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CASE NUMBER: 2023CV31432

DISTRICT COURT, CITY & COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	
Plaintiffs: STEVEN WARD, et al. v. Defendants: STATE OF COLORADO, by and through JARED S. POLIS, in his official capacity as Governor of Colorado, et al.	**COURT USE ONLY** Case Number: 23CV31432 Courtroom: 280

ORDER RE: SECOND AMENDED COMPLAINT UNDER 1-11-203.5

THIS MATTER comes before the Court on Plaintiffs Steven Ward, Jerry Sonnenberg, Abe Laydon, Lora Thomas, George Teal, Kevin Grantham, Stan Vander Werf, Carrie Geitner, Cami Bremer, Longinos Gonzalez, Jr., Chuck Broerman, Mark Flutcher, Christopher Richardson, Grant Thayer, Dallas Schroeder, Advance Colorado, Cheyenne County, Douglas County, El Paso County, Elbert County, Fremont County, Kit Carson County, Logan County, Mesa County, Phillips County, Prowers County, Rio Blanco County, Washington County, and Highlands Ranch Metropolitan District's (hereinafter "Plaintiffs") Second Amended Complaint Under 1-11-203.5 (hereinafter "SAC"). The parties agreed to an expedited briefing schedule for resolution of the issues raised in the SAC. Plaintiffs and Defendants State of Colorado, by and through Jared S. Polis, in his official capacity as Governor of Colorado (hereinafter "the State") and Jena Griswold, in her official capacity as Colorado Secretary of State, submitted simultaneous Opening Briefs on May 30, 2023.[1] The parties likewise submitted simultaneous Answer Briefs on June 5, 2023. The Court, having reviewed its file and being fully advised of the matters therein, finds and orders as follows:

BACKGROUND

The crux of the controversy between the parties is SB23-303 and its embedded referred measure, Proposition HH. Briefly, Plaintiffs contend that SB23-303 and Proposition HH, individually and collectively, violate the Colorado Constitution's requirement that a bill not

[1] The Secretary of State's Opening Brief "takes no position on the merits of Plaintiffs' claims," and simply urges the Court to expeditiously resolve the matter to ensure that this case, and any subsequent appeals, will be resolve in advance of the September 11, 2023 deadline to certify the ballot content to the county clerks.

contain more than one subject which shall be clearly expressed in its title. See Colo. Const. Art. 5, § 21. Accordingly, Plaintiffs seek a declaration from this Court that SB23-303 is unconstitutional and void, or, in the alternative, that Section 3[2] of SB23-303 is void and unenforceable as a matter of law. Plaintiffs likewise seek, if the Court does not declare the foregoing unconstitutional, an order reforming the title of Proposition HH "to provide a clear, detailed and politically neutral explanation of its contents." See SAC, ¶ 12.

More specifically, Plaintiffs contend that SB23-303 violates the single subject requirement as SB23-303 includes at least four subjects, including: 1) a reduction in property tax assessment rates; 2) a request for voter approval for the retention of funds for other expenditures in an amount greater than necessary to offset the reduction in property taxes with the remainder to be reverted to the State's Education Fund; 3) an appropriation of an amount of funds to be used for tenant rent relief; and 4) a change to, and the ultimate elimination of, TABOR refunds. See SAC, ¶ 31. Plaintiffs contend that Proposition HH itself violates the single subject requirement on the same bases that SB23-303 does insofar as it essentially incorporates the same issues in the form of a ballot question. See SAC, ¶ 39. Plaintiffs also contend that Proposition HH violates the single subject requirement because a previously passed bill, HB23-1311, will go into effect only if Proposition HH is approved. See SAC, ¶ 41.

Plaintiffs contend that SB23-303 violates the clear title requirement in the following ways: 1) by calling for an unspecified reduction in property taxes without providing actual numbers (SAC, ¶¶ 43, 44); 2) by not disclosing that the excess of funds appropriated to be used to "backfill" the loss in revenue from the property tax reductions would be retained in the education fund (SAC, ¶ 45); 3) by failing to mention the formula that increases the TABOR limit by 1% each year for at least ten years (SAC, ¶ 46); 4) by failing to mention the local government opt-out provision (SAC, ¶ 47); 5) by failing to mention an appropriation to the housing development grant fund (SAC, ¶ 48); and 6) by failing to "describe or reference the fact that legislators are given the right to permanently change the TABOR cap" (SAC, ¶ 49). Likewise, Plaintiffs seek a reformation of the title of the ballot question on the same bases, in addition to failing to comply with certain subsections of C.R.S. § 1-40-106. SAC, ¶¶ 62-68.

LEGAL STANDARD

"No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall

[2] Plaintiffs contend that Section 3 of SB23-303 contains the referred measure, Proposition HH. SAC, ¶ 10.

not be so expressed." Colo. Const. Art. V, § 21. The purposes of this provision are: 1) to notify the public and legislators of pending bills so that all may participate in the legislative process; 2) to make the passage of each legislative proposal depend on its own merits; and 3) to enable the governor to consider each single subject of legislation separately in determining whether to exercise the veto power. *Colorado Criminal Justice Reform Coalition v. Ortiz*, 121 P.3d 288, 291 (Colo. App. 2005), *superseded by Rule on other grounds as stated in Paradine v. Goei*, 463 P.3d 868 (Colo. App. 2018).

The single subject requirement prohibits the joining in a single act of disconnected and incongruous matters, or of subjects having no necessary or proper connection. *Id*. The requirement was not designed to hinder or unnecessarily obstruct legislation, and to prevent it from having this effect, the provision must be liberally and reasonably construed. *Id*. In the matter of legislative titles, particularity is neither necessary nor desirable, and if legislation is germane to the general subject expressed in title, and is relevant and appropriate to such subject, it does not violate the clear title provision. *Corder v. Pond*, 190 P.2d 582, 583 (Colo. 1948). "It is enough if the bill treats of but one general object, and that object is expressed in the title." *People v. Goddard*, 7 P. 301, 304 (Colo. 1885). "To require that each subdivision of the subject, each and every of the end and means necessary or convenient for the accomplishment of the object, must be specifically mentioned in the title, would greatly impede and embarrass legislation." *Id*. In other words, where the body of the legislation is germane, relevant, and appropriate to the general subject matter expressed in the title, the requirement is met. *People v. Sa'ra*, 117 P.3d 51, 58 (Colo. App. 2004).

ANALYSIS

I. Subject Matter Jurisdiction

The State first contends that this Court lacks subject matter jurisdiction to entertain substantive claims under *Polhill v. Buckley*, 923 P.2d 119 (Colo. 1996). The State contends that limited jurisdiction exists under C.R.S. § 1-11-203.5 to address deficiencies in ballot titles, but that otherwise the Court is without jurisdiction to consider the single subject challenges to SB23-303 and Proposition HH, as well as the clear title challenge to SB23-303, leaving only the clear title challenge to Proposition HH and leaving the only available remedy thereunder reformation of the ballot title. State's Opening Brief, pp. 4-5.

