

<p>SUPREME COURT STATE OF COLORADO</p> <p>2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED May 13, 2025 3:16 PM</p>
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2024) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2025-2026 # 47</p> <p>Petitioners: Suzanne Taheri and Michael Fields</p> <p>v.</p> <p>Title Board: Theresa Conley, Jason Gelender, and Kurt Morrison.</p>	<p>▲ COURT USE ONLY ▲</p>
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<p>THE TITLE BOARD'S OPENING BRIEF</p>	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, I certify that:

The brief complies with the word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

☒ It contains 3,170 words.

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

☒ In response to each issue raised, the appellee must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

/s/ Lane Towery

Signature of attorney or party

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether the Title Board set a clear and accurate ballot title for Proposed Initiative 2025-2026 #47.

STATEMENT OF THE CASE AND FACTS

Proponents Suzanne Taheri and Michael Fields seek to circulate #47 to obtain the necessary signatures to place an initiative on the ballot. The measure proposes a permanent 0.2% reduction in the income tax rate beginning in tax year 2027. *See Record*, p 3.

I. Title language requirements.

The Colorado constitution requires all initiatives to contain “one subject, which shall be clearly expressed in its title.” Colo. Const. art. V, § 1(5.5) (incorporated at § 1-40-106.5). Proponents bring their challenge under the “clear title” mandate. The General Assembly has explained that the purpose of the clear title provision is to prevent “surreptitious measures,” to “apprise the people of the subject” of each initiative, and to “prevent surprise and fraud” upon voters. § 1-40-106.5(1)(e)(II). With those goals in mind, the Board is directed to “consider the public confusion” and draft titles which are “brief” and “unambiguously state

the principle” of the initiative. § 1-40-106(3)(b). In short, the “title and submission clause 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 2013-2014 #90*, 2014 CO 63, ¶ 23 (citation omitted).

In 2021, the General Assembly added a new requirement for setting ballot titles. For measures that “reduce state tax revenue through a tax change,” the ballot title must begin with specific explanatory language:

Shall there be a reduction to the (description of tax) by (the percentage by which the tax is reduced in the first full fiscal year that the measure reduces revenue) thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to (the three largest areas of program expenditure) by an estimated (projected dollar figure of revenue reduction to the state in the first full fiscal year that the measure reduces revenue) in tax revenue...?”

§ 1-40-106(3)(e) (adopted in Ballot Measure Fiscal Transparency Act of 2021, H.B. 21-1321, 2021 Colo. Sess. Laws Ch. 474, 3395–99).

The “three largest areas of program expenditure” that must be listed in the title are the three largest recipients of operating appropriations from the general fund as listed in the Joint Budget Committee’s annual appropriations report.¹ § 1-40-106(3)(i)(I). The mandatory tax-cut language “may not be considered” in determining “whether a ballot title qualifies as brief.” § 1-40-106(3)(h).

II. Initiative #47

As submitted, Initiative #47 proposes amendments to state statutes which would permanently decrease the personal and corporate income tax rates by 0.2% beginning in tax year 2027. *See* Record, p 2.

As required under § 1-40-105.5, Legislative Council staff submitted a fiscal summary—a “preliminary assessment of the measure’s fiscal impact”—upon receiving the initiative proposal. *See* Record, p 10. In it, the Legislative Council estimated, based on “current

¹ “If the ballot measure specifies the public services or programs that are to be reduced by the tax change, those public services or programs must be stated in the ballot title.” § 1-40-106(3)(e). Initiative #47 does not specify any public services or programs that would be reduced by the tax change.

forecasts for FY 2026-27” that the tax cuts would reduce the amount of TABOR taxpayer refunds, with no net impact on the amount available for the budget. *Id.*

