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COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE 2021-2022 #75

MOTION FOR REHEARING

On behalf of Alex Valdez and Colin Larson, registered electors of the State of Colorado and the designated representatives for Initiative 2021-2022 #75, the undersigned counsel hereby submits this Motion for Rehearing pursuant to C.R.S. § 1-40-107, and as grounds therefore states as follows:

I. INTRODUCTION

At the initial Title Board hearing on March 15, 2022, the Title Board followed the recommended staff draft of the title, which applied C.R.S § 1-40-106(3)(f), and adopted a title that fundamentally misleads voters as the intent and effect of Initiative #75. The title, as currently drafted, states that the measure will cause a "reduction of $1.3 billion in property tax revenue." But that is not Initiative #75's purpose, and C.R.S § 1-40-106(3)(f) should not have been applied to the measure because it is not a "tax change" as defined in statute. The measure's intent is to slow the rate of increase in assessed property valuations to protect homeowners, businesses, and Colorado's economic vitality. Separate and apart from this, a downstream effect of the measure would be slowing the rate of increase in revenues collected by some local districts. No district, however, would experience a true reduction in revenue in any year as a result of this measure. That language in the title therefore should not have been applied to Initiative #75. It fundamentally deceives voters about both the intent and the effect of the ballot measure, and must be removed.

II. ARGUMENT

a. The Title adopted by the Title Board improperly and unfairly uses the structure in C.R.S § 1-40-106(3)(f).

1. The applicable statutory provisions.

Passed last year, C.R.S § 1-40-106(3)(f) provides that specific language should inserted at the beginning of the title for a particular type of measure:

> (f) For measures that reduce local district property tax revenue through a tax change, the ballot title must begin "Shall funding available for counties, school districts, water districts, fire districts, and other districts funded, at least in part, by property taxes be impacted by a reduction of (projected dollar figure of property tax revenue reduction to all districts in the first full fiscal year that the measure reduces revenue) in property tax revenue...?". The title board shall exclude any districts whose property tax revenue would not be reduced by the measure from the measure's ballot title. The estimates reflected in the ballot title shall not be interpreted as restrictions of a local district's budgeting process.

Thus, based on the plain language of the statute, the words beginning with "Shall funding . . ." should only be used in measure's title if it would: (a) reduce local district property tax revenue; and (b) do so through a tax change.

A "tax change" is a critical element triggering the use of that language in a title. C.R.S. § 1-40-106(3)(i)(II) defines this term as the following:

> (II) "Tax change" means any initiated ballot issue or initiated ballot question that has a primary purpose of lowering or increasing tax revenues collected by a district, including a reduction or increase of tax rates, mill levies, assessment ratios, or other measures, including matters pertaining to tax classification, definitions, credits, exemptions, monetary thresholds, qualifications for taxation, or any combination thereof, that reduce or increase a district's tax collections. "Tax change" does not mean an initiated ballot issue or initiated ballot question that results in a decrease or increase in revenue to a district in which such decrease or increase is incidental to the primary purpose of the initiated ballot issue or initiated ballot question.

Therefore, if a measure does not cause a "tax change," then then language in C.R.S § 1-40-106(3)(f) must not be used in the measure's title.

2. Initiative #75 would not result in a "tax change."

Initiative #75 is not a "tax change" because it does not have a "primary purpose of lowering or increasing tax revenues collected by a district" and does not fit within any of the examples of a "tax change" in C.R.S. § 1-40-106(3)(i)(II).

The measure's primary purpose is creating predictability for property values by establishing a predictable rate of growth. The measure does so by limiting the actual value of property to inflation, limited to 3%. While it is certainly possible that the measure, through creating this predictability, could reduce property tax revenue for some local districts for certain years, lowering such revenue is not a

primary purpose of the measure. Indeed, property values may increase in the future at a rate lower than inflation, limited to 3%, and, as the Fiscal Summary notes, "[t]o the extent that properties are sold between 2022 and 2023, and revalued at a higher than inflation up to 3 percent," any reduction in property tax revenue "will be reduced." The Fiscal Summary also correctly states that the impact to local governments will vary and "depend on several factors, including mill levies and the composition of properties in each jurisdiction." Local governments, school districts, and other districts with floating mill levies will adjust these levies as necessary to keep revenue constant. Moreover, by establishing a predictable rate of growth for actual value of properties, the measure may actually increase revenue to at least some local districts by incentivizing new development. Thus, lowering tax revenues collected by a district is not a primary purpose of the measure, and any such lowering is merely incidental to the primary purchase of creating predictability as to the actual value of properties.

That Initiative #75 does not have lowering tax revenues as a primary purpose is further illustrated by the fact that it does not fall within ***any*** of the examples listed under the definition of "tax change" in C.R.S. § 1-40-106(3)(i)(II). The measure provides a cap on the actual value of properties. It does not increase or decrease tax rates, mill levies, or assessment ratios. It also has nothing to do with tax classifications, definitions, credits, exemptions, monetary thresholds, or any combination thereof. None of the examples in the statutory provision fit the measure.

