

**COLORADO SUPREME COURT**

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

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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

**OPENING 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 5,439 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 opening brief<sup>1</sup>:

**STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

1. Whether the Title Board had jurisdiction to set a title where a Section of the initiative is neither a law or an amendment.
2. Whether each of the Proposed Initiatives in this consolidated case 2025-2026 #191, #195, and #196 (“the initiatives”) constitutes a single subject.
3. Whether the Title Board set a clear title that reflects the central purposes of each of the initiatives.

**STATEMENT OF THE CASE**

Each initiative in the instant case is a constitutional and statutory initiative which makes changes to Colo. Const. Art. X, § 20 (8)(a) repealing Colorado’s requirement that all income be taxed at the same rate. The measures also contain statutory provisions establishing a progressive income tax and dedicating the ensuing additional revenue to specific funds.

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<sup>1</sup> The Court consolidated three separate initiatives into one case. Although the initiatives all concern similar provisions, there are differences between the three which affect the single subject and clear title arguments.

The Title Board met on January 21, 2026, to consider the measures. The Board found that each measure constitutes a single subject and proceeded to set title. The title for #191 was set as follows<sup>2</sup>:

“State taxes shall be increased \$2.7 billion annually, in order to increase or improve levels of public services, including K-12 public school education, health care, and early child care and education services, by an amendment to the Colorado Constitution and a change to the Colorado Revised Statutes repealing existing law and creating new law to replace the uniform state income tax rate with a graduated income tax structure, and, in connection therewith, amending the Taxpayer’s Bill of Rights to eliminate the constitutional requirement for all income to be taxed at one rate; establishing various income tax rates based on the amount of taxable income earned by individuals, estates, trusts, and corporations, while maintaining the current 4.4% tax on income from the sale of a principal residence, which will result in the estimated change in income taxes owed by individuals as identified in the following table; and authorizing the state to retain and spend any increased revenue from the new tax structure, as a voter-approved revenue change, to supplement current levels of funding for K-12 public school education, health care, and early child care and education programs:

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<sup>2</sup> Each of the measures has a slightly different title due to the slight differences in the text of each initiative. Although each title varies slightly, Petitioner’s objections on the title set by the Board are substantively the same for #191, #195, and #196.

## **Initiative 191**

### **Change in Income Taxes Owed by Income Category**

<b>Income Categories</b>	<b>Current Average Income Tax Owed</b>	<b>Proposed Average Income Tax Owed</b>	<b>Proposed Change in Average Income Tax Owed if Passed + or -</b>
\$25,000 or less	\$59	\$50	-\$9
\$25,001 - \$50,000	\$751	\$632	-\$119
\$50,001 - \$100,000	\$1,877	\$1,666	-\$210
\$100,001 - \$200,000	\$4,126	\$3,828	-\$298
\$200,001 - \$500,000	\$9,344	\$9,019	-\$325
\$500,001 - \$1,000,000	\$19,288	\$18,963	-\$325
\$1,000,001 - \$2,000,000	\$29,432	\$34,196	+\$4,764
\$2,000,001 - \$5,000,000	\$41,196	\$55,110	+\$13,914

Income categories use adjusted gross income reported to the federal Internal Revenue Service.”

### **PRESERVATION OF ISSUES**

Petitioners were one of four separate parties who filed a Motion for Rehearing. The Motion for Rehearing included arguments related to jurisdiction, single subject and clear title. The rehearing was conducted on February 4, 2026, and the Title Board denied all four Motions for Rehearing filed by opponents of each initiative in their entirety.

Petitioner Michael Fields now challenges the Board’s decision to accept jurisdiction to set title due to the measure’s content in Section 1, the Board’s single subject determination, and the title established by the Board. These issues were preserved for review.

### **SUMMARY OF THE ARGUMENT**

Each initiative is designed with the stated intent of eliminating Colorado’s flat income tax for individuals and corporations and replacing it with a progressive income tax.

However, along with eliminating the flat tax, the measures change several other long-standing tax and fee policies in Colorado which are unrelated to establishing a progressive income tax. Because they each individually combine multiple, unrelated elements of tax policy, direct the revenue resulting from these changes to specific funds, authorize a voter approved revenue change, and require<sup>3</sup> the ensuing additional revenue to supplement, not supplant, current spending levels across the dedicated funds, none of the measures constitutes a single subject.

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<sup>3</sup> Initiative #196 is differentiated from #191 and #195 primarily because #196 states that the additional revenue generated from the new tax structure is “intended” (rather than required) to supplement and not supplant current funding levels for the target programs.

Initiative #191 accomplishes its widespread changes to tax policy by striking 20 words from the constitution and enacting a progressive income tax coupled with unconnected mandates.

Similarly, Initiative #196 and #196 each strike the same 14 words from the constitution, resulting in a slightly different structure purportedly to eliminate the flat tax requirement.

Because of the proponent's drafting decisions to strike words mid-sentence from the constitution, the resulting constitutional clause is not comprehensible, and the Board cannot set title on an incomprehensible measure.

Due in part to the complexity of the measure, the ballot language set by the Title Board fails to properly capture the totality of the changes made to Colo. Const. Art. X, § 20 (8)(a).

The ballot title also improperly includes mandatory language from C.R.S. § 1-40-106(3)(g)(I) for a ballot title related to a tax change. Yet, the measure does not qualify as a "tax change" under the statutory definition.

## ARGUMENT

### **I. Initiatives #191, #195, and #196 contain non-legislative acts and the Board lacked jurisdiction to set title.**

#### **A. Standard of Review**

In determining the Title Board's statutory authority to act the Court reviews the statutes de novo. See *Sperry v. Field*, 205 P.3d 365, 367 (Colo. 2009) ("Statutory interpretation is a question of law subject to de novo review."). The goal in construing a statute is to ascertain and give effect to the General Assembly's intent. *Byrne v. Title Board*, 907 P.2d 570, 573 n.2 (Colo. 1995).

#### **B. Argument**

Colo. Const. Art. V, § 1(1) reserves to the people the power to “propose law and amendments.” As this Court has repeatedly found, the initiative power applies “only to acts which are legislative in character.” *Aurora v. Zwerdlinger*, 571 P.2d 1074, 1076 (Colo. 1977); *Vagneur v. City of Aspen*, 295 P.3d 493, 514 (Colo. 2013)

The filing requirements in statute follow this same principle. The draft of texts of an “initiated constitutional amendment” or “initiated law” must first be submitted to legislative research and drafting office for review and comment. Colo. Const. Art. V, § 5; C.R.S. § 1-4-105(1). After review and comment, the draft initiative must then

be submitted to the Secretary of State for setting of title. Failure to follow the filing procedures divests the Board of jurisdiction. See *In re Title Pertaining to “Tax Reform”*, 797 P.2d 1283 (Colo.1990) (requiring the draft first be submitted to the legislative research and drafting office); *Matter of Proposed Initiative 1997-1998 No.109*, 962 P.2d 252 (Colo.1998) (failing to indicate changes in response to review and comments justifies not setting title); *Hayes v. Ottke (In re Title, Ballot Title & Submission Clause for Proposed Initiatives 2011-2012 Nos. 67, 68, & 69)*, 293 P.3d 551, 554 (Colo. 2013) (holding that both designated representatives must appear in person at any Board meeting at which the designated representative’s ballot issue is considered).

Here, proponents properly begin “*Be it Enacted by the People of the State of Colorado*”, but then immediately include a provision that is not enacted as a law or amendment.

Section 1 of the proposal is a legislative declaration. The two-page declaration will not be codified in any law or constitutional provision if the measure is adopted. Because it does not appear in law it is unclear what if any impact the declaration will have in expressing what the people intended in passing the law.

There is no authority in the constitutional reserve of power of initiative that allows such a provision. Just as proponents may not put stand-alone declarations

before the voters, they cannot submit floating declarations such as this one, that falls outside of an enacted law or amendment.

In submitting such a measure, the proponents have submitted text outside of the power to initiate. The Title Board did not have jurisdiction to set title on a matter that is neither a law or amendment.

## **II. Initiatives #191, #195 and #196 do not contain a single subject.**

### **A. Standard of Review**

The Colorado Constitution requires that any initiative must comprise a single subject. Colo. Const. Art. V, § 1 (5.5). Where a measure contains multiple subjects, the Board lacks jurisdiction to set a title.

One purpose of the single-subject requirement is that it “precludes the joining together of multiple subjects into a single initiative in the hope of attracting support from various factions which may have different or even conflicting interest.” *In re Proposed Initiative "Public Rights in Waters II"*, 898 P.2d 1076, 1079 (Colo. 1995).

The inclusion of competing interests in a single measure “is precisely the logrolling dilemma that the voters intended to avoid when they adopted the [single-subject] requirements.” *In re Title, Ballot Title, & Submission Clause for 2011-2012 #3*, 274 P.3d 562, 571 (Colo. 2012).

The single-subject requirement is designed to protect voters against fraud and surprise and to eliminate the practice of combining several unrelated subjects in a single measure for the purpose of enlisting support from advocates of each subject and thus securing the enactment of measures which might not otherwise be approved by voters on the basis of the merits of those discrete measures. *In re Proposed Initiative for an Amendment to the Constitution of the State of Colorado Adding Section 2 to Article VII (Petitions)*, 907 P.2d 586, 589 (Colo. 1995); *In re Proposed Initiative "Public Rights in Waters II"*, 898 P.2d 1076, 1078 (Colo. 1995); *In re Proposed Initiative on Sch. Pilot Program*, 874 P.2d 1066, 1069 (Colo. 1994).

The requirement “prevent[s] surprise and fraud from being practiced upon voters.” C.R.S. § 1-40-106.5(1)(e)(II). An initiative contains a single subject when its provisions are “necessarily and properly connected rather than disconnected or incongruous.” *Haynes v. Vondruska (In re Title, Ballot Title & Submission Clause for 2019–2020 #315)*, 500 P.3d 363 (Colo. 2020) (quoting *Hayes v. Spalding (In re Title, Ballot Title & Submission Clause for 2015-2016 #73)*, 369 P.3d 565, 568 (Colo. 2016),); accord *Howes v. Brown*, 235 P.3d 1071, 1077 (Colo. 2010) (“[W]hen an initiative's provisions seek to achieve purposes that bear no necessary or proper connection to the initiative's subject, the initiative violates the constitutional rule against multiple subjects.”).

Single-subject is violated when the text of the measure “relates to more than one subject and has at least two distinct and separate purposes which are not dependent upon or connected with each other.” *In re Title, Ballot Title & Submission Clause for 2005-2006 #74*, 136 P.3d 237, 239 (Colo. 2006) (quoting *In re Title, Ballot Title & Submission Clause, & Summary with Regard to a Proposed Petition for an Amendment to the Const. of State Adding Section 2 to Article VII (Petition Procs.)*, 900 P.2d 104, 109 (Colo. 1995)).

### **B. Introduction to single subject challenge**

The representatives of the initiative clearly stated their goal at the first hearing on this series of measures. During the hearing on October 1, 2026, regarding proposed initiative 2025-2026 #145, counsel for the proponents stated:

The point of this measure is to create a graduated income, not to increase revenue, not to favor this group or that group, but to create a graduated income, which we're addressing the constitutional prohibition, we create a graduated tax...It is incidental in some of this that if we're moving from one flat rate to a graduated rate, some rates might go down, some rates might go up. And a graduated tax, it is likely that lower income taxpayers would be the ones that would go down and higher income taxpayers would be the rates go up. That would sort of be the logical way to structure a graduated income.” [October 1, 2026 Title Board audio, 19:45 – 21:07]

In subsequent meetings, the record from all previous progressive tax measures in the cycle, including #145 was incorporated. At the February 4, 2026 rehearing for Initiative #191, Title Board Chair Theresa Conley incorporated the record for #145

into the record for #191. [February 4, 2026 Title Board hearing audio, 01:55:38 – 01:55:54 for #191; 02:18:38 – 02:49:17 for #195; and 02:53:00 – 02:53:30 for #196].

Proponents can accomplish their stated purpose of instituting a graduated income tax with two changes. One change requires new language in the Colorado Constitution to allow for a graduated tax and the other is a revenue neutral adjustment to individual or corporate income tax rates across different incomes. No other changes are necessary, and the additional changes are by their nature not “necessarily and properly connected. *TITLE v. APPLE*, 920 P.2d 798, 802 (Colo. 1996)

Upon review, the Court must “examine sufficiently an initiative’s central theme to determine whether it contains hidden purposes under a broad theme.” *In re Title, Ballot Title & Submission Clause, for 2007–2008, #17*, 172 P.3d 871, 875 (Colo. 2007). An initiative’s purposes “must be interrelated to avoid violating the single-subject requirement.” *In re Title, Ballot Title and Submission Clause for 2009-2010 #45*, 234 P.3d 642, 646 (Colo. 2010).

Ultimately, this measure suffers from the same problem as other measures violate single subject by, “surprising voters with a surreptitious change because voters may focus on one change and overlook the other.” *VanWinkle v. Sage (In re Title, Ballot Title & Submission Clause for 2021-2022 #1)*, 489 P.3d 1217, 1225 (Colo. 2021) (citations and internal quotation marks omitted).

### C. Single subject objections to the constitutional change in #191

Initiative #191 makes the following change to the final sentence in Colo.Const.Art X, § 20(8)(a):

~~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 approved by voters, the sentence would read “Any income tax law change after July 1, 1992 shall also require no added tax or surcharge.”

Prior to the amendment the provision required **all** (corporate and individual) taxable **net income** (tax basis) be taxed at **one rate** (flat tax) **with no** (a prohibition) added tax or surcharge. (emphasis added)

By striking the emphasized words above the proponents have created three unconnected subjects. The only change necessary and connected to the measure’s purpose of enacting a graduated income tax is to eliminate the flat tax requirement.

#### 1) *Uncoupling individual and corporate income tax.*

In striking the word “all” the measure uncouples the requirement that individual and corporate tax be taxed at the same rate. This is unrelated to any change the proponents sought to accomplish.

This surreptitious change would come as a surprise to voters. Taxes would not just be raised or lowered not just *within* a class of taxpayers, but *across* classes of taxpayers. (emphasis added) This is a significant change to tax policy that has no connection to a progressive income tax.

This provision is both unconnected and unnecessary to the measure. In fact, the measure leaves the tax rate across classes of taxpayers at status quo. Such a change in the constitution without an actual implementation cannot be said to be connected or necessary.

2) *Removal of the prohibition on added taxes and surcharges.*

By striking “[,] with” before “no added tax or surcharge” the entire operation of the sentence changes. Currently, TABOR prohibits added taxes and surcharges. The new language, “Any income tax law change after July 1, 1992 shall also require no added tax or surcharge”, no longer prohibits added taxes or surcharges. While the new language may not “require” an added tax or surcharge, it certainly does not prohibit them. Not requiring an act is easily distinguished from prohibiting an act.

Allowing taxes and surcharges to now be assessed on an income tax is a vast departure from TABOR’s purpose and plain language. Not only would it remove the prohibition on taxes (that are at least voted on by the people), but it would now allow for a surcharge (which does not require a vote of the people). *See Tabor Found. v.*

*Colo. Bridge Enter.*, 353 P.3d 896, 901 (Colo. App. 2014) (using fee and surcharge interchangeably and finding a fee or surcharge is not subject to a vote of the people).

Voters would improperly have to choose between a graduated income tax and allowing fees to be added to taxes without a vote of the people.

3) *Removal of the tax basis.*

Striking “taxable net income” removes the tax basis used to calculate tax liability. This allows for taxes to be assessed on something other than “net income”. Again proponents have made a change to the constitution that is unconnected to their measure. Proponents have offered no explanation as the purpose behind the change or how it is necessary to their measure.

These changes to the constitution were not necessary or connected to a progressive income tax. Proponents are clearly attempting to strike language from TABOR to avoid the 55% vote mandate and the mandate that they collect signatures and demonstrate support throughout Colorado. *See Colo