COLORADO SUPREME COURT 101 W. Colfax, # 800 Denver, Colorado 80202	DATE FILED: January 30, 2023 10:48 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 #3 - Establishment of a New Attainable Housing Fee **Petitioner**: Rebecca R. Sopkin, v. **Respondents**: Dalton Kelley, Dee Wisor **and** **Title Board:** Jason Gelender, Melissa Kessler and David Powell	COURT USE ONLY
Rebecca R. Sopkin (Atty. Reg. No. 20998) 720 Kipling, #12 Lakewood, CO 80215 (303) 232-4184 grsop@msn.com	Case No.: 2023SA000015

OPENING BRIEF IN SUPPORT OF PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE #3 - ESTABLISHMENT OF A NEW ATTAINABLE HOUSING FEE

CERTIFICATE OF COMPLIANCE

I hereby certify that this Opening Brief complies with all the 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) and it contains 4767 words.

The brief complies with C.A.R. 28(a)(7)(A) and contains for each issue raised by the Petitioner, under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of review, with citation to authority, and (2) whether the issue was preserved, and if preserved, the precise location in the record where the issue was raised.

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/ Rebecca R. Sopkin

Rebecca R. Sopkin

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On my own behalf, as a registered elector of the State of Colorado, the undersigned hereby respectfully submits to this Court the following Opening Brief as authorized by the Court's Order dated January 13, 2023, in support of my Petition to Review the Actions of the Ballot Title Setting Board with Respect to Proposed Initiative 2023-2024 #3 - Establishment of a New Attainable Housing Fee, pursuant to C.R.S. § 1-40-107(2022).

STATEMENT OF THE ISSUES

The overall issue of this case is whether the Title Board has validly set a title for Proposed Initiative 2023-2024 #3 - Establishment of a New Attainable Housing Fee (the "Proposed Initiative"). The specific issues I will present are (1) whether the title set by the Title Board is misleading as it does not refer to that fact that the Proposed Initiative would in effect be amending the Colorado Constitution by instituting a real property tax, which is expressly forbidden by the constitution; (2) whether the title set by the Title Board is misleading as it does not refer to that fact that the Proposed Initiative would in effect be amending the Colorado Constitution by instituting a tax increase, without following the process set forth in the constitution; (3) whether the Title Board has jurisdiction to set a title for the Proposed Initiative as it is an invalid attempt to amend the Colorado Constitution by means of a statutory revision; (3) whether the Title Board has jurisdiction to set a title for the Proposed Initiative as it violates the single subject rule; and (4))

whether the Court should remand this issue to the Title Board to set a proper title requiring it to include in its title a statement that the Proposed Initiative would be amending the constitution and following the required language for such amendment.

STATEMENT OF THE CASE

Procedural History of Proposed Initiative 2023-2024 #3.

Dalton Kelley and Dee Wisor (hereinafter "Proponents") proposed Initiative #3 2023-2024 #3 (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 a final version of the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board.

The Proposed Initiative was attached, in a certified copy from the Secretary of State, to the Petition for Review.

The ballot title and submission clause set by the Title Board for the Proposed Initiative is as follows:

> The ballot title and submission clause as designated and fixed by the Board is as follows: Shall there be a change to the Colorado Revised Statutes concerning funding to increase attainable housing, and, in connection therewith, on and after January 1, 2024, imposing a community attainable housing fee, payable by the purchaser, upon the recording of deeds for real property equal to 0.1% of the amount by which the purchase price exceeds $200,000; defining attainable housing as housing that is attainable by a household that makes between 80% and 120% of the area median income and

> is priced so that the household need not spend more than 30% of its income on housing costs; requiring the net fee revenue to be deposited in the Colorado attainable housing fund and used only to fund new and existing programs administered by the division of housing that support the financing, purchase, refinancing, construction, maintenance, rehabilitation, or repair of attainable housing in Colorado; and exempting the fee revenue from the limitation on state fiscal year spending?

