

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION
CLAUSE FOR INITIATIVE 2025-2026 #413

MOTION FOR REHEARING

This *Motion for Rehearing* is submitted on behalf of Kelly Maher (“Maher”), a registered elector of the State of Colorado. Maher objects to the title and ballot title and submission clause adopted by the Title Board for Proposed Ballot Initiative 2025-2026 #413 (“Initiative #413”). Undersigned counsel hereby submits this *Motion for Rehearing* under § 1-40-107, C.R.S. (2026), and as grounds state as follows:

I. Introduction

Initiative #413 fails to meet the “single subject” and “clearly expressed” mandates of the Colorado Constitution. For those reasons, the Title Board should reverse its decision to set title for Initiative #413.

Argument**A. The Single-Subject Rule**

Colorado Constitution Article V § 1(5.5) requires that “No measure shall be proposed by petition containing more than one subject.” The single-subject rule is intended to prevent two dangers: (1) combining subjects with no necessary or proper connection for the purposes of garnering support for an initiative from various factions, and (2) to help avoid voter surprise or fraud due to passage of a surreptitious provision coiled up in the folds of an initiative. *In re Proposed Initiative on “Public Rights in Waters II,”* 898 P.2d 1076, 1078-79 (Colo.1995); *In re Ballot Title 2011-2012 No. 45*, 2012 CO 26; *In the Matter of the Title, Ballot Title & Sub. Clause for 2015-2016 No. 63*, 2016 CO 34. The single-subject rule prevents proponents from joining two distinct and separate purposes that are not dependent upon or connected with each other in order to garner support for the initiative. *In re*

Ballot Title 1999-2000 #104, 987 P.2d 249, 253 (Colo.1999). For example, the “single subject requirement prevents proponents from engaging in ‘log rolling’ tactics combining multiple subjects in hopes of attracting support from various factions with different or conflicting interests.” *In the Matter of Proposed Initiative 2025-2026 #158*, 2026 CO 13, 16.

In this instance, the proponents have combined the following separate subjects into Initiative #413:

1. Defines artificial persons and powers under Colo. Const. art XV, specifically excluding political spending as an artificial person power. Imposes a penalty against any artificial person engaged in political spending by withdrawing all the entity’s charter privileges.
2. Charges a tax paid to the state treasury, tied to the amount of political spending rather than the cost of services, for reinstatement of charter privileges.
3. Bars artificial persons created under Colorado campaign finance laws - including Colo. Const. art. XXVIII and Colorado Revised Statutes Title 1, Article 45 - except political committees, from political spending.

B. Initiative #413’s definition of artificial persons and powers casts a broad net that will lead to voter surprise

Initiative #413 most directly impacts Colo. Const. art. XV which governs corporations in Colorado. It does so by introducing an entire new section into the constitution. Proposed Colo. Const. art. XV § 16 (“§ 16”) includes multiple definitions, including what constitutes an “artificial person” and “artificial person powers” as well as “political spending power” and exclusions thereto. It then extends certain powers to artificial persons and voids actions outside those actions.

This is not an insignificant change. Initiative #413 casts an exceptionally wide net and will affect every artificial entity in the State of Colorado including, but not limited to: corporations (both for profit and not-for-profit), limited liability companies, partnerships, municipal corporations, penal or reformatory corporations, special district corporations, and similar entities. Each one will need to abide by the dictates of Initiative #413.

The breadth of Initiative #413 will almost certainly lead to voter surprise. For example, special districts are quasi-municipal corporations defined under C.R.S. § 32-1-103(20). Special districts regularly raise funds by placing ballot questions before the electorate. Under Initiative #413, this activity would endanger the special district's charter and privileges.

C. Initiative #413 imposition of a tax for reinstatement is a separate subject constituting impermissible “log rolling”

Recently the Colorado Supreme Court reiterated that “a charge is a ‘tax’ if its primary purpose is to defray general governmental expenses” opposed to “a charge is a ‘fee’ if its ‘primary purpose is to defray the cost of services provided to those charged.” *In the Matter of Proposed Initiative 2025-2026 #158*, 2026 CO 13, ¶¶ 3-4. Because Initiative #413 requires “full payment to the state treasury in an amount equal to the amount improperly expended,” it falls within Colorado’s definition of a tax. The amount is not tied to the costs to the costs of services, but rather the amount of spending. Furthermore, it does not go to a specific fund or government department charged with administering artificial persons, but to the general state treasury to defray general government expenses.