The Title Board held an initial hearing for #47 on April 2, 2025. *Id.* at 4. The Board concluded the measure contained a single subject and, because #47 proposes a tax cut, set a title which included the mandatory tax-cut language from § 1-40-106(3)(e). *See Record*, pp 3–4; *also Hearing Before Title Board on Proposed Initiative 2025-2026 #47* (Apr. 2, 2025) at 1:48:00, available at <https://tinyurl.com/3t3dxx5k> (explaining statutory requirement). Based on a memo from the Legislative Council Chief Economist, the Board identified the three largest areas of program expenditure as “health care policy and financing, education, and higher education.” *Record*, p 3; *Hearing* (Apr. 2, 2025) at 1:45:26–1:46:40. Thus, the title as set reads:

Shall there be a reduction to the state income tax by 0.2% for the taxable years commencing on or after January 1, 2027, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to health care policy and financing, education, and higher education by an estimated \$32.2 million in tax revenue, by a change to the Colorado Revised Statutes concerning a reduction in the state income tax rate from 4.40% to 4.39% which will result in the

estimated change in income taxes owed by individuals as identified in the table that follows:

Initiative 47
Change in Income Taxes Owed by Income Category (Tax Year 2027)

Income Categories*	Current Average Income Tax Owed	Proposed Average Income Tax Owed	Proposed Change in Average Income Tax Owed + or -
\$25,000 or less	\$58	\$57	\$0
\$25,001 - \$50,000	\$758	\$756	-\$2
\$50,001 - \$100,000	\$1,897	\$1,893	-\$4
\$100,001 - \$200,000	\$4,137	\$4,127	-\$9
\$200,001 - \$500,000	\$9,248	\$9,227	-\$21
\$500,001 - \$1,000,000	\$18,028	\$17,987	-\$41
\$1,000,001 - \$2,000,000	\$26,419	\$26,539	-\$60
\$2,000,001 - \$5,000,000	\$40,671	\$40,579	-\$92

*Adjusted Gross Income reported to the federal Internal Revenue Service.

Record, pp 3–4.

Proponents objected to identifying the three largest areas of program expenditure in the ballot title because “at best it’s theoretical and interferes with clear title.” *Hearing* (Apr. 2, 2025) at 1:48:27–1:48:52. The Board reasoned that it was “obliged to follow statute,” which mandates that the title state the tax cut will reduce state revenue, and as such, reduce funding for state expenditures that include but are not limited to the three largest areas of program

expenditure, namely, here, health care policy and financing, education, and higher education. *Id.* at 1:49:07; *see also* § 1-40-106(3)(e).

Proponents moved for a rehearing on April 9, 2025. Record, pp 7–9. Despite acknowledging “the Title Board’s duty to follow laws regarding ballot title setting,” Proponents argued that the required tax-cut language in § 1-40-106(3)(e) conflicts with the constitutional requirement to set a clear title, and that the Board erred in using the statutory language. *Id.* at 7–8. Proponents explained that the title “did not even come close” to accurately describing the purpose or effect of the initiative because the Legislative Council’s fiscal summary predicted the tax cuts would reduce TABOR refunds but not the state budget. *Id.* at 8; *see also id.* at 10 (fiscal summary).

The Title Board conducted a rehearing on April 16, 2025. *Id.* at 6. Proponents argued that the title as set by the Board, “while required by statute, interferes with our clear title.” *Rehearing Before Title Board on Proposed Initiative 2025-2026 #47* (Apr. 16, 2025) at 1:58:40, available at <https://tinyurl.com/yj57yhpp>. In addition to recognizing the Title Board’s legal requirements, Proponents also acknowledged the Court

recently had affirmed a title set by the Board over proponents’ similar challenge to the required tax-cut language in § 1-40-106(3)(e). *Id.* at 2:00:34; *see also In re Title, Ballot Title, & Submission Clause for 2021-2022 #46*, 2021SA316, Order of Court (entered April 14, 2022). Finally, Proponents confirmed they did not offer any substitute language addressing any potential TABOR refund reduction, either in place of or in addition to the mandatory tax cut text. *Rehearing* (Apr. 16, 2025) at 2:02:00. The Board denied the Motion. Record, p 6.

