SUPREME COURT STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	DATE FILED March 23, 2026 4:28 PM
Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2025) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2025-2026 #191 **Petitioners:** Michael Fields, Michael Hancock, Rebecca Sopkin, and the TABOR Foundation, v. **Respondents:** Chris deGruy Kennedy and Kiyana Newell, and **Title Board:** Theresa Conley, Christy Case, and Kurt Morrison.	▲**COURT USE ONLY**▲ Case No. 2026SA45
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THE TITLE BOARD'S ANSWER BRIEF

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).

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/s/ Abigail Armstrong
Signature of attorney or party

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INTRODUCTION

Petitioners Fields, Hancock, and Sopkin ask this Court to overturn the Title Board's determinations that Proposed Initiatives 2025–2026 #191, #195, and #196 may contain non-statutory legislative declarations, contain a single subject, and have clear and accurate titles. Because Petitioners have not shown the clear case required to disturb the Board's determinations, this Court should affirm.[1]

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[1] The titles for Initiatives #191, #195, and #196, as they appear in the record, are not capitalized and bolded. *See* Record #191, pp 34–39; Record #195, pp 34–39; Record #196, pp 34–39. Section (3)(c) of Article X, Section 20 of the Colorado Constitution requires "[b]allot titles for tax or bonded debt increases" to begin "**SHALL (DISTRICT) TAXES BE INCREASED …"**. The titles' phrasing ("Shall state taxes be increased ...") and the discussion before the Board on rehearing for Initiatives #191, #195, and #196 confirm the Board viewed these titles as subject to the requirements of section (3)(c) of Article X, Section 20 of the Colorado Constitution. *See Hearing Before Title Board* (Feb. 4, 2026) (discussion at 1:35:50) *available at* https://tinyurl.com/mrxr3uvd (last visited March 23, 2026). At a subsequent hearing on March 18, 2026, the Board entertained a motion regarding the font and capitalization of the title language for Initiatives #191, #195, and #196, and by unanimous vote the Board confirmed that "[i]t is the Board's position that the titles' language will be capitalized and bold on the ballot" pursuant section (3)(c) of Article X, Section 20 of the Colorado Constitution. *See Hearing Before Title Board* (March 18, 2026) (motion and vote at 1:56:00) *available at* https://tinyurl.com/35b8dbt9 (last visited March 23, 2026).

ARGUMENT

I. Petitioners have failed to identify any Colorado law limiting the power of the people to enact a non-statutory legislative declaration.

Petitioners argue the Board lacked jurisdiction because Section 1 of each initiative contains a legislative declaration that is not codified into statute or the constitution. That argument fails for three reasons.

First, as noted in the Board's opening brief, the people of Colorado are the very source of the legislature's authority and have no less power to legislate under Colorado's Constitution. *See* COLO. CONST. art. II, § 1; COLO. CONST. art. V, § 1(1) (reserving for voters the power to propose, enact, and reject laws, along with the ability to overturn legislatively-enacted statutes). The people, as the source of the legislature's authority, inherently have the same power to enact non-statutory legislative declarations as the legislature.[2] No Petitioner identified any

[2] Petitioner Fields relies on *City of Aurora v. Zwerdlinger*, 571 P.2d 1074, 1076 (Colo. 1977), and *Vagneur v. City of Aspen*, 295 P.3d 493, 514 (Colo. 2013), to argue that "this Court has repeatedly found[] the initiative power applies 'only to acts which are legislative in character.'" Fields Opening Br., p 6. This is a misleading use of these cases. The quoted language refers to the peoples' power to pass acts that are *legislative* in character as opposed to *administrative* acts, which are not

binding law precluding the people from including a non-statutory legislative declaration in an initiative.

Second, Colorado's initiative statutes must be liberally construed to facilitate the exercise of the people's reserved rights. Board Opening Br., pp 9–10; *Colo. Project-Common Cause v. Anderson*, 495 P.2d 220, 221 (Colo. 1972). Petitioners Sopkin and Fields ask the Court to narrowly construe these statutes to prohibit non-statutory legislative declarations. *See* Sopkin Opening Br., p 5; Fields Opening Br., pp 6–7. But that approach diminishes "this most important right reserved to [the people] by the constitution." Board Opening Br., p 10; *Colo. Project-Common Cause*, 495 P.2d at 221.

