

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Dianne Criswell
vs.

Suzanne Taheri and Steven Ward, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2023-2024 #21

Dianne Criswell, registered elector of the County of Denver and the State of Colorado, through her undersigned counsel, objects to the Title Board’s (the “Board”) title and ballot title and submission clause set for Initiative 2023-2024 #21, and states:

The Board set a title for Initiative 2023-2024 #21 on April 5, 2023. The Board designated and fixed the following ballot title and submission clause:

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 \$2.2 billion in property tax revenue by an amendment to the Colorado constitution and a change to the Colorado Revised Statutes concerning a 3% annual limit on property tax increases, and, in connection therewith, creating an exception to the limit if a property's use changes or its square footage increases by more than 10%, in which case, the property is reappraised, and, beginning in fiscal year 2024-25, allowing the state to annually retain and spend up to \$100 million of excess state revenue, if any, as a voter-approved revenue change to offset reduced property tax revenue and to reimburse local governments for fire protection.

I. This measure violates the constitutional single subject requirement.

The single-subject requirement in Article V, sec. 1(5.5) serves two purposes: (1) it ensures that the initiative “depends upon its own merits for passage”; and (2) it “protects against fraud and surprise occasioned by the inadvertent passage of a surreptitious provision ‘coiled up in the folds’ of a complex bill.” *In re Title & Ballot Title & Submission Clause for 2005-2006 #55*, 138 P.3d 273, 277 (Colo. 2006) (citation omitted).

In applying this mandate, the Title Board must evaluate the measure to determine if it is constitutionally compliant. An initiative may not group “distinct purposes under a broad theme” to circumvent the single-subject requirement, nor can it “hide purposes unrelated to the [i]nitiative’s central theme” to gain passage of a hidden provision. *Id.* at 277-78.

Proponents contend their single subject is the creation of a 3% annual limit on property tax increases. However, their measure also has an additional purpose: authorizing the state to retain and spend up to \$100 million annually to reimburse local governments for fire protection. *See*

Initiative 2023-2024 # 21, sec. 2, proposed C.R.S. § 24-33.5-1201(6). Proponents frame this authorization as an “offset” for revenue local districts lose because of the measure’s property tax cap. The provision states:

FOR THE PURPOSE OF OFFSETTING REVENUE RESULTING FROM THE CAP IN PROPERTY TAX AND TO FUND STATE REIMBURSEMENTS TO LOCAL GOVERNMENT ENTITIES FOR FIRE PROTECTION, AS AUTHORIZED BY THE VOTERS AT THE STATEWIDE ELECTION IN THE NOVEMBER 2023, IN FISCAL YEAR COMMENCING ON JULY 1, 2024 THE STATE SHALL BE AUTHORIZED TO RETAIN AND SPEND UP TO ONE HUNDRED MILLION DOLLARS PER YEAR IN REVENUE EXEMPT FROM LIMITATIONS UNDER SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

Id. Although described by Proponents as an offset, this provision is not an offset. As a verb, “offset” means “to balance; to cancel by contrary claims or sums; to counteract.” *Browne v. Indus. Claim Appeals Office*, 2021 COA 83, ¶ 36 (quoting *Lalime v. Desbiens*, 55 A.2d 121 (Vt. 1947)); see also Ballantine’s Law Dictionary (defining “offset” as “[a] balancing or compensating factor”). To be an offset, this provision would need to “balance,” “counteract,” or “compensat[e]” for a loss in fire protection revenue because of the measure’s cap on property tax increases.

As Proponents themselves have admitted, that is not what this provision does. Instead, this is a general authorization for the state to retain funds and spend up to \$100 million annually on fire protection reimbursements. The provision does not tie or condition the state’s authority to retain and spend this money to the property tax revenue cap: it does not require that fire districts lose any property tax revenue; it does not require that local districts spend less on fire protection efforts because of the property tax cap; and it does not limit state reimbursements to covering an actual reduction in local spending on fire protection due to the property tax cap. Indeed, local budgets for fire protection could increase and this provision would still permit the state to retain and spend the additional \$100 million annually. Proponents confirmed this is the intent of the provision during the review and comment hearing:

[Leg. Staff]: To clarify, the \$100 million retention is authorized irrespective of the actual loss to fire districts?