Proponents timely initiated this Court’s review under § 1-40-107(2), arguing that the title contains “false information” and conflicts with the constitution, and asking the Court to “determine” that the title “violates the constitutional requirement to set a clear and accurate ballot title.” Pet. for Review (Apr. 23, 2025) pp 4–5.

SUMMARY OF THE ARGUMENT

The title as set by the Board is clear and accurate because it uses language required by the General Assembly to effectuate the clear title imperative. The title unambiguously and correctly describes the tax cut proposed by the initiative and is not misleading or confusing.

To the extent Proponents ask this Court to strike down § 1-40-106(3)(e) as unconstitutional, such relief is not available in this special statutory proceeding. This proceeding authorizes expedited Supreme Court review for the narrow purpose of “either affirming the action of the title board or reversing it.” § 1-40-107(2). A facial challenge to the statute cannot be pursued in this action.

ARGUMENT

I. The title set by the Board satisfies the clear title requirement.

A. Standard of review and preservation.

In the Court’s “limited review” of the Title Board’s actions, it examines a title’s “wording” to “determine whether it and its title comport with the constitutional single subject and clear title requirements.” *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 14.

In determining whether a title is clear, the Court “ensure[s] that the title fairly reflects the proposed initiative such that voters will not be misled into supporting or opposing the initiative because of the words that the Title Board employed.” *Id.* at ¶ 17. The Court does not

“consider whether the Title Board set the best possible title.” *Id.* At bottom, the Court will reverse the title set by the Board “only if a title is insufficient, unfair, or misleading.” *In re Title, Ballot Title & Submission Clause for 2015-2016 #156*, 2016 CO 56, ¶ 8; *In re 2013-2014 #90*, ¶ 8.

“The Title Board is vested with considerable discretion in setting the title[.]” *In re 2015-2016 #156*, ¶ 8 (citation omitted). That includes “discretion in resolving interrelated problems of length, complexity, and clarity in setting a title and ballot title and submission clause.” *In re 2013-2014 #90*, ¶ 24. Given this discretion, the Court “employ[s] all legitimate presumptions in favor of the propriety of the Title Board’s actions.” *In re 2015-2016 #156*, ¶ 8 (citation omitted). Finally, in conducting its “limited inquiry,” the Court employs the general rules of statutory construction and gives words and phrases their plain and ordinary meanings. *In re 2019-2020 #3*, ¶ 14.

The Title Board agrees this issue is preserved. *See* Record, pp 7–8.

B. The title is clear, accurate, and in compliance with statutory requirements.

The Board drafted the title for initiative #47 according to the requirements of § 1-40-106(3)(e). Proponents do not dispute #47 is a measure that “reduce[s] state tax revenue through a tax change” under § 1-40-106(3)(e). Nor do they argue that the Title Board failed to incorporate the required text with fidelity; indeed, Proponents acknowledge the Board’s “duty to follow laws regarding ballot title setting,” including the mandatory tax-cut language. Record, p 7; *see also Rehearing* (April 16, 2025) at 1:58:40. Instead, Proponents argue that because the title incorporates the statutorily required tax cut language, the title, as set, is unclear and inaccurate.

But the title is clear and accurate. It “unambiguously state[s] the principle” of the initiative. § 1-40-106(3)(b). The initiative proposes an amendment to statute reducing the income tax rate beginning in tax year 2027. The title as drafted communicates exactly that, by including (1) the text required by § 1-40-106(3)(e) and (2) a table explaining the average tax cut by personal income as required by § 1-40-106(3)(j).

Record, pp 3–4. The title satisfies the Board’s duty to “summarize the central features of a proposed initiative.” *In re 2013-2014 #90*, ¶ 24.

