SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203	DATE FILED: May 3, 2023 7:55 PM
Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #21 ("Limitation on Property Tax Increases") **Petitioner: Dianne Criswell** **v.** **Respondents: Suzanne Taheri and Steven Ward** **and** **Title Board: Theresa Conley, Eric Meyer, and Ed DeCecco**	**▲COURT USE ONLY▲**
Attorneys for Petitioner: Nathan Bruggeman, #39621 Mark G. Grueskin, #14621 Recht Kornfeld, P.C. 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-573-1900 (telephone) 303-446-9400 (facsimile) nate@rklawpc.com mark@rklawpc.com	Case Number: 2023SA109

PETITIONER'S OPENING BRIEF ON PROPOSED INITIATIVE 2023-2024 #21 ("LIMITATION ON PROPERTY TAX INCREASES")

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

Choose one:

X It contains 5,162 words.

☐ It does not exceed 30 pages.

The brief complies with C.A.R. 28(k).

X For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record, not to an entire document, where the issue was raised and ruled on.

☐ For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

s/ Nathan Bruggeman
Nathan Bruggeman
Attorney for Petitioner

TABLE OF CONTENTS

INTRODUCTION 1
ISSUES PRESENTED.....2
STATEMENT OF THE CASE.....3
A. Statement of Facts. 3
B. Nature of the Case, Course of Proceedings, and Disposition Below. 6
SUMMARY OF ARGUMENT 8
LEGAL ARGUMENT.....9
I. Single Subject. 9
A. Standard of review; preservation of issue below. 9
B. Initiative #21's authorization for the state to retain and spend $100 million annually on fire protection reimbursements is not an "offset" to, and is separate from, the measure's cap on increases in property tax revenues. 10
C. The Board's reasoning conflicts with this Court's precedent because the measure's state reimbursements do not replace local government entity revenue lost "because of" the property tax revenue cap. 13
D. Proponents should not be allowed to attract additional voter support by adding unconnected spending authorizations to tax measures. 15
II. The title set by the Board misdescribes Initiative #21 and will confuse and mislead voters. 17
A. Standard of review; preservation of issue below. 17
B. The title inaccurately describes the spending authorization in Initiative #21 as an offset. 18
C. The title inaccurately describes the measure as including exceptions to the annual cap on property tax revenue increases. 19
CONCLUSION.....22

TABLE OF AUTHORITIES

Cases

Browne v. Indus. Claim Appeals Office, 2021 COA 83 11
In re the Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # 29, 972 P.2d 257 (Colo. 1999)..... 12, 15, 18
In re Title, Ballot Title & Submission Clause for 2015-2016 #156, 2016 CO 56 ...19
In re Title, Ballot Title & Submission Clause, & Summary for 2005-2006 # 73, 135 P.3d 736 (Colo. 2006).....17
In re Title, Ballot Title & Submission Clause, & Summary for Petition on Campaign & Political Fin., 877 P.2d 311 (Colo. 1994) 17
In re Title, Ballot Title and Submission Clause for 2009-2010 # 91, 235 P.3d 1071 (Colo. 2010) 14
In re Title, Ballot Title and Submission Clause, and Summary Adopted April 17, 1996 (1996-17), 920 P.2d 798 (Colo. 1996).....10
In re Title, Ballot Title and Submission Clause, and Summary for 1997-1998 #62, 961 P.2d 1077 (Colo. 1998).....18
In re Title, Ballot Title and Submission Clause, and Summary for 1999- 2000 No. 172, No. 173, No. 174, and No. 175, 987 P.2d 243 (Colo. 1999) 9
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 ("Amend Tabor #32"), 908 P.2d 125 (Colo. 1995) 13
In re Title, Ballot Title, & Submission Clause for Initiative 2015-2016 #132, 2016 CO 55 15
In re Title, Ballot Title, and Submission Clause for Proposed Initiative 2021-2022 #27, No. 2021SA151 (Colo. May 27, 2021) 14
In re Titles, Ballot Titles, & Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, & #128, 2022 CO 37..... 9, 12, 15