Plaintiffs contend that the Court has subject matter jurisdiction to review their challenge, arguing that: 1) because the Governor signed SB23-303 into law, and because "portions" thereof became effective notwithstanding that the bulk of the bill remains contingent on voter approval, the Court has subject matter jurisdiction to consider their challenge to SB23-303 (Plaintiffs'

Answer Brief, p. 2); and 2) that the Court has subject matter jurisdiction to consider their challenge to Proposition HH under C.R.S. § 1-11-203.5 and under Colo. Const. Art. V, § 1(5.5). Plaintiffs' Answer Brief, pp. 7-8.

The Court concludes that it lacks subject matter jurisdiction to consider Plaintiffs' single subject matter challenge to SB23-303 and, by extension, Proposition HH to the extent that Plaintiffs challenge matters contingent upon voter approval, for the reasons explained below. The Court finds that it has subject matter jurisdiction to consider Plaintiffs' title reformation challenge under C.R.S. § 1-11-203.5, but that such jurisdiction is limited by that statute such that substantive constitutional challenges are not subject to review thereunder. However, for purposes of judicial expediency and economy, the Court will consider the merits of Plaintiffs' challenges so that, in the event the matter is appealed, and this Court erred in its jurisdictional analysis, the issues will be ripe for consideration and the merits of the Plaintiffs' challenge can be considered by the reviewing court with all necessary dispatch.

a. Subject Matter Jurisdiction re: Single-Subject Challenges to SB23-303 and Proposition HH

In *Polhill*, the Supreme Court of Colorado held that "courts lack subject matter jurisdiction to review a legislative referendum for compliance with the single-subject requirement of the Colorado Constitution unless and until it has been approved by the voters." 923 P.2d at 121. The Supreme Court was considering a challenge to a referendum proposed under Colo. Const. Art. XIX, § 2(3), which generally governs amendments to the Colorado Constitution and which subsection specifically forbids multiple subjects and unclear titles on measures submitted by the general assembly to the voters through referenda. The language quite closely parallels that of Colo Const. Art. V, § 21.[3] That the Supreme Court was considering a challenge under Colo. Const. Art. XIX, § 2(3) is of no moment, however, as the Supreme Court's rationales underlying its holding are equally applicable to the nearly identical Art. V, § 21.

The *Polhill* Court noted the "strong tradition" which requires that courts refrain from interfering with the ongoing legislative process except in extraordinary circumstances. 923 P.2d at 121; see also *Id*. at 122 (discussing separation of powers principles which counsel against a court

[3] *Compare* Colo. Const. Art. XIX, § 2(3) ("No measure proposing an amendment to this constitution shall be submitted by the general assembly to the registered electors of the state containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be expressed.") *with* Colo. Const., Art. V, § 21 ("No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.").

invading domains subject to legislative control and judgment in order to supervise the legislative process while law remains in gestation). As such, jurisdiction to review pending legislation exists only in limited circumstances, where conferred by constitutional provision or enabling statute. *See Id.*; see also *Bd. of Cty. Com'rs of Cty. of Archuleta v. Cty. Rd. Users Ass'n*, 11 P.3d 432, 439 (Colo. 2000) (distinguishing *Polhill* because the authority to propose the initiative at issue was provided for by County Sales Tax Act, not general constitutional reservation of initiative and referenda powers). The *Polhill* Court found that Art. XIX, § 2(3) did not itself confer jurisdiction and that C.R.S. § 1-40-107 provided jurisdiction for pre-election review of citizen initiatives, but not legislative referenda. 923 P.2d at 121.

Likewise, this Court finds that Art. V, § 21 does not itself confer jurisdiction to consider a single-subject challenge to a referendum, nor is the Court aware of any applicable statutory conferral.[4] As the *Polhill* Court found that Art. XIX, § 2(3) did not itself provide a conferral, and its language is nearly identical to Art. V, § 21, so too does this Court find that Art. V, § 21 does not provide for jurisdiction for such challenges.[5]

The *Polhill* Court also noted that, in certain circumstances, equity may provide a basis for jurisdiction where no adequate remedy is available to right the alleged wrong. 923 P.2d at 122. However, the *Polhill* Court declined to find that equity provided jurisdiction to consider a single-subject challenge to pre-election referendum where an adequate post-election remedy (invalidation of the referendum) was available, specifically noting that such a remedy was available under Art. V, § 21 (and, by extension, Art. XIX, § 2(3)). See fn. 4, *supra*. As such, Plaintiffs, here, have an adequate remedy available to them, post-election.

b. Subject Matter Jurisdiction under C.R.S. § 1-11-203.5 and Colo. Const., Art. V, § 1(5.5)

Plaintiffs contend that subject matter jurisdiction to consider their single-subject challenge to Proposition HH exists under C.R.S. § 1-11-203.5 and pursuant to Colo. Const., Art. V, § 1(5.5). See Plaintiffs' Answer Brief, pp. 6-9. The Court disagrees. However, the Court finds that limited jurisdiction is available under C.R.S. § 1-11-203.5 to consider the clear title challenge to Proposition HH where the remedy is reformation.

[4] The Court will discuss the limits of the jurisdiction conferred by C.R.S. § 1-11-203.5 in Section I(b), *infra*.

[5] The virtual identity of these two provisions was noted by the *Polhill* Court. In finding that challengers would have an adequate post-election remedy for a passed referendum that violated the single-subject requirement of Art. XIX, § 2(3), the *Polhill* Court noted that "the language of Article XIX, § 2(3) is also found in Article V, § 21, of the Colorado Constitution…[and] that language has not been found to limit the remedy which may be imposed if a bill is found to violate the single-subject requirement." 923 P.2d at 121-22.

First, regarding C.R.S. § 1-11-203.5, Plaintiffs argue that jurisdiction is available thereunder to hear "all election contests arising out of a ballot issue or ballot question concerning the order on the ballot or the form or content of any ballot title." Plaintiffs' Answer Brief, p. 7. They contend that their challenge to Proposition HH is precisely that: a challenge to the form and content of Proposition HH's title. *Id*.

