

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2021-2022 #75 (“Concerning Property Valuation”)</p> <p>Petitioners: Bernard Buescher</p> <p>v.</p> <p>Respondents: Alex Valdez and Colin Larson</p> <p>and</p> <p>Title Board: Teresa Conley, David Powell, and Ed DeCecco</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Petitioner:</p> <p>Mark G. Grueskin, #14621 Recht Kornfeld, P.C. 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-573-1900 (telephone) 303-446-9400 (facsimile) mark@rklawpc.com</p>	<p>Case Number:</p>
<p>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2021-2022 #75 (“CONCERNING PROPERTY VALUATION”)</p>	

Bernard Buescher (“Petitioner”), registered elector of the State of Colorado, through undersigned counsel, respectfully petitions this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Initiative 2021-2022 #75 (“Concerning Property Valuation”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2021-2022 #75.

Alex Valdez and Colin Larson (hereafter “Proponents”) proposed Initiative 2021-2022 #75 (the “Proposed Initiative”). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, the Proponents submitted final versions of the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board, of which the Secretary or her designee is a member.

A Title Board hearing was held on March 16, 2022, at which time titles were set for 2021-2022 #75. On March 23, 2022, Petitioner Bernard Buescher filed a Motion for Rehearing, alleging that Initiative #75 contained multiple subjects, contrary to Colo. Const. art. V, sec. 1(5.5), and that the Title Board set titles which are misleading and incomplete as they do not fairly communicate the true intent

and meaning of the measure and will mislead voters. The rehearing was held on April 6, 2022, at which time the Title Board denied the Motion for Rehearing.

B. Jurisdiction

Petitioner is entitled to a review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioner timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1). Additionally, Petitioner timely filed this Petition for Review within seven days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of: (1) the draft, amended, and final version of the initiative filed by the Proponents; (2) the original ballot title set for this measure; (3) the Motion for Rehearing filed by the Petitioner; and (4) the ruling on the Motion for Rehearing as reflected by the title and ballot title and submission clause set by the Board. Petitioner believes that the Title Board erred in denying certain aspects of the Motion for Rehearing. The matter is properly before this Court.

GROUND FOR APPEAL

The titles set by the Title Board violate the legal requirements imposed on the Board because the Initiative contains multiple subjects, in violation of Colo. Const. art. V, sec. 1(5.5), and the title set by the Board violate the “clear ballot

title” requirement by misstating or omitting critical elements of the measure and will mislead voters. The following is an advisory list of issues to be addressed in Petitioner’s brief:

- a. Whether the Board erred in setting any title at all, given that Initiative #75 both subjects and exempts residential land from its changed property tax valuation techniques, making the measure so inherently confusing that a title reflecting its true meaning cannot be set.
- b. Whether the Board violated the statutory “clear ballot title” requirement by indicating that the measure changes property tax valuation techniques for real property without stating that agricultural land, mines, and oil and gas producing lands or leaseholds are expressly exempt from this initiative’s limits on valuation increases for property tax purposes.

PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties’ briefs, this Court determine that:

1. The titles are legally flawed and direct the Title Board to return the initiative to the designated representative because titles cannot be set due to the inherently contradictory directives of Initiative #75;

2. In the alternative, that the titles must be corrected to address the misleading statements about changes to property valuation techniques that expressly do not apply to certain classes of property, including agricultural land, mines, and oil and gas producing lands or leaseholds.

Respectfully submitted this 13th day of April, 2022.

s/ Mark G. Grueskin

Mark G. Grueskin, #14621

RECHT KORNFELD, P.C.

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ATTORNEY FOR PETITIONERS

CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2021-2022 #75 (“CONCERNING PROPERTY VALUATION”)** was sent electronically via Colorado Courts E-Filing this day, April 13, 2022, to the following:

Counsel for the Title Board:
Michael Kotlarczyk
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1300 Broadway, 6th Floor
Denver, CO 80203

Counsel for Proponents:
Sarah Mercer
Brownstein Hyatt Farber & Shreck
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And via United States Mail to Proponents:

Alex Valdez
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Denver, CO 80203

Colin Larson
200 E Colfax, Room 307
Denver, CO 80203

/s Erin Holweger



STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal impact statement and abstract, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2021-2022 #75 'Concerning Property Valuation'"

..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 6th day of April, 2022.

