

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Scott Wasserman, Movant

vs.

Suzanne Taheri and Steven Ward, Designated Representatives of Proponents.

**MOTION FOR REHEARING ON INITIATIVE 2021-2022 #110
("Property Taxes")**

Scott Wasserman, a registered elector in the State of Colorado, through his undersigned counsel, respectfully submits the following Motion for Rehearing regarding Proposed Initiative 2021-2022 #110 ("Property Taxes").

I. Proposed Initiative 2021-2022 #110 contains more than a single subject.

Proposed Initiative 2021-2022 adds the following language to Colo. Const. art. X, §3:

NO TAX REVENUE ON A PROPERTY SHALL INCREASE MORE THAN 2% ANNUALLY UNLESS THE PROPERTY IS SUBSTANTIALLY IMPROVED BY ADDING MORE THAN 10% SQUARE FOOTAGE TO THE EXISTING BUILDINGS OR STRUCTURES OR ITS USE CHANGED IN WHICH CASE THE PROPERTY'S ACTUAL VALUE SHALL BE REAPPRAISED.

There was some discussion at the initial Title Board hearing on this measure on April 21, 2022, regarding its potential applicability to taxes other than general *ad valorem* property taxes for the general expenses of local government. The discussion was precipitated in part by the use of the terminology "*no tax revenue on a property shall increase more than 2% annually*" (subject to specified exceptions). The discussion was hi-lighted by the testimony of a particularly well-informed on-line participant who described a number of common assessments – often by municipalities and special districts that fund such specific services as waste water disposition and alley maintenance – that indisputably generate "tax revenue on property" but are neither *ad valorem* in nature nor dedicated to general expenses of government. These would include, for example, both excise taxes and special assessments (both of which are generally referred to a property taxes). *Cf., Bloom v. City of Fort Collins*, 784 P.2d 304, 307-308 (Colo. 1989).

As the plain language of Initiative 2021-2022 #110 limits all increases in “*tax revenue on a property*” to two percent annually, this limit necessarily incorporates such non-*ad-valorem* assessments as well as general property taxes. Tacking this language into Colo. Const. art. X, §3 doesn’t change that; at best it indicates that general *ad valorem* property taxes would have to be reduced – perhaps to zero or lower – should any other “tax revenue on a property” drive a combined total increase on a particular property above two percent. The result is a carefully – perhaps strategically – concealed second subject “coiled in the folds” of the initiative. *Cf., In re Title, Ballot Title and Submission Clause for 2009-2010 #91*, 235 P.3d 1071, 1077 (2010); *In re Title, Ballot Title and Submission Clause for 2007-2008 #17*, 172 P.3d 871, 876 (Colo. 2007).

Additionally, as Colo. Const. art. X, §3 addresses taxes on both real and personal property, its problematic application to the latter is at best a second subject and at worst sufficiently unclear and misleading as to prevent the setting of a comprehensible title.

II. If the language of Proposed Initiative 2021-2022 #110 cannot be understood clearly enough to allow the setting of a clear title, the Title Board must reject the initiative on that basis alone.

There was considerable discussion among the Title Board members, the proponents themselves (inconsistently), and other participants at the initial hearing (including most helpfully the on-line participant) – and now the present movants – as to what the language of the proposed measure (particularly “no tax revenue on a property”) means. At best – and giving every benefit of the doubt to the proponents – the meaning is unclear. The result is that a “single subject” cannot be clearly and comfortably stated.

“Before a clear title can be written, the Board must reach a definitive conclusion as to whether the initiatives encompass multiple subjects.” *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #25*, 974 P.2d 458, 468 (Colo. 1999). “While the Board must give deference to a proponent’s expression of his or her initiative’s intent . . . it may not do so at the expense of its other equally important duties. The Board must simultaneously consider the potential public confusion that might result from misleading titles and exercise its authority in order to protect against such confusion.” *Id.* at 469.

In the present case, the language of the initiative itself – particularly the core term and concept (“tax revenue on a property”) – is sufficiently confusing that the Board, at best, cannot fairly determine if the measure contains multiple subjects. It cannot, therefore, set a clear title.

III. The title set for Proposed Initiative 2021-2022 #110 is unclear and misleading.

Even were the Title Board to conclude that Proposed Initiative 2021-2022 #110 contains a single subject, it cannot formulate a title that “correctly and fairly express[es] the true intent and meaning” of the measure. C.R.S. §1-40-106(3)(b). Nor in this case has it been able to “avoid [a title] for which the general understanding of the effect of a ‘yes/for’ or ‘no/against’ vote will be unclear.” Id. Tracking the language of the measure, the title states the effect of the measure to be “limiting the annual increase in tax revenue on a property to no more than 2% . . .” As with the measure itself, it is wholly unclear at best – if not patently misleading to the voters at worst – as to whether this “tax revenue on a property” is limited to revenue generated only by general *ad valorem* property taxes for general expenses of government or inclusive of targeted excise tax and special assessment “tax revenue on a property” (as the language of the measure would suggest). Nor is its application to personal property discernable.

Movant would very much like to suggest a clearer and more accurate title, but he is in no better a position to do so than the Title Board. The present title – and any alternative we can conjure up – will simply fail to provide the voters any clear or meaningful “understanding of the effect of a ‘yes/for’ or ‘no/against’ vote” on this initiative.

Respectfully submitted April 27, 2022.

_____/s/
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CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of this **MOTION FOR REHEARING ON INITIATIVE 2021-2022 #110** was delivered on April 27, 2022 to Proponents via their legal counsel:

Suzanne Taheri
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/s/ Edward Ramey