C.R.S. § 1-11-203.5(1) provides that "all election contests arising out of a ballot issue or ballot question election concerning the order on the ballot or the form or content of any ballot title shall be summarily adjudicated by the district court." The statute, thus, contemplates a limited class of challenges arising out of a ballot issue or ballot question; namely, those concerning: 1) "the order on the ballot" or 2) "the form or content of any ballot title." *Id*. If a court, reviewing a challenge pursuant to this section, finds that the order of the ballot or the form or content of the ballot title does not comply with constitutional or statutory requirements, then the court must correct the ballot title or correct the order of the measures to be placed upon the ballot. *Id*. at -203.5(3).[6]

Read together, the most natural reading of the statute is that it is one which concerns itself with challenges to the language used in a ballot title, and not the substance of a ballot question, with a limited remedy of reformation to a nonconforming title. See *Cacioppo v. Eagle Cty. Sch. Dist. Re-50J*, 92 P.3d 453, 464 (Colo. 2004) (noting that the "form or content of the ballot title…refers only to the heading of the ballot issue and the question presented to the voters."). It is a limited grant of jurisdiction to consider a narrow issue with limited available remedies. It necessarily presupposes that a ballot title *can* be reformed to comply with statutory and constitutional requirements; in other words, it assumes that the ballot issue complies with matters such as the single-subject requirement. Challenges, such as Plaintiffs', to a ballot issue, which are predicated on the assumption that a ballot issue violates the single subject requirement (and thus assume a title cannot be properly formulated) are beyond the contemplation of C.R.S. § 1-11-203.5. The *Cacioppo* Court made such clear when it found that "a matter involves the substance of a ballot issue [and is therefore not subject to C.R.S. § 1-11-203.5] if it relates to the language in the ballot title itself…and if it such that it would be legally impossible for the court adjudicating the ballot title contest to reform or reword the ballot title as – contemplated by statute – to any constitutionally or statutorily acceptable level. Stated differently, the contest involves the substance of the ballot issue if, regardless of any contest filed before the election, the ballot issue as approved cannot be upheld under the laws or constitution of the state." 92 P.3d at 465. In short,

[6] As Plaintiffs do not challenge the order of the ballot, the Court disregards this provision in its forthcoming analysis.

"if the claim alleges that the ballot issue as passed," or here, as proposed, "cannot stand under the laws of this state, it is substantive in nature." *Id*.

This is precisely the nature of the single-subject challenge Plaintiffs now assert. See Plaintiffs' Opening Brief, p. 15 ("Because Proposition HH violates the Single Subject Requirement, there necessarily is no title that can be set for the measure and therefore may not be submitted to the voters for their approval."). The Court agrees with Plaintiffs that the issue in *Cacioppo* was not a single-subject challenge but disagrees with the contention that the holding is therefore no barrier to this Court's jurisdiction. The *Cacioppo* Court held, broadly, that substantive challenges to a ballot issue are not covered by C.R.S. § 1-11-203.5 and established a standard for determining when a challenge is substantive. In this Court's view, Plaintiffs' single-subject challenge clearly meets the standard for a substantive challenge to a ballot issue as set forth in *Cacioppo*.[7] As such, C.R.S. § 1-11-203.5 does not apply, and any jurisdiction conferred thereunder does not reach Plaintiffs' single-subject challenge. See also *Campbell v. Buckley*, 203 F.3d 738, 747 (10th Cir. 2000) (rejecting equal protection challenge to title setting procedure on the basis that legislative bills cannot be subject to a single-subject challenge before being passed into law whereas citizen initiatives can be subject to such a challenge before a petition is even circulated).

Second, Plaintiffs contend that subject matter jurisdiction is provided by Colo. Const., Art. V, § 1(5.5), which provides that "no measure shall by proposed by petition containing more than one subject, which shall be clearly expressed in its title" and that "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 poll."

Plaintiffs are mistaken. Colo. Const. Art. V, § 1(5.5) applies to initiatives, not referenda. The language of the provision itself refers to measures proposed "by petition," and while the

[7] The Court has considered *Busse v. City of Golden*, 73 P.3d 660 (Colo. 2003) and finds that it does not compel the conclusion that a single-subject challenge to a ballot issue is a challenge to the form or content of a ballot title. In *Busse*, the plaintiff argued that a referred local ballot issue was "invalid because it included multiple, separate purposes on a single ballot title." 73 P.3d at 662. The *Busse* Court held, in cursory fashion, that "Plaintiff's argument that the ballot issue was invalid because it contained multiple purposes is clearly a challenge to the form or content of the ballot title." *Id*. at 664. To further compound the confusion, the *Busse* Court also stated that "plaintiff's claim that Referred Issue 2A is invalid because it includes four separate purposes…[is] a challenge to the content of the ballot itself on the basis of multiple subjects," and is therefore subject to C.R.S. § 1-11-203.5's statute of limitations. *Cacioppo*, which considered the application of C.R.S. § 1-11-203.5 in greater detail, provides greater guidance to this Court concerning the statute in distinguishing between challenges to the title of a ballot issue itself and challenges to the substance of a ballot issue which, necessarily, implicate the title, and as such, is the most applicable. To the extent *Busse* and *Cacioppo* conflict and are not reconcilable, *Cacioppo* controls. See *Parker v. Plympton*, 273 P. 1030, 1034 (Colo. 1928) ("Where decisions are conflicting, the latest govern."), *superseded by rule on other grounds as stated in Klipp v. Grusing*, 200 P.2d 917 (Colo. 1948).

People, by petition, can place a referendum on the ballot,[8] a referred measure, as is at issue here, is not referred "by petition." Further, the provision provides that, where a petition violates the single subject requirement and a ballot title expressing a single subject cannot be set, "the measure may be revised and resubmitted for the fixing of a proper title without the necessity of review and comment on the revised measure in accordance with subsection (5) of this section." Subsection (5) of Art. V, § 1 requires that "the original draft of the text of the proposed initiated constitutional amendments and initiated laws" be submitted for review and comment; which is to say, it applies to initiatives, not referenda. It would be nonsensical for subsection (5.5) to exempt noncomplying referenda from a procedure to which they are already not subject. Plainly, Art. V, § 1(5.5) does not govern referenda. See also *Campbell*, 203 F.3d at 747 n. 57 (noting that "the single subject requirement for *citizen initiatives* is found at Colo. Const. Art. V, § 1(5.5)" and that "general assembly bills as well as constitutional amendments proposed by the general assembly and submitted to the electorate are also subject to a single subject requirement" under Art. V, § 21 and Art. XIX, § 2(3)."") (emphasis added); see also C.R.S. § 1-40-106.5(1)(a) (providing that "Section 1(5.5) of article V…require[s] that every…law proposed by initiative…be limited to a single subject, which shall be clearly expressed in its title.").

As such, the Court concludes that Colo. Const. Art V., § 1(5.5) provides no jurisdiction for the Court to consider Plaintiffs' single subject challenge to either SB23-303 or Proposition HH.

c. Subject Matter Jurisdiction re: Challenges to Provisions not Contingent upon Voter Approval of Proposition HH

As previously mentioned, Plaintiffs contend that SB23-303 "is law today and subject to judicial review" because it has been approved by the general assembly and signed by the Governor, and that because "critical parts of the bill are 'effective' upon passage" (*i.e.* not upon approval of Proposition HH), their challenge is ripe. Plaintiffs' Answer Brief, p. 2.