Jena Griswold

SECRETARY OF STATE



2021-2022 #75 – Final Text

Be it Enacted by the People of the State of Colorado:

SECTION 1. In the constitution of the state of Colorado, **amend** section 3 of article X as follows:

Section 3. Uniform taxation – exemptions. (1)(a) Each property tax levy shall be uniform upon all real and personal property not exempt from taxation under this article located within the territorial limits of the authority levying the tax. The actual value of all real and personal property not exempt from taxation under this article shall be determined under general laws, which shall prescribe such methods and regulations as shall secure just and equalized valuations for assessments of all real and personal property not exempt from taxation under this article. Valuations for assessment shall be based on appraisals by assessing officers to determine the actual value of property in accordance with provisions of law, which laws shall provide that actual value SHALL NOT BE INCREASED ANNUALLY BY MORE THAN INFLATION, LIMITED TO 3%, AND SHALL be determined by appropriate consideration of cost approach, market approach, and income approach to appraisal. However, the actual value of residential real property shall NOT BE INCREASED ANNUALLY BY MORE THAN INFLATION, LIMITED TO 3%, AND SHALL be determined solely by consideration of ~~cost approach and~~ THE market approach to appraisal; and, however, the actual value of agricultural lands, as defined by law, shall be determined solely by consideration of the earning or productive capacity of such lands capitalized at a rate as prescribed by law. NOTHING IN THIS SUBSECTION (1)(a) OF SECTION 3 OF ARTICLE X OF THE COLORADO CONSTITUTION SHALL BE CONSTRUED TO CHANGE THE APPLICABILITY OF THE HOMESTEAD EXEMPTION FOR QUALIFYING SENIORS AND QUALIFYING DISABLED VETERANS AS SET FORTH IN SECTION 3.5 OF ARTICLE X OF THE COLORADO CONSTITUTION.

SECTION 2. In Colorado Revised Statutes, **add** 39-1-102.5 as follows:

39-1-102.5. ADDITIONAL DEFINITIONS. AS USED IN SECTIONS 103 AND 104, AND FOR PURPOSES OF INTERPRETATING SECTION 3 OF ARTICLE X OF THE COLORADO CONSTITUTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) “INFLATION” MEANS THE ANNUAL PERCENTAGE CHANGE IN THE UNITED STATES BUREAU OF LABOR STATISTICS CONSUMER PRICE INDEX FOR DENVER-AURORA-LAKEWOOD, ALL ITEMS, ALL URBAN CONSUMERS, OR ITS SUCCESSOR INDEX, LIMITED TO 3%.

SECTION 3. In Colorado Revised Statutes, 39-1-103 **amend** (5)(a) and **add** (15.5) as follows:

39-1-103. Actual value determined – when. (5)(a) All real and personal property shall be appraised and the actual value thereof for property tax purposes determined by the assessor of the county wherein such property is located. The actual value of such property, other than agricultural lands exclusive of building improvements thereon and other than residential real property and other than producing mines and lands or leaseholds producing oil or gas, shall NOT BE INCREASED ANNUALLY BY MORE THAN INFLATION, LIMITED TO 3%, AND SHALL be that value determined by appropriate consideration of the cost approach, the market approach, and the

