

COLORADO SUPREME COURT
2 E. 14th Ave.
Denver, CO 80203
Original Proceeding Pursuant to § 1-40-107(2),
C.R.S. (2016)
Appeal from the Ballot Title Board
In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative 2017-
2018 #23, #24, #25, #26, and #27.

Petitioner:

Dennis Polhill,

v.

Respondents:

Anthony Milo and James Moody

and

Title Board:

Suzanne Staiert, David Blake, and Sharon
Eubanks

CYNTHIA H. COFFMAN, Attorney General

MATTHEW D. GROVE, Assistant Solicitor General, Reg. No. 34269*

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OPENING BRIEF

Protester, Dennis Polhill, hereby incorporates the arguments he made in his motion for rehearing before the Title Board repeated as follows:

1. Protester is a registered Colorado elector. He files this motion for rehearing under 1-40-107 (1)(a) C.R.S. He is not satisfied with the April 19, 2017 decisions of the Title Board ("Board"). He believes each petition contains multiple subjects and he is not satisfied with the ballot title set on each. Each ballot title is unfair and does not fairly express its true meaning and intent.

2. He also objects to the abstracts presented to the title board. They are incorrect, misleading and prejudicial, and do not comply with requirements of 1-40-105.5 C.R.S.

3. **Each text has many subjects** in its 25 or more pages. Among other issues, they cover: a) a sales tax increase; b) state borrowing, which protester notes is illegal under Article XI of the state constitution that bans state debt over \$100,000 or on a basis other than property tax; c) state road projects; d) local road projects; e) 15% of revenue for unknown projects; f) diversion of existing revenue from the general fund; and g) in draft #28, 2% of revenue for water projects. These

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Case Nos. 2017SA86, 2017SA87, 2017SA88,
2017SA89, 2017SA90, and 2017SA91: May 22, 2017

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MAY 22 2017

OF THE STATE OF COLORADO
Christopher T. Ryan, Clerk

various issues are not connected or related by any one common subject. They are a classic example of "logrolling" tactics to form a bloc of narrow and competing special interests. The single subject rule was also meant to prevent surprise and fraud by covert topics, to avoid deception of voters. These catch-all schemes are precisely what the 1994 single subject amendment and statute 1-40-106.5 were meant to stop.

4. Voter intent will not be clear. Some may like the tax but not the debt, or vice versa. Some may want new revenue that does not take from existing programs, and others may prefer changing priorities rather than expanding government. The \$150 million yearly general fund siphon is objectionable to those who claim insufficient state revenue exists for existing programs. Water projects are an anomaly in #28, not connected to roads. Roads have little relationship to light rail or other vague slush fund recipients. These drafts may reduce aviation fuel taxes, contrary to the goal of increasing revenue and not disclosed.

5. All ballot titles violate TABOR and are false. Sales tax revenue will grow every year, but the titles state a specific dollar amount "annually for a twenty-year period," which means the same fixed sum each year. The word "annually" means year by year, year after year, and each year thereafter. Example: The #23 title, \$715,100,000 annually, means a total of 20 times that amount in 20 years. State sales tax usually grows near 5% per year. Instead of about \$15 billion total, it will be over \$40 billion compounded over 20 years. Those billions are not disclosed. TABOR (7)(d) says "...voter-approved revenue changes are dollar amounts that are exceptions to, and not part of, any district base." That means the authorized tax amount does not grow by inflation plus population as the fiscal year spending base does, but is "adjusted for revenue changes" which are dollar amounts outside the spending base. The amount in the ballot title must be stated as a fixed annual dollar amount per TABOR (4)(a).

6. Draft #23 says a \$3.5 billion (illegal) state debt has a repayment cost of \$5 billion, (42.8% for interest, or \$1.5 billion). But other citizen proposals that do not raise taxes were heard that day--#21 and #22. Draft #21 said a \$2.5 billion debt had a repayment cost of \$4 billion. That is 60% for interest (also \$1.5 billion). Draft #22 said its \$3.5 billion debt had a repayment of \$5.2 billion (48.5%, or \$1.7 billion)--\$200 million more in interest than these drafts. That is not explained or explainable. That shows bias by state analysts in favor of these drafts to raise taxes and increase state revenue, a result state employees naturally favor. The abstracts and fiscal impacts are obviously false, biased, and inconsistent, and must be changed per 1-40-107 (b).