Plaintiffs point to Section 23 of SB23-303, which provides that: "(1) except as otherwise provided in subsection (2) of this section, this act takes effect only if a majority of voters approve the ballot issue referred…enacted in section 3 of this act." SB23-303, p. 47. Subsection (2) of Section 23 provides that section 3, section 39-1-104.2(3.7) contained within section 9, section 39-3-210(1)(a.3), (1)(e), and (2.5) as provided for in section 14, section 18, section 23, and section 24 are effective upon passage. The matters contained within those sections are as follows:

[8] See *Campbell*, 203 F.3d at 740 ("An initiative is placed on the ballot after the proponent secures by petition the required number of signatures by registered electors. A referendum similarly may be placed on the ballot by circulating a petition, or may be placed on the ballot by the general assembly.").

- Section 3 of SB23-303: section 3 of SB23-303 is the part of the legislation which submits Proposition HH to the voters. See SB23-303, pp. 3-7; see also SAC, ¶ 10.

- Section 39-1-104.2(3.7) as contained within section 9: this section of SB23-303 provides for the amendment of existing law or the addition of new provisions to existing law, including subsection (3.7). Subsection (3.7) itself directs the creation of a "working group" to consider and make recommendations about ways to streamline and improve the designation of the primary residence real property in the event that voters approve Proposition HH. See SB23-303 pp, 18, 21-22.

- Section 39-3-210(1)(a.3), (1)(e), and (2.5) as provided for in section 14: this section of SB23-303 likewise provides for the amendment of existing law or additions thereto, including the sections detailed above. These additions concern: clarifying that the term "county" as used includes a city and county (see (1)(a.3)); that the term "municipality" as used means a home rule or statutory city, town, or territorial charter city (see (1)(e)); and a reporting requirement for the covered treasurers to report certain estimates to the administrator for all local government entities within their county, some of which are conditioned upon the adoption of Proposition HH (see (2.5)). See SB23-303, pp. 36, 38-39.

- Section 18: this section of SB23-303 imposes an obligation on the executive director to calculate the amount of the identical individual refund under certain provisions and also the amount of the refund allowed for each income classification under C.R.S § 39-22-2003(3) for the taxable year commencing during the fiscal year based on the amount of excess state revenues that will be refunded under C.R.S. § 39-3-210, to be repealed July 1, 2024. See SB23-303, pp. 44-45.

- Section 23: this section of SB23-303 conditions the efficacy of most of SB23-303 on the approval of Proposition HH, with the exceptions discussed above. See SB23-303, p. 47.

- Section 24: this section of SB23-303 is the safety clause[9] of the bill. See SB23-303, pp. 47-48.

[9] Colo. Const. Art. 5, § 1(3) provides for the power of referendum, which may be ordered "except as to laws necessary for the immediate preservation of the public peace, health, or safety." The general assembly has the exclusive authority to determine whether a law is necessary for the immediate preservation of the public peace, health, or safety. *American Constitutional Law Foundation, Inc. v. Meyer*, 120 F.3d 1092, 1096 (10th Cir. 1997), *citing Van Kleeck v. Ramer*, 156 P. 1108, 1110 (Colo. 1916). When the general assembly attaches a safety clause to a law, a referendum is precluded. *Id.*

A review of the foregoing reveals that Plaintiffs' characterization of these sections as being "critical parts" of the bill is a bit of a stretch. Indeed, it is telling that the individual challenges raised by Plaintiff in their comprehensive complaint and briefing do not concern any of these issues, individually.[10] Section 3 is the part of the bill which puts forth the referendum; it would be untenable to read *Polhill* as disallowing a challenge to referenda on single-subject grounds but allowing a challenge to the section of the bill which operates to put forth a referenda on precisely the same grounds. Likewise, Section 23, which conditions the efficacy of the bulk of the bill on approval of the referendum, and Section 24, which is a boilerplate safety clause, does not open the door to substantive consideration of the referendum itself prior to voter approval. To allow such procedural and structural provisions to open the door to the substance of what *Polhill* prohibited would be to read *Polhill* out of existence entirely.

The remaining sections (*i.e.* Sections 18, parts of 14, and parts of 9) create data-generation, consulting, and reporting obligations concerning fiscal data and policy, regardless of the approval of Proposition HH, subjects which do not constitute a part of Plaintiffs' challenge. To the extent this Court has subject matter jurisdiction to consider challenges to such provisions, the Court finds that Plaintiffs have not carried their burden to overcome the presumption of constitutionality of such provisions beyond a reasonable doubt.

In short, the fact that certain provisions of SB23-303 are currently active and in effect does not allow the Court to pry open the gates shut by the *Polhill* court, where the currently active provisions are procedurally-enabling sections or which otherwise concern ancillary details such as data generation, particularly where such provisions have not been placed at issue by the Plaintiffs and where Plaintiffs have thus failed to carry their burden to show that such provisions are unconstitutional beyond a reasonable doubt. To do so would be to disregard those august concerns discussed in *Polhill* and impermissibly circumvent the limitations they impose, justified on the most anemic of bases.

d. Subject Matter Jurisdiction re: Clear Title Challenges to SB23-303 and Proposition HH

Regarding Plaintiffs' clear title challenge to SB23-303, the Court finds that it lacks subject matter jurisdiction to consider such a challenge for the same reasons it lacks subject matter jurisdiction to consider a single subject challenge. The constitutional requirement for clear title is

[10] In Plaintiffs' own words, "the substance of SB23-303 is at stake in Proposition HH," and that "only" those provisions discussed above remain effective without the approval of Proposition HH. Plaintiffs' Opening Brief, p. 11, p. 11 n. 5.

found alongside the requirement for a single subject matter in Colo. Cont. Art. V, § 21, which itself confers no jurisdiction to hear a pre-election challenge. Likewise, C.R.S. § 1-11-203.5 provides no jurisdiction to hear a challenge to a bill title. In short, because SB23-303 is predominantly contingent on voter approval of the referred measure, and Plaintiffs' challenge arises out of those portions which are explicitly conditioned on such approval, any ruling by this Court on the bill's title would constitute an impermissible advisory opinion and trespass into the legislative domain to prematurely "superintend" obligations which are theirs to discharge.

The State, and this Court, agree, however, that limited jurisdiction exists to consider reformation of the title of the ballot issue under C.R.S. § 1-11-203.5 to the extent it can be done without considering the constitutional substance of Proposition HH.