Moreover, the title is not misleading or confusing. *See In re 2019-2020 #3*, ¶ 15 (“[T]he title board shall consider the public confusion that might be caused by misleading titles[.]”); *id.* at ¶ 17 (the Court “ensure[s]...that voters will not be misled[.]”); *In re 2015-2016 #156*, ¶ 8 (the Court will reverse the title set by the Board only if a title is “insufficient, unfair, or misleading.”). A title is not misleading if “the title read as a whole fairly and accurately” describes the initiative. *In re Title, Ballot Title & Submission Clause for 2009-2010 #45*, 234 P.3d 642, 649 n.3 (Colo. 2010). As described, this title fairly and accurately describes the proposed statutory amendment. Proponents do not challenge the language writ large, but instead home in specifically on the title’s list of program areas most likely to see reduced government expenditure. Proponents argue that, because the fiscal summary predicts the tax cut will reduce the TABOR refund rather than restrict appropriations, the required language is “false.” This argument fails for three reasons.

First, the General Assembly decided, in its judgment, that the mandatory language assists voters in understanding proposed tax cuts. As discussed above, public confusion is an important consideration in setting titles. *See In re 2019-2020 #3*, ¶ 15 (“[T]he title board shall consider the public confusion that might be caused by misleading titles[.]”). The General Assembly rejected any argument that § 1-40-106(3)(e) is confusing when it added it to §1-40-106. After all, it is this same statute, in § 1-40-106(3)(b), that “directs the Title Board to consider the possibility of voter confusion when setting titles.” *In re Title, Ballot Title & Submission Clause for 1997-1998 #74*, 962 P.2d 927, 929 (Colo. 1998). Thus, by including §1-40-106(3)(e) in the broader title statute, the General Assembly concluded that the mandatory tax-cut language does not cause voter confusion. So, too, regarding brevity. The General Assembly expressly directed that the mandatory tax-cut language “may not be considered” in determining “whether a ballot title qualifies as brief.” § 1-40-106(3)(h). That is to say that the required language of §1-40-106(3)(e) exists in harmony, not conflict, with the statutory directives for clarity and brevity.

Second, the title language cannot be “false” because the future impact of legislation is not an empirical truth. It is for precisely this reason that the future impact of an initiative ordinarily does not factor into the clear title analysis. *See In re 2019-2020 #3*, ¶¶ 14, 16 (explaining the Court does not “suggest how [a proposed initiative] might be applied if enacted” and the Board “need not explain the meaning or potential effects” of the proposed initiative.); *also In re Title, Ballot Title, & Submission Clause for 1999-2000 #235(a)*, 3 P.3d 1219, 1225 (Colo. 2000) (noting the Court’s “limited review of the Title Board’s actions” does not allow it to “determine the future application of an initiative in the process of reviewing the action of the Title Board[.]”). True, since 2021, the legislature has required titles set for measures that reduce state tax revenue to contain language about the potential future effect on government expenditures. But that language is qualified, not definite. *See* § 1-40-106(3)(e) (describing reductions “that include, *but are not limited to*” the three largest areas of program expenditure) (emphasis added).

The uncertainty of the future is just the rub. Proponents prefer that the title describe the future effect as reductions in TABOR refunds and furthermore claim that the list of cuts to government expenditures is “false information.” Pet. for Review at 4. But regardless of what the Legislative Council may have predicted, the precise effect of future tax cuts is contingent. Proponents’ projections may never come to pass, or other future events could counteract them. *Cf. Leece v. Griffin*, 371 P.2d 264, 265 (Colo. 1962) (“It is well settled in Colorado that one of the essential elements of . . . deceit is that there be a false representation of a material fact, which fact either exists in the present or has existed in the past[.]”) (quotations omitted); *cf., also League of Women Voters of Greeley, Weld Cnty., Inc. v. Bd. of Cnty. Comm’rs of Cnty. of Weld*, 2025 CO 8, ¶ 23 (noting that neither an “overly indirect and incidental injury nor the remote possibility of a future injury convey standing”) (internal citations and quotations omitted).