income approach to appraisal. The assessor shall consider and document all elements of such approaches that are applicable prior to a determination of actual value. Despite any orders of the state board of equalization, no assessor shall arbitrarily increase the valuations for assessment of all parcels represented within the abstract of a county or within a class or subclass of parcels on that abstract by a common multiple in response to the order of said board. If an assessor is required, pursuant to the order of said board, to increase or decrease valuations for assessment, such changes shall be made only upon individual valuations for assessment of each and every parcel, using each of the approaches to appraisal specified in this paragraph (a), if applicable. The actual value of agricultural lands, exclusive of building improvements thereon, shall be determined by consideration of the earning or productive capacity of such lands during a reasonable period of time, capitalized at a rate of thirteen percent. Land that is valued as agricultural and that becomes subject to a perpetual conservation easement shall continue to be valued as agricultural notwithstanding its dedication for conservation purposes; except that, if any portion of such land is actually used for nonagricultural commercial or nonagricultural residential purposes, that portion shall be valued according to such use. Nothing in this subsection (5) shall be construed to require or permit the reclassification of agricultural land or improvements, including residential property, due solely to subjecting the land to a perpetual conservation easement. The actual value of residential real property shall NOT BE INCREASED ANNUALLY BY MORE THAN INFLATION, LIMITED TO 3%, AND SHALL be determined solely by consideration of the market approach to appraisal. A gross rent multiplier may be considered as a unit of comparison within the market approach to appraisal. The valuation for assessment of producing mines and of lands or leaseholds producing oil or gas shall be determined pursuant to articles 6 and 7 of this title. NOTHING LIMITING THE INCREASE IN THE ACTUAL VALUE OF A PROPERTY SHALL BE CONSTRUED AS A TAX CHANGE OR AS A CHANGE TO A PROPERTY'S MILL LEVY RATE OR PROPERTY TAX RATE.

(15.5)(a) IF A PROPERTY SUFFERS A DECLINE IN VALUE, THE TAXPAYER MAY PROTEST THE ACTUAL VALUE OF THE PROPERTY IN ACCORDANCE WITH SECTION 39-5-121 (1)(a)(I) OR MAY APPEAL THE ACTUAL VALUE OF THE PROPERTY IN ACCORDANCE WITH SECTION 39-5-122 (2). IF THE PROTEST OR APPEAL RESULTS IN AN ACTUAL VALUE THAT IS LESS THAN THE MOST RECENT VALUATION, THEN THE PROPERTY SHALL BE REAPPRAISED PURSUANT TO SECTION 39-1-104 (10.2) ANNUALLY AND THE ACTUAL VALUE SHALL BE THE REAPPRAISED VALUE UNTIL THE PROPERTY RECOVERS ALL ITS VALUE, CALCULATED AS THE ACTUAL VALUE OF THE PROPERTY PRIOR TO WHEN THE PROTEST OR APPEAL CONCLUDED, ADJUSTED FOR INFLATION TO THE CURRENT YEAR.

(b) IF AN ASSESSOR DETERMINES THAT THE COUNTY HAS SUFFERED A SUSTAINED ECONOMIC DOWNTURN, THE ASSESSOR MAY CONDUCT A COUNTYWIDE REAPPRAISAL OF ALL PROPERTIES IN THE COUNTY. IF THE REAPPRAISAL RESULTS IN AN ACTUAL VALUE THAT IS LESS THAN THE MOST RECENT VALUATION, THEN THE PROPERTY SHALL BE REAPPRAISED PURSUANT TO SECTION 39-1-104 (10.2) ANNUALLY AND THE ACTUAL VALUE SHALL BE THE REAPPRAISED VALUE UNTIL THE PROPERTY RECOVERS ALL ITS VALUE, CALCULATED AS THE ACTUAL VALUE OF THE PROPERTY PRIOR TO THE SUSTAINED ECONOMIC DOWNTURN ADJUSTED FOR INFLATION TO THE CURRENT YEAR.

SECTION 4. In Colorado Revised Statutes, 39-1-104 **amend** (10.2) as follows:

39-1-104. Valuation for assessment - definitions. (10.2)(a) Except as otherwise provided in subsection (12) of this section, beginning with the property tax year which commences January 1, 1989, a reassessment cycle shall be instituted with each cycle consisting of two full calendar years. At the beginning of each reassessment cycle, the level of value to be used during the reassessment cycle in the determination of actual value of real property in any county of the state as reflected in the abstract of assessment for each year in the reassessment cycle shall advance by two years over what was used in the previous reassessment cycle; except that the level of value to be used for the years 1989 and 1990 shall be the level of value for the period of one and one-half years immediately prior to July 1, 1988; except that, if comparable valuation data is not available from such one-and-one-half-year period to adequately determine the level of value for a class of property, the period of five years immediately prior to July 1, 1988, shall be utilized to determine the level of value. Said level of value shall be adjusted to the final day of the data gathering period. BEGINNING WITH THE PROPERTY TAX YEAR WHICH COMMENCES JANUARY 1, 2023, THE ACTUAL VALUE OF REAL PROPERTY SHALL NOT INCREASE ANNUALLY BY MORE THAN INFLATION, LIMITED TO 3%,.

