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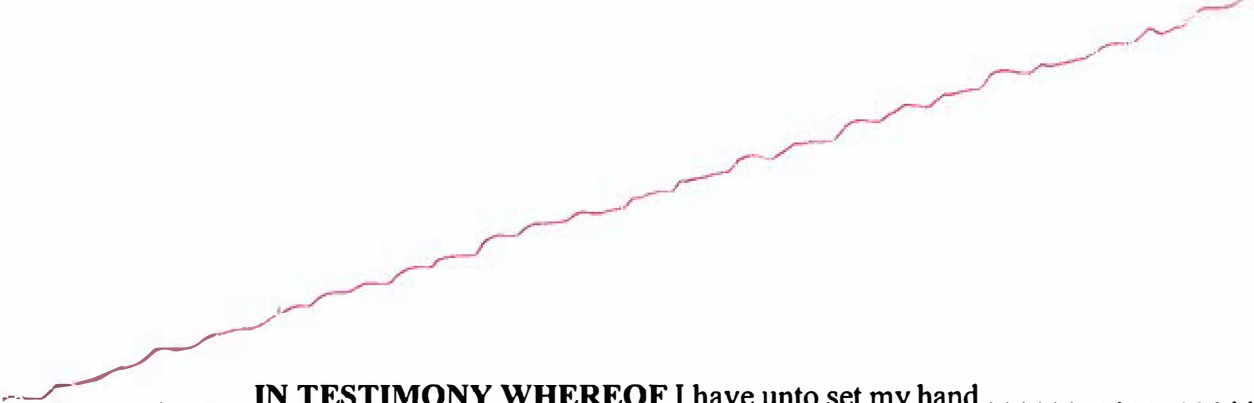
STATE OF COLORADO

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 summary, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2023-2024 #21 'Limitation on Property Tax Increases'"



..... **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 21st day of April, 2023.

Jena Griswold

SECRETARY OF STATE



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 10 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 be determined by appropriate consideration of cost approach, market approach, and income approach to appraisal. However, the actual value of residential real property shall be determined solely by consideration of cost approach and 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. NO TAX REVENUE ON A PROPERTY WILL INCREASE MORE THAN THREE PERCENT ANNUALLY UNLESS THE PROPERTY IS SUBSTANTIALLY IMPROVED BY ADDING MORE THAN TEN PERCENT SQUARE FOOTAGE TO THE EXISTING BUILDINGS OR STRUCTURES OR ITS USE CHANGED IN WHICH CASE THE PROPERTY'S ACTUAL VALUE SHALL BE REAPPRAISED.

SECTION 2. In Colorado Revised Statutes, 24-33.5-1201 **add** (6) as follows:

24-33.5-1201. Division of fire prevention and control--creation--public school construction and inspection section--health facility construction and inspection section--legislative declaration.

(6) 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.

SECTION 3. Effective Date:

This act takes effect on the date of the proclamation of the Governor announcing the approval, by the registered electors of the state, of the proposed initiative.

Ballot Title Setting Board

Proposed Initiative 2023-2024 #21¹

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 \$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.

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 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?

Hearing April 5, 2023:

Single subject approved; staff draft amended; titles set.

The Board made a technical correction to the text of the initiative.

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, Kurt Morrison, Ed DeCecco

Hearing adjourned 10:30 A.M.

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

Ballot Title Setting Board

Proposed Initiative 2023-2024 #21¹

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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.

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Hearing adjourned 10:30 A.M.

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

Rehearing April 19, 2023:

Motion for Rehearing (Criswell) was denied in its entirety.

Motion for Rehearing (Proponents) was denied in its entirety.

Board Members: Theresa Conley, Eric Meyer, Ed DeCecco

Hearing adjourned 9:34 A.M.

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.

s/ Nathan Bruggeman
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Objector’s Address:
225 E 16th Ave, Ste 1000
Denver, CO 80203

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
6501 E. Belleview Ave, Suite 375
Denver, CO 80111

s/ Erin Holweger

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR INITIATIVE 2023-2024 #21

MOTION FOR REHEARING

On behalf of Suzanne Taheri and Steven Ward, registered electors in the State of Colorado and proponents of designated representatives for Initiative 2023-2024 #21, the undersigned counsel, hereby submits this Motion for Rehearing of the Title Board's April 5, 2023 decision.

The designated representatives assert that the titles as set violate clear title as they incorrectly describe the measure. Additionally, the Fiscal Summary for Proposed Initiative 2023-2024 #21 incorrectly states in several places that the measure will reduce local property tax revenue.