Constitutional Provisions

Colo. Const., art. V, § 1(5.5).....9
Colo. Const., art. X, § 3(1)(a) 20

Statutes

C.R.S. § 1-40-106(3)(f) 7
C.R.S. § 1-40-106.5(1)(d) 15

Other Authorities

Aldo Svaldi, "Unprecedented gains in Colorado home values preview budget-busting property tax hikes next year," *The Denver Post*, Apr. 26, 2023, available at https://www.denverpost.com/2023/04/26/colorado-home-values-property-taxes-increase/ 22
Ballantine's Law Dictionary 11, 20
Merriam-Webster Online, https://www.merriam-webster.com/ 21

INTRODUCTION

In 1994, voters decided that future statutory and constitutional initiatives should no longer lump together unrelated provisions where one of such provision is added solely to attract votes and force voters to weigh the provision they support against the provision they do not. It is the Title Board's and this Court's role to evaluate and prevent proposals that ask voters to make such a trade-off.

Initiative 2023-2024 #21 is a prime example of that conundrum. It cuts property taxes but also adds an authorization for the state to retain and spend funds on a politically appealing subject (fire protection). Thus, #21's two-for-one offer is lower taxes and, if that doesn't justify a "yes" vote itself, enhanced safety measures to protect against fire dangers.

Of course, proponents could offer two measures to achieve these two goals. But Proponents propose the new spending authority on fire prevention as an "offset" for loss of local government entity revenue from the property tax cut. But the new spending authorization is not an offset; more spending on any state program doesn't require a tax cut.

Why is the funding allocation for fire-related programs not an "offset?" Even if local governments do not lose any revenue for fire protection, the state must still retain and spend an additional $100 million annually on it. Any second subject that

is as disconnected as this one is a single subject violation, and thus the Title Board erred in ruling otherwise.

The Board also erred by violating the clear title requirement. The new state spending authorization is not an offset, and the Board should not have described it as such in the titles. Additionally, the Board's title will mislead and confuse voters into believing that there are "exceptions" to the measure's property tax cap when, in fact, there are not.

Accordingly, the Court should return Initiative #21 to the Board for lack of jurisdiction or, in the alternative, to draft a title that accurately describes the measure.

ISSUES PRESENTED

1. Whether the Title Board lacked jurisdiction because the single subject requirement was violated by the measure's combination of a standalone authorization for the state to retain and spend $100 million annually on fire protection reimbursements and the independent provision capping annual increases in property tax revenues by 3 percent.

2. Whether the Board violated the "clear ballot title" requirement by describing a free-standing spending authorization of $100 million annually on fire protection reimbursements when such authorization does not offset any loss of local government entity revenue due to the cap on property tax revenue increases.

3. Whether the Board violated the "clear ballot title" requirement by describing as "an exception" to the measure's 3 percent cap on increases in property tax revenues the measure's requirement for property reappraisal where there is a change in property use or an increase of the property's square footage by more than 10 percent.

STATEMENT OF THE CASE

A. Statement of Facts.

Suzanne Taheri and Steven Ward ("Proponents") proposed Initiative 2023-2024 #21 ("Initiative #21" or the "Initiative"). The Initiative's purpose is to limit property taxes, which the Initiative accomplishes through a 3 percent annual cap on the growth of property tax revenue. (Initiative #21, sec. 1, proposed Colo. Const. art. X, sec. 3(1)(a) [Certified R. at 2].) Proponents confirmed during the April 5, 2023, hearing before the Title Board that the property tax revenue cap is the single subject of their initiative: "The single subject is a property tax cap of 3 percent." (Apr. 5, 2023, Hr'g before the Initiative Title Setting Rev. Bd., at 05:28 to 05:33.[1])

[1] The hearing recording is available at https://csos.granicus.com/player/clip/374?view_id=1&redirect=true&h=f80b51afe6ea3f45715d6116b0ff6a97.

The Initiative does not modify the appraisal or valuation process for properties or achieve its aim through limitations or changes on mill levies. It is, instead, a straight revenue cap. (*See* Mar. 24, 2023, Review and Comment Hr'g ("Review and Comment Hr'g"), at 10:09:25 to 10:13:12.[2]) Proponents attach a requirement that certain properties are to be reappraised, specifically where a property's use changes or its square footage increases more than 10 percent:

> 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.

