

<p>SUPREME COURT STATE OF COLORADO</p> <p>2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED June 2, 2025 12:02 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><b>Petitioners:</b> Suzanne Taheri and Michael Fields</p> <p>v.</p> <p><b>Title Board:</b> Theresa Conley, Jason Gelender, and Kurt Morrison.</p>	<p>▲ COURT USE ONLY ▲</p>
<p>PHILIP J. WEISER, Attorney General LANE TOWERY, Assistant Attorney General *</p> <p>Ralph L. Carr Colorado Judicial Center 1300 Broadway, 7th Floor Denver, CO 80203 Telephone: (720)508-6000 E-Mail: lane.towery@coag.gov Registration Number: 59161 *Counsel of Record <i>Attorneys for the Title Board</i></p>	<p>Case No. 2025SA115</p>
<p><b>THE TITLE BOARD’S ANSWER BRIEF</b></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 1,183 words.

**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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## INTRODUCTION

Petitioners seek an income tax cut, and the Title Board set a title describing exactly that. The title is clear. No remand is necessary.

Petitioners go so far as to ask this Court to invalidate the mandatory tax-cut language, but this Court may not do so in this limited proceeding, and the language is constitutional.

## ARGUMENT

### **I. The title satisfies the clear title requirement.**

Petitioners urge that the title set by the Board is “unnecessarily long,” “conceals the purpose of the measure,” “does not fairly describe the measure,” and is “demonstrably false.” Opening Br. at 8, 10. Not so.

*First*, the title is accurate and fair. Petitioners propose a reduction in Colorado’s income tax. Opening Br. at 4. The title unambiguously describes a tax cut. *Cf. In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 14 (the Court examines “the initiative’s wording,” employs “the general rules of statutory construction,” and gives “words and phrases their plain and ordinary meanings.”). The title begins, “Shall there be a reduction to the state income tax by 0.2% for

the taxable years commencing on or after January 1, 2027....” Record, p 3. It then details precisely what that means for each voter with a table titled “Change in Income Taxes Owed by Income Category (Tax Year 2027).” *Id.*, p 4. The title clearly describes the proposed initiative’s true meaning and intent. And it “unambiguously state[s] the principle” of the initiative, § 1-40-106(3)(b), enabling the electorate “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).

*Second*, the title is not overly long. True, statute requires the Title Board to set titles which are “brief,” § 1-40-106(3)(b), but the law also mandates specific language when an initiative proposes a tax cut, as this one does, § 1-40-106(3)(e). And the legislature explicitly directed that neither the Board nor the Court may consider the mandatory tax-cut language in determining “whether a ballot title qualifies as brief.” § 1-40-106(3)(h).

*Third*, the title is not “demonstrably false.” Petitioners in turn say the title is “provably false,” Opening Br. at 8, “demonstrably false,” *id.*

at 10, and that it contains “false information,” *id.* at 9, and a “material misrepresentation,” *id.* at 10. None are true.

Petitioners speak with too much certainty about a future which is yet to be determined. It should be undisputed that a reduction in income taxes will decrease state revenues. The overall effect of that decrease, however, will only be known after the eventual revenues are filtered through TABOR’s requirements. It could be the TABOR rules and formulas will cause the loss of revenue to decrease TABOR refunds (as the legislative counsel estimated). But it could also be that the decrease in revenue will, after filtering through TABOR, decrease the state budget. Moreover, the final effect on the state budget is contingent on population growth and inflation, Colo. Const. art. X, § 20(7), and on any future changes to TABOR. The effect of the revenue reduction would also be iterative because the decreased revenues will be filtered through TABOR each year and could result in differing future outcomes.

Because the future effect of the proposed initiative cannot be empirically proven, nothing about the title as set can be “demonstrably

false” or a “material misrepresentation” of what might occur in years to come. The legislative counsel’s estimate is just that, an estimate. It does not establish that a title describing the likeliest sources of budget cuts is false.

## **II. The Court lacks jurisdiction to consider the constitutionality of Section 1-40-106(3)(e).**

Petitioners’ Opening Brief makes clear that they seek a declaration that the mandatory tax cut language is unconstitutional. Opening Br. at 8 (“[T]he 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.”). But in this limited proceeding, the Court has jurisdiction to determine only whether the proposed initiative has a single subject, and the title is clear. § 1-40-107(1)(a)(I).

The Court cannot deem a statute unconstitutional in the limited confines of a title appeal. In this statutorily authorized appeal, the only permitted relief is an order “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). A constitutional challenge to § 1-40-106(3)(e) is thus beyond this Court’s scope of review under § 1-40-107(2). *Cf. In re Title, Ballot Title & Submission Clause, & Summary for a Petition on Sch. Fin.*, 875 P.2d 207, 211 (Colo. 1994) (A “constitutional challenge to the initiative is beyond the scope of this court’s review of the Board's decisions in setting the title, ballot title and submission clause, and summary, and therefore we need not address it.”). 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).

**III. Even if the constitutionality of the mandatory title language could be considered here, it does not conflict with the constitution.**

Petitioners argue that § 1-40-106(3)(e)’s mandatory tax-cut language conflicts with the Constitution’s clear title imperative. As set forth above, the title is clear as written, and the Court can simply affirm the Board’s title. But taking the argument head on, the required

title language does not conflict with the Constitution because the General Assembly intended it to further the clear title imperative.

The legislature has the power to implement the initiative and referendum process, including the power to fulfill the clear title imperative. *See* Colo. Const. art. V, § 1(9) (“The manner of exercising [the initiative] powers shall be prescribed by general laws.”); *id.*, § 1(10) (“[T]he form of the initiative or referendum petition may be prescribed pursuant to law.”).

The legislature is well-suited to interpret and carry out the clear title rule because it wrote it. The General Assembly put the clear title requirement to the voters via a popular referendum and drafted it by incorporating the prior clear title rule which applied to the legislature’s bills. *See* §§ 1-40-106(b), (c).

The General Assembly intended that the mandatory tax-cut language would realize the clear title imperative by providing more information to voters. When the legislature implemented the required tax-cut language it did so to “increase information about the fiscal impact of statewide ballot measures that would result in a change in

district revenue.” Ballot Measure Fiscal Transparency Act of 2021, H.B. 21-1321, 2021 Colo. Sess. Laws Ch. 474, 3395–99. That is, the legislature intended the mandatory tax cut language to be a manifestation of the clear title imperative, not a rule in conflict with it. The mandatory tax cut language is consistent with the Constitution.

### CONCLUSION

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

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*/s/ Lane Towery*

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### CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **THE TITLE BOARD’S ANSWER BRIEF** upon all counsel of record by Colorado Courts E-filing (CCE), this 2nd day of June, 2025.

*/s/ Carmen Van Pelt*