

## BEFORE COLORADO STATE TITLE SETTING BOARD

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### In re Ballot Title and Submission Clause for 2011-2012 Initiative #77 (“Elimination of Property Taxes”)

SCOTT WASSERMAN, Objector

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### MOTION FOR REHEARING

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Pursuant to C.R.S. § 1-40-107, Objector, Scott Wasserman, a registered elector of the State of Colorado, by and through his legal counsel, Heizer Paul Grueskin LLP, is not satisfied with the April 4, 2012 decision of the Title Board that Initiative # 77 comprises a single subject and further that the title for this proposed ballot measure is fair and that they accurately express the meaning and intent of said measure.

1. This ballot measure violates the single subject requirement, Colo. Const., art. V, § 1(5.5), by addressing separate and distinct subjects that include but are not limited to:
  - a. Prohibiting all *ad valorem* taxes on real property and improvements.
  - b. Prohibiting all other "taxation on real property" including:
    - i. excise taxes that apply to real property, *Cherry Hills Farm, Inc. v. City of Cherry Hills Village*, 670 P.2d 779, 782 (Colo. 1983);
    - ii. severance taxes which apply to real property;
    - iii. sales/use taxes that apply to real property's improvements; and
    - iv. local real estate transfer taxes which pre-dated the enactment of TABOR, Colo. Const., art. X, sec. 20.
  - c. Mandating spending cuts for levels of government that do not vote to switch the burden of property-related taxes to other taxes within the transition period. *In re Proposed Initiative for 1997-98 Nos. 84 & 85*, 961 P.2d 456, 460 (Colo. 1998) ("voters would be surprised to learn that by voting for local tax cuts, they also had required the reduction, and possible eventual elimination of state programs").
  - d. Repealing, in light of Proposed Colo. Const., art. II, sec. 32(2) ("All sections of this constitution that provide for taxation shall not apply to the taxation of real property"), the multiple subjects of TABOR that relate to taxation of real property, Colo Const., art. X, sec. 20(4)(a) (district elections for increased mill levies and assessment ratios), (7)(d) (relation between district bonded debt, fiscal year spending, and property tax revenue), (8)(a) (prohibition on new and increased real estate transfer taxes), and (8)(c) (mailing of valuation notices,

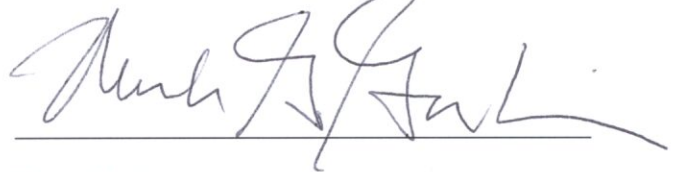
appeals of valuation notices, absence of presumption relating to pending valuations, use of lender and government sales in market approach to appraisal, statement of actual valuations on property tax bills, and sole reliance on market approach to appraisal for residential real property), as well as revenue limits for revenue resulting from taxes on real property and improvements, and replacing these repealed provisions with substantive provisions relating to and including future ballot measure elections, transition revenue levels and limits, and protected status of education, police, and fire funding and taxation on real property and improvements ends. *In re Initiative 1996-4*, 916 P.2d 528, 533 (Colo. 1996).

2. The Title Board did not provide a fair or accurate ballot title because it failed to, among other things:
  - a. Specify that "taxation upon real property," Proposed Colo. Const., art. II, sec. 32(1), (2), (3)(a), is not the functional equivalent of "property taxes," Proposed Colo. Const., art. II, sec. 32(3)(a)(II), 3(b), and (3)(c).
  - b. Address the requirement that ballot measures replacing property tax revenue with revenue from another tax must state both the increase in new taxes as well as the decrease in property taxes.

Please set this matter for rehearing, pursuant to C.R.S. § 1-40-107(1).

Respectfully submitted this 11<sup>th</sup> day of April, 2012.

HEIZER PAUL GRUESKIN LLP

A handwritten signature in black ink, appearing to read 'Mark G. Grueskin', written over a horizontal line.

Mark G. Grueskin

Objector's address:

Scott Wasserman, 5460 E. Bails Drive, Denver, CO 80222

**CERTIFICATE OF SERVICE**

A true and accurate copy of this MOTION FOR REHEARING was sent to the designated representatives, by means of U.S. Mail, first class, postage prepaid:

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