

**COLORADO SUPREME COURT**

2 East 14<sup>th</sup> Avenue  
Denver, CO 80203

DATE FILED  
March 23, 2026 2:08 PM

Original Proceeding  
Pursuant to Colo. Rev. Stat. § 1-40-107(2)  
Appeal from the Ballot Title Setting Board

In the Matter of the Title, Ballot Title, and  
Submission Clause for Proposed Initiative  
2024-2025 #191, #195, and #196 (“Concerning a  
Graduated State Income Tax”)

▲ COURT USE ONLY ▲

**Petitioners:**

Rebecca Sopkin and The TABOR  
Foundation;  
Michael Fields; and  
Michael Hancock

v.

**Respondents:**

Chris DeGruy Kennedy and Kiyana  
Newell, Designated Representatives  
and  
Title Board: Theresa Conley, Christy  
Chase, and Kurt Morrison

**Attorney for Petitioner Michael Fields:**

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Case Number: 26SA45  
& 26SA46  
& 26SA47

**ANSWER BRIEF OF PETITIONER MICHAEL FIELDS**

## 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 1,353 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*

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Michael Fields (“Petitioner”), through undersigned counsel, respectfully submits the following answer brief:

### **INTRODUCTION**

Just two weeks ago, this Court overturned the Title Board on initiative 2025-2026 #158 “Vote on Fees” holding the Board erred in finding the measure contained a single subject. *In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2025–2026 #158*, 2026 CO 13.

In #158 the Court expressed concerns about initiatives that propose to make significant changes beyond their central purpose. *Id.* p.15 (citing *In re 2015–2016 #132*, ¶¶ 17, 19, 374 P.3d at 465–66 (Colo. 2016) (explaining that the initiatives violated the single subject requirement by “propos[ing] a significant change to the mission and role of the existing Supreme Court Nominating Commission” when their central purpose was “redistricting in Colorado”). The Court further found a danger of logrolling where an initiative may attract a “yes” vote from one category of voters that supported voting on “fees”, but who not support defining that same term if the term strays from previous definitions or “judicially developed” interpretations of the term. *Id.* (finding the “redefinition of fee” is neither necessarily nor properly connected).

Petitioner seeks to have the standard imposed upon his Initiative #158 applied equally to the instant case.

Proposed Initiatives 2024-2025 #191, #195, and #196 were consolidated by the Court into the instant case because they all concern similar concepts and they each reach their multiple goals in a similar manner. None of these proposed initiatives constitutes a single subject, and the Board should not have set title.

Among the multitude of subjects each initiative covers are: 1) Allowing taxation of income at different rates for different income levels while also creating a substantial tax increase; 2) Directing excess revenue generated from the resulting new tax revenue to supplant specific, disparate programs; and 3) Repealing the requirement that individuals and corporations be taxed at the same rate; 4) Striking the prohibition on surcharges and added taxes; and 5) Striking taxable net income as the tax basis.

## **ARGUMENT**

### **I. Creating different tax rates for different taxpayers and while raising taxes by 2.7 billion dollars annually are two subjects.**

Since the passage of TABOR in the 1990s, Colorado has taxed all income – both corporate and individual – at the same rate. The purpose of the proposed initiatives are to establish new, progressive income tax rates. Each of the initiatives would lower income taxes for some taxpayers while simultaneously raising it for

others. This is the purpose of the initiative as stated repeatedly by proponents. Yet the initiative, just like the Court found in #158, makes “significant changes beyond their central purpose.”

One of the most significant is the raising of taxes by 2.7 billion dollars annually. There is no reason a graduated income tax cannot be revenue neutral or de minimis. Proponents have offered no explanation of how this is connected to their measure. This is the type of logrolling danger the Court warned about in #158. The initiative may attract a “yes” vote from one category of voters that supports graduated income tax, but who not support a significant raise in taxes. *Id.*

## **II. Splitting individual and corporate tax rates is unrelated to a progressive income tax.**

Although these initiatives set the same progressive rates for individuals and corporations, the changes made in the constitution would untether the two categories paving the way for future changes between the rates.

This change in the constitution, although unrelated to the measure, would allow for major changes in long standing tax policy. Future changes, requiring no further constitutional approval, could see the shift of the tax burden tilted against either corporations or individuals without the requirement that a change to one necessitate a change to the other. This amendment is surreptitious and is coiled into the folds of the initiative.