(Initiative #21, sec. 1, proposed Colo. Const. art. X, sec. 3(1)(a) [Certified R. at 2].)

In addition to its property tax revenue cap, Proponents included another purpose within the measure: authorization for the state to retain and spend up to $100 million annually on fire protection provided for local government entities. Although the measure attempts to frame this authorization as an "offset" to the property tax cap, it is pivotal to note that the measure does not require local districts to lose any revenue for the state to retain and spend this money. Nor does the measure require that any reimbursements to local government entities are in proportion to a reduction

[2] The hearing recording is available at https://sg001-harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20230427/72/14286.

in spending for fire protection efforts or to compensate for a loss of revenue for fire protection districts. The measure provides:

> 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.*, sec. 2, proposed C.R.S. § 24-33.5-1201(6) [Certified R. at 2].) Proponents confirmed during the review and comment hearing that there is no connection between the property tax revenue cap (i.e. a loss of local district revenue for fire protection spending) and the new authorization for state spending on fire protection reimbursements:

> [Leg. Staff]: How is the amount of the offset intended to be calculated?
>
> [Mr. Ward]: What does that mean?
>
> [Leg. Staff]: So the language in the initiative is saying that for the purpose of offsetting revenue resulting from the cap, presumably tied to the 3 percent cap that will be revenue perhaps not brought in. It appears that then this language in section 2 is to offset for fire protection purposes. So my question, the question in the memo is how are you intending to calculate or how do you anticipate that calculation should be done in order to determine how that revenue goes out then to the local government entities?
>
> [Mr. Ward]: [inaudible] I think we're just putting the flat amount in. [inaudible]

> [Ms. Taheri]: [inaudible] If they want to do per capita, if they want to do it [inaudible].
>
> [Leg. Staff]: Up to $100 million as implemented by?
>
> [Mr. Ward]: I'm sure they'll go up to $100 million.
>
> [Leg. Staff]: ***To clarify, the $100 million retention is authorized irrespective of the actual loss to fire districts***?
>
> [Mr. Ward]: ***Yeah.***
>
> [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," that doesn't, 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.***

(Review and Comment Hr'g, at 10:33:25 to 10:35:07 (emphasis added).)

B. Nature of the Case, Course of Proceedings, and Disposition Below.

A review and comment hearing was held before the Offices of Legislative Council and Legislative Legal Services. Proponents then filed a final version of Initiative #21 with the Secretary of State for submission to the Title Board.

A Title Board hearing was held on April 5, 2023, at which time the Board set title for the Initiative and allowed Proponents to correct a handful of typographical issues in the Initiative. On April 12, 2023, Petitioner Dianne Criswell ("Petitioner") filed a Motion for Rehearing, alleging that the Board lacked jurisdiction because

Initiative #21 violated the single subject requirement. Petitioner also argued that the Board erred by setting a title that failed to inform voters of key element of the Initiative and that the title would mislead voters.[3]

A rehearing was held on April 19, 2023. The Board denied Petitioner's Motion for Rehearing, and approved the initial title set for the measure. The Board approved 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 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?

(Ballot Title Setting Bd., *Proposed Initiative 2023-24 #21* [Certified R. at 4].) Petitioner filed her Petition for Review with the Court on April 26, 2023, which was seven days after the Board denied her Motion for Rehearing.

[3] Proponents also filed a Motion for Rehearing arguing the Board erred by including C.R.S. § 1-40-106(3)(f)'s mandatory "tax change" language in Initiative #21's title. The Board denied Proponents' motion, which denial Proponents did not appeal.

SUMMARY OF ARGUMENT

The Title Board lacked jurisdiction to set a title for Initiative #21 because the measure violates the single subject requirement. The single subject flaw in this measure is that the new spending authorization for the state operates independently of any effect that the measure's property tax cut has. Because the state retention and expenditure of new funds is not required to bear any connection to a loss of local revenue for fire protection efforts, the new state spending operates independently of the tax cut. The fire protection spending does not, in other words, support or implement the tax cut—but it does provide a powerful political argument to attract voters who may not support or care about reductions in property taxes but who are concerned about mitigating or responding to the risk of fires.

