

<p>SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, Colorado 80203</p>	<p>DATE FILED May 13, 2025 1:41 PM</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. §1-40-107(2) Appeal from the Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2025-2026 #47 (“Income Tax Rate”)</p> <p>Petitioners: Suzanne Taheri and Michael Fields</p> <p>v.</p> <p>Respondents: Theresa Conley, Jason Gelender, and Kurt Morrison</p>	<p>▲ COURT USE ONLY ▲</p> <p>Supreme Court Case No. 2025SA115</p>
<p>Attorneys for Petitioners/Proponents:</p> <p>Suzanne Taheri, Reg. No. 23411 West Group Law & Policy 1800 Glenarm Place, Suite 375 Denver, CO 80111 Phone: (303) 263-0844 Email: st@westglp.com</p>	
<p>PETITIONERS’ OPENING BRIEF</p>	

CERTIFICATE OF COMPLIANCE

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

The brief complies with C.A.R. 28(g).

Choose one:

It contains 2,165 words.

It does not exceed 30 pages.

The brief complies with C.A.R. 28(k):

It contains under a separate heading a concise statement of the applicable standard of appellate review with citation to authority.

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

/s/ Suzanne Taheri
Suzanne Taheri
Attorney for the Petitioner

TABLE OF CONTENTS

CERTIFICATE OF COMPLIANCE ii

TABLE OF CONTENTS..... iii

TABLE OF AUTHORITIES iv

STATEMENT OF THE ISSUES PRESENTED1

STATEMENT OF THE CASE1

SUMMARY OF ARGUMENT4

STANDARD OF REVIEW5

LEGAL ARGUMENT6

 I. The Title Violates the Clear Title Requirement in Colo. Const. Art. V §
 (1)(5.5)..... 6

 1. *The Title is unnecessarily long and conceals the purpose of the
 measure.* 8

 2. *The Title does not fairly describe the measure.*10

CONCLUSION10

TABLE OF AUTHORITIES

Cases

<i>Billings v. Buchanan</i> , 192 Colo. 32, 555 P.2d 176 (1976)	6
<i>Brownlow v. Wunch</i> , 83 P. 2d 775, 777 (Colo. 1938).....	5
<i>Colo. Project-Common Cause v. Anderson</i> , 178 Colo. 1, 495 P.2d 220 (1972).....	6
<i>Haynes v. Vondruska (In re Title, Ballot Title & Submission Clause for 2019–2020 #315)</i> , 2020 CO 61, ¶ 31.....	7, 8
<i>In re 1997-1998 # 75</i> , 960 P.2d 672 (Colo. 1998)	9
<i>In re Proposed Initiative Concerning “State Personnel System”</i> , 691 P.2d 1121 (Colo. 1984)	7
<i>In re Proposed Initiative for 1999-2000 No. 29</i> , 972 P.2d 257, 266, 1999 WL 68793, at 10 (Colo. Feb. 16, 1999)	6
<i>In re Proposed Initiative on Parental Notification of Abortions for Minors</i> , 794 P.2d 238 (Colo.1990).....	6
<i>In the Matter of the Title, Ballot Title and Submission Clause for 2017-2018 No. 4</i> , 395 P.3d 318, 323 (Colo. 2017)	5
<i>Matter of Election Reform Amendment</i> , 852 P.2d 28 (Colo. 1993).....	7
<i>Matter of Title, Ballot Title et al.</i> , 831 P.2d 1301 (Colo.1992)	7
<i>Robinson v. Dierking</i> , 2016 CO 56, 413 P.3d 151	6

Statutes

1-40-106(3)(e), C.R.S.	8
1-40-107(1)(a), C.R.S.	4
1-40-107(2), C.R.S.....	1

Constitutional Provisions

Colo. Const. Art. V § (1)(5.5) 1
Colo. Const. Art. V § 1 6

Suzanne Taheri and Michael Fields (“Petitioners/Proponents”) hereby respectfully submit this Opening Brief in objection to the title, ballot title and submission clause set by the Title Board for Proposed Initiative 2025-2026 #47 (the “Initiative” or “Measure”).

STATEMENT OF THE ISSUES PRESENTED

Whether the Title Board erred in ruling that the measure satisfies the clear title requirement in Colo. Const. Art. V § (1)(5.5).

STATEMENT OF THE CASE

The Petitioner brings this original proceeding pursuant to section 1-40-107(2), C.R.S., as an appeal of the Title Board’s decision to deny Petitioner’s Motion for Rehearing and set title for Proposed Initiative 2025-2026 #47.

The initiative amends Colorado statute. The measure, in full, states:

Be it enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 39-22-104, **amend** (1.7)(c); and **add** (1.7)(d) and (1.7)(e) as follows:

39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - report - tax preference performance statement - legislative declaration - definitions - repeal.

(1.7)(c) Except as otherwise provided in section 39-22-627, subject to subsection (2) of this section, with respect to taxable years commencing on or after January 1, 2022, BUT BEFORE JANUARY 1, 2027, a tax of four and forty one-hundredths percent is imposed on the federal taxable income, as determined pursuant to section 63 of the internal revenue code, of every individual, estate, and trust.