A Title Board hearing was held on December 21, 2022, at which time titles were set for the Proposed Initiative. On December 28, 2022, Petitioner Rebecca R. Sopkin filed a Motion for Rehearing, alleging that the Title Board lacked jurisdiction as the Proposed Initiative was in actuality proposing a tax increase which could not validly be done without amending the Colorado Constitution, that the Proposed Initiative contained multiple and distinct subjects in violation of Colo. Const. art. V sec 1(5.5) and that the Proposed Initiative neglected to include any mention of rental properties which were clearly a part of the proposed statutory changes. The rehearing was held on January 4, 2023, at which time the Title Board granted the Motion for Rehearing only to the extent that changes were made to the title to include rental property.

The Petitioner then filed a Petition For Review Of Final Action Of Ballot Title Setting Board Concerning Proposed Initiative #3 - Establishment Of A New Attainable Housing Fee with the Colorado Supreme Court and on January 13, 2023, this Court issued its Order setting a briefing schedule. This Opening Brief is filed pursuant to that Order.

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. C.R.S. § 1-40-107(1). Additionally, Petitioner timely filed this Petition for Review within seven (7) days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107(2).

Petitioner believes that the Title Board erred in denying certain aspects of the Motion for Rehearing.

SUMMARY OF ARGUMENTS

I. THE TITLE SET BY THE TITLE BOARD FOR THE PROPOSED INITIATIVE IS MISLEADING AS IT DOES NOT REFER TO THE FACT THAT THE PROPOSED INITIATIVE IS A FACIALLY INVALID ATTEMPT TO AMEND THE COLORADO CONSTITUTION, ART. X, SEC. 20, BY MEANS OF A STATUTORY REVISION BY INSTITUTING A REAL PROPERTY TRANSFER TAX IN DIRECT VIOLATION OF THE CONSTITUTION.

II. THE TITLE SET BY THE TITLE BOARD FOR THE PROPOSED INITIATIVE IS MISLEADING AS IT DOES NOT REFER TO THE FACT THAT THE PROPOSED INITIATIVE IS AN ATTEMPT TO AMEND THE COLORADO CONSTITUTION, ART. X, SEC. 20, BY MEANS OF A STATUTORY REVISION AS SHOWN BY COLORADO CASELAW REGARDING THE DIFFERENCE BETWEEN A "FEE" AND A "TAX."

III. THE TITLE BOARD DOES NOT HAVE JURISDICTION TO SET A TITLE FOR THE PROPOSED INITIATIVE AS IT IS AN ATTEMPT TO AMEND THE COLORADO CONSTITUTION, ART. X, SEC. 20, BY MEANS OF A STATUTORY REVISION.

IV. THE TITLE BOARD DOES NOT HAVE JURISDICTION TO SET A TITLE FOR INITIATIVE #3 AS A STATUTORY INITIATIVE AS INITIATIVE #3 IS IN VIOLATION OF THE SINGLE SUBJECT RULE.

V. IF THE TITLE BOARD DOES SET A TITLE FOR THE PROPOSED INITIATIVE, IT NEEDS TO CONTAIN REFERENCE TO THE COLORADO CONSTITUTIONAL PROVISIONS WHICH THE PROPOSED INITIATIVE IS ATTEMPTING TO AMEND AND MEET THE REQUIREMENTS FOR A CONSTITUTIONAL AMENDMENT BY PROPOSED INITIATIVE.

ARGUMENT

I. THE TITLE SET BY THE TITLE BOARD FOR THE PROPOSED INITIATIVE IS MISLEADING AS IT DOES NOT REFER TO THE FACT THAT THE PROPOSED INITIATIVE IS A FACIALLY INVALID ATTEMPT TO AMEND THE COLORADO CONSTITUTION, ART. X, SEC. 20, BY MEANS OF A STATUTORY REVISION.