The Board also violated the clear title requirement. First, the Board erroneously described Initiative #21's spending authorization as being an "offset" to the property tax revenue cap. That new state authorization does not, however, operate as an "offset," and it is misleading and confusing to describe in that way. Second, the Board erred in describing the measure as including "exceptions" to the property tax revenue cap. Although the measure requires certain properties to be ***reappraised***, it does not provide that the revenue cap does not apply to those properties after reappraisal. As Proponents themselves admitted during the Review

and Comment hearing, the property tax revenue cap operates separately from the process by which property taxes are calculated. For purposes of setting a clear title, it is no answer that the phrasing used by the Board came from the measure itself. A title that misleads voters must not be presented to them on petitions or ballots. Thus, the Court should rectify the Board's missteps.

LEGAL ARGUMENT

I. Single Subject.

A. Standard of review; preservation of issue below.

The Colorado Constitution requires that any initiative must comprise a single subject. Colo. Const., art. V, § 1(5.5). Where a measure contains multiple subjects, the Board lacks jurisdiction to set a title. *In re Titles, Ballot Titles, & Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, & #128 ("In re Initiatives 2021-2022 #67, #115, & #128")*, 2022 CO 37, ¶ 11. The Board's analysis and this Court's review is a limited one, addressing the meaning of an initiative to identify its subject or subjects. *In re Title, Ballot Title and Submission Clause, and Summary for 1999- 2000 No. 172, No. 173, No. 174, and No. 175*, 987 P.2d 243, 245 (Colo. 1999). To find that a measure addresses only one subject, the Court must determine that an initiative's topics are "necessarily and properly" related to the general single subject, rather than "disconnected or incongruous" with that subject. *In re Title,*

Ballot Title and Submission Clause, and Summary Adopted April 17, 1996 (1996-17), 920 P.2d 798, 802 (Colo. 1996) (internal citation omitted).

Petitioner raised this issue in her Motion for Rehearing, and during the rehearing on Proponents' initiative, and, therefore, preserved the issue for review. (*See* Pet.'s Mot. for Reh'g on Initiative 2023-2024 #21 at 1-3 [Certified R. at 6-8]; Apr. 19, 2023, Hr'g before the Initiative Title Setting Rev. Bd. ("Apr. 19, 2023, Hr'g"), at 05:02 to 06:40.[4])

B. Initiative #21's authorization for the state to retain and spend $100 million annually on fire protection reimbursements is not an "offset" to, and is separate from, the measure's cap on increases in property tax revenues.

As described by Proponents and the Board in the title, the single subject of Initiative #21 is capping annual increases in property tax revenues. The measure is, by its own terms, concerned with ***limiting*** tax ***revenue***. Proponents nonetheless are attempting to slip into the measure another subject: a state ***spending*** authorization. They do so by framing the new state spending authorization as "offsetting" some of the revenue local government entities may lose under the measure, specifically for

[4] The hearing recording is available at https://csos.granicus.com/player/clip/377?view_id=1&redirect=true&h=f0aff54d05746292d0c2c9a5899d391b.

fire protection. The Title Board accepted their theory. The trouble is, that new spending authorization 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, therefore, the new spending authorization 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 the retention and spending authorization 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.

Initiative #21 includes no such limiting language. In fact, 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 answered "Yeah" to the question from legislative staff, "To clarify, the $100 million retention is authorized irrespective of the actual loss to fire districts?". And they said "Right" when asked if it was correct that if fire districts "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?". (Review and Comment Hr'g, at 10:33:25 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 ("In re 1999-2000 # 29")*, 972 P.2d 257, 261 (Colo. 1999) (internal citation omitted). It is intended to be and, as drafted, operates independent of the cap on property tax revenues, which means that it does not "effect or . . . carry out one general objective or purpose" of the measure as is needed to satisfy the single subject requirement. *See In re Initiatives 2021-2022 #67, #115, & #128*, 2022 CO 37, ¶ 13 (internal citation omitted).