7. The ending clauses attempts to exempt revenue other than the stated tax increase from the state spending limit. That vague request for a second revenue change is not a dollar amount. Only a constitutional amendment may change the spending limit formula and definition of voter-approved revenue change. It is another subject and would be a surprise to voters.

8. Draft #23 and others are unclear in stating "50% is used to fund municipal and county transportation projects equally." Equal dollars, or equal percentages (25% and 25%)? Is every county getting the same dollar amount? Every municipality? Is every county getting the same dollar amount as every city, town, and village? Who approves of the projects and the funding allocation?

9. State revenue is part of local revenue limits. Will this massive state tax hike result in taxpayer refunds in districts that exceed their fiscal year spending limit? It would surprise state taxpayers to pay higher taxes for local tax relief. Is that "equal?"

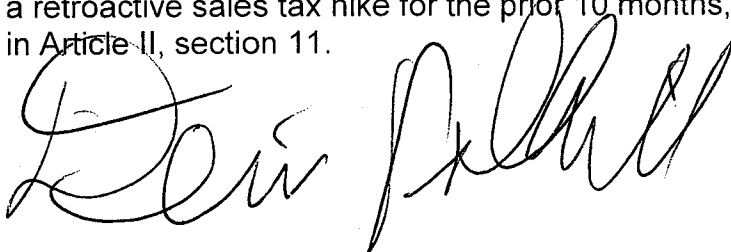
10. The word "multimodal" is not clear, nor plain English. It is "government speak," foreign to average voters. Who decides what funds go for such projects--the state or some unknown district? What constitutes a "multimodal" project?

11. The key phrase "transportation projects" is undefined. Alleys? Dirt roads? Streets? Curbs, gutters, and striping? Highways? Airports? Trains? Buses? Ski runs? Hot air balloons? It is a fatal flaw at the core of each draft.

12. The ballot titles say what the state debt would be, but later authorize "additional transportation revenue anticipation notes," defeating the purpose of constitutionally-mandated debt disclosure up front. That is vague, deceptive, and illegal. TRANS notes required detailed ballot information in 1999, but now they do not? Draft #25 shows the \$150 million "portion" of the yearly repayment cost of this undefined TRANS debt is not disclosed in the opening words of the ballot title.

13. Saying the draft is "exempt from any limitations in law" is an illegal constitutional amendment striking down TABOR voter-approved revenue change rules and Article XI state debt laws. Overriding the constitution is a second subject, requiring a higher hurdle in signature collection and voter approval; see Amendment 71.

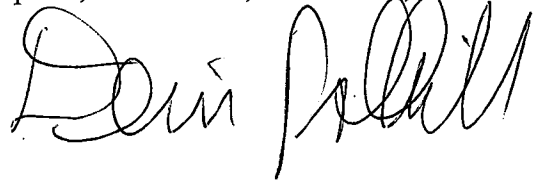
14. Apart from Article XI's \$100,000 limit on state debt, its limited repayment source (real property tax), its limited purpose (erecting state buildings), and TABOR (8)(a)'s ban on state real property tax, its section 5 says state debt shall be voted on only at state general elections. That means 2018. TABOR (1) also says "Other limits on...debt may be weakened only by future voter approval." The state debt election date limit has never been amended or weakened. These titles are premature for the 2018 election; approval at the 2018 election would impose a retroactive sales tax hike for the prior 10 months, violating the ex post facto ban in Article II, section 11.



CERTIFICATE OF SERVICE

This is to certify that I have duly served the within Opening Brief upon all parties herein by electronic transmission, or by depositing copies of same in the United States mail, first-class postage prepaid, at Golden, Colorado, this 17th day of May 2017 addressed as follows:

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