C. STANDARD OF REVIEW AND STATEMENT OF PRESERVATION

When the Court reviews title board work, it employs "all legitimate presumptions" in deference to the board's determination. In re Title, Ballot Title and Submission Clause for Proposed Amendment to Const. Section 2 to Art. VII, 900 P.2d 104, 108 (Colo. 1995). The Court should examine the wording of the titles and the initiative to determine whether they comport with the clear title requirement. Cordero v. Leahy (In re Title, Ballot Title and Submission Clause for 2013-2014 #90), 328 P.3d 155, 159 (Colo. 2014). The Title Board is required to "consider the public confusion that might be caused by misleading titles." C.R.S. § 1-40-106(3)(b)(2022). The title set is required to "correctly and fairly express the true intent and meaning" of an initiative. Id. The title board is also required to "avoid confusion between a proposition and an amendment" by clearly specifying "an amendment as 'an amendment to the Colorado constitution.'" C.R.S. § 1-40-106(3)(c)(2022).

The issue of the Proposed Initiative's inappropriate attempt to amend the

constitution by a statutory revision was preserved in the Petitioner's Motion for Rehearing, In The Matter Of The Title And Ballot Title And Submission Clause For Initiative 2022-2023 #3, Argument I, pg. 1, and in the Petitioner's Petition For Review Of Final Action Of Ballot Title Setting Board Concerning Proposed Initiative #3 - Establishment Of A New Attainable Housing Fee, Argument II, pg. 4.

B. GROUNDS FOR ARGUMENT

This case is much simpler than many of the cases regarding the Taxpayer's Bill of Rights, Colo. Const. Art. X, Sec. 20 ("TABOR") which have been brought before this Court, as the Colorado Constitution directly and explicitly deals with the issue at hand. Section (8) provides that "[n]ew or increased transfer tax rates on real property are prohibited." Colo. Const. art. 10, § 20(8)(a).

The Proposed Initiative would enact by statute the following new provision: "Community Attainable Housing Fee (1)(a) . . . . A Community Attainable Housing Fee is hereby imposed upon the recording of each deed in accordance with the requirements of this section at the rate of one-tenth of one percent of the value of the real property as specified in the deed." Proposed Initiative at C.R.S. § 29-4-1203.

This is quite clearly a tax on the transfer of the real property. Colorado has a "race-notice recording statute." C.R.S. § 38-35-109(1)(2022) wherein "no such unrecorded instrument or document shall be valid against any person with any kind of rights in or to such real property who first records." This makes the recording of a deed conveying real property an absolutely essential step in securing good title to the property. Colorado case law reiterates this importance in many cases. Province v. Johnson, 894 P.2d 66 (Colo. App. 1995); Joondeph v. Hicks, 235 P.3d 303 (Colo, 2010). Practically, the time of deed recording is when the local government entity is formally informed of the transfer of real property and of the consideration exchanged therefor. *See* C.R.S. § 38-35-106(1)(2022).

Any ballot initiative proposing to amend to the Colorado Constitution must clearly state that it is an "amendment to the Colorado constitution." C.R.S. § 1-40-106(3)(c) (2022). As the Proposed Initiative directly contradicts the constitution it would need to amend it in order to have any validity. As it does not do so, it is invalid and the title set is misleading for not setting forth the actual effect of the Proposed Initiative.

II. THE TITLE SET BY THE TITLE BOARD FOR THE PROPOSED INITIATIVE IS MISLEADING AS IT DOES NOT REFER TO THE FACT THAT THE PROPOSED INITIATIVE IS AN ATTEMPT TO AMEND THE COLORADO CONSTITUTION, ART. X, SEC. 20, BY MEANS OF A STATUTORY REVISION AS SHOWN BY COLORADO CASELAW REGARDING THE DIFFERENCE BETWEEN A "FEE" AND A "TAX."

A. STANDARD OF REVIEW AND STATEMENT OF PRESERVATION

When the Court reviews title board work, it employs "all legitimate presumptions" in deference to the board's determination. In re Title, Ballot Title and Submission Clause for Proposed Amendment to Const. Section 2 to Art. VII, 900 P.2d 104, 108 (Colo. 1995). The Court should examine the wording of the titles and the initiative to determine whether they comport with the clear title requirement. Cordero v. Leahy (In re Title, Ballot Title and Submission Clause for 2013-2014 #90), 328 P.3d 155, 159 (Colo. 2014). The Title Board is required to "consider the public confusion that might be caused by misleading titles." C.R.S. § 1-40-106(3)(b). The title set is required to "correctly and fairly express the true intent and meaning" of an initiative. Id. The title board is also required to "avoid confusion between a proposition and an amendment" by clearly specifying "an amendment as 'an amendment to the Colorado constitution.'" C.R.S. § 1-40-106(3)(c).

