title Board of jurisdiction to set title.

As stated by the proponents at the initial Title Board hearing on April 18, 2024, the single subject of Initiative #269 is "adjusting the assessment rate for nonresidential property, except for small business property as defined in the measure, to 32% in years in which the local share of total program funding under the Public School Finance Act is estimated to fall below 50% of total program funding for school districts statewide." However, as noted during the initial hearing on the measure, the measure's citation to the "Public School Finance Act of 1994" is so vague that clear title cannot be set.

In response to questions about the language, Mr. Ramey acknowledged their drafting error and stated that if the Initiative #269 passes, "what our burden is going to be, we're going to have to run to the legislature and say amend the underlying statute and presume that they would or wouldn't." Because it is unclear whether the state legislature will fix proponents' drafting error, the Board cannot set a sufficiently clear title to alert voters as to what they are actually voting for. *See In re Breene*, 24 P. 3, 7-8 (Colo. 1890) ("The matter covered by legislation is to be 'clearly,' not dubiously or obscurely, indicated by the title. Its relation to the subject must not rest upon a merely possible or doubtful inference. The connection must be so obvious that ingenious reasoning aided by superior rhetoric will not be necessary to reveal it.").

## II. Initiative #269 contains a hidden second subject.

To make matters worse, Initiative #269 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.").

As was raised in the Review and Comment Hearing, Initiative #269 conditionally increases the assessment rate on "nonresidential property," which is a term that is not defined in the measure or elsewhere in Title 39 of the Colorado Revised Code. In the absence of a definition of the term, Initiative #269 captures *all* nonresidential property, including oil and gas, mining, and agricultural property, and not simply commercial property. It would have been easy enough to exclude such property, but proponents did not take that approach. Voters would be surprised to learn that by voting for a measure purporting to create a conditional increase in the assessment rate on nonresidential property, they also would be altering complex assessment calculations applying to oil and gas, mining, and agricultural property. *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).

As a result, Initiative #260 presents significant logrolling risk because it attempts to garner support from voters who want to impose a conditional assessment rate increase on nonresidential property when public school funding falls below a certain level, a proposal many Coloradans may agree to support, and

those that might to change how assessment calculations are made for oil and gas, mining, and agricultural property, which is an obscure aspect of the measure. 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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