II. Reformation of the Ballot Title Under C.R.S. § 1-11-203.5

Plaintiffs challenge the title of Proposition HH on multiple fronts. First, they contend that the title is so misleading that it amounts to a denial of due process. See SAC, ¶ 59. More concretely, they contend that the ballot title: a) fails to provides for specific rates of property tax changes, revenue reductions, or increased appropriations; b) does not explain that "backfilled" funds would not stop at revenue replacement; c) does not mention the compounding TABOR cap reform which, they contend, permanently alters the TABOR formula; d) describes excess revenue under TABOR as "surplus funds" without explaining that such funds would otherwise by refunded; e) does not adequately explain the local government opt-out provision; f) does not advise voters of the rent-assistance appropriation; and g) inaccurately states that funds will be used for "school districts," rather than the state education fund. SAC, ¶ 62. Plaintiffs also contend that the title expresses more than one subject (SAC, ¶ 63), that the title is misleading because it is exempted from C.R.S. § 1-40-106(3)(d) (SAC, ¶ 65), that the title is misleading because it "re-defines" excess TABOR revenue as a "state surplus" (SAC, ¶ 66), that the title fails to comply with C.R.S. § 1-40-106(f) (SAC, ¶ 67), and that the title fails to comply with C.R.S. § 1-40-106(g) (SAC, ¶ 68). Plaintiffs also contend, in their Opening Brief, that Proposition HH violates the clear title requirement because it does not alert the voter to the fact that the efficacy of HB23-1311 depends on their approval of Proposition HH. See Plaintiffs' Opening Brief, p. 17; *Cf.* SAC, ¶¶ 41, 42 (alleging that Proposition HH violates the single-subject requirement because HB23-1311 is conditioned on approval of Proposition HH).

A due process challenge is a substantive challenge which the Court lacks jurisdiction to entertain, as is the single-subject challenge. Challenges to the title under C.R.S. § 1-40-106(f), (g) appear to have been abandoned by Plaintiffs as they are not discussed in their Opening Brief. Regardless, such provisions are applicable to titles set by the Title Board as to proposed initiatives,

not referred measures. See *Matter of Title, Ballot Title and Submission Clause, and Summary Adopted Feb. 10, 1992 by Title Setting Review Board and Pertaining to a Proposed Initiative for an Amendment to Article XVI, Section 5, Colorado Constitution, Entitled "W.A.T.E.R."*, 831 P.2d 1301, 1306 (Colo. 1992).

The Court considers whether Proposition HH's title is misleading in such a way that it can be reformed. See *Cacioppo*, 92 P.3d at 466 (challenge appropriate where challenge refers to "wording and order of ballot title and not to the substance of what voters can approve," and where reviewing court could have reworded title to conform to constitutional requirement).

As previously mentioned, in the matter of titles, particularity is neither necessary nor desirable. *Corder*, 190 P.2d at 583. So long as the subject matter is germane to the general subject expressed in the title, and is relevant and appropriate to such subject, the title will pass muster. *Id*. The means by which the general subject of the title is accomplished are germane. *People v. Montgomery*, 342 P.3d 593, 596 (Colo. App. 2014) (sentencing, parole, and probation germane to subject of lifetime supervision of sex offenders as means by which behavior of convicted sex offenders were supervised). Clear title requirements have been "uniformly construed liberally in favor of the validity of enactments." *Cole v. People*, 18 P.2d 470, 471 (Colo. 1933). In *Cole*, the Supreme Court denied a challenge to an act entitled "an Act relating to banks and bankers" predicated on the fact that the act created a new felony not mentioned in the title. Quoting *Italia America Shipping Corporation v. Nelson*, 154 N.E. 198, 199 (Ill. 1926), the *Cole* Court found that, in order to sustain a clear title challenge, the challenged provision "must be so incongruous with the title or must have no proper connection with or relation to the title" and that "if all the provisions of an act relate to one subject indicated in the title and are parts of it or incident to it or reasonably connected with it or in some reasonable sense auxiliary to the object in view, then the [clear title] provision of the Constitution is obeyed;" the term "subject" as used means "the basis or principal object of the act," which "may contain many objects growing out of and germane to it" including "any matter or thing which may reasonably be said to be subservient to the general subject or purpose." 18 P.2d at 471.

In *People v. Trozzo*, the plaintiff challenged an act entitled "An act concerning certain forms of prostitution and providing punishment for persons encouraging prostitution in violation of this act." 117 P. 150, 151 (Colo. 1911). The Court held that "the controlling provision of the title in questions is 'An act concerning certain forms of prostitution,'" with the remainder referring to "nothing which is not germane to the subject thus expressed." Likewise, in *Zeigler v. People*, the Court held that the general subject of an act entitled "An act relating to agriculture and agricultural products; providing for investigations of the business and affairs of wholesale purchasers thereof, whether under contract or otherwise; and for licensing and regulation of

purchasers of such products; to prevent unfair trade practices in connection with such products; providing penalties for the violation of this act and providing that this act may be indexed and cited as 'The Produce Dealers Act'" was "agriculture and agricultural products." 124 P.2d at 596. In *Zeigler*, the Defendant complained that he did not realize he was not exempt from the licensing provisions. The *Zeigler* Court noted that the defendant "could ascertain from the title that the act requires the licensing of dealers in farm produce and, reading through the body of the act, could observe that the exemptions do not exclude him from its operation." *Id*. at 597.

It is against this backdrop[11] that the Court considers Plaintiffs' active challenges to Proposition HH's title. Proposition HH's title is as follows:

> SHALL THE STATE REDUCE PROPERTY TAXES FOR HOMES AND BUSINESSES, INCLUDING EXPANDING PROPERTY TAX RELIEF FOR SENIORS, AND BACKFILL COUNTIES, WATER DISTRICTS, FIRE DISTRICTS, AMBULANCE AND HOSPITAL DISTRICTS, AND OTHER LOCAL GOVERNMENTS AND FUND SCHOOL DISTRICTS BY USING A PORTION OF THE STATE SURPLUS UP TO THE PROPOSITION HH CAP AS DEFINED BY THIS MEASURE?

The general subject of the title is the rebalancing of the property tax burden facing homes and businesses in the state. The title alerts the voter to the stated intent to reduce property taxes on homes and businesses without undercutting funding from sectors that rely on property taxes for funding by "backfilling" certain entities and funding school districts. The title further alerts the voter to the mechanism to accomplish the rebalancing, *i.e.* use of a portion of the state surplus, and that the details of that mechanism are as defined by the Proposition.