SECTION 5. In Colorado Revised Statutes, 39-5-121 **amend** (1)(a)(I) as follows:

39-5-121. Notice of valuation – legislative declaration – repeal. (1)(a)(I) No later than May 1 in each year, the assessor shall mail to each person who owns land or improvements a notice OF VALUATION setting forth the valuation of such land or improvements, WHICH SHALL NOT INCREASE ANNUALLY BY MORE THAN INFLATION IN ACCORDANCE WITH SECTION 39-1-104 (10.2). For agricultural property, the notice must separately state the actual value of such land or improvements in the previous year, the actual value in the current year, and the amount of any adjustment in actual value. For all other property, the notice must state the total actual value of such land and improvements together in the previous year, the total actual value in the current year, and the amount of any adjustment in total actual value. The notice must not state the valuation for assessment of such land or improvements or combination of land and improvements. Based upon the classification of such taxable property, the notice must also set forth either the ratio of valuation for assessment to be applied to said actual value of all taxable real property other than residential real property prior to the calculation of property taxes for the current year or the projected ratio of valuation for assessment to be applied to said actual value of residential real property prior to the calculation of property taxes for the current year and that any change or adjustment of the projected ratio of valuation for assessment for residential real property must not constitute grounds for the protest or abatement of taxes. With the approval of the board of county commissioners, the assessor may include in the notice an estimate of the taxes owed for the current property tax year. If such estimate is included, the notice must clearly state that the tax amount is merely an estimate based upon the best available information. The notice must state, in bold-faced type, that the taxpayer has the right to protest any adjustment in valuation but not the estimate of taxes if such an estimate is included in the notice, the classification of the property that determines the assessment percentage to be applied, and the dates and places at which the assessor will hear such protest. The notice must also set forth the following: That, to preserve the taxpayer’s right to protest, the taxpayer shall notify the assessor either in writing or in person of the taxpayer’s objection and protest; that such notice must be

delivered, postmarked, or given in person no later than June 1; and that, after such date, the taxpayer's right to object and protest the adjustment in valuation is lost. The notice must be mailed together with a form that, if completed by the taxpayer, allows the taxpayer to explain the basis for the taxpayer's valuation of the property. Such form may be completed by the taxpayer to initiate an appeal of the assessor's valuation. However, in accordance with section 39-5-122 (2), completion of this form does not constitute the exclusive means of appealing the assessor's valuation. For the years that intervene between changes in the level of value, if the difference between the actual value of such land or improvements in the previous year and the actual value of such land or improvements in the intervening year as set forth in such notice constitutes an increase in actual value of more than seventy-five percent, the assessor shall mail together with the notice an explanation of the reasons for such increase in actual value.

SECTION 6. Effective date.

THIS MEASURE SHALL BECOME EFFECTIVE UPON THE EARLIER OF THE OFFICIAL DECLARATION OF THE VOTE HEREON BY PROCLAMATION OF THE GOVERNOR OR THIRTY DAYS AFTER THE VOTE HAS BEEN CANVASSED, PURSUANT TO SUBSECTION (4) OF SECTION 1 OF ARTICLE V OF THE COLORADO CONSTITUTION.

Ballot Title Setting Board

Proposed Initiative 2021-2022 #75¹

The title as designated and fixed by the Board is as follows:

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 by an amendment to the Colorado constitution and a change to the Colorado Revised Statutes concerning the actual value of property for purposes of property taxation, and, in connection therewith, limiting the increase of a property's value to inflation or to three percent, whichever is less; and allowing a property to be reappraised in certain circumstances.

