

COLORADO TITLE SETTING BOARD

**IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR PROPOSED INITIATIVE 2023-2024 #227**

MOTION FOR REHEARING ON PROPOSED INITIATIVE 2023-2024 #227

On behalf of Jessica Goad, registered elector of the State of Colorado, the undersigned counsel hereby submits to the Title Board this Motion for Rehearing on Proposed Initiative 2023-2024 #227 (“Initiative #227”) and as grounds therefore state as follows:

I. THE TITLE SET BY TITLE BOARD AT APRIL 3, 2024 HEARING

On April 3, 2024, the Title Board set the following ballot title and submission clause for Initiative #227:

An amendment to the Colorado constitution prohibiting state and local governments from banning or restricting products or services based on the energy source of the product or service.

II. GROUND FOR REHEARING**A. The Initiative Impermissibly Contains Several Separate and Distinct Subjects in Violation of the Single Subject Requirement.**

Pursuant to Colo. Const. art. V, §1(5.5),

no measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls.

See also 1-40-106.5, C.R.S. “[T]he Board may not set the titles of a proposed Initiative, or submit it to the voters, if the Initiative contains multiple subjects.” *Aisenberg v. Campbell (In re Title, Ballot Title & Submission Clause 1990-2000 #104)*, 987 P.2d 249, 253 (Colo. 2000).

The single subject requirement serves two functions. First, the single subject requirement “is intended to ensure that each proposal depends upon its own merits for passage.” *Johnson v. Curry (In re Title, Ballot Title & Submission Clause for 2015-2016 #132)*, 374 P.3d 460, 465 (Colo. 2016). Second – and as pertinent here – the single subject requirement is intended to “prevent surprise and fraud from being practiced upon voters caused by the inadvertent passage of a surreptitious provision ‘coiled up in the folds’ of a complex initiative.” *Id.* “If an initiative

advances separate and distinct purposes, the fact that they both relate to the same general concept or subject is insufficient to satisfy the single subject requirement.” *Id.*

Initiative #227 contains numerous separate subjects in violation of article V, section 1(5.5) of the Colorado Constitution, and section 1-40-106.5, C.R.S. When carefully considered, the breadth and reach of Initiative #227 extends far beyond what the proponents contend. The language of the measure states that “[s]tate and local governments shall not ban or restrict products or services currently in common use based on the energy source of that product or service.”

The measure does not define what “restrict” means, and that term could cover a whole range of different subjects in the Initiative, for example, the application of police powers: would local governments be prohibited from (1) restricting natural gas or electric service on a wildfire advisory day? (2) setting energy efficiency requirements in building codes? (3) requiring compliance with state greenhouse gas emission targets? (4) requiring inspection of heating and cooling systems? “Restrict” could also limit taxing authority: would local governments be prohibited from collecting state or local taxes on certain products or services?

Each of these purposes is couched in a measure that at first read would appear to be barring laws banning or restricting gas powered, or propane fueled products, such as vehicles, stoves, lawnmowers and heaters. This is the classic “coiled up in the folds” scenario whereby the voting public will be affirmatively surprised to learn that the measure will unduly restrict government police powers and taxing authority. *See, e.g., Johnson, supra; In re Title & Ballot Title & Submission Clause for Initiative 2001-2002 #43*, 46 P.3d 438, 446 (Colo. 2002).

The purpose of the single subject requirement is to “obviate the risk of ‘uninformed voting caused by items concealed within a lengthy or complex proposal’” *Id.* While the Initiative is not long, a measure can be “complex” without necessarily being “lengthy” – indeed a short and seemingly simple initiative, directed to a large and moderately complex body of law, can harbor the most pernicious surprises “coiled up in [its] folds.” Here, Initiative #227 brings all these dangers.

B. The Ballot Title and Submission Clause Is Misleading, and Does Not Correctly and Fairly Express Its True Intent and Meaning.

The title of the Initiative is misleading and does not correctly and fairly express the initiative’s true intent and meaning. Section 1-40-106(3)(b), C.R.S. provides:

In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a "yes" or "no" vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly express the true intent and meaning thereof, together with the ballot title and submission clause. . . .

Titles and submission clauses should "enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10th day of April 2024, a true and correct copy of **MOTION FOR REHEARING ON PROPOSED INITIATIVE 2023-2024 #227** was filed and served on Proponents Kristi Burton Brown and Michael Tsogt, via email to their counsel of record as follows:

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