[Mr. Ward]: Yea.

[Leg. Staff]: So if the measure is implemented in such a way that all of the local government stakeholders that need to get together to do the implementation for this bill decide “fire districts are the most important districts and they’re going to be kept whole” and they don’t actually experience any kind of revenue reduction as a result of the measure that doesn’t change the \$100 million retention or allowance?

[Ms. Taheri]: Right.

Mar. 24, 2023, Review and Comment Hr’g, at 10:34:37 to 10:35:07.

As such, the \$100 million fire protection reimbursement authorization is “not dependent upon or connected with” the measure’s single subject of limiting increases in property taxes. See *In re the Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # 29*, 972 P.2d 257, 261 (Colo. 1999). It is intended to be and, as drafted, operates **independent of** the cap on property tax increases, which means that it does not “effect or . . . carry out one general objective or purpose.” *In re Titles, Ballot Titles, and Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, and #128*, 2022 CO 37, ¶ 13 (internal citation omitted). This case thus differs from a situation in which a measure requires the state to backfill actual lost revenue to a local district that results from a tax change. See *In re Title, Ballot Title and Submission Clause, and Summary with Regard to a Proposed Petition for an Amendment to the Constitution of the State of Colorado Adding Paragraph (D) Subsection (8) of Section 20 of Article X*, 908 P.2d 125 (Colo. 1995) (finding a single subject where a measure required “the state to replace monthly local government revenues lost **because of** the tax credit” (emphasis added)).

The second subject here violates the underlying concern behind the single subject requirement that a subject pass on its own merits and without comingling of support for another subject. See C.R.S. 1-40-106.5(1)(e)(I); *In re 1999-2000 # 29*, 972 P.2d at 261 (“Each proposal within an initiative must depend ‘on its own merits for passage.’” (internal citation omitted)). Whether and how to address property tax relief has been a recurring public policy issue in Colorado, both within the General Assembly and with proponents of ballot measures. Fire protection has a different political salience in Colorado given the risk of wildfires and recent incidents such as the Marshall fire. The inclusion of additional funding for fire protection will attract supporters who would not otherwise be sympathetic to property tax relief and thereby help tip the scales in favor of the measure, which the single subject requirement prohibits.¹

II. The title set by the Board violates the clear title requirement for initiative titles.

The titles set by the Board are incomplete or misleading in the following ways:

- (a) As explained above, Section 2 of the measure and the authorization for the state to retain and spend \$100 million annually on local district fire protection reimbursements does not operate as an “offset.” This authorization operates independent of the 3% annual limit on property tax increases. As such, it is incorrect and misleading to describe it as an “offset” for “reduced property tax revenue.”

¹ Counsel is aware that the Colorado Supreme Court affirmed the title setting for measure 2021-2022 #27, but that case should not dictate the outcome here. First, the Court’s Order summarily affirmed the Board, and, as such, there is no analysis explaining the Court’s reasoning. Second, the nature of the cases differ. Initiative #27’s “offset” related to state reimbursement for the homestead exemptions. Those exemptions are intimately related to the operation of the state’s property tax system, which raised distinct single subject issues. Fire protection funding, in contrast, is simply one activity that is funded by property tax revenues, and this measure creates a standalone new authorization for state spending on it.

(b) The titles inaccurately describe the measure as creating an “exception to the limit” if a property’s use changes or its square footage increases by more than 10%. The measure provides only that, in such cases, the property is “reappraised.” Although these properties may be “reappraised,” the measure does not provide that such reappraisal alters or eliminates the 3% cap. It is, therefore, not an “exception” to the 3% cap and describing it as such is inaccurate and misleading.

RESPECTFULLY SUBMITTED this 12th day of April, 2023.

RECHT KORNFELD, P.C.

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CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2023-2024 #21** was sent this day, April 12, 2023, via first-class mail, postage prepaid to the proponents:

Suzanne Taheri & Steven Ward
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s/ Erin Holweger