Much of Plaintiffs' challenge can be characterized as an objection to the lack of specificity contained in the title. For example, Plaintiffs protest that the title does not provide for the specifics of the property tax rate changes, estimated revenue reductions, or increased appropriations, does not adequately explain that "backfilling" does not stop at replacement, does not explain the TABOR cap reform, does not adequately explain that "surplus funds" would otherwise be refunded, does not adequately explain the opt-out provision, and does not alert voters to the rent-assistance appropriation. See SAC, ¶ 62. The remaining challenges may be more aptly characterized as based on allegations that the title is misleading, by inaccurately stating that funds

[11] Which is to say, a presumption in favor of the validity of the title, and a requirement only that a general subject matter be expressed and that all manner of incidental, auxiliary, or necessary subjects may be contained within the law without needing to be expressed in the title, so long as they are germane and congruous to the general object therein expressed.

will be used for school districts instead of the education fund, because the title is exempt from C.R.S. § 1-40-106(3)(d), and because the title "re-defines" excess TABOR revenue as a "state surplus." See SAC, ¶¶ 62, 65, 66.

Regarding the challenges based on the alleged lack of specificity in the title, the Court rejects such challenges. A title is meant to be a title, not a summary of the specifics of a proposition. Particularity is neither necessary nor desirable when it comes to the title. The title exists for the purpose of alerting the reader to the general object of the proposed legislation, and it is not improper for it to decline to delve into specifics. See, *e.g.*, *Zeigler*, 124 P.2d at 597 (title indicated licensing regime was contemplated by act, and defendant could observe that he was not exempted from operating of the licensing requirement by reading through the body of the act); see also *In re Breene*, 24 P. 3, 4 (Colo. 1890) ("It is not essential that the title shall specify particularly each and every subdivision of the general subject."). Thus, objections to the lack of specifics concerning rate reductions and revenue projections, the mechanics of the "backfilling" mechanism and the TABOR cap, the opt-out provision, and the rent-assistance appropriation, are not well-taken. "The general assembly may, within reason, make the title of a bill as comprehensive as it chooses, and thus cover legislation, relating to many minor but associated matters." *In re Breene*, 24 P.3d at 4; see also *Rinn v. Bedford*, 84 P.2d 827, 829 (Colo. 1938) (denying clear title challenge to act entitled "An Act providing for additional public revenue" because such a title "has the prime merit…of being general and comprehensive, rather than being excessively analytical or constituting a mere catalogue or list of subtitles or secondary subject," and holding that "matter of providing in detail the process of collecting additional revenue is clearly included within, and germane to, the connotation of the title."). The current title alerts readers to the general object to be accomplished by the proposed law, and those concerned with the specifics are more than capable of reading the body of the proposition. While, of course, a title may not be so vague as to require a voter to read the body of the proposition to determine its general object, it does not follow that the title must be so specific as to relieve the voter entirely of reading the bill to understand the precise nature of the manner in which the general object is to be obtained.

The Court likewise does not find the title to be misleading. First, the title is not misleading because it is exempt from C.R.S. § 1-40-106(3)(d). Plaintiffs, having ignored the subject entirely in their briefs, present no basis for their contention that a Proposition cannot be exempted from the requirements of C.R.S. § 1-40-106(3)(d). The Court therefore finds that Plaintiffs have not shown that the title is unconstitutionally in need of reformation for being so exempted. Nor is the title unconstitutionally misleading because it refers to excess TABOR revenue as a "state surplus." The context of the usage of the term makes clear the matter in question concerns "funding" for government entities, which predominantly rely on taxes for such funding. Thus, an ordinary intellect could discern that the "state surplus" relates to the amount of taxes which are in excess of

the amount required to finance government enterprises, which ordinarily would be refunded. While the Court appreciates that the title could, perhaps, do more to make this clear, it is not the role of the Court to "superintend" the responsibilities of the legislature in setting titles, nor is it the purpose of review under C.R.S. § 1-11-203.5 to allow this Court to substitute its judgment as to the title unless and until it is shown that the title is unconstitutionally infirm. The term "state surplus" is not so obscuring as to mislead a voter of ordinary intellect such that the Court feels it necessary to intercede. Finally, the title is not misleading because it refers to funding "school districts" instead of the general education fund. Again, Plaintiffs did not discuss this issue in their Opening or Answer Briefs, and as such, have failed to demonstrate its impropriety. Regardless, the Court does not find that referring to funding "school districts" is misleading because such funds are placed into the general education fund created by Colo. Const., Art. IX, § 17. The spending of money in that fund is expressly limited by the terms of the constitutional amendment which created it, and it would not be unconstitutionally duplicitous to characterize the use of money in this education fund as "fund[ing] school districts."

Concerning HB23-1311, the Court does not find that the failure of Proposition HH's title to alert readers to the fact that HB23-1311 is conditioned on approval of Proposition HH renders the title unconstitutionally unclear. Proposition HH, itself, does not concern itself with HB23-1311; its conditional nature is a consequence of its own provisions. In other words, Proposition HH, itself, does not presume to create the conditional nature of HB23-1311, and as such, is not an object of the ballot issue which must be disclosed in the title. Plaintiffs provide no support for the proposition that a ballot title must disclose the impact it may have on the implementation or efficacy of other laws, and the Court has likewise found none. Given that, the Court finds that Plaintiffs have failed to demonstrate the impropriety of Proposition HH's title for this supposed failure.

Lastly, challenges predicated on "convention" or requirements for initiative titles are neither here nor there. Convention is not requirement, so long as the departure therefrom is not so egregious as to amount to a fraud or deception upon the reader, and the Court declines to bind a current legislature to the practices of those past where such practices have not been reduced to binding statutory or constitutional requirements. Further, title requirements for citizen initiatives need not be paralleled by those applicable to legislative referenda. See *Campbell*, 203 F.3d at 748 (rejecting equal protection challenge to disparate standards for citizen initiatives and legislative actions because citizens and legislatures are not similarly situated classes with respect to the circumstances of the issue).

In short, the Court declines to reform the title of Proposition HH as it currently stands. The title alerts the reader to the general object to be attained by the proposed legislation: reducing

property taxes and making up the difference with excess revenues. All that is required of a title is a clear, general object; specifics need not be presented. The Court perceives no deception rising to a level as cannot be countenanced by the constitution, given the presumption in favor of validity of legislative acts and the heavy burden associated with overcoming such a presumption.