(d) SUBJECT TO SUBSECTION (2) OF THIS SECTION, WITH RESPECT TO THE TAXABLE YEARS COMMENCING ON OR AFTER JANUARY 1, 2027, A TAX OF FOUR AND THIRTY-NINE ONE-HUNDREDTHS PERCENT (4.39%) IS IMPOSED ON THE FEDERAL TAXABLE INCOME, AS DETERMINED PURSUANT TO SECTION 63 OF THE INTERNAL REVENUE CODE, OF EVERY INDIVIDUAL, ESTATE, AND TRUST.

SECTION 2. In Colorado Revised Statutes, 39-22-301, **amend** (1)(d)(I)(K); and **add** (1)(d)(I)(L) as follows:

39-22-301. Corporate tax imposed - repeal.

(1)(d)(I) A tax is imposed upon each domestic C corporation, foreign C corporation, and combined group, as defined in section 39-22-303 (12)(a.3), doing business in Colorado annually in an amount of the net income of such C corporation during the year derived from sources within Colorado as set forth in the following schedule of rates:

(K) Except as otherwise provided in section 39-22-627, for income tax years commencing on or after January 1, 2022, BUT BEFORE JANUARY 1, 2027, four and forty one-hundredths percent of the Colorado net income.

(L) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2027, FOUR AND THIRTY-NINE ONE-HUNDREDTHS PERCENT (4.39%) OF THE COLORADO NET INCOME.

SECTION 3. Effective date. This act takes effect January 1, 2027.

Petitioners/Proponents filed an original draft of the measure on March 7, 2025. Petitioners/Proponents filed an amended draft of the Initiative with the Title

Board on March 21, 2025¹. The Title Board considered the Initiative on April 2, 2025, and determined that it had jurisdiction to set title and set the following title:

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

¹ The Board requested technical corrections to the text of the initiative. The final copy with technical corrections was filed immediately following the initial title board hearing on April 2, 2025.

\$2,000,001 -			
\$5,000,000	\$40,671	\$40,579	-\$92

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

Petitioners/Proponents filed a timely Motion for Rehearing on Proposed Initiative 2025-2026 #47 pursuant to section 1-40-107(1)(a), C.R.S. The Petitioners’ Motion for Rehearing is at issue in this appeal.

At the Rehearing, the Title Board denied the Petitioners’ Motion for Rehearing in its entirety. Petitioners subsequently filed a timely petition for review in this Court on April 23, 2025.

SUMMARY OF ARGUMENT

The Title Board improperly set title by including unnecessary and confusing language in the title. The initiative simply reduces Colorado income tax from 4.40 percent to 4.39 percent starting January 1, 2027. This is the only feature of the measure. The scope of the measure is very clear, but the Title is not. Rather than simply describing this change, the Title contains additional provisions stating that expenditures for programs including but not limited to health care policy and

financing, education, and higher education *will* be impacted by the measure.

(emphasis added)

The title's embedded claims regarding reductions in expenditures run directly counter to the fiscal summary produced by legislative staff which says: "Based on current forecasts for FY 2026-27, the measure is expected to reduce the amount required to be refunded to taxpayers under TABOR, with no net impact on the amount available for the budget." [emphasis added]

The Title set by the Board obfuscates the central feature of the measure and includes false and confusing effects in violation of clear title requirements.

STANDARD OF REVIEW

The Court has the authority to review the Title Board's clear-title findings. *In the Matter of the Title, Ballot Title and Submission Clause for 2017-2018 No. 4*, 395 P.3d 318, 323 (Colo. 2017). Provisions relating to the initiative should be liberally construed to permit the exercise of the electors of this most important privilege. *See Brownlow v. Wunch*, 83 P. 2d 775, 777 (Colo. 1938). The clear title requirement in the constitution, as well as the statutes which implement it, must be liberally construed so as not to unduly limit or curtail the exercise of the initiative rights constitutionally reserved to the people. *Colo. Project-Common Cause v.*

Anderson, 178 Colo. 1, 495 P.2d 220 (1972); *Billings v. Buchanan*, 192 Colo. 32, 555 P.2d 176 (1976).

An illogical and inherently confusing title does not satisfy clear title requirement where voters would be confused as to the intent of the initiative and would be prevented from intelligently choosing whether to vote for or against it. *Robinson v. Dierking*, 2016 CO 56, 413 P.3d 151; Colo. Const. Art. V § 1.

LEGAL ARGUMENT

I. The Title Violates the Clear Title Requirement in Colo. Const. Art. V § (1)(5.5).

In setting Title, the Board's duty is "to capture, in short form, the proposal in plain, understandable, accurate language enabling informed voter choice." *In re Proposed Initiative for 1999-2000 No. 29*, 972 P.2d 257, 266, 1999 WL 68793, at 10 (Colo. Feb. 16, 1999). Neither a court nor the board may go beyond the intent of the initiative to interpret the meaning or suggest how it would be applied if adopted. The role of the court is to determine whether the title is correct and fairly reflects the purpose of the proposed amendment. *In re Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238 (Colo.1990).