The issue of the Proposed Initiative's inappropriate attempt to amend the constitution by a statutory revisions was preserved in the Petitioner's Motion for Rehearing, In The Matter Of The Title And Ballot Title And Submission Clause For Initiative 2022-2023 #3,

Argument I, pg. 1, and in the Petitioner's Petition For Review Of Final Action Of Ballot Title Setting Board Concerning Proposed Initiative #3 - Establishment Of A New Attainable Housing Fee, Argument II, pg. 4.

B. GROUNDS FOR ARGUMENT

The Proposed Initiative purports to impose an "attainable housing fee upon the recording of each deed." Proposed Initiative at C.R.S. § 29-4-1203(1)(a). Despite the fact that the Proposed Initiative uses the term "fee," Colorado case law shows that this is clearly a "tax" and thus may not be imposed without following the Colorado constitutional requirements for increasing taxes. Colo. Const. art. 10, § 20(3) & (4).

As this Court has noticed a "statutory charge may be labeled a fee, but in effect be a tax." Barber v. Ritter, 196 P.3d 238, 250 n.15 (Colo. 2008). Furthermore, the Court has observed that it is "normally called upon to decide only cases in which the government has attempted to circumvent TABOR's requirements by pretending that the tax is, in fact, not a tax and labeled it accordingly." Colo. Union of Taxpayers v. City of Aspen, 418 P.3d 506, 514 (Colo. 2018).

Colorado case law follows the general practice of defining a "fee" as a charge for which "[t]he primary statutory purpose for the collection of the transferred monies was to defray the cost of special services provided to those who paid the charge." Barber v. Ritter,

196 P.3d 238, 248 (Colo. 2008). Furthermore, "[u]nlike a tax, a special fee is not designed to raise revenues to defray the general expenses of government, but rather is a charge imposed upon persons or property for the purpose of defraying the cost of a particular government service." Bloom v. City of Ft. Collins, 784 P.2d 304, 308 (Colo. 1989) cited by Barber at 248. The courts have examined whether the "the primary purpose of the charge is to finance or defray the cost of services provided to those who must pay it." TABOR Foundation v. Colo. Bridge Enterprise, 353 P.3d 896, 902 (Colo. App. 2014) quoting Barber, 196 P.3d at 238, 241, 249 (Colo. 2008). The Proposed Initiative cites this case in its legislative declaration, but completely omits a further explanation that the charge can only be "imposed on those who are reasonably likely to benefit from or use the service." TABOR Foundation v. Colo. Bridge Enterprise, 353 P.3d at 903. Its legislative declaration purports to identify benefits to the property owners who are charged this substantial fee, but then lists "community benefit[s]" some of which are specific to "local business owners," some of which are general to the community as a whole, but none of which are particular to the property owners paying the fee. Proposed Initiative at C.R.S. § 29-4-1201 (5), (6), (7), (8) & (9).

In the case of Colo. Union of Taxpayers v. City of Aspen, the Court enunciated at two step analysis to determine whether a particular charge was a tax or a fee. The Court held that the distinction rests on "whether (1) the charge was imposed as part of a

regulatory scheme enacted pursuant to the government's police powers and (2) the charge bore a reasonable relationship to the direct or indirect costs to the government of providing the service or regulating the activity." Colo. Union of Taxpayers v. City of Aspen, 418 P.3d 506, 512 (Colo. 2018). The Proposed Initiative fails both parts of this analysis.

The activity on which the Proposed Initiative imposes a charge is the recording of a deed for the conveyance of real property. Proposed Initiative at C.R.S. § 29-4-1202(b) & § 29-4-1203(1)(a). In fact, the Proposed Initiative makes a provision for the County Clerk who records such deeds to "retain five percent of the amount collected as his or her fee for collection" prior to "remit[ting] the balance on a monthly basis to the state treasurer" to be deposited into the proposed Attainable Housing Fund. C.R.S. § 29-4-1203(3) & C.R.S. § 29-4-1203(1)(d).