Third, Petitioner Sopkin's reliance on section 2-4-203(1)(g), C.R.S., and the Colorado Legislative Drafting Manual are inapt. Sopkin Opening Br., pp 7–9. The fact that guidelines exist for drafting and interpreting statutes by the general assembly does not mean anything about the drafting and interpretation of citizen-initiated statutes. And

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within the initiative power. *See Zwerdlinger*, 571 P.2d at 1076–77. The cited cases do nothing to undermine the peoples' authority to initiate a non-statutory legislative declaration.

the manual and statute Petitioner Sopkin points to do not displace either the constitutional text reserving the power of initiative to the people or the liberal construction canon governing initiative review.

The initiative uses the legislative declaration to summarize and contextualize the operative provisions of the measures; the declaration is not confusing or misleading. The Board had jurisdiction to set title to the initiative, including its legislative declaration.

II. The proposed initiative contains a single subject.

The single subject of the initiative is to improve public school education, health care, and child care by replacing the uniform state income tax rate with a graduated income tax structure. As explained in the Board's opening brief, each of the initiative's provisions are "necessarily and properly connected" to effectuate this single purpose. Board Opening Br., p 12; *In re Title, Ballot Title, & Submission Clause for 2015-2016 #73*, 2016 CO 24, ¶¶ 14, 17.

In addition to the arguments addressed in the Board's opening brief, Petitioners raise several other single-subject arguments related to (1) the provision directing how increased revenue is spent, (2) the

provision acknowledging that the increased revenue is a voter-approved revenue increase under section (7)(d) of article X, section 20 of the Colorado Constitution ("TABOR"), (3) the initiative's impact on both corporate and individual income tax, and (4) the amendment to TABOR section (8)(a). These arguments all fail. The Board addresses each in turn.

A. Directing how increased revenue is spent is part of the single subject.

Directing funds to public school education, health care, and child care is central to the single subject of improving these services by replacing the uniform state income tax rate with a graduated income tax structure. As this Court recognized in *In re Title, Ballot Title, & Submission Clause for 2019-2020 #315*, 2020 CO 61, allocating revenue generated by an initiative does not create a separate subject. *Id.*, ¶¶ 20–21.

Petitioner Hancock attempts to distinguish *In re 2019-2020 #315* by arguing the single subject here is narrower.[3] Hancock Opening Br.,

[3] The deadline to appeal the Board's ruling denying the motion for rehearing was February 11, 2026. § 1-40-107(2), C.R.S. (providing seven

pp 38–39. In that case, the measure's single subject was "creating and administering a Colorado preschool program funded by state taxes on nicotine and tobacco products." *In re 2019-2020 #315*, ¶ 20. Petitioner Hancock asserts that here, in contrast, "the Initiative's primary goal" is "implementing the graduated income tax structure." Hancock Opening Br., p 38. But this is incorrect. Just as "creating and administering a Colorado preschool program" was part of the single subject in *In re 2019-2020 #315*, improving public school education, health care, and

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days to appeal the Board's ruling on a motion for rehearing); Record #191, p 39 (stating that the Board denied the motions for rehearing on Initiative #191 on February 4, 2026); Record #196, p 39 (stating that the Board denied the motions for rehearing on Initiative #196 on February 4, 2026). Petitioner Hancock did not file petitions for Initiatives #191 and #196 with this Court until February 12, 2026, one day after the deadline in section 1-40-107(2), C.R.S. Hancock Petition for Review of Final Action of the Ballot Title Setting Board Concerning Proposed Initiative 2025-2026 #191 (filed February 12, 2026); Hancock Petition for Review of Final Action of the Ballot Title Setting Board Concerning Proposed Initiative 2025-2026 #196 (filed February 12, 2026). Accordingly, this Court need not consider his arguments on those Initiatives. *In re Title, Ballot Title, & Submission Clause for 2023-2024 #175*, 2024 CO 52, ¶ 12 (finding timeliness of appeals in Title Board cases to be jurisdictional).

child care is part of this initiative's single subject.[4] *See* Board Opening Br., pp 15–16.