C. The Board's reasoning conflicts with this Court's precedent because the measure's state reimbursements do not replace local government entity revenue lost "because of" the property tax revenue cap.

The Board seemed to reason that, because there was some hypothetical possibility that state reimbursements could offset some loss of local revenue for fire protection spending (what they referred to as a "partial" offset), the measure satisfied the single subject requirement. As an initial matter, describing Initiative #21 as at least requiring a "partial" offset is incorrect: the measure does not require local districts to lose ***any*** fire protection revenue at all before the state can retain and spend the $100 million for fire protection reimbursements. But as a legal matter, the Board's reasoning runs contrary to this Court's precedent.

This Court previously considered a proposed measure that mixed a change in tax policy and a requirement for state reimbursement to local governments. *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 ("Amend Tabor #32")*, 908 P.2d 125, 127 (Colo. 1995). That initiative proposed "to establish a $60 tax credit that applies to six state or local taxes[.]" *Id.* at 129. The measure also included a requirement that the state reimburse local governments for lost revenue. *Id.*; *see also id.* at 131 (measure text provided for "monthly state replacement of

local revenue impacts"). The Court found that this combination of tax changes and state reimbursement did not violate the single subject requirement. Unlike the initiative here, the proposal there limited the state reimbursement obligation to "local revenues lost ***because of*** the tax credit." *Id.* at 128-29 (emphasis added); *id.* at 129 ("Here, the Initiative seeks to establish a $60 tax credit that applies to six state or local taxes and requires the state to replace on a monthly basis local revenues that are lost ***because of*** the tax credit provision." (emphasis added)).[5]

Amend Tabor #32's analysis identifies a clear, easily applied test for circumstances such as those in this case: a measure proposing a state reimbursement to a local district for a tax change satisfies the single subject requirement if the reimbursement is for revenue lost "because of" the tax change. A "because of" standard provides the necessary link that the reimbursement "relate[s] directly to [the measure's] single subject" of a tax change. *See In re Title, Ballot Title and Submission Clause for 2009-2010 # 91*, 235 P.3d 1071, 1076 (Colo. 2010) (discussing single subject). Here, the "because of" nexus is missing. While the

[5] Petitioner understands that the Court affirmed title setting for Initiative 2021-2022 #27, which included a property tax rate reduction and an authorization related to state reimbursements to local districts related to the homestead exemption. *See In re Title, Ballot Title, and Submission Clause for Proposed Initiative 2021-2022 #27*, No. 2021SA151 (Colo. May 27, 2021). However, the Court summarily affirmed title setting, and therefore, it is not possible to understand how the Court viewed that measure's specific provisions.

measure refers generally to an "offset," it does not in fact require that any of the newly authorized state spending is to replace local revenue lost "because of" the property tax revenue cap.

D. Proponents should not be allowed to attract additional voter support by adding unconnected spending authorizations to tax measures.

The single subject requirement "was designed to prevent or inhibit various inappropriate or misleading practices that might otherwise occur" in the ballot initiative process. C.R.S. § 1-40-106.5(1)(d). "[T]he single subject requirement for ballot initiatives prevents proponents from engaging in 'log rolling' tactics, that is, combining multiple subjects into a single initiative in the hope of attracting support from various factions that may have different or even conflicting interests." *In re Title, Ballot Title, & Submission Clause for Initiative 2015-2016 #132*, 2016 CO 55, ¶ 13. The log rolling prohibition thus asks: "Have measures been combined to secure the enactment of one that could not be carried out on its own?" *In re Initiatives 2021-2022 #67, #115, & #128*, 2022 CO 37, ¶ 15; *see also 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)).

This measure strikes at the core of the concern behind log rolling: adding a sweetener to the measure to attract voters who may not otherwise support it. In this

case, voters will be lured to support #21, regardless of their interest in property tax limits, because it guarantees new fire prevention spending. The overarching intent of the measure is to limit property taxes, which proposal appeals directly to a discrete set of voters, namely, property owners. Many other voters, however, do not own property (or may own property but pass on any property tax increases to renters or lessees and thus are unaffected by this change). As a result, there are voting segments who will not be moved by a cap on property taxes.