The Proposed Initiative is not creating a regulatory scheme for recording deeds. In fact, such processes are well established. As explained above the benefits of the Proposed Initiative are all general and community benefits which do not in any way flow from the recording of the deed and are not in any way particular to the property owners paying the deed. The proposed government action is clearly a function of the state's general powers rather than its regulatory police powers. Colo. Union of Taxpayers v. City of Aspen, 418 P.3d at 512. The proponents of the Proposed Initiative seem to believe that the mere

creation of a fund separating the revenue received and the specification of what that revenue can be spent on is sufficient to convert the charge from a "tax" into a "fee."

Furthermore, the governmental charge created by the Proposed Initiative bears no "reasonable relationship to the direct or indirect costs to the government of providing the service." 418 P.3d at 512. There is no additional cost or difficulty of recording a deed for a piece of real property which sold for a million dollars over one which sold for a hundred thousand dollars. There is no rational basis to tie the fee to the cost of the property. There is no reason to believe, in fact, that the clerks are not already being adequately compensated for their efforts.

All of the rest of the benefits listed by the proponents are of such a general and speculative nature that it is impossible to determine whether the property owners being charged have actually received any of such benefits and, if they have, how much those benefits were, and whether there was any "reasonable relationship" to the charge they would pay.

In short, the Proposed Initiative clearly proposes to initiate a new tax which does not meet any of the requirements for such a charge to be appropriately deemed a fee.

III. THE TITLE BOARD DOES NOT HAVE JURISDICTION TO SET A TITLE FOR THE PROPOSED INITIATIVE AS IT IS AN ATTEMPT TO AMEND THE COLORADO CONSTITUTION, ART. X, SEC. 20, BY MEANS OF A STATUTORY REVISION.

A. STANDARD OF REVIEW AND STATEMENT OF PRESERVATION

When the Court reviews title board work, it employs "all legitimate presumptions" in deference to the board's determination. In re Title, Ballot Title and Submission Clause for Proposed Amendment to Const. Section 2 to Art. VII, 900 P.2d 104, 108 (Colo. 1995). The Court should examine the wording of the titles and the initiative to determine whether they comport with the clear title requirement. Cordero v. Leahy (In re Title, Ballot Title and Submission Clause for 2013-2014 #90), 328 P.3d 155, 159 (Colo. 2014). The Title Board is required to "consider the public confusion that might be caused by misleading titles." C.R.S. § 1-40-106(3)(b). The title set is required to "correctly and fairly express the true intent and meaning" of an initiative. Id. The title board is also required to "avoid confusion between a proposition and an amendment" by clearly specifying "an amendment as 'an amendment to the Colorado constitution.'" C.R.S. § 1-40-106(3)(c).

The issue of the Proposed Initiative's inappropriate attempt to amend the constitution by a statutory revisions was preserved in the Petitioner's Motion for Rehearing, In The Matter Of The Title And Ballot Title And Submission Clause For Initiative 2022-2023 #3, Argument I, pg. 1, and in the Petitioner's Petition For Review Of Final Action Of Ballot

Title Setting Board Concerning Proposed Initiative #3 - Establishment Of A New Attainable Housing Fee, Argument II, pg. 4.

A. GROUNDS FOR ARGUMENT

As explained above, the Proposed Initiative purports to be a statutory revision, however its clear effect is to significantly amend the Colorado Constitution. The Title Board is required to explicitly include such amendments in any title it sets, but as the Proposed Initiative itself does not include the appropriate language to amend the Colorado Constitution the Title Board cannot set a valid title. Since the Proponents have not complied with the requirements of the Initiative and Referendum Act, C.R.S. §§ 1-40-101to -111(2022) the Title Board does not have jurisdiction to set a title for the Proposed Initiative as set forth.