For example, a global pandemic, nationwide recession, or other unanticipated event could significantly reduce state revenues. Or Colorado could approve a revenue change that authorizes the state

government to keep any surplus. In such an event, the tax cut would reduce state expenditures. Accordingly, because Proponents' objection is based on conjectural and contingent future events, they cannot establish the title is in any sense "false."

Third, this Court has recently affirmed the Title Board, without a written opinion, in a similar challenge to § 1-40-106(3)(e). *In re Title, Ballot Title, & Submission Clause for 2021-2022 #46*, 2021SA316, Order of Court (entered April 14, 2022); Title Board's Opening Brief (filed Nov. 15, 2021). The main distinction between that appeal and this is that there the title language included the qualifying phrase, "unless the state is required to refund excess revenue," after listing the three program budgets most likely to be reduced as required by § 1-40-106(3)(e). Here, Proponents never offered up substitute language or asked for a TABOR qualifier—an opportunity they knowingly and intentionally declined during the rehearing. *Rehearing* (Apr. 16, 2025) at 2:02:00.

II. The Court cannot invalidate § 1-40-106(3)(e) in this proceeding.

Proponents ask this Court to “determine” that the title “violates the constitutional requirement to set a clear and accurate ballot title[.]” Pet. for Review, p 5. Though not styled as a facial challenge to the statute, it is one, because the Petition asks this Court to find that the required tax-cut language conflicts with the constitution. *Id.*, pp 3–4. In so doing, this Court would in effect invalidate the legislature’s mandate in § 1-40-106(3)(e), at least as applied here and in other similar situations, if not in all cases. But this Court is not authorized to provide such a remedy in this limited statutory proceeding under § 1-40-107(2).

That statute specifies the only relief available in this proceeding: “the matter shall be disposed of promptly, consistent with the rights of the parties, either affirming the action of the title board or reversing it, in which latter case the court shall remand it with instructions, pointing out where the title board is in error.” § 1-40-107(2). Section 1-40-107(2) prescribes the Court’s power in this proceeding and thus limits the relief Proponents can obtain. *See State v. Borquez*, 751 P.2d 639, 644 (Colo. 1988) (“In an action which is entirely statutory, the

procedure therein prescribed is the measure of the power of the tribunal to which jurisdiction of causes arising under the statute is given.”) (quotations omitted).

Accordingly, the Court’s “review of the Board’s action is limited to whether the title, ballot title and submission clause, and summary fairly reflect the intent of the initiative.” *In re Title, Ballot Title & Submission Clause, & Summary for a Petition on Sch. Fin.*, 875 P.2d 207, 210 (Colo. 1994). For example, this Court previously declined to address a constitutional challenge to § 1-40-107(2) “[b]ecause such considerations are far beyond the scope of our review.” *In re Proposed Initiated Const. Amend. Concerning Ltd. Gaming*, 873 P.2d 733, 737 n.2 (Colo. 1994), *superseded on other grounds as stated in Hayes v. Ottke*, 2013 CO 1; *see also In re Petition on Sch. Fin.*, 875 P.2d at 211 (A “constitutional challenge to the initiative is beyond the scope of this court’s review of the Board’s decisions . . . and therefore we need not address it.”). A constitutional challenge to § 1-40-106(3)(e) is thus beyond this Court’s scope of review under § 1-40-107(2). In fact, this Court recently declined to address a prior potential constitutional

challenge to § 1-40-106(3)(e) and instead issued a one-page order affirming the title set by the Board. *See In re Title, Ballot Title, & Submission Clause for 2021-2022 #46*, 2021SA316, Order of Court (entered April 14, 2022).

CONCLUSION

This Court should affirm the title as set for Proposed Initiative 2025-2026 #47.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **THE TITLE BOARD'S OPENING BRIEF** upon all counsel of record by Colorado Courts E-filing (CCE), this 13th day of May, 2025.

/s/ Carmen Van Pelt