Proponents provided these voters with a separate reason to support #21: increased state spending on fire protection. The disruption to voters' lives and the fear of events such as recent fires in rural and urban Colorado provide an independent reason to vote for this measure. Whether directly or indirectly, all of the state's residents are affected by the risk or danger of fire, as made plain by numerous, recent catastrophic fire events in the state—including, for example, the Black Forest Fire in the Colorado Springs area in 2013, the wave of forest fires in 2020 that struck mountain communities and the Front Range, and the 2021 Marshall Fire. Even if fires do not touch a person's home, they may well affect her insurance rates and/or general peace of mind. For those not interested in supporting a property tax cut, supporting increased fire prevention spending presents an entirely different set of

considerations—and voters might very well trade off having to support property tax cuts for more state fire prevention spending.

The political appeal of the fire protection spending sweetener is enhanced because the $100 million annual authority exists independent of the property tax cap: it is a flat amount that can be retained and spent irrespective of the 3 percent property tax revenue cap and its effects on local government budgets. Political constituency one receives its property tax cut, and political constituency two receives more state spending on fire protection. That is exactly the type of log rolling the single subject requirement prohibits.

II. The title set by the Board misdescribes Initiative #21 and will confuse and mislead voters.

A. Standard of review; preservation of issue below.

An initiative title must "fairly summarize the central points" of the proposed measure. *In re Title, Ballot Title & Submission Clause, & Summary for Petition on Campaign & Political Fin.*, 877 P.2d 311, 315 (Colo. 1994). Titles must be "fair, clear, accurate, and complete" but are not required to "set out every detail of the initiative." *In re Title, Ballot Title & Submission Clause, & Summary for 2005-2006 # 73*, 135 P.3d 736, 740 (Colo. 2006).

This Court will review titles set by the Board "with great deference" but will reverse the Board where "the titles are insufficient, unfair, or misleading." *Id.* No

such deference is required where the titles "contain a material and significant omission, misstatement, or misrepresentation." *In re Title, Ballot Title and Submission Clause, and Summary for 1997-1998 #62*, 961 P.2d 1077, 1082 (Colo. 1998). "Perfection (in writing a ballot title) is not the goal; however, the Title Board's chosen language must not mislead the voters." *In re 1999-2000 # 29*, 972 P.2d at 266.

Petitioner raised this issue in her Motion for Rehearing, and during the rehearing on her Motion, and, therefore, preserved the issue for review. (*See* Pet.'s Mot. for Reh'g on Initiative 2023-2024 #21 at 3-4 [Certified R. at 8-9]; Apr. 19, 2023, Hr'g, at 06:40 to 07:35.)

B. The title inaccurately describes the spending authorization in Initiative #21 as an offset.

The Board used the language from the measure to describe the $100 million spending authorization in the title:

> . . . 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.

(Ballot Title Setting Bd., *Proposed Initiative 2023-24 #21* [Certified R. at 4] (emphasis added).) This language is, however, inaccurate because, as described above, the measure does not operate as an offset. Describing it this way will lead

voters to believe that the measure requires a nexus between lost local district revenue for fire protection and the level of state spending that is authorized. The measure does not include that nexus, as the $100 million for fire protection reimbursements is authorized regardless of any lost local revenue. Although the language appears in the measure, that does not mean that the Board is entitled to use it when, as here, the language is misleading or would cause voter confusion. *See, e.g.*, *In re Title, Ballot Title & Submission Clause for 2015-2016 #156*, 2016 CO 56, ¶ 15 (concluding that a title violated the clear title requirement even though it "substantially tracks language found in the initiative itself").

C. The title inaccurately describes the measure as including exceptions to the annual cap on property tax revenue increases.

Initiative #21 provides:

> 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***.