III. Consideration of the Merits of Plaintiffs' Challenges

To be clear, the Court finds that it lacks subject matter jurisdiction to consider the bulk of Plaintiffs' challenges, as outlined above. Typically, the Court would go no further, and not consider the merits of the challenge in light of the lack of jurisdiction. See, *e.g.*, *Polhill*, 923 P.2d at 122 ("Because we hold that the courts do not have jurisdiction…we do not decide whether SCR 95-2 encompasses a single subject."). However, given that the parties have fully briefed the merits of the challenge, and given the extraordinary time crunch[12] facing the parties, the Court finds it prudent to consider the merits to account for the possibility that its jurisdictional analysis is mistaken, so as to ensure that all issues are properly presented to a reviewing court, should any party seek further review, for the purposes of the rapid disposition of the merits of the challenge and the avoidance of any needless delay in resolving the questions put forth by Plaintiffs.

a. Single-Subject Challenges

Plaintiffs contend that SB23-303 violates the single subject requirement as SB23-303 contains at least four subjects, including: 1) a reduction in property tax assessment rates; 2) a request for voter approval for the retention of funds for other expenditures in an amount greater than necessary to offset the loss; 3) an appropriation of an amount of funds to be used for tenant rent relief; and 4) a change in TABOR refunds. See SAC, ¶ 31. Plaintiffs contend that Proposition HH violates the single subject requirement on the same grounds, as well as violating the single subject requirement by virtue of the fact that a previously passed bill, HB23-1311, will go into effect only if Proposition HH is approved. See SAC, ¶¶ 39, 41.

The Court does not find that SB23-303 and, by extension, Proposition HH, violate the single-subject requirement on the grounds articulated by Plaintiffs. Again, the Court is starting from a strong presumption of constitutional validity and considers such challenges in light of the liberal construction that must be afforded to the requirements of Colo. Const. Art. V, § 21. The single subject requirement is satisfied "so long as the matters encompassed in [a piece of legislation] are necessarily or properly connected to each other rather than disconnected or

[12] The Court, again, notes the deadline by which ballot issues must be certified is approximately three months from the date of this order. See fn. 1, *supra*.

incongruous." *Montgomery*, 342 P.3d at 596. The Court finds that the matters complained of are necessarily or properly connected with each other in light of the object of the legislation.

As previously mentioned, the object of the legislation is to afford property tax relief to homes and businesses without undercutting the funding of entities that rely on such tax income. One could fairly argue that reducing taxes *and* shoring up the financial shortfall are two separate subjects, but the Court does not believe that they are so "disconnected and incongruous" as to be constitutionally impermissible; they are both part of the financial balance attempting to be adjusted by the legislation.[13] The request for voter approval of the use of excess state revenue for the source of the financial backstop is a means of accomplishing the intended object, it is the mechanism by which the books are balanced, and as such, is not "disconnected or incongruous" in a constitutional sense.

But that does not completely address the full substance of Plaintiffs' challenge. Plaintiffs contend that the legislation goes beyond merely balancing the books, and affirmatively provides for a "source of additional revenue for state spending on public education" as well as an appropriation for rent relief, which Plaintiffs contend "cannot be" necessarily related to property tax relief because tenants do not pay property taxes. Plaintiffs' Answer Brief, p. 3.

It is worth briefly reviewing the mechanism by which Proposition HH would finance the property tax reduction shortfalls. First, the excess state revenues, if any, are deposited in an account. SB23-303, p. 6. Such funds must be used in a specified manner, the first of which is that whatever money is in the account be used to reimburse "local governments," (a definition which explicitly excludes school districts, see SB23-303, p. 36). SB23-303, p. 6. After such disbursement, five percent of whatever funds remain, up to a cap of $20 million, are set aside for use in a housing development grant fund to reduce the property taxes paid by renters as a portion of their rent. *Id*. The remainder is transferred to the state education fund, as constituted by Art. IX, § 17. *Id*.

The Court first considers what is, in the Court's view, the easier issue: the use of funds for rent relief. Plaintiffs contend that the rent subsidies cannot be necessarily related to property tax relief as "residential tenants do not pay property taxes – their landlords do." Plaintiffs' Answer Brief, p. 3. Plaintiffs further contend that it is no defense to say that renters indirectly pay property taxes as a portion of their rent because they will "benefit from their landlords' reduced property

[13] Indeed, even Plaintiffs seem to concede that "a dollar-for-dollar 'backfill' of local property tax revenue 'lost' because of lower assessment rates may be permissible," Plaintiffs' Opening Brief, p. 3, thereby suggesting that even they agree that lowering taxes, on one hand, and balancing the shortfall, on the other, does not constitute multiple subjects in the constitutional sense.

tax burden," and thus "the rental assistance…cannot have anything to do with reducing the (nonexistent) property-tax burden of renters." Plaintiffs' Answer Brief, p. 6.

The Court first rejects, out of hand, the notion that rental tenants "do not pay property taxes," as advanced by Plaintiffs. The Court appreciates the hyper-literal distinction advanced by Plaintiffs, but it is a distinction without a difference in the context presented by this case. Landlords invariably pass on the cost of their property taxes to their tenants when setting their rental rates. Thus, in the most real and practical sense, renters pay property taxes. And while the Court is fully willing to credit Plaintiffs' argument, predicated on either (or both) the good faith of landlords and the invisible hand of the market, that landlords will pass on their property tax savings to their tenants in the form of reduced rental rates, it does not necessarily follow that rental subsidies, therefore, "cannot have anything to do" with the property tax burden of renters. Rental subsidies will afford a practical relief to renters of the kind shared by their home-owning compatriots. Simply because some, or even all, landlords may pass on their property tax benefits to their tenants in the form of reduced rent does not mean that renters would not also experience a similar benefit through rent subsidies. Perhaps the legislature, in its calculus, determined that both the anticipated pass-through property tax reduction benefits and rent subsidies combined constitutes the appropriate level of relief for renters. Or perhaps the legislature was unwilling to rely on landlords to pass on the benefits of the property tax reduction to their tenants and desired a more direct form of relief, over which the state exercised more control. It matters not, as the Court's role is not to displace the legislature's judgment as to whether an object is accomplished,[14] but to determine whether the parts of the proposed legislation are germane or a necessary incident to the general object. Rental subsidies are a means to accomplish the goal of property tax relief as it applies to renters, and as such, are not so disconnected and incongruous from the object of the legislation as to offend the constitution.

Regarding the transfer of excess funds to the education fund in an amount which may exceed the loss occasioned to schools by the proposed property tax reductions, the Court does not find that such a circumstance constitutes a separate subject from the general object of the legislation. The Court notes that funds in excess of the loss will only be realized if the retained surplus is greater than the combined value of the local government entity backfill, the rental assistance set-aside, and the backfill for the loss to school districts from the property tax reduction.[15] To the extent that the legislation results in a "reserve fund" accruing in the education

[14] Which is to say, it is not for the Court to decide that the object of SB23-303 is fully accomplished by a single mechanism and invalidate all others which may work towards the same goal.