Petitioner Hancock also argues that specifying multiple social programs to which additional funds will be directed constitutes impermissible logrolling.[5] Hancock Opening Br., p 40; *see also* Sopkin Opening Br., pp 14–15. But the single subject of this initiative includes directing funding to these three programs. The allocation of funds to a specified program is an "implementing provision[]," and "an initiative will not be deemed to violate the single subject requirement merely because it spells out details relating to its implementation." *In re 2019-2020 #315*, ¶¶ 15, 20. Directing the revenue from this initiative to

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[4] Petitioner Hancock also argues that the initiative here is distinct from *In re 2019-2020 #315* because that initiative "raise[d] new taxes … within the current tax schemes." Hancock Opening Br., pp 38–39. But he fails to explain why the source of revenue generated by the measure leads to a different conclusion. It does not.

[5] In support of this argument, Petitioner Hancock cites only one authority—a case in which this Court did not issue an opinion. *In re Title, Ballot Title, & Submission Clause for Proposed Initiative 2019-2020 #68*, 2019SA82 (order affirming the Board's decision to deny title setting); Hancock Opening Br., p 40. But because the Court did not issue an opinion in that case, Petitioner Hancock's reliance on that case does nothing to support his argument.

public school education, health care, and child care is part of this initiative's single subject.

Petitioner Fields argues that the "supplement and not supplant" language of Section 5 likens it to an initiative this Court rejected on single-subject grounds in *In re Title, Ballot Title, & Submission Clause, Summary for 1997-98 #84*, 961 P.2d 456 (Colo. 1998). Fields Opening Br., pp 19–20; Record, p 46. In that case, the proposed initiative would have (1) cut local taxes and (2) required the state to cut funding for other programs in order to replace the lost local revenue. *In re 1997-98 #84*, 961 P.2d at 457. This Court concluded that "tax cuts" and "mandatory reductions in state spending on state programs" were separate subjects and that "[v]oters would be surprised to learn that by voting for local tax cuts, they also had required the reduction, and possible eventual elimination, of state programs." *Id.* at 460–61. Whatever the effect of the "supplement and not supplant" provision, it is unlike *In re 1997-98 #84* because it does not require cuts to other programs. Petitioner Fields argues that this initiative is also similar to the initiative in *In re 1997-98 #84* because "voters would be surprised to

learn that they are mandating current levels of funding to large state programs." Fields Opening Br., p 20. But there is no risk of voter surprise. The single subject of this initiative is *improving* certain public services by replacing the uniform state income tax rate with a graduated income tax structure. Thus, voters would expect the revenue generated by this measure to improve—or supplement—current funding levels. This provision serves the initiative's single subject.

B. Acknowledging that TABOR exempts the excess revenue raised by this initiative from the State's TABOR base is part of its single subject.

As explained in the Board's opening brief, the provision acknowledging that the excess revenue raised by this measure is a voter-approved revenue change under TABOR section (7)(d) and therefore will not count toward the State's spending limit does not create a separate subject. Board Opening Br., p 20.

Petitioners Sopkin and Hancock disagree. They point to the separation of Propositions LL and MM as an example of "giving the voters the option to make a change in the fiscal structure of the state either with or without voter-approved revenue retention." Sopkin

Opening Br., pp 12–13; *see* Hancock Opening Br., p 39. This is inapt. Propositions LL and MM presented a different scenario than the initiative here.

Propositions LL and MM, which were legislatively referred rather than citizen-initiated, were separate subjects and required voter approval under TABOR sections (3)(c) and (4)(a), respectively. *See* 2025 State Ballot Information Booklet, https://tinyurl.com/mpuusac6 (last visited March 23, 2026). In 2022, voters approved Proposition FF, which created the Healthy School Meals for All (HSMA) program by increasing tax on certain taxpayers. *See* 2022 State Ballot Information Booklet, https://tinyurl.com/5avp4mfd (last visited March 23, 2026). Proposition FF was projected to raise approximately $100 million. But because Proposition FF generated more than $100 million and because TABOR section (3)(c) requires voter approval to retain funds collected in excess of the voter-approved estimate, Proposition LL asked voters in 2025 whether to retain the excess HSMA revenue. 2025 State Ballot Information Booklet, p 6. Separately, Proposition MM asked voters in

2025 to increase tax on certain taxpayers to raise additional funds for HSMA. *Id.* at 7.

