

<p><b>SUPREME COURT OF COLORADO</b>  2 East 14<sup>th</sup> Avenue  Denver, Colorado 80203</p>	<p>DATE FILED  March 23, 2026 7:51 PM</p>
<p>Original Proceeding  Pursuant to Colo. Rev. Stat. §1-40-107(2)  Appeal from the Ballot Title Setting Board</p>	
<p>In the Matter of the Title, Ballot Title, and  Submission Clause for Proposed Initiative 2025-  2026 #195 (“Concerning a Graduated State  Income Tax”)</p> <p><b>Petitioners:</b> MICHAEL FIELDS, MICHAEL  HANCOCK, REBECCA SOPKIN, and THE  TABOR FOUNDATION</p> <p>v.</p> <p><b>Respondents:</b> CHRIS DEGRUY KENNEDY and  KIYANA NEWELL, Proponents</p> <p>and</p> <p><b>Ballot Title Board:</b> THERESA CONLEY,  CHRISTY CHASE, and KURT MORRISON</p>	<p>▲ <b>COURT USE ONLY</b> ▲</p>
<p><u>Attorneys for Respondents:</u>  Edward T. Ramey, #6748  Tierney Lawrence Stiles LLC  225 East 16<sup>th</sup> Avenue, Suite 350  Denver, CO 80203  Telephone: 303-949-7676  Email: <a href="mailto:eramey@TLS.legal">eramey@TLS.legal</a></p>	<p>Supreme Court Case No.  2026SA45</p>
<p><b>RESPONDENTS’ ANSWER BRIEF IN CONSOLIDATED CASE NOS.  2026SA45, 2026SA46, and 2026SA47</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, the undersigned certifies that:

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

The Answer Brief does not exceed 5,700 words; It contains 3,151 words.

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

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/ Edward T. Ramey

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Attorney for Respondents

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Respondents Chris deGruy Kennedy and Kiyana Newell, the designated representatives of the proponents of Proposed Initiatives 2025-2026 #191, 2025-2026 #195, and 2025-2026 #196 (the “Proposed Initiatives”), respectfully submit their following Answer Brief in these consolidated proceedings:

**STATEMENT OF THE ISSUES PRESENTED FOR REVIEW<sup>1</sup>**

1. Whether several of the issues addressed by the Petitioners in their Opening Briefs exceed the jurisdictional scope of these proceedings under §1-40-107(1), C.R.S. (2026).
2. Whether each of these three proposed initiatives addresses a single subject as required by COLO. CONST. art. V, §1(5.5) and §1-40-106.5(1)(a), C.R.S. (2026).
3. Whether the titles set by the Title Board for these three initiatives correctly and fairly address the true intent and meaning of the proposed initiatives as required by §1-40-106(3)(b), C.R.S. (2026).

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<sup>1</sup> Respondents present this Statement in their Answer Brief due to the discursive expansion of topics presented in Petitioners’ various Opening Briefs beyond those clearly raised before the Title Board in their collective Motions for Rehearing.

## **SUMMARY OF THE ARGUMENTS**

1. The Petitioners have raised issues in their collective Opening Briefs that are beyond the jurisdictional scope of these proceedings for review of the actions of the Title Board under §1-40-107(1) and (2), C.R.S. (2026).

2. The Title Board correctly determined that each of the three proposed initiatives at issue in these proceedings addresses a single subject as required by §1-40-106.5. C.R.S. (2026).

3. The titles set by the Title Board for each of these three proposed initiatives correctly and fairly reflect the true intent and meaning of the subject initiative as required by §1-40-106(3)(b), C.R.S. (2026).

## **ARGUMENTS**

1. Jurisdictional considerations under §1-40-107(1) and (2), C.R.S. (2026).

As a threshold matter, these Respondents respectfully submit that several arguments presented by the various Petitioners in their Petitions and Opening Briefs (1) are outside the statutory scope of rehearings conducted by the Title Board under §1-40-107(1), C.R.S. (2026) – and therefore (2) are not properly within the limited jurisdictional scope of review by this Court in the context of these proceedings under §1-40-107(2), C.R.S. (2026).

