COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR PROPOSED INITIATIVE 2025-2026 #80

MOTION FOR REHEARING ON PROPOSED INITIATIVE 2025-2026 #80

On behalf of Aly Ferrufino-Coqueugniot, registered elector of the State of Colorado, the undersigned counsel hereby submits to the Title Board this Motion for Rehearing on Proposed Initiative 2025-2026 #80 ("Initiative #80") and as grounds therefore state as follows:

I. THE TITLE SET BY TITLE BOARD AT MAY 7, 2025 HEARING

On May 7, 2025, the Title Board set the following ballot title and submission clause for Initiative #80:

> An amendment to the Colorado Constitution prohibiting state and local governments from banning or restricting commonly used energy sources; and, in connection therewith, prohibiting bans and restrictions on products and services fueled or powered by a commonly used energy source except for health or safety restriction of the international building code or a public safety emergency, and removing the power to regulate access to energy from home rule municipalities.

II. GROUNDS FOR REHEARING

A. The Initiative Impermissibly Contains More Than One Subject 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 #80 contains multiple separate subjects in violation of article V, section 1(5.5) of the Colorado Constitution, and section 1-40-106.5, C.R.S. First, in section (1)(b), the measure states that "access to energy to power and heat homes, cook, and operate equipment is a matter of statewide concern." When a policy area is deemed to be a matter of statewide concern, local governments, including home rule municipalities, may not enact laws in that policy area, as that authority is reserved for the state. Home rule cities are granted plenary authority by the constitution to regulate issues of local concern. *See* Colo. Const. art. XX, § 6. If a home rule city takes action on a matter of local concern, and that ordinance conflicts with a state statute, the home rule provision takes precedence over the state statute. *See id.*; *see also City & County of Denver v. State*, 788 P.2d 764, 767 (Colo. 1990) (finding a state statute unconstitutional because it conflicted with a local initiative on a matter of local concern). If the matter is one of statewide concern, however, home rule cities may legislate in that area only if the constitution or a statute authorizes the legislation. *See City & County of Denver*, 788 P.2d at 767. Otherwise, state statutes take precedence over home rule actions. *See id.* If the matter is one of mixed local and statewide concern, a home rule provision and a state statute may coexist, as long as the measures can be harmonized. If the home rule action conflicts with the state legislature's action, however, the state statute supersedes the home rule authority. *See id.*

Under section (1)(b) of the measure, home rule jurisdictions cannot enact woodburning bans or oil and gas setback requirements, for example, because these laws impact access to energy to power and heat homes, cook, and operate equipment. This is one subject of the measure which is to change the status quo and remove from local governments, including home rule municipalities, the authority to regulate access to energy in their jurisdictions.

Next, in section (2), Initiative #80 creates a constitutional limitation on state and local governments from banning or restricting products or service connections powered by an energy source in common use except under specific health and safety criteria. This constitutional provision prohibits the state and local governments from restricting access to energy unless there is a health or safety restriction in the International Building Code or a public safety emergency, such as a fire or natural disaster. This is an entirely different subject from making access to energy a matter of statewide concern.

Each of these purposes is couched in a measure that at first read would appear to be barring laws banning or restricting commonly used energy sources. This is the classic "coiled up in the folds" scenario whereby the voting public will be affirmatively surprised to learn that the measure will remove the authority of home rule jurisdictions to impose health and safety laws to protect residents from poor air or water quality or noise pollution. *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 #80 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 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 #80 does not apprise voters of how it changes the status quo with regard to health and safety laws that are commonly adopted by home rule jurisdictions. The phrase "removing the power to regulate access to energy from home rule municipalities" is insufficient to allow voters to understand the reach of the measure in practical terms. Here, the title for Initiative #80 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 #80 does not enable voters to make an informed choice because it does not correctly and fairly express its true intent and meaning.

Alternatively, the Title Board lacks jurisdiction to set a title because the measure is contradictory and unclear, and thus it cannot craft a title which "correctly and fairly express[es] the true intent and meaning" of the measure. *See* Section 1-40-106(3)(b), C.R.S. Section (1)(b) of the measure precludes home rule jurisdictions from enacting laws to regulate access to energy in their jurisdictions, which is in direct conflict with section (2) which allows local governments to regulate access to energy so long as they are not banning an energy source in common use or in times of natural disaster, or to protect the health and safety of residents based on the International Building Code. Because the true intent of the measure is unclear, the Title Board cannot set a clear title, and, therefore, lacks jurisdiction to set any title.

III. CONCLUSION

Based on the foregoing, Aly Ferrufino-Coqueugniot requests a rehearing of the Title Board for Initiative 2025-2026 #80, because the initiative contains multiple subjects, the title is unclear and misleading to voters, and it fails to fairly express the initiative's true meaning and intent. As a result, the Title Board lacks jurisdiction to set a title and should reject the measure in its entirety.

Respectfully submitted this 14th day of May, 2025.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 14th day of May 2025, a true and correct copy of **MOTION FOR REHEARING ON PROPOSED INITIATIVE 2025-2026 #80** was filed and served on Proponents Michael Fields and Steven Ward, via email to their counsel of record as follows:

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