

COLORADO TITLE SETTING BOARD

**IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR PROPOSED INITIATIVE 2025-2026 #126**

MOTION FOR REHEARING ON PROPOSED INITIATIVE 2025-2026 #126

On behalf of Alicia Ferrufino-Coqueugniot, registered elector of the State of Colorado, the undersigned counsel hereby submits to the Title Board this Motion for Rehearing on Proposed Initiative 2025-2026 #126 (“Initiative #126”) and as grounds therefore state as follows:

I. THE TITLE SET BY TITLE BOARD AT OCTOBER 1, 2025 HEARING

On October 1, 2025, the Title Board set the following ballot title and submission clause for Initiative #126:

Shall there be an amendment to the Colorado Constitution creating new law requiring state revenue collected for road transportation to be spent on road transportation, and, in connection therewith, defining “state revenue collected to support road transportation” and dedicating such revenue, collected from January 1, 2027, through December 31, 2036, to the construction, maintenance, and operation of, and the development and improvement of safety measures for, public streets, roads, highways, or bridges designed and primarily used for motor vehicles?

II. GROUNDINGS FOR REHEARING

A. The Initiative Impermissibly Contains More Than One Separate and Distinct Subjects in Violation of the Single Subject Requirement.

Pursuant to Colo. Const. art. V, §1(5.5),

no 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.

See also 1-40-106.5, C.R.S. “[T]he Board may not set the titles of a proposed Initiative, or submit it to the voters, if the Initiative contains multiple subjects.” *Aisenberg v. Campbell (In re Title, Ballot Title & Submission Clause 1990-2000 #104)*, 987 P.2d 249, 253 (Colo. 2000).

The single subject requirement serves two functions. First, the single subject requirement “is intended to ensure that each proposal depends upon its own merits for passage.” *Johnson v. Curry (In re Title, Ballot Title & Submission Clause for 2015-2016 #132)*, 2106 CO 55, 13. Second, the single subject requirement is intended to “prevent surprise and fraud from being practiced upon voters caused by the inadvertent passage of a surreptitious provision ‘coiled up in the folds’ of a complex initiative.” *Id.* at 14. “If an initiative advances separate and distinct purposes, the fact that they both relate to the same general concept or subject is insufficient to satisfy the single subject requirement.” *Id.* at 15.

Initiative #126 contains more than one subject in violation of article V, section 1(5.5) of the Colorado Constitution, and section 1-40-106.5, C.R.S. While the Proponents state that the single subject of the measure is to require “state revenue collected for road transportation to be spent on road transportation,” it also does the following:

The measure creates a definition of road transportation limited to construction, maintenance, and operation of public streets, roads, highways, and bridges. In so doing, this definition excludes programs such as rail, bicycle and electric vehicle infrastructure, multimodal transportation, sidewalks, crosswalks, ramps to comply with the Americans with Disabilities Act, transit projects such as Bustang, wildlife crossings, and many other program areas. The measure then restricts some or all state revenue collected in three broad categories to fund only projects contained in this new definition of “road transportation.”

The measure violates the single subject requirement by fundamentally altering the power and authority of at least the following four enterprises:

1. The Community Access Enterprise, C.R.S. § 24-38.5-301 *et seq*;
2. The Clean Fleet Enterprise, C.R.S. § 25-7.5-101 *et seq*;
3. The Clean Transit Enterprise, C.R.S. § 43-4-1201 *et seq*;
4. The Nonattainment Area Air Pollution Mitigation Enterprise, C.R.S. § 43-4-1301 *et seq*.

The purpose of the Community Access Enterprise is to support the widespread adoption of electric motor vehicles by investing in transportation infrastructure and incentivizing the acquisition and use of electric motor vehicles in communities. The enterprise achieves this purpose by imposing a retail delivery fee and using the funds generated from the retail delivery fee to fund the enterprise purposes.

The purpose of the Clean Fleet Enterprise is to incentivize and support the use of electric motor vehicles, including motor vehicles that originally were powered by internal combustion engines but have been converted into electric motor vehicles, by businesses and governmental entities that own or operate fleets of motor vehicles. The enterprise achieves this purpose by imposing a clean fleet per ride fee and a clean fleet retail delivery fee and using the funds generated from these fees to fund the enterprise purposes.

The purpose of the Clean Transit Enterprise is to reduce and mitigate the adverse environmental and health impacts of air pollution and greenhouse gas emissions produced by

motor vehicles used to make retail deliveries by supporting the replacement of existing gasoline and diesel transit vehicles with electric motor vehicles. The enterprise achieves this purpose by imposing a clean transit retail delivery fee and using the funds generated from these fees to fund the enterprise purposes.

The purpose of the Nonattainment Area Air Pollution Mitigation Enterprise is to mitigate the environmental and health impacts of increased air pollution from motor vehicle emissions in nonattainment areas that result from the growth in retail deliveries made by motor vehicles and in prearranged rides provided by transportation network companies. The enterprise achieves this purpose by imposing an air pollution mitigation per ride fee and an air pollution mitigation retail delivery fee and using the funds generated from these fees to fund the enterprise purposes.