The Initiative and Referendum Act requires that all proposed ballot initiatives "shall be worded with simplicity and clarity and so that the effect of the measure will not be misleading or likely to cause confusion among voters." C.R.S. § 1-40-105(3). The Colorado Constitution requires that any proposed "new tax, tax rate increase, . . . or tax policy change directly causing a net tax revenue gain" must have explicit prior voter approval. Colo. Const. art. 10, § 20(4). Any proposed ballot initiative seeking voter approval for such an increase must begin with the language "SHALL (DISTRICT) TAXES BE INCREASED (first, or if phased in, final, full fiscal year dollar increase) ANNUALLY . . .?" Colo. Const. art. 10, § 20(3)(c).

As the Proponents have neglected to include such language, or any other language in their Proposed Initiative which recognizes that they are proposing a constitutional amendment, the Title Board cannot properly set a title for this Proposed Initiative and,therefore, does not have jurisdiction to set such a title.

IV. THE TITLE BOARD DOES NOT HAVE JURISDICTION TO SET A TITLE FOR INITIATIVE #3 AS A STATUTORY INITIATIVE AS INITIATIVE #3 IS IN VIOLATION OF THE SINGLE SUBJECT RULE.

A. STANDARD OF REVIEW AND STATEMENT OF PRESERVATION

The Colorado Constitution contains the single subject requirement for the Proposed Initiative and its title. The Constitution states that "[n]o measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title. . . . If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls." Colo. Const. art . V, sec. 1(5.5).

The standard for review for the Court in determining whether a Proposed Initiative impermissibly contains more than one subject is similar to the standard stated above. Again "all legitimate presumptions" in deference to the board's determination shall be employed. In re Title, Ballot Title and Submission Clause for Proposed Amendment to Const. Section 2 to Art. VII, 900 P.2d 104, 108 (Colo. 1995). The Court should examine the wording of the titles and the initiative to determine whether they comport with the

single subject requirement. Cordero v. Leahy (In re Title, Ballot Title and Submission Clause for 2013-2014 #90), 328 P.3d 155, 159 (Colo. 2014). The General Assembly has explicitly required the board to "apply judicial decisions construing the constitutional single-subject requirement for bills . . ." § 1-40-106.5(3) C.R.S. (2022).

The issue of the Proposed Initiative's violation of the single subject rule was preserved in the Petitioner's Motion for Rehearing, In The Matter Of The Title And Ballot Title And Submission Clause For Initiative 2022-2023 #3, Argument II, pg. 2 and in the Petitioner's Petition For Review Of Final Action Of Ballot Title Setting Board Concerning Proposed Initiative #3 - Establishment Of A New Attainable Housing Fee, Argument I, pgs. 3-4.

A. GROUNDS FOR ARGUMENT

As demonstrated above, when the actual substance and operation of the Proposed Initiative is examined it becomes clear that this initiative would necessarily be amending the Colorado Constitution in order to change the provision that forbids the imposition of "new or increased transfer tax rates on real property." Colo. Const. art. 10, § 20(8)(a). Then it would need to proceed to seek voter permission to impose such taxes, following the procedures which are clearly laid out in the constitution. Colo. Const. art. 10, § 20(3). Only after those preliminary matters had been dealt with could the Proposed Initiative appropriately construct its new fund, provide for revenue for such fund and specific how that revenue should be spent.

These are clearly three separate subjects, causing the Proposed Initiative to be in violation of our state's single subject rule.

C.R.S. § 1-40-106.5(1)(a)(2022) requires that every "law proposed by initiative . . . be limited to a single subject." The purpose of this is "to prevent surreptitious measures and apprise the people of the subject of each measure by the title, that is, to prevent surprise and fraud from being practiced upon voters." C.R.S. § 1-40-106.5(1)(e)(II)(2022). Of the three subjects identified above in this Proposed Initiative two are so surreptitious as to not be explicitly mentioned at all, although the enactment of this initiative would in fact be significantly and substantively changing and amending our constitution. This is precisely the type of deception of voters which the single subject rule is intended to prevent.