Proponents fail to offer any reason for this change in the constitution. Despite Petitioner raising this issue in the motion for rehearing and notice of appeal, Respondents proponents choose to continue to ignore the argument, instead addressing only the strike out of “at one rate”. They have offered no defense for why they have struck the strike “all” preceding taxable net income, the language that tied the two categories together and the change that is at issue here.

The Title Board also failed to grasp the issue arguing, “[r]emoving the requirement for uniformity between individuals and corporations is central to repealing and replacing the uniform income tax requirement. Because TABOR’s uniform income tax rate requirement applies to all income taxpayers—including individuals and corporations—repealing it necessarily eliminates the requirement that the State tax individuals and corporations uniformly. ” (Opening Brief p. 24) Petitioner agrees the amendment eliminates the requirement that individuals and corporations be taxed at the same rate across the categories, but this argument does nothing to explain why it needed to be eliminated or how it is necessarily connected to establishing a progressive income tax.

Clearly the repeal of the requirement is not connected to a graduated income tax. This is proven because the measure keeps the uniformity between individuals and corporations in setting the progressive income tax rates.

This is a significant change beyond the central purpose in violation of single subject. See *In re 2015–2016 #132*, ¶¶ 17, 19, 374 P.3d at 465–66 (explaining that the initiatives violated the single subject requirement by “propos[ing] a significant change to the mission and role of the existing Supreme Court Nominating Commission” when their central purpose was “redistricting in Colorado”).

**III. Striking the prohibition on surcharges and added taxes violates single subject.**

Respondents failed to address this noticed issue in their Opening Brief. See *#191 Petition For Review (1)(b)(ii)(6)*; *#195 Petition for Review (1)(b)(ii)(6)*; *#196 Petition For Review (1)(b)(ii)(6)*.

**IV. Directing surplus revenue to specific programs is a distinct subject.**

Proponents direct excess revenue from the initiative into specific programs which may be supported by disparate groups of taxpayers. This is an obvious attempt to garner support for their initiative from groups which are interested in funding certain programs but may not be interested in a progressive income tax. This logrolling attempt should be rejected by the Court.

Additionally, Initiative 191 and 195 require this excess revenue “supplement and not supplant” current funding. Neither the Title Board, nor proponents, offer an explanation on how this is connected to their measure.

Directing funding is a separate subject on its own but mandating that the current funding level remain as is, creates yet another subject. That is what the supplant language requires.

"Words and phrases should be given effect according to their **plain** and ordinary meaning . . . ." *Farmers Grp., Inc. v. Williams*, 805 P.2d 419, 422 (Colo. 1991). The court "must not strain to give language other than its plain meaning, unless the result is absurd." *Colo. Dep't of Soc. Servs. v. Bd. of Cty. Comm'rs*, 697 P.2d 1, 18 (Colo. 1985). "Supplement" is defined as "something added to supply" *Blacks Law Dictionary 6<sup>th</sup> ed. 1990*. Supplement is commonly understood to be an addition. This is further highlighted by the measure's language, "not supplant". If it the new moneys cannot supplant funding then funding must remain at its current level. This is far afield of single subject.

**V. Striking "taxable net income" as the income base for taxation violates single subject.**

Respondent Title Board argues that striking the tax basis "taxable net income" is "an integral part of the uniform income tax rate requirement—it defines what income is subject to the requirement. Colo. Const. Art. X, § 20(8)(a)." Title Board, Opening Brief, p. 25. But the tax basis for the rate has nothing to do with implementing a graduated income tax. These are two entirely different factors in the calculation.  $\text{Tax} = \text{Rate} \times \text{Basis}$ . Changing one factor does necessitate changing the

other. In admittedly altering the definition of income the proponents have made significant changes beyond their central purpose. *See Ballot Title 2025-2026 #158, supra* p.15. Surely, some voters may support a graduated income tax, but not support changing the tax basis from the current constitutional formula.

### **CONCLUSION**

Parity matters. *See also, id.*

Respectfully submitted March 23, 2026.

s/Suzanne Taheri  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd of March 2026, a true and correct copy of the **ANSWER BRIEF OF PETITIONER MICHAEL FIELDS** was served via the Colorado Court's E-Filing System to the following:

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