(Initiative #21, sec. 1, proposed Colo. Const. art. X, sec. 3(1)(a) [Certified R. at 2] (emphasis added).) The Board described in the title the requirement to reappraise a property after its use changes or its square footage increases by more than ten percent as an "exception" the property tax revenue cap. The title states:

> 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*** . . .

(Ballot Title Setting Bd., *Proposed Initiative 2023-24 #21* [Certified R. at 4] (emphasis added).) This description is inaccurate and misleading because a "reappraisal" is not an "exception" to the revenue cap.

Initiative #21 does not change the process of valuing property for tax purposes, the application of mills, or the calculation of the property tax. The measure is agnostic as to how property taxes are determined. It instead limits property taxes by applying a cap to the revenue that can be collected. (*See also* Review and Comment Hr'g at 10:09:25 to 10:13:12.) Put differently, the measure does not alter the "formula" for determining property taxes. An "appraisal" or "reappraisal" is, however, part of the formula for determining property taxes—an appraisal is the means of determining the "worth or value" of property, which then serves as the basis for calculating the property tax that is due. *See* Colo. Const., art. X, § 3(1)(a) ("Valuations for assessment shall be based on appraisals by assessing officers to determine the actual value of property . . ."); Ballantine's Law Dictionary (defining "appraisal" as "[a] determination of worth or value"). Since Initiative #21 does not

limit property taxes by altering or controlling the formula for determining property taxes, a change to that formula is not an "exception" to the 3 percent cap on increases in property tax revenues. A qualifying property may be reappraised, but that reappraisal does not, under the measure's language, lift the 3 percent cap, change the percentage, or operate as an "exception" to the cap.

The Board concluded otherwise, largely based on the measure's use of the word "unless" to set apart the two circumstances that require reappraisal. It is true that "unless" generally means "except." *See, e.g.*, Merriam-Webster Online, https://www.merriam-webster.com/ (defining "unless"). The Board would be right in its interpretation if the measure simply said "unless" and then the two identified circumstances. But that is not how Proponents drafted their initiative. They added a final, modifying clause.

Board's Reading of Measure	**Measure's Text**
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.	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***.

It is that final, modifying clause that dictates what the consequences are when one of the two circumstances occurs. The clause does not state "in which case the property tax cap does not apply" or "in which case [some other cap amount applies]" (either of which would be exceptions to the 3 percent cap). The modifying clause instead requires a specific outcome—reappraisal—which does not affect the operation of the measure's property tax revenue cap.

The property tax revenue cap in this measure would work a substantial change to Colorado's property tax law, which is generally important to Colorado voters but even more so given the recent, dire warnings about impending property tax increases.[6] It is imperative that the title describe accurately what Initiative #21 does or does not do, and the title here will mislead voters into thinking the measure includes exceptions to its 3 percent cap when it does not.

CONCLUSION

Accordingly, Petitioner respectfully requests that the Court reverse the Board and hold that Initiative #21 violates the Constitution's single subject requirement or,

[6] *See, e.g.*, Aldo Svaldi, "Unprecedented gains in Colorado home values preview budget-busting property tax hikes next year," *The Denver Post*, Apr. 26, 2023, available at https://www.denverpost.com/2023/04/26/colorado-home-values-property-taxes-increase/.

in the alternative, return the title to the Board with instructions to modify the title to accurately describe the measure.

Respectfully submitted this 3rd day of May, 2023.

s/ Nathan Bruggeman
Nathan Bruggeman, #39621
Mark G. Grueskin, #14621
RECHT KORNFELD, P.C.
1600 Stout Street, Suite 1400
Denver, CO 80202
Phone: 303-573-1900
Facsimile: 303-446-9400
Email: nate@rklawpc.som
mark@rklawpc.com
ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I, Nathan Bruggeman, hereby affirm that a true and accurate copy of the **PETITIONER'S OPENING BRIEF ON PROPOSED INITIATIVE 2023-2024 #21 ("LIMITATION ON PROPERTY TAX INCREASES")** was sent electronically via CCEF this day, May 3, 2023, to the following:

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

Counsel for the Respondents:
Suzanne Taheri
West Group
6501 E. Belleview Ave., Suite 375
Denver, CO 80111

/s Nathan Bruggeman