Including a new tax in an initiative presents a danger of impermissible log rolling. The tax is not necessary or connected to the definition of artificial persons or the limitation on political spending. Instead, it is another subject that acts to attract votes to the initiative. For example, voters may not agree with limiting artificial persons for political spending, but support the measure in order to increase funds to the general treasury. In the alternative, voters may support the idea of limiting political spending by artificial persons, but be opposed to any additional taxes. This is the precise scenario forbidden by the single subject requirement.

D. Initiative #413 will bar political spending from most entities created specifically for that purpose under Colo Const. art. XXVIII

As threshold matter, Colorado campaign finance laws define a “person” who can engage in political activity, including receiving contributions and making expenditures, far beyond the limited scope of a natural person and including what Initiative #413 defines as an “artificial person”:

“Person” means any natural person, partnership, committee, association, corporation, labor organization, political party, or other organization or group of persons. Colo. Const. art. XXIII § 2(11); also C.R.S. § 1-45-103(13) (adopting the constitutional definition).

This definition then flows into the definitions of multiple types of committees engaged in political activity. For example, the following entities exist, and have been created, under Colorado campaign finance laws to engage in political spending:

“Candidate committee” means a person, including the candidate, or persons with common purpose of receiving contributions or making expenditures under the authority of a candidate. Colo. Const. art. XXIII § 2(3); also C.R.S. § 1-45-103(3) (adopting the constitutional definition).

“Independent expenditure committee” means one or more persons that make an independent expenditure in support of or in opposition to a candidate in an aggregate amount in excess of one thousand dollars or that collect in excess of one thousand dollars from one or more persons for the purpose of making independent expenditures. C.R.S. § 1-45-103(11.5).

“Issue committee” means any person, other than a natural person, or any group of two or more persons, including natural persons; (I) That has a major purpose of supporting or opposing any ballot issue or ballot question; or (II) That has accepted or made contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question. Colo. Const. art. XXIII § 2(10)(a); also C.R.S. § 1-45-103(12)(a) (adopting the constitutional definition) and C.R.S. § 1-45-103(12)(b) (noting that “major purpose” can be reflected in an organization’s “specifically identified objectives in its organizational documents at the time it is established or as such documents are later amended”).

“Political committee” means any person, other than a natural person, or any group of two or more persons, including natural persons that have accepted or made contributions or expenditures in excess of \$200 to support or oppose the nomination or election of one or more candidates. Colo. Const. art. XXIII § 2(12)(a); also C.R.S. § 1-45-103(14).

Furthermore, because the definition of other political active entities flows from the entities defined above or in federal law, Initiative #413 also impacts the following:

“Political organization” means a political organization defined in section 527(e)91) of the federal “Internal Revenue code of 1986”, as amended, that is engaged in influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any state or local public office ...” C.R.S § 1-45-103(14.5).

“Small donor committee” means any political committee that has accepted contributions only from natural persons who each contributed no more than fifty dollars in the aggregate per year. Colo. Const. art. XXIII § 2(14)(a); also C.R.S. § 1-45-103(16) (adopting the constitutional definition).

“Small-scale issue committee” means an issue committee that has accepted or made contributions or expenditures in an amount that does not exceed five thousand dollars during an applicable election cycle for the major purpose of supporting or opposing any ballot issue or ballot question. C.R.S. § 1-45-103(16.3)(a); also see C.R.S. § 1-45-103(16.3)(b) which treats all small-scale issue committees established, financed, maintained, or controlled by a single corporation, labor organization, or group of persons or other organizations.

Initiative #413 would bar all of these entities, with the exception of political committees (and potentially small donor committees as a subset of political committees) from engaging in the very activities they were created to perform. As a practical matter, in order to receive contributions or make expenditures these committees must obtain federal Employer Identification Numbers (EIN) to open bank accounts; that requires creation of an entity that falls squarely within Initiative #413’s broad ambit.

The title as written does not address this issue. It would surely lead to voter surprise if nearly every category of entity created by Colorado campaign finance laws were eviscerated. That is precisely the type of effect hidden within the folds of the initiative that the single subject requirement is intended to ameliorate.