The ballot title and submission clause as designated and fixed by the Board is as follows:

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 \$1.3 billion in property tax revenue by an amendment to the Colorado constitution and a change to the Colorado Revised Statutes concerning the actual value of property for purposes of property taxation, and, in connection therewith, limiting the increase of a property's value to inflation or to three percent, whichever is less; and allowing a property to be reappraised in certain circumstances?

Hearing March 16, 2022:

Single subject approved; staff draft amended; titles set.

The Board determined that the proposed initiative requires the addition of language to the Colorado Constitution; a 55% vote is required to pass.

Board members: Hilary Rudy, David Powell, Ed DeCecco

Hearing adjourned 2:39 P.M.

¹ Unofficially captioned “**Concerning Property Valuation**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Ballot Title Setting Board

Proposed Initiative 2021-2022 #75¹

The title as designated and fixed by the Board is as follows:

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 by an amendment to the Colorado constitution and a change to the Colorado Revised Statutes concerning the actual value of real and personal property for purposes of property taxation, and, in connection therewith, limiting the annual increase of a property's value to inflation or to three percent, whichever is less; and allowing a property to be reappraised when a property suffers a decline in value or is in a county that has suffered a sustained economic downturn.

The ballot title and submission clause as designated and fixed by the Board is as follows:

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 \$1.3 billion in property tax revenue by an amendment to the Colorado constitution and a change to the Colorado Revised Statutes concerning the actual value of real and personal property for purposes of property taxation, and, in connection therewith, limiting the annual increase of a property's value to inflation or to three percent, whichever is less; and allowing a property to be reappraised when a property suffers a decline in value or is in a county that has suffered a sustained economic downturn?

Hearing March 16, 2022:

Single subject approved; staff draft amended; titles set.

The Board determined that the proposed initiative requires the addition of language to the Colorado Constitution; a 55% vote is required to pass.

Board members: Hilary Rudy, David Powell, Ed DeCecco

Hearing adjourned 2:39 P.M.

Rehearing April 6, 2022:

Motion for Rehearing (Movants) denied.

¹ Unofficially captioned “**Concerning Property Valuation**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Motion for Rehearing (Proponents) granted only to the extent that the Board made changes to the titles.

The Board determined that the proposed initiative requires the addition of language to the Colorado Constitution; a 55% vote is required to pass.

Board Members: Theresa Conley, David Powell, Ed DeCecco

Hearing adjourned: 2:50 P.M.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Bernard Buescher, Objector,

vs.

Colin Larson and Alex Valdez, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2021-2022 #75

Bernard Buescher, registered elector of the County of Mesa and the State of Colorado, through his undersigned counsel, objects to the Title Board’s (the “Board”) title and ballot title and submission clause set for Initiative 2021-2022 #75, and states:

The Board set a title for Initiative 2021-2022 #75 on March 16, 2022. The Board designated and fixed the following ballot title and submission clause:

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 \$1.3 billion in property tax revenue by an amendment to the Colorado constitution and a change to the Colorado Revised Statutes concerning the actual value of property for purposes of property taxation, and, in connection therewith, limiting the increase of a property’s value to inflation or to three percent, whichever is less; and allowing a property to be reappraised in certain circumstances?

I. The Board lacks jurisdiction over Initiative #75, as it violates the Constitution’s single subject requirement.

Initiative #75’s single subject statement is “concerning the value of property for purposes of property taxation.” In fact, Initiative #75 has the following separate and distinct purposes:

- A. Changing valuation techniques for property tax valuation; and
- B. Mandating reductions in state spending due to the required backfill funding for K-12 education by the State, *see In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 #44*, 961 P.2d 456, 460-61 (Colo. 1998) (single subject requirement violated by tax cut and shift to state from local governments to pay the difference); *see also In re Interrogatory on House Bill 21-1164 Submitted by the Colo. Gen. Assembly*, 2021 CO 34 ¶¶ 7, 11 (describing backfill mandate provided by state law where locally generated revenue for school districts decreases).

II. Even if the Title Board has jurisdiction, the titles set are legally flawed because the titles fail to inform voters of certain central elements of the measure and would mislead voters.