Per its unanimous decision in *In re Title, Ballot Title, and Submission Clause for 2023-2024 #188*, 2024 CO 53, P16, 550 P.3d 718, 721-22 (Colo. 2024), this Court held that motions for rehearing before the Title Board – and their review by this Court – are limited to:

"whether a [ballot measure] contains more than a single subject pursuant to section 1-40-106.5";

whether the title adopted by the Title Board is "unfair" or "do[es] not fairly express the true meaning and intent" of the measure;

whether "the fiscal summary is misleading or prejudicial" or "does not comply with the requirements set forth in section 1-40-105.5(1.5)"; or

whether a measure "that proposes a constitutional amendment only repeals in whole or in part a provision of the state constitution."

A. Objections to ballot title language and content statutorily required by §1-40-106(3)(g) and (j), C.R.S. (2026).

Petitioner Fields objects to inclusion in the titles of language statutorily required to be included by §1-40-106(3)(g), C.R.S. (2026) – identifying public services impacted by proposed tax revenue increases – on the grounds that the projected increases for each of the measures here (estimated at \$2.7 billion annually) are “incidental” to the primary purpose of the measures. Fields Op. Br. pp. 22-24. Petitioner Hancock poses a similar objection to inclusion and contents of the table statutorily required by §1-40-106(3)(j), C.R.S. (2026), for any measure “that either increases or decreases the income tax rate.” Hancock Op. Br. pp. 22-

23. Whatever arguable merit objections of this nature may or may not have in the context of the title setting and review process, nullification or revision of these statutory mandates is not within the limited jurisdictional scope of these proceedings – a Title Board rehearing under §1-40-107(1), C.R.S. (2026), or review of that rehearing by this Court under §1-40-107(2), C.R.S. (2026).

B. Jurisdictional arguments regarding inclusion of legislative declarations in proposed ballot measures.

Petitioners Fields, Sopkin, and the TABOR Foundation all pose an additional concern as to whether the Title Board had jurisdiction to set titles for any of these three measures as each underlying measure contained a legislative declaration that “will not be codified in any law or constitutional provision if the measure is adopted.” Fields Op. Br. pp. 7-8; *cf.*, Sopkin/TABOR Op. Br. pp. 5-9. The objection is not to the content or clarity of anything in the title or number of “subjects” arguably addressed by the underlying measure, but to whether the underlying legislative measure itself may contain a non-codifiable legislative declaration.

Initially, the same question arises as to whether this issue falls within the purview of the title setting process and review by this Court under §1-40-107(1) and (2), C.R.S. (2026), at all.

Second – in defense of their legislative declarations – Respondents submit that the “legislative power of the state” – vested in the General Assembly but from which the powers of initiative and referendum have been explicitly reserved by the people per COLO. CONST. art. V, sec. 1(1), (2) – includes more than production of purely codifiable material. This Court has consistently recognized the value of uncodified legislative declarations as interpretive aids and as an integral part of the legislative process. *See, e.g., People ex rel. S.G.H.*, 2025 CO 59, P42, P44, 578 P.3d 505, 513, 514 (Colo. 2025). The General Assembly concurs with this practice – §2-4-203(1)(g), C.R.S. (2026) – and has a detailed internal process for preparing such non-codifiable materials – Legislative Drafting Manual, Chap. 2, §2.7.<sup>2</sup> It would be odd to interpret the “legislative power” constitutionally reserved by the people – specifically exercisable through the initiative process – to be narrower or more constrained in scope or content than the portion of the same governmental power accorded by the people to the General Assembly.<sup>3</sup>

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<sup>2</sup> [Chapter 2 Colorado Legislative Drafting Manual - Google Docs](#)

<sup>3</sup> *Cf., McKee v. City of Louisville*, 616 P.2d 969, 972 (Colo. 1980) (referring specifically to the right of initiative): “This court has always liberally construed this fundamental right, and, concomitantly, we have viewed with the closest scrutiny an[y] (*sic*) governmental action that has the effect of curtailing its free exercise.”