In addition, the amendment of Colorado's beloved taxpayer rights, as contained in the TABOR provisions of the Constitution, would be a very significant and different matter from the Proposed Initiative's stated goals of procuring attainable housing. As the Court has stated "a proposed initiative cannot seek to accomplish multiple, discrete, unconnected purposes." In re Title, Ballot Title, Submission Clause for 2013-2014 #89, 328 P.3d 172, 177 (Colo. 2014). These issues are not in any particular way related or in proper connection, other than the general connection that TABOR's provisions must be revoked or amended for the rest of the Proponents' proposal to proceed. One need only

think about the many other proposals which would also flow from such changes in TABOR to realize that there is no specific connection between these varying subjects.

V. IF THIS COURT CHOOSES TO REMAND THIS MATTER, THE TITLE BOARD MUST SET A TITLE FOR THE PROPOSED INITIATIVE THAT INCLUDES THE COLORADO CONSTITUTIONAL PROVISIONS WHICH THE PROPOSED INITIATIVE IS ATTEMPTING TO AMEND AND MEETS THE REQUIREMENTS FOR A CONSTITUTIONAL AMENDMENT BY PROPOSED INITIATIVE.

A. STANDARD OF REVIEW AND STATEMENT OF PRESERVATION

When the Court reviews title board work, it employs "all legitimate presumptions" in deference to the board's determination. In re Title, Ballot Title and Submission Clause for Proposed Amendment to Const. Section 2 to Art. VII, 900 P.2d 104, 108 (Colo. 1995). The Court should examine the wording of the titles and the initiative to determine whether they comport with the clear title requirement. Cordero v. Leahy (In re Title, Ballot Title and Submission Clause for 2013-2014 #90), 328 P.3d 155, 159 (Colo. 2014). The Title Board is required to "consider the public confusion that might be caused by misleading titles." C.R.S. § 1-40-106(3)(b). The title set is required to "correctly and fairly express the true intent and meaning" of an initiative. Id. The title board is also required to "avoid confusion between a proposition and an amendment" by clearly specifying "an amendment as 'an amendment to the Colorado constitution.'" C.R.S. § 1-40-106(3)(c).

The issue of the Proposed Initiative's inappropriate attempt to amend the constitution by a statutory revisions was preserved in the Petitioner's Motion for Rehearing, In The Matter Of The Title And Ballot Title And Submission Clause For Initiative 2022-2023 #3, Argument I, pg. 1, and in the Petitioner's Petition For Review Of Final Action Of Ballot Title Setting Board Concerning Proposed Initiative #3 - Establishment Of A New Attainable Housing Fee, Argument II, pg. 4.

B. GROUNDS FOR ARGUMENT

In the alternative, if the Court finds that the Title Board does have valid jurisdiction to set a title with regard to the Proposed Initiative, that title has not been validly set. The title must make it clear that this is an attempt to amend the Colorado Constitution as its provisions are in direct contradiction to existing provisions in the Colorado Constitution as explained above. Colo. Const. art. 10, § 20(8)(a).

As stated above the title for the Proposed Initiative is required to specifically acknowledge that it is proposing an "amendment to the Colorado constitution." C.R.S. § 1-40-106(3)(c)(2022). Colorado law further requires that the Title Board "shall determine whether the proposed constitutional amendment only repeals in whole or in part a provision of the state constitution," and "shall keep a record of the determination made by the title board." C.R.S. § 1-40-106 (3.5)(2022). This the Title Board did not do.

In the case of any remand, the Title Board must make an appropriate finding regarding what provision of the constitution is being amended and whether in whole or in

part. The board must then also include the language required in Colo. Const. art. 10, § 20(3)(c).

CONCLUSION

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the Proposed Initiative is facially invalid as violating the Colorado Constitution or, in the alternative, that the Title Board was without jurisdiction to set a title for this Proposed Initiative as it is currently written and direct the Title Board to return the initiative to the designated representative for lack of jurisdiction, due to violation of the constitutional single subject requirement, or. in the alternative, to correct the title to address the deficiencies outlined in Petitioner's briefs.

Respectfully submitted this 30th day of January, 2023.

/s/Rebecca R. Sopkin

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **OPENING BRIEF IN SUPPORT OF PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE #3 - ESTABLISHMENT OF A NEW ATTAINABLE HOUSING FEE**was served via Colorado Courts e-filing, on this 30th day of January, 2023 upon the following:

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