The Board is charged with the duty to act with utmost dedication to the goal of producing documents which will 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 Proposed Initiative Concerning “State Personnel System”*, 691 P.2d 1121 (Colo. 1984); *Matter of Election Reform Amendment*, 852 P.2d 28 (Colo. 1993).

In ruling on an inclusion of a fiscal analysis in a ballot title, the Court has held that including a fiscal impact statement must have some support in the record. *Matter of Title, Ballot Title et al.*, 831 P.2d 1301 (Colo.1992). The Court has granted the Title Board with considerable discretion in exercising its judgment on whether to include in the summary a statement that a proposed measure will have a fiscal impact on government and, if so, how to best communicate that fact without creating prejudice for or against the proposed measure. *Id.* at 1306-07.

The Court ruled on this precise issue in 2020, finding that requiring the Board to include language advising voters of cuts in government programs would result in a lengthy and complex title, and this would be contrary to the Board’s duty. *Haynes v. Vondruska (In re Title, Ballot Title & Submission Clause for 2019–2020 #315)*, 2020 CO 61, ¶ 31.

In so finding, the Court held that the Board is not required to set forth in a title all of the details of each funding consequence set forth in a measure. Rather, the requirement is the title must balance brevity against the requirement that the title unambiguously set forth the measure’s central features:

[a]s to petitioner’s contention that the title at issue does not advise voters regarding major cuts to programs from existing funds, we disagree that the Board was required to itemize in the title some or all of the programs that would face funding cuts. Again, requiring that level of detail in the title would render the title unnecessarily long and potentially confusing, contrary to the above-described statutory mandate.

Haynes at 2020 CO 61.

Despite the Court’s ruling, the legislature passed HB 21-1321 contrary to the clear title requirement in the Constitution. The title set in the instant case demonstrates the constitutional deficiencies of the statutory requirement.

1. *The Title is unnecessarily long and conceals the purpose of the measure.*

The measure proposes minimal changes to the state income tax. It operates to reduce the tax by .01 percent. The Title should simply read:

Shall there be a change to the Colorado Revised Statutes that reduces the state income tax rate from 4.40 percent to 4.39 percent effective January 1, 2027?

These 27 words adequately explain the measure, but the title set by the Board as mandated by the state legislature includes the provably false claim that the proposed income tax cut will reduce funding for state programs. The majority of the Title is spent explaining impacts that will not occur.

This is because under the requirements of C.R.S. § 1-40-106(3)(e) the Board added the language:

“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...”

Importantly, it was not the Board using its discretion that led them to set this title. It was the mandate in the statute. The conflict between the Board’s duty to set an accurate title and the legislative mandate is clear in the record:

“I would just mention that, as the proponents know, you know, this issue has come up a number of times during the last cycle, and as far as I know, and correct me if I'm wrong, the court hasn't weighed in yet, and we haven't gone up there and gotten even an affirmance of our settings, which have been using this language or a denial that we can't do it.” Audio of the April 16, 2025, Rehearing, Jason Gelender at 2:00:12.

In following the mandated language, the Board was forced to put false information in the Title. This is because the statute requires the inclusion of language advising voters of the three top state spending programs which *will* face reduced funding. (*emphasis added*). But according to state projections there would be no funding reductions in the years affected by the measure. Instead, there would be a TABOR overage. *Cf, p. 10*

The Board's job is to set fair, clear, and accurate titles that do not mislead the voters through a material omission or misrepresentation. *See In re 1997-1998 # 75, 960 P.2d 672, 673 (Colo. 1998)*. Here, the statute takes away the Board’s discretion to fulfill its constitutional requirement. The title set in this matter was

not a result of the Board using its sound discretion. It was the result of a legislative enactment that, as applied in the instant case, conflicts with Colo. Const. Art.V § (1)(5.5). The title has a material misrepresentation and voter's will not be able to make an informed decision based on the title. As a result, the Board violated the clear title requirement.

2. *The Title does not fairly describe the measure.*

Over the objection of the proponents the Board included program cuts that are demonstrably false.

CONCLUSION

Petitioner respectfully requests the Court overturns the Title Board's decision and remand this matter to the Board with instructions to set clear title.

Respectfully submitted this 13th day of May 2025.

s/ Suzanne Taheri
Suzanne M. Taheri, #23411
WEST GROUP LAW & POLICY
6501 E. Belleview Ave, Suite 375
Englewood, CO 80111
Phone Number: (303) 263-0844
Email: st@westglp.com
Attorney for Petitioners

CERTIFICATE OF SERVICE/MAILING

I hereby certify that on 13th day of May a true and correct copy of the **PROPONENTS' OPENING BRIEF** was served via the State of Colorado's e-file system, properly addressed to the following:

Emily Buckley
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203
Counsel for the Title Board

/s/ Suzanne Taheri

Suzanne Taheri

Duly signed original on file at West Group