Although it is true that the list of examples in C.R.S. § 1-40-106(3)(i)(II) may be non-exhaustive, Colorado courts would apply one of the most prominent canons of statutory construction—*ejusdem generis*—in ascertaining whether Initiative #75's cap is a "tax change." Under *ejusdem generis*, "where a general term follows a list of things in a statute . . . the general terms are applied only to those things of the same general kind or class as those specifically mentioned." *Winter v. People*, 126 P.3d 192, 195 (Colo. 2006) (concluding that the phrase "other apparatus or equipment" applied only to those things that share the characteristics of the items listed in the statute); *Davidson v. Sandstrom*, 83 P.3d 648, 656 (Colo. 2004) ("[W]hen a general word or phrase follows a list of specific persons or things, the general word or phrase will be interpreted to include only persons or things of the same type as those listed.") (quoting *Ejusdem Generis*, *Black's Law Dictionary* (7th ed. 1999)). Applying this canon, the phrase "that has a primary purpose of lowering or increasing tax revenues collected by a district," as well as the term "other measures," must fit within the general kind or class of the specific types of "tax changes" listed in the statute. A cap on actual values of property does not do so. While the measure's cap impacts the base value used in calculating property taxes, tax rates, mill levies, and assessment ratios pertain to the multiplier, which is expressed as a fraction or percentage. In other words, the cap is not within the general kind or class that the General Assembly has deemed a "tax change."

3. The intent behind House Bill 21-1321 was to exclude measures such as this one from the requirements of C.R.S. § 1-40-106(3).

Further illustrating this point, Governor Jared Polis specifically stated in his signing statement for House Bill 21-1321, which added the provisions at issue in C.R.S. § 1-40-106(3) to statute, that "this legislation does not apply to measures that seek to slow the rate of increase of revenue because such measures do not necessarily result in a determinable increase or decrease in state or local revenue or funding for a particular program." (Ex. 1, Signing Statement, at 2.) In other words, it would be improper to apply the language in C.R.S. § 1-40-106(3) to these types of measures.

Governor Polis is correct—such measures are fundamentally different. Initiative #75 is a cap that slows the rate of growth of the actual value of a property. It falls therefore falls within the specific types of measure that are not tax changes and thus do not trigger C.R.S. § 1-40-106(3).

4. The first clause in the title set by Title Board must be removed because the measure is not a tax change.

Because Initiative #75 is not a "tax change" as defined in C.R.S. § 1-40-106(3)(i)(II), C.R.S § 1-40-106(3)(f) is inapplicable. The first clause in the measure's title—"Funding available for counties, school districts, water districts, fire districts, and other districts funded, at least in part, by property taxes shall be impacted by a reduction of $1.3 billion in property tax revenue"—was therefore improperly added and must be removed. Otherwise, the title unfairly classifies the measure as a "tax change," which biases voters against voting for the measure due to the estimated reduction of $1.3 billion in property tax revenue.[1] A rehearing is necessary to remove this language from the title that is unfair and does not fairly express the true meaning and intent of the measure.

b. Applying C.R.S. § 1-40-106(3) to Initiative #75 is unconstitutional.

Even if Initiative #75 is a tax change, which it is not, applying C.R.S. § 1-40-106(3) to the measure nevertheless violates the Colorado Constitution. As the Title Board knows, Article V, section 1 of the Colorado Constitution reserves to registered electors the right to initiate constitutional amendments. This right to petition is

[1] Indeed, the challenged language is particularly misleading because of the prevalence of districts with floating mill levies. For those districts, a decrease in assessed value could trigger an increase in mills to stabilize revenue. This would mean that the measure would not pose a change in revenue for as many as 25% of districts, making the challenged language inaccurate for a large percentage of Coloradans.

broad. Indeed, the statutory provisions governing ballot initiatives are to be "liberally construed" so as "to preserve and protect the right of initiative and referendum." C.R.S. § 1-40-106.5(2).

By imposing the language at issue in the title, C.R.S. § 1-40-106(3) misleads voters about the intent and plain meaning of measures such as Initiative #75. It would cause voters to be biased against such measures by indicating that, if passed, they would, for example, cause a "reduction of $1.3 billion in property tax revenue." As described above, Initiative #75 does not reduce revenue but rather slows the rate of increase in revenue collected by some local districts. Thus, by misleading voters and biasing them against measures such as Initiative #75, C.R.S. § 1-40-106(3) usurps the right to initiative. The Title Board must therefore remove the language at issue for this additional reason.

CONCLUSION

Accordingly, the Proponents respectfully request that this Motion for Rehearing be granted and a rehearing set pursuant to C.R.S. § 1-40-107(1).

Respectfully submitted this 23rd day of March, 2022.

/s/ Sarah M. Mercer
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