On April 5, 2023, the Title Board conducted a hearing Proposed Initiative 2023-2024 #21. The Board found a single subject and proceeded to set title 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 \$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.”

The Title set by the Board utilizes the language statutorily prescribed language for a measure that reduces local property tax revenue through a tax change:

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. §1-40-106(3)(f), C.R.S.

In using the language prescribed by statute, the Board overlooked a key component of the measure. The proposed initiative does not actively decrease property tax revenue. Rather, it decreases the *growth* of property tax revenue. It is not a straight cut in property taxes; it is a cap on the amount by which they can grow from year to year. Because it is not a tax cut, the Board must not apply the language required by §1-40-106(3)(f).

Notwithstanding the key difference between a tax rate cut which would cause a reduction in revenue from one year to the next and the proposed initiative which merely caps the *growth* of tax revenue, the title as set by the Board is misleading. The title indicates that there will be a reduction of \$2.2 billion in property tax revenue. However, that is not what the initiative does. Because the Board chose to apply the construction in the statute, it was prevented from properly describing the \$2.2 billion as a reduction in the *growth* of the taxes that must be remitted by taxpayers rather than the taxing districts receiving \$2.2 billion less from one year to the next.

Proponents understanding of the statute comports with the Governor's own signing statement which clearly states the statute does not apply to caps of tax increases.

Respectfully submitted this 12th day of April, 2023.

s/Suzanne Taheri
Suzanne Taheri
West Group
6501 E Belleview Ave, Suite 375
Denver, CO 80111
Phone: (303) 218-7150



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

Initiative 21

Fiscal Summary

Date: April 3, 2023

Fiscal Analyst: David Hansen (303-866-2633)

LCS TITLE: LIMITATION ON PROPERTY TAX INCREASES

Fiscal Summary of Initiative 21

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. The measure is expected to reduce local property tax revenue by limiting annual growth in property taxes on a property to three percent in most situations. The amount of the impact will depend on how the measure is implemented. Assuming that the measure first applies to 2023 property taxes paid in 2024, it is expected to reduce property tax revenue by at least \$2.2 billion in 2024, at least \$2.9 billion in 2025, and larger amounts in future years. These estimates are based on the December 2022 Legislative Council Staff forecast for assessed values. Impacts are expected to vary based on market conditions and mix of property classes within each tax district. Areas with rapid growth in market values or large amounts of revenue from oil and gas or producing mines may experience a proportionally larger decrease. Expanding areas with large amounts of new construction or areas with slow growing or declining values could experience a proportionally smaller decrease. For school districts only, a portion of lost revenue will be offset by increased state contributions to school finance, as discussed below.

The measure will require changes to the statutes that direct how county assessors determine the amount of property tax due. Administrative costs in assessors' offices will depend on implementing legislation, and are expected to be significant in the initial years of implementation.

State revenue. The measure is assumed to reduce local property taxes paid by oil and gas producers, thereby reducing future ad valorem tax credits that they can claim when calculating state severance taxes. This will increase state cash fund revenue from severance taxes beginning in FY 2024-25. The amount of this impact will depend on producer's specific tax situations and has not been estimated.

State expenditures. The measure reduces the local share of total program funding for school finance, correspondingly increasing the state aid requirement. The amount of this impact will depend on how the measure is implemented. If the property tax revenue impact is distributed across taxing entities proportionally to current mill levies, the measure is expected to increase the state aid requirement by at least \$525 million in FY 2023-24 and at least \$715 million FY 2024-25, and by larger amounts in future years.

TABOR refunds. The measure allows the state to retain and spend up \$100 million per year above the Referendum C cap beginning in FY 2024-25, decreasing the amount of state revenue required to be refunded to taxpayers when revenue subject to TABOR is above the cap. In FY 2024-25, the measure is projected to allow the state to retain \$100 million based on the March 2023 Legislative Council Staff forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2024-25.

The measure may interact with state backfill requirements and reimbursements to local governments under Senate Bill 22-238. The fiscal impact of this interaction, if any, will depend on how the measure is implemented and is not estimated here.

Economic impacts. Limiting property tax growth will increase the amount of after-tax income available for homeowners and business property owners to spend or save, increasing their spending, saving, or investment elsewhere in the economy. The measure will decrease revenue available for counties, municipalities, school districts, and special districts relative to current law, lowering the amount of funds available for public services. Any overall change in economic activity will depend on the net economic impacts of higher after-tax household and business income and reduced investment in public services. The measure is also expected to reduce property improvements and changes in use, as these changes could result in large increases in property tax.