Each of these four enterprises are separate and independent entities within the Colorado government that currently either do not fund “road transportation” as newly defined in the measure, or whose projects in most cases would not meet that definition. Initiative #126 transfers the current funding to each of these independent enterprises away from the enterprise activities and to the newly defined “road transportation” activities. This fundamentally alters the power and authority of the enterprises, which is not properly and necessarily related to the initiative’s purpose - to fund “road transportation,” and constitutes a second subject. *Johnson v. Curry (In re Title, Ballot Title, & Submission Clause for 2015-2016 #132)*, 2016 CO 55, 28-29.

Further, Initiative #126 requires all revenue collected under the broad umbrella of “state revenue collected to support road transportation” as newly defined in the measure, to be spent only on the newly narrowly defined “road transportation” in the measure. This is the classic “coiled up in the folds” scenario whereby the voting public will be affirmatively misled by the language of the measure. *See In re Title & Ballot Title & Submission Clause for Initiative 2001-2002 #43*, 46 P.3d 438, 446 (Colo. 2002). Indeed, some voters might well support more funding for road transportation but would not support defunding rail, bicycle and electric vehicle infrastructure, multimodal transportation, sidewalks, crosswalks, ramps to comply with the Americans with Disabilities Act, transit programs such as Bustang, and wildlife crossings, and others might feel precisely the opposite. These are simply two different subjects. *Fine v. Ward (In re Titles, Ballot Titles, & Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, & #128)*, 2022 CO 37, 23.

The purpose of the single subject requirement is to “obviate the risk of ‘uninformed voting caused by items concealed within a lengthy or complex proposal’” *Public Rights in Water II*, 898 P.2d 1076, 1079 (Colo. 1995). While the Initiative is not long, a measure can be “complex” without necessarily being “lengthy” – indeed a short and seemingly simple initiative, directed to a large and moderately complex body of law, can harbor the most pernicious surprises “coiled up in [its] folds.” Here, Initiative #126 brings all these dangers.

B. The Ballot Title and Submission Clause Is Misleading, and Does Not Correctly and Fairly Express Its True Intent and Meaning.

The title of the Initiative is misleading and does not correctly and fairly express the initiatives' true intent and meaning. Section 1-40-106(3)(b), C.R.S. provides:

In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a "yes" or "no" vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly express the true intent and meaning thereof, together with the ballot title and submission clause. . . .

Titles and submission clauses should "enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal." *In re Title, Ballot Title & Submission Clause for Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 242 (Colo. 1990)). The purpose of reviewing an initiative title for clarity parallels that of the single-subject requirement: voter protection through reasonably ascertainable expression of the initiative's purpose. *See id.*

The Title for Initiative #126 is not a clear statement of what this measure does. If the voters are not aware of how the initiative changes the *status quo* with regard to funding for rail, bicycle and electric vehicle infrastructure, multimodal transportation, sidewalks, crosswalks, ramps to comply with the Americans with Disabilities Act, transit programs such as Bustang, wildlife crossings, and other programs, they will lack sufficient information to determine intelligently whether to support or oppose the proposal. Ballot titles must convey to voters an initiative's likely impact on state spending on state programs. *In re Proposed Initiative for 1999-2000 No. 37*, 977 P.2d 845, 846 (Colo. 1999) ("[T]he titles and summary fail to convey to voters the initiative's likely impact on state spending on state programs. Therefore, we hold that the titles and summary may not be presented to the voters as currently written.") *Id.*, citing *In re Proposed Initiative for 1999-2000 No. 25*, 974 P.2d 458, 465 (Colo. 1999).

Additionally, the measure defines "road transportation" to "include[] the development and improvement of safety measures *for motor vehicles* traveling on public streets, roads, highways, or bridges." Yet the title states that the measure dedicates revenue to the "improvement of safety measures for public streets, roads, highways, or bridges designed and primarily used for motor vehicles." This language suggests that the safety measures are not just for *motor vehicles*, as the text of the measure requires, but rather more broadly for all who may be using the public streets, roads, highways, or bridges. This is inaccurate and misstates the plain language of the measure.

As written, the title does not enable voters to understand the change to the *status quo*, and to determine intelligently whether to support or oppose the measure. Here, the title for Initiative #126 is one for which the general understanding of the effect of a "yes" or "no" vote will be unclear. See generally 1-40-106(3)(b); *see also In re Proposed Initiative on "Obscenity,"* 877 P.2d 848, 850-51 (Colo. 1994). As a result, the title for Initiative #126 does not enable voters to make an informed choice because it does not correctly and fairly express its true intent and meaning.

III. CONCLUSION

Based on the foregoing, Objector Alicia Ferrufino-Coqueugniot requests a rehearing of the Title Board for Initiative 2025-2026 #126, because the initiative contains multiple subjects,

the title is unclear and misleading to voters, and it fails to fairly express the initiative's true meaning and intent. As a result, the Title Board lacks jurisdiction to set a title and should reject the measure in its entirety.

Respectfully submitted this 8th day of October, 2025.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 8th day of October, 2025, a true and correct copy of **MOTION FOR REHEARING ON PROPOSED INITIATIVE 2025-2026 #126** was filed and served on Proponents Donald Hanneman and Michael Hancock, via email to their counsel of record as follows:

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