[15] Plaintiffs contend that SB23-303 is projected to "result in an additional $72 million in state funding to public education [in 2023-24]," which "jumps to $128 million" in 2024-25, and "increases further to $269 million" in 2025-26. Plaintiffs' Answer Brief, p. 5. Plaintiffs draw these figures from the Revised Fiscal Note for SB23-303, attached as Appendix D to their Answer Brief. The Court does not share their reading of the Fiscal Note. Rather, the fiscal

fund, the Court does not find that this offends the single subject requirement. Securing financing to effect a program is plainly germane to the program, and to the extent a reserve fund might be created from which the education backfill could be financed in lean years, that seems to this Court to be a necessary or appropriate incident to securing financing. The existence of a reserve fund, from which the state can backfill school district losses occasioned by the reduction in property taxes in years for which the designated surplus funds from that year cannot offset the loss, is not unconstitutionally disconnected or incongruous from the purpose of the legislation. Conceptually, it is no different from a person whose income is commission-based setting aside a little extra money during good months so that he or she can afford to pay his or her bills during the bad; it is simply a practice incident to sound finance. As such, it does not seem to this Court to be disconnected or incongruous from the subject of the legislation, as it is merely a means to effect their chosen financing method in light of future uncertainties.

Lastly, the Court considers Plaintiffs' argument that HB23-1311's operation being conditioned on approval of Proposition HH causes Proposition HH to violate the single subject requirement. In short, Plaintiffs contend that, because HB23-1311 will not go into effect if voters reject Proposition HH, Proposition HH therefore functions "as a referendum" on HB23-1311 and, as such, incorporates an additional subject matter not properly connected to the subject matter of Proposition HH. The Court rejects this argument.

The Court acknowledges that the argument has, at first blush, plausible merit, but subsequent consideration reveals the argument's failings. The Court notes that Plaintiffs have not provided any case law, despite the multiplicity of state constitutions with single-subject requirements, shedding light on the precise question; nor has the Court's own search yielded any results of its own. It seems untenable to the Court, however, to find that conditional legislation violates the single-subject requirement, even where the subjects are not necessarily related.

There can be no question that conditional legislation is an appropriate exercise of legislative power, so long as it does not improperly devolve the legislative function. See *Marshall Field & Co. v. Clark*, 143 U.S. 649, 683 (1892) ("We can see no sufficient reason why the legislature should not exercise its discretion…either expressly or conditionally, as their judgment should direct.").[16] Plaintiffs' invitation to the Court to invalidate legislation because a separate act

note provides that the state will transfer $72 million in 2023-24 to the education fund, from which schools will be backfilled, and that transfers for 2024-25 and 2025-26 from surplus revenue are estimated to be $124.9 million and $269 million, respectively. See Revised Fiscal Note SB23-303, p. 8. These numbers are not estimates of the net gain to the education fund.

[16] Most typically, challenges to conditional legislation are argued on the basis that the condition is made dependent on the discretion of a person or persons who are not permitted to exercise legislative authority, and that by relegating the determination of the condition to their discretion, the legislature has impermissibly delegated its authority to an

conditioned its effectiveness upon the legislation's approval asks the Court to exercise an unwarranted degree of interference in the legislative function. A finding that conditional legislation, in the circumstances present here, violates the single-subject requirement would either prohibit the passing of conditional legislation or prohibit the adoption of new legislation which had the effect of triggering conditions in legislation already existing. The single-subject requirement was not meant to impede the operation of government; it is intended to prevent logrolling and the passage of "unknown and alien subjects, which might be coiled up in the folds of the bill." *In re Breene*, 24 P. at 3-4. But the conditional nature of HB23-1311 is not "coiled up in the folds" of Proposition HH, it is openly expressed in a separate bill, which was itself approved on its own merits, conditional provision and all. It seems absurd to find that Proposition HH, which, by its terms, does not concern itself with HB23-1311, should be rendered unconstitutional because a separate piece of legislation openly set a condition on its own efficacy. Under such circumstances, the Court fails to perceive how declaring Proposition HH unconstitutional would further the purposes of the single-subject requirement; such a declaration would rather seem to have the effect of obstructing the ability of the legislature to pass conditional legislation, which is not the purpose of the constitutional requirement.

b. Clear Title Challenges

Lastly, the Court considers Plaintiffs' clear title challenges to SB23-303 and Proposition HH. Plaintiffs allege, in their SAC, that both SB23-303's title and Proposition HH's title violate the clear title requirement,[17] but in their Opening Brief, Plaintiffs advance arguments concerning only the title of Proposition HH. See Plaintiffs' Opening Brief, pp. 15-18; Plaintiffs' Answer Brief, pp. 10-15. It may be that Plaintiffs' contention is that SB23-303 violates the clear title requirement through the title of Proposition HH, contained within. The SAC suggests that this is not the case, however, and the Court notes that Section I of Plaintiffs' Argument in their Opening Brief is entitled, in part "Proposition HH and SB23-303 Violate the Colorado Constitution's Single Subject and Clear Title Requirements." But, again, no argument is advanced on the subject. The Court therefore considers only whether Proposition HH's title violates the clear title requirement, as Plaintiffs have either abandoned their challenge to SB23-303's title or have failed to carry their burden to show its impropriety by virtue of their silence on the subject.

improper party to "make" the law, by virtue of having control over the condition precedent. See, *e.g.*, *Marshall*, 143 U.S. at 692-93 (challenge to act of Congress requiring the President to issue a proclamation when certain trade conditions by foreign countries were found by him to be unequal and unreasonable, which would trigger trade suspensions); *Amalgamated Transit Union Local 587 v. State*, 11 P.3d 762, 797 (Wash. 2000) (collecting cases from states with no reserved legislative powers to the people or initiative/referenda powers which have found that conditioning legislation on statewide voter approval constitutes improper delegation of legislative authority).

[17] See SAC, ¶¶ 43-50, 62-60, 76, 77.

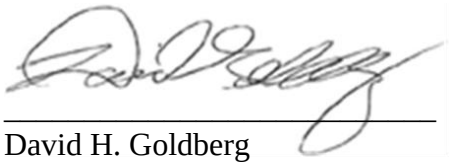
Turning to the title of Proposition HH, the Court finds that the title does not violate the constitutional clear title requirements. The Court's analysis, as set forth in Section II, *supra*, is applicable, as Plaintiffs' challenge to the title under C.R.S. § 1-11-203.5 was fundamentally predicated on the constitutional clear title requirement. In short, the title alerts the reader to the general object of the proposed legislation. The matters of which Plaintiffs complain are incidents, or means, to the accomplishment of that objective, and as such are germane to the general object. The title is not so vague or obscure as to force the reader to delve into the body of the proposed legislation to determine the general object, nor does interpretation of the title require any sort of superior intellect or rhetoric to divine the nature of the proposition. The Court therefore finds that Plaintiffs have not shown the title of Proposition HH to be unconstitutional.

CONCLUSION

For the reasons stated above, the Court DENIES Plaintiffs' requested relief.

SO ORDERED on this 9th day of June, 2023.

BY THE COURT:



David H. Goldberg
District Court Judge