

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Bernard Buescher, Objector,

vs.

Colin Larson and Alex Valdez, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2021-2022 #74

Bernard Buescher, registered elector of the County of Mesa and the State of Colorado, through his undersigned counsel, objects to the Title Board's (the "Board") title and ballot title and submission clause set for Initiative 2021-2022 #74, and states:

The Board set a title for Initiative 2021-2022 #74 on March 16, 2022. The Board designated and fixed the following ballot title and submission clause:

Shall funding available for counties, school districts, water districts, fire districts, and other districts funded, at least in part, by property taxes shall be impacted by a reduction of \$1.3 billion in property tax revenue by an amendment to the Colorado constitution and a change to the Colorado Revised Statutes concerning the actual value of property for purposes of property taxation, and, in connection therewith, limiting the increase of a property's value to inflation or to three percent, whichever is less; allowing a property to be reappraised in certain circumstances; and requiring another statewide vote in ten years to reauthorize these changes or restore the constitutional and statutory provisions as of this measure?

I. The Board lacks jurisdiction over Initiative #74, as it violates the Constitution's single subject requirement.

Initiative #74's single subject statement is "concerning the value of property for purposes of property taxation." In fact, Initiative #74 has the following separate and distinct purposes:

- A. Changing valuation techniques for property tax valuation.
- B. By making "permanent" the statutory changes in this initiative and thus repealing any intervening statutory amendments to provisions addressed by this initiative, the General Assembly's general legislative powers are forever restricted as to amendments to C.R.S. §§39-1-102.5, -103(5)(a), (15.5); -104(10.2)(a); -121(1)(a)(I), and -125; see *In the Matter of the Title, Ballot Title and Submission Clause for 2009-2010 # 91*, 235 P.3d 1071 1079, (Colo. 2010) (change in tax policy is a separate

subject from “depriving the General Assembly of its legislative authority over” a substantive area in which it has lawmaking authority; “Discovery of this second purpose is revealed only through a close reading of the initiative and an appreciation of its complex text and how its sections interrelate”).

- C. By making “permanent” the statutory and constitutional provisions amended by this measure, this initiative restricts the voters’ reserved legislative powers (as well as the general, plenary legislative powers of the General Assembly) granted by Article V, sec. 1 of the Constitution as to the statutes amended in this initiative.
- D. By making “permanent” the statutory changes in this initiative, proponents seek to create an exception by statute to amend Article V, sec. 17 of the Constitution, authorizing the enactment of a law by bill.
- E. By requiring that a future ballot title for reauthorization be worded in the same manner as the ballot title for #74, the General Assembly’s authority to enact amendments to title setting statutes that affect a 2032 ballot title is restricted – and such restriction will then change the legal requirements for ballot titles that relate to this initiative as well as those measures that have nothing to do with property tax valuation; *see In re Amend Tabor 25*, 900 P.2d 121, 125 (Colo. 1995) (single subject requirement violated by initiative that created tax credit and also “procedural requirements for future ballot titles”).
- F. Mandating reductions in state spending due to the required backfill funding for K-12 education by the State, *see In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 #44*, 961 P.2d 456, 460-61 (Colo. 1998) (single subject requirement violated by tax cut and shift to state from local governments to pay the difference); *see also In re Interrogatory on House Bill 21-1164 Submitted by the Colo. Gen. Assembly*, 2021 CO 34 ¶¶ 7, 11 (describing backfill mandate provided by state law where locally generated revenue for school districts decreases).

II. Even if the Title Board has jurisdiction, the titles set are legally flawed because the titles fail to inform voters of certain central elements of the measure and would mislead voters.

The ballot title and submission clause for Initiative #74 should state the following:

- A. Property affected by the changed valuation techniques will include both personal property and real property.
- B. The specified conditions under which reappraisals are authorized instead of merely using the vague and non-informative phrase, “in certain circumstances.”
- C. Property valuations are authorized to increase yearly by inflation or 3%, not every other year as occurs in the existing biennial valuation process.

- D. Property valuation protests are authorized only where a property declines in value rather than where a property value increases, decreases, or does not change at all.
- E. #74 repeals the Constitution’s authority to use the cost approach to appraisal in residential valuation (ballot title “shall unambiguously state the principle of the provision sought to be added, amended, or **repealed**,” C.R.S. §1-40-106(3)(b)).
- F. Ballot title fails to state that the constitutionally authorized approaches to appraisal (cost, market, income) are applicable only insofar as the valuation indicated by such approaches cannot increase beyond the mandatory inflation/3% formula.
- G. Ballot title fails to state that proposed changes in valuation standards would not apply to agricultural land and mines or oil and gas producing lands or leaseholds.
- H. Ballot title fails to state that the measure would make these statutory and constitutional changes “permanent” rather than just “reauthorized.”
- I. Correct the final phrase of the titles (“*and requiring another statewide vote in ten years to reauthorize these changes or restore the constitutional and statutory provisions as of this measure*”) which would be incorrect when, as required by the measure, it is placed before voters in 2032 because the Secretary of State must use the title language crafted for Initiative #74 (Secretary required to “resubmit this initiative by its ballot title”).
- J. The measure subjects and exempts residential land from its inflation/3% valuation cap, and for that reason, a ballot title cannot be written without confusing voters as to the true meaning and effect of the measure. *In the Matter of the Title, Ballot Title and Submission Clause for 2015-2016 #156*, 2016 CO 56, ¶¶13-15, 413 P.3d 151.

WHEREFORE, the titles set March 16, 2022 should be reversed, due to the single subject violations addressed herein or, if not, at least corrected to address central features of Initiative #74 identified above.

RESPECTFULLY SUBMITTED this 23rd day of March, 2022.

RECHT KORNFELD, P.C.

s/ Mark G. Grueskin
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CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2021-2022 #74** was sent this day, March 23, 2022, via email to the proponents via their legal counsel:

Sarah Mercer
Brownstein Hyatt Farber Schreck
smerc@bhfs.com

s/ Erin Holweger _____
Erin Holweger