Finally, if there is any question as to the value of including these non-codifiable statements of legislative intent with proposed legislation of any kind, the array of speculative interpretations and future applications suggested by various of the Petitioners in these proceedings should resolve that issue.

C. Objection to repeal or amendment by “strikeout.”

Petitioner Hancock also objects to Respondents being permitted to amend or repeal language in COLO. CONST. art. X, §20(8)(a), by striking existing language rather than affirmatively adding new language to this constitutional section.

Though invoking the incorrect constitutional section for this proposition – it should be COLO. CONST. art. XIX, §2(1)(b) – his point appears to be that Respondents are improperly attempting to avoid a 55% (rather than 50%) voter approval threshold for passage of any of these measures. The statutory mis-cite is actually quite important here, as COLO. CONST. art. XIX, §2(1)(b) contains an explicit exception to its heightened voter approval requirement for an “amendment that is limited to repealing, in whole or in part, any provision of this constitution.” Strikeouts are a standard drafting mechanism for full or partial repeals. *See., e.g.,* Colorado General Assembly Legislative Drafting Manual, §2.5.4.5. And the use of strikeouts in these measures is directed by the proponents solely to accomplish a partial repeal of a

requirement in COLO. CONST. art. X, §20(8)(a); nothing is being added in any way to the Constitution.

The Title Board was correct in concluding that the section of each of these proposed initiatives addressing that constitutional provision is limited to repealing a part of that provision.

2. Single subject arguments.

Per COLO. CONST. art. V, §1(5.5) and §1-40-106.5(1)(a), C.R.S. (2026), every constitutional amendment or law proposed by initiative must “be limited to a single subject.” §COLO. CONST. art. V, §1(5.5); §1-40-106.5(1)(a), C.R.S. (2026). “An initiative meets this requirement as long as the subject matter of the initiative is ‘necessarily or properly connected.’” *In re Title, Ballot Title, and Submission Clause for 2013-2014 #89*, 2014 CO 66, P12, 328 P.3d 172, 177 (Colo. 2014).<sup>4</sup> “An initiative may contain several purposes, but they must be interrelated” rather than “incongruous” – *In re Title, Ballot Title and Submission Clause for 2009-2010 #45*, 234 P.3d 642, 646 (Colo. 2010). “We construe the single-subject requirement liberally to avoid unduly restricting the initiative process.” *Id.*

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<sup>4</sup> Petitioner Fields unintentionally misstates this requirement – as many of us often do with this particular phrase – as “necessarily *and* properly connected.” Fields Op. Br. p. 11. The correct conjunction is important, at a minimum, to avoid redundancy.

Importantly, “when determining whether a proposed initiative comports with the single-subject/clear title requirement, we may not ‘address the merits of a proposed initiative, nor [may] we interpret its language or predict its application if adopted by the electorate.’” *In re Title, Ballot Title, and Submission Clause for 2007-2008 #62*, 184 P.3d 52, 58 (Colo. 2008).

In light of the quantity and variance of “single subject” issues posited by the Petitioners in their opening briefs, Respondents preface their consolidated response here with the statement of “single subject” for each of these measures as presented to the Title Board:

To create a graduated income tax in Colorado for every individual, estate, trust, and corporation, and, in connection therewith, remove the constitutional prohibition on graduated income taxes, designate any increased revenue directly resulting from the new graduated structure as a voter approved revenue change, dedicate the uses of this excess revenue, and require an audited public report regarding the uses to which this revenue is put.

As best these Respondents can discern, all of the Petitioners acknowledge that the central purpose of each of these three initiatives is to establish a graduated income tax structure in Colorado. All Petitioners also appear to acknowledge that this will require some form of full or partial repeal of the mandate in COLO. CONST. art. X, §20(8)(a) that all taxable net income be taxed at one rate. From there, the

Petitioners' objections diverge, multiply, and in part conflict with one another.

