

COLORADO TITLE SETTING BOARD

**IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR PROPOSED INITIATIVE 2023-2024 #284**

MOTION FOR REHEARING ON PROPOSED INITIATIVE 2023-2024 #284

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 #284 (“Initiative #284”) and as grounds therefore state as follows:

I. THE TITLE SET BY TITLE BOARD AT APRIL 17, 2024 HEARING

On April 17, 2024, the Title Board set the following ballot title and submission clause for Initiative #284:

An amendment to the Colorado constitution limiting new and existing fees that fund mass transit, and, in connection therewith, requiring fees that fund bus and passenger rail to be collected only in areas that are served by the transit and approved by voters in those areas before the fees can be collected, excluding fees to fund roads, highways or bridges from these requirements, and reducing current transit funding.

II. GROUNDS FOR REHEARING**A. The Title Board Lacks Jurisdiction to Set a Title Because Proponents Impermissibly Made Changes to the Initiative That Were Not in Response to Comments in Review and Comment.**

After the review and comment meeting, the proponents impermissibly changed the measure from a statutory measure in Title 24 of Colorado Revised Statutes to a constitutional measure in article XVIII. Pursuant to § 1-40-105(2), after the review and comment meeting but before submission to the secretary of state for title setting, the proponents of an initiative may amend the petition in response to some or all of the comments of the directors of the legislative council and the office of legislative legal services, or their designees. If any substantial amendment is made to the petition, other than an amendment in direct response to the comments of the directors of the legislative council and the office of legislative legal services, the amended petition must be resubmitted to the directors for another review and comment meeting. *Id.*

While there was discussion at the review and comment meeting about placement of the measure in article 77 of title 24 instead of article 43 of title 24, and the potential need for

conforming amendments to section 20 of article X of the state constitution, the directors did not separately raise a comment about placing the measure in the constitution. *See Review and Comment Memorandum for Proposed Initiative 2023-2024 #284*, paragraph 3ci, ii, iii.

Such a change is not permitted by C.R.S. §1-40-105(2) (“If any substantial amendment is made to the petition, other than an amendment in direct response to the comments of the directors of the legislative council and the office of legislative legal services, the amended petition must be resubmitted to the directors for comment ... prior to submittal to the secretary of state”)

B. 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 #284 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 #284 extends far beyond what the proponents contend. The language of the measure states that “[a]ny fees assessed for the purpose of funding mass transportation such as bus, light rail, high speed rail, passenger rail or fixed rail projects ... must (a) be assessed only to a person who makes the transaction in an area that is served by such mass transportation; and (b) be approved by a vote of the people in the state or political subdivision where such fees will be collected.”

The measure does not define what “fees” means, and that term could cover a whole range of different subjects in the Initiative, for example, fees could include all types of charges that may be assessed for the purpose of funding mass transportation, including surcharges, special assessments, fines, and penalties. It is unclear how fees assessed for multiple purposes, one of

which is funding of a mass transit project, are treated under the measure and whether those fees are also captured. Proponents, during the initial hearing, indicated that their intent is that the initiative is retroactive, requiring a vote of the people for all existing mass transit fees.

Each of these purposes is couched in a measure that at first read would appear to be requiring mass transit to be funded only by fees collected in the areas served by the transit. 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 #284 brings all these dangers.

C. 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 support or oppose such a proposal." *In re Title, Ballot Title & Submission Clause for Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 242 (Colo. 1990). The purpose of reviewing an initiative title for clarity parallels that of the single-subject requirement: voter protection through reasonably ascertainable expression of the initiative's purpose. *See id.*

The Title for Initiative #284 does not apprise voters of the expansive reach of the measure, and how it changes the status quo with regard to collection of all applicable fees assessed for the purpose of funding mass transit . Here, the title for Initiative #284 is one for which the general understanding of the effect of a "yes" or "no" vote will be unclear. See generally 1-40-106(3)(b). As a result, the title for Initiative #284 does not enable voters to make an informed choice because it does not correctly and fairly express its true intent and meaning.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 24th day of April 2024, a true and correct copy of **MOTION FOR REHEARING ON PROPOSED INITIATIVE 2023-2024 #284** was filed and served on Proponents Michele Haedrich and Steven Ward, via email to their counsel of record as follows:

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