In contrast, this provision of the initiative merely recognizes that the revenue it will raise constitutes a voter-approved revenue change under TABOR section (7)(d). That Propositions LL and MM were separate ballot measures has no bearing on whether this initiative contains a single subject. This provision is part of the initiative's single subject.

C. The initiative's changes to the corporate and individual income tax rates serve the single subject.

The initiative's impact on both individual and corporate taxpayers does not create a separate subject, as explained in the Board's opening brief. Board Opening Br., pp 20–22. The initiative's single subject is improving public school education, health care, and child care by replacing the uniform state income tax requirement with a graduated income tax. Because both corporations and individuals pay income tax, the initiative's impacts on corporations and individuals serve its single subject.

Petitioner Hancock contends that the initiative's effect on both individual and corporate income tax rates constitutes logrolling because a voter might, for example, support raising tax rates on individuals earning over one million dollars but not corporations earning over one million dollars. Hancock Opening Br., pp 23–24. But an initiative only presents a logrolling risk where it combines "unrelated subjects in a single proposal." *In re Title, Ballot Title, & Submission Clause for 2013-2014 #89*, 2014 CO 66, ¶ 18. As explained in the Board's opening brief, corporate income tax and individual income tax are related. Board Opening Br., pp 20–22. The fact that a hypothetical voter could feel differently about individual and corporate income taxes does not change that. *See In re Title, Ballot Title, & Submission Clause for 2025-2026 #158*, 2026 CO 13, ¶ 16 (defining logrolling as "combining multiple subjects in hopes of attracting support from various factions with different or conflicting interests"). The initiative's impact on corporate and individual income tax is not logrolling.

Petitioner Hancock also argues that this initiative's impacts on earners other than individuals is "coiled up in the folds," and therefore

creates a separate subject. Hancock Opening Br., p 26. He asserts this is especially true for small businesses, which are not explicitly mentioned in the title or initiative's language. *Id.* As explained in the Board's opening brief, Section 4 of the initiative is plainly dedicated to corporate income tax, and the title explicitly refers to "taxable income earned by individuals, estates, trusts, and corporations." Board Opening Br., p 21–22; Record, p 37. And because small businesses are a subset—a subset that Petitioner Hancock does not define—of corporations, it is not clear how the impact on small businesses could be coiled up in the folds of this measure.

The initiative's impacts on corporate and individual income tax rates are part of its single subject.

D. The initiative's constitutional amendment repealing the uniform income tax rate requirement serves its single subject.

The initiative's constitutional amendment (both the amendment in #191 and the amendment in #195 and #196) serves its single subject. As explained in the Board's opening brief, the amendment is necessarily and properly connected to repealing the uniform state income tax to

create a graduated state income tax structure. Board Opening Br., pp 22–26. And to the extent that Petitioners ask this Court to speculate on the possible future effects of the amendment, this Court should decline to do so. *See In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 #256*, 12 P.3d 246, 257 (Colo. 2000).

As to Initiative #191, Hancock argues that striking "taxable net income" from TABOR section (8)(a) is not necessarily and properly related to Initiative #191's single subject because Initiatives #195 and #196 do not strike that language. Hancock Opening Br., p 34. But just because it would be possible to impose a graduated tax without striking "taxable net income," as Initiatives #195 and #196 would do, does not mean that doing so creates a separate subject. As explained in the Board's opening brief, "taxable net income" defines what income is subject to the uniform income tax requirement, so striking that language is part of Initiative #191's single subject of improving certain public services by replacing the uniform income tax requirement with a graduated tax structure. Board Opening Br., p 25. Initiative #191 does not change the definition of taxable income, and this Court need not

speculate as to an initiative's future effects. *See In re 1999-2000 #256*, 12 P.3d at 257.

Also as to Initiative #191, Petitioner Hancock argues that the constitutional amendment caps the income tax rate at the rate as of passage because an increased rate "could be construed as an 'added tax.'" Hancock Opening Br., p 33. But the amendment would not change the prohibition on added taxes and thus does not create a second subject. TABOR section (8)(a) currently provides: "Any income tax law change after July 1, 1992 shall also require all taxable net income to be taxed at one rate, excluding refund tax credits or voter-approved tax credits, with no added tax or surcharge." If Initiative #191 were to pass, TABOR section (8)(a) would read: "Any income tax law change after July 1, 1992 shall also require no added tax or surcharge." Record #191, p 42. Although worded differently, both the current language and the language under Initiative #191 plainly prohibit added tax. Hancock offers no reason why an increased tax rate would be an added tax under Initiative #191 but not under TABOR's current language. Whatever the meaning of "added tax," it is prohibited both by TABOR section (8)(a)'s

current language and Initiative #191. Thus, this aspect of the amendment does not create an additional subject.