Petitioner Fields:

With regard to Initiative 191, Petitioner Fields argues that simply striking the constitutional requirement that “all” income be taxed at one rate would have the “surreptitious” effect of “uncoupling” individual and corporate income taxes. Yet the measure itself does not do that – it establishes and applies an identical graduated rate structure applicable (as with the single flat rate structure now) to all (individual and corporate) taxpayers. While it is possible that such “uncoupling” may occur in some future legislation, it does not occur here.

Petitioner Fields next argues that striking the punctuation and word “[,]with” before “no added tax or surcharge” in COLO. CONST. art. X, §20(8)(a) opens the door to added taxes and surcharges. By any reasonable reading, this drafting actually preserves the prohibition on added taxes and surcharges. He then submits that striking the words “taxable net income” in COLO. CONST. art. X, §20(8)(a) removes the current tax basis; it does not address the tax basis. With regard to Initiatives 195 and 196, Petitioner Fields poses similar objections. To these he adds several strained interpretations of the amended phrase requiring “all taxable net income to be taxed with no added surcharge” – predicting highly unlikely applications. Please see *In re 2007-2008 #62*, 184 P.3d 52, 58, *supra*.

Shifting attention to the proposed statutory provisions, Petitioner Fields submits that proposing to raise income tax rates for some taxpayers and lower them for others is disconnected “logrolling” – yet this is precisely what a graduated income tax structure does and the essence of what it is designed to do. He then objects to inclusion of both individual and corporate taxpayers in the new graduated structure – yet both are included in the current flat-rate structure and their income/applicable-rate uniformity is retained in each of these proposed new measures. He objects to the authorization for the state to retain and spend any newly generated “excess revenue” – the alternative being to immediately refund that revenue per COLO. CONST. art. X, §20(1) to precisely the same taxpayers from whom it was just collected. Finally, he objects to initial dedication of the new revenue – and only that new revenue – to specified funds (with a directive that this revenue is intended to supplement current funding). Respectfully, it is difficult to imagine a collection of more “properly connected” implementation provisions.

Petitioners Sopkin and TABOR Foundation:

Petitioners Sopkin and the TABOR Foundation raise several of the same single-subject objections raised by Petitioner Fields. These specifically include retention and dedication of initial uses of the “excess revenue” generated specifically by the proposed new graduated income tax structure, application of the

new structure to corporations as well as individuals and estates (though with identical income-based rates as is the case with each of these taxpayers now), the prospect that the constitutional revisions may be applied in the future to allow de-coupling of the individual and corporate rate structure (though no such de-coupling occurs under these measures), or a shift in one of the measures (191) that could arguably allow a future change to taxing gross (rather than net) income – though that measure makes no operative change of that nature.

However one may view these enumerated concerns, they are all “properly connected” within the single subject of each measure and, in large part, purely speculative as to potential future applications.

Petitioner Hancock.

Petitioner Hancock’s first “single subject” concern focuses upon the deletion in each of these measures of the current constitutional requirement that “all taxable income be taxed at one rate” – raising a concern similar to Petitioner Fields’ that this is a covert attempt to “curry favor” with individuals who particularly want to see other individual “higher income earners (*i.e.*, millionaires)” taxed at higher rates – while incidentally in this case having an arguable lesser practical impact on businesses. Hancock Op. Br. pp. 23-24. As with Petitioner Fields, this overlooks the fact that repeal of the constitutional single-rate requirement is not only

“properly” connected – it is “necessarily” connected – to creating any form of graduated income tax structure at all, including the one central to Respondents’ proposed measures. And there is nothing “surreptitious” – *Id.*, p 26 – about any of this.

Petitioner Hancock then submits that including corporations in the proposed new graduated structure constitutes a second subject – *i.e.*, that Respondents’ failure to affirmatively enact precisely the “uncoupling” to which Petitioner Fields prospectively objects as a second subject itself constitutes a second subject. Hancock Op. Br. p. 31. Respectfully, some perspective in this zero-sum mix must qualify as within the ambit of “properly connected.”