The ballot title and submission clause for Initiative #75 should state the following:

- A. Property affected by the changed valuation techniques will include both personal property and real property.
- B. The specified conditions under which reappraisals are authorized instead of merely using the vague and non-informative phrase, “in certain circumstances.”
- C. Property valuations are authorized to increase yearly by inflation or 3%, not every other year as occurs in the existing biennial valuation process.
- D. Property valuation protests are authorized only where a property declines in value rather than where a property value increases, decreases, or does not change at all.
- E. #74 repeals the Constitution’s authority to use the cost approach to appraisal in residential valuation (ballot title “shall unambiguously state the principle of the provision sought to be added, amended, or **repealed**,” C.R.S. §1-40-106(3)(b)).
- F. Ballot title fails to state that the constitutionally authorized approaches to appraisal (cost, market, income) are applicable only insofar as the valuation indicated by such approaches cannot increase beyond the mandatory inflation/3% formula.
- G. Ballot title fails to state that proposed changes in valuation standards would not apply to agricultural land and mines or oil and gas producing lands or leaseholds.
- H. The measure subjects and exempts residential land from its inflation/3% valuation cap, and for that reason, a ballot title cannot be written without confusing voters as to the true meaning and effect of the measure. *In the Matter of the Title, Ballot Title and Submission Clause for 2015-2016 #156*, 2016 CO 56, ¶¶13-15, 413 P.3d 151.

WHEREFORE, the titles set March 16, 2022 should be reversed, due to the single subject violations addressed herein or, if not, at least corrected to address central features of Initiative #75 identified above.

RESPECTFULLY SUBMITTED this 23rd day of March, 2022.

RECHT KORNFELD, P.C.

s/ Mark G. Grueskin

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Email: mark@rklawpc.com

Objector's Address:
4350 N. Club Ct., Unit B
Grand Junction, CO 81506

CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2021-2022 #75** was sent this day, March 23, 2022, via email to the proponents via their legal counsel:

Sarah Mercer
Brownstein Hyatt Farber Schreck
smerc@bhfs.com

s/ Erin Holweger

Erin Holweger

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 be 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 purpose 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.

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Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

Initiative 75

Fiscal Summary

Date: March 14, 2022

Fiscal Analyst: Marc Carey (303-866-4102)

LCS TITLE: CONCERNING PROPERTY VALUATION

Fiscal Summary of Initiative 75

This fiscal summary, prepared by the nonpartisan Director of Research of the Legislative Council, contains a preliminary assessment of the measure's fiscal impact. A full fiscal impact statement for this initiative is or will be available at www.colorado.gov/bluebook. This fiscal summary identifies the following impact.

Local government impact. Beginning in property tax year 2023, this measure limits annual growth in assessed values for all real and personal property to inflation or 3 percent, whichever is lower. By allowing the value of this property to grow by inflation capped at 3 percent, the measure will decrease property tax revenue to local governments statewide by up to an estimated \$1.3 billion in budget year 2023-24. To the extent that properties are sold between 2022 and 2023, and revalued at a higher than inflation up to 3 percent, this impact will be reduced. The reduction in local property tax revenue will grow in subsequent years to the extent that property values grow faster than inflation up to 3 percent. The impact will vary among local governments across the state, and the specific impact on each city, county, special district, or school district will depend on several factors, including mill levies and the composition of properties in each jurisdiction.

State expenditures. The measure increases state expenditures to backfill lost property tax revenue to school districts. As a result, the state share of school finance is estimated to increase by a maximum of \$360 million in budget year 2023-24, and this state cost will continue to grow in subsequent years. The measure will also increase workload for the Division of Property Taxation to update and review forms and training materials, as well as to respond to inquiries regarding new assessment procedures.

Economic impacts. This measure will decrease property taxes for homeowners and nonresidential property owners, increasing the money that households will save or spend and that businesses will have to hire employees, purchase equipment or other investments, or retain as profit. The measure will also decrease revenue to cities, counties, special districts, and school districts, resulting in lower levels of local government services, including police and fire protection, hospital, transportation, education, and library, among other services.