As to Initiatives #195 and #196, Petitioner Hancock warns that striking "no added tax" "could subject voters to the whims of the legislature in imposing additional income tax beyond the graduated income tax already in place." Hancock Opening Br., p 36. Again, this Court should decline to speculate on the future effects of this initiative and reject this argument. *In re 1999-2000 #256*, 12 P.3d at 257.

III. The title set by the Board is clear, accurate, and in compliance with statutory requirements.

The initiative's title clearly expresses the subject of improving certain public services by replacing the uniform state income tax rate with a graduated income tax structure and fairly reflects what voters would be asked to approve. In addition to the arguments addressed in the Board's opening brief, Petitioners make three additional objections to the clear title in their opening briefs. None are availing.

First, Petitioners Fields and Hancock argue the requirements of section 1-40-106(3)(g), C.R.S., and 1-40-105.5(1.5)(a)(V), C.R.S. (the requirements to include ballot title language identifying programs

being funded and the table on income tax changes, respectively) "cloud clear title requirements." Fields Opening Br., p 24; *see also* Hancock Opening Br., pp 22–23, 27–29. But Petitioners' issues with those statutory requirements cannot be addressed by this Court in this appeal. This Court is limited to review of the initiative's title for single subject and clear title purposes. *See In re Title, Ballot Title & Submission Clause for 2021-2022 #16*, 2021 CO 55, ¶ 10.

Second, Petitioner Hancock styles his clear title argument as a novel issue: "whether a measure that strikes constitutional language but leaves the resulting provision unintelligible can nevertheless obtain a title." Hancock Opening Br., pp 14–20. But this is not a novel issue. The Colorado Constitution requires a simple majority vote for "an initiated constitutional amendment that is limited to repealing, in whole or in part, any provision of [the] constitution." COLO. CONST. art. V, § 1(4)(b). The initiatives here are limited to repealing constitutional language. Petitioner Hancock's objection (that the repeal here results in an unclear provision) falls squarely within this Court's review of the

clear title requirement. For the reasons stated in the Board's opening brief, the title is clear. Board Opening Br., pp 26–35.

Third, Petitioner Hancock misunderstands the impact of the initiative on the TABOR spending limit and voter-approval requirements. Hancock Opening Br., p 49. He argues that "the titles as drafted do not clarify the excess portion of the revenue generated does not count toward the TABOR cap. They specifically fail to mention the measures remove the voters' right to vote on retaining excess revenue under TABOR." *Id.* This misunderstands both the title and TABOR. First, the title explicitly states the initiative "authoriz[es] the state to retain and spend any increased revenue from the new tax structure, as a voter-approved revenue change." Record, p 37. And nothing in the measure "remove[s] the voters' right to vote on retaining excess revenue under TABOR." Hancock Opening Br., p 49; *see* COLO. CONST. art. X, § 20(3)(c) (requiring voter approval to retain revenue in excess of the voter-approved estimate).

The Court should affirm the Board and reject Petitioners' clear expression challenge. *In re Title, Ballot Title & Submission Clause, &*

Summary for 1999-2000 ##227 & 228, 3 P.3d 1, 5 (Colo. 2000) (title will be upheld "if … not clearly misleading").

CONCLUSION

This Court should affirm the title as set for Proposed Initiatives 2025-2026 #191, #195, and #196.[6]

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[6] Petitioner Hancock includes an argument in his opening brief regarding the fiscal impact statement. *See* Hancock Opening Br., pp 50–51. As noted in the Title Board's opening brief, that issue is not appropriate for review by this Court, so the Board does not address it here. *See* Board Opening Br., p 1; § 1-40-105.5(2)(a), C.R.S. ("The fiscal impact statement is not subject to review by the title board or the Colorado supreme court under this article 40.").

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 23rd day of March, 2026.

/s/ Carmen Van Pelt