Petitioner Hancock then proceeds to interpret Initiative 191’s failure to delete the current phrase “no added tax” in COLO. CONST. art. X, §20(8)(a), as a disconnected and covert second subject. Hancock Op. Br. p. 33. Yet this is precisely the phrase that Petitioner Fields wants to retain – *i.e.*, as properly connected – and fears is endangered by other edits. At base, this conundrum appears to stem from Petitioner Hancock’s odd interpretation of *retaining* the prohibition on “added” taxes as forever blocking base tax rate increases – *i.e.*, from the awkward wording of COLO. CONST. art. X, §20(8)(a) as it exists today. This is followed by a suggestion that inclusion of the words “net income” in the 191

strikeout independently suggests an affirmative redefinition of the base criteria for *measuring* all “income” subject to taxation (Hancock Op. Br. pp. 34-35) – a proposition (a) for which there is no logical support by anything else associated with that measure and (b) which nicely demonstrates the value of non-codifiable legislative declarations associated with proposed legislative enactments.

Turning to Initiatives 195 and 196, Petitioner Hancock posits the proposition that striking the word “tax” in the last line of COLO. CONST. art. X, §20(8)(a) could be interpreted as referring to additional or secondary taxes on income rather than solely base rates. Hancock Op. Br. pp. 35-37. The Title Board took this into consideration and clearly reflected it in the titles set for both measures (“eliminate the constitutional requirement for all taxable net income to be taxed at one rate with no added tax on income”). The subject of the tax remains the same – net income – and the base connection is certainly “proper.”

From here, Petitioner Hancock objects to the retention and dedication of increased revenue resulting specifically and solely from implementation of these measures to specified “social programs” as a second subject – terming this “at least one step too far.” Hancock Op. Br. at pp. 37-39. This is immediately followed by a separate objection to essentially the same increased revenue dedications as “logrolling.” Hancock Op. Br. at pp. 40-43.

As discussed above, the retention and initial dedication of the increased (“excess”) revenue resulting directly and solely from these measures can hardly be deemed not “properly connected” to the generation of precisely that increased (“excess”) revenue. To constitute “logrolling” there must be no proper connection. *See, e.g., In re Title, Ballot Title and Submission Clause for 2017-2018 #4*, 2017 CO 57, \*7, 395 P.3d 318, 321 (Colo. 2017).

Second, the statement that these proposed initiatives “include a mandate preventing the legislature from lowering current appropriations if it is to appropriate the revenue gained from increased income taxes to those programs” reads way too much into the language and legal effect of these purely statutory strictures upon implementation of these measures. Nor is the authorization to collect, retain, and spend these “excess revenues” as a voter approved revenue change legally contingent upon adherence to these initial revenue dedications. These may certainly be powerful statements of voter intent, but they are and can be nothing more than that.

3. Arguments regarding clarity of titles.

Respondents respectfully submit that the Title Board set very appropriate, fair and clear titles for each of these three proposed initiatives. Petitioners’ objections to the titles focus generally upon misinterpretations of the language or

legal effect of measures and reassertions of purported multiple subjects (as discussed above), unwarranted predictions of future applications and potential dire consequences flowing therefrom, or matters outside the jurisdictional scope of these proceedings under §1-40-107(1), C.R.S. (2026) – *e.g.*, inclusion of the table statutorily required by §1-40-106(3)(j), C.R.S. (2026).

Respondents respectfully submit that the titles prepared by the Title Board for all three of these measures are clear, accurate, and fair.

### **CONCLUSION**

For the reasons set forth above, Respondents respectfully renew their request to this Court to affirm the actions of the Title Board with regard to Proposed Initiatives 2025-2026 #191, 2025-2026 #195, and 2025-2026 #196.

Respectfully submitted this 23rd day of March, 2026.

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**ATTORNEYS FOR RESPONDENTS**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23rd day of March, 2026, a true and correct copy of the foregoing **ANSWER BRIEF** was filed and served upon all counsel of record in these consolidated proceedings via the Court's E-filing system.

*s/Edward T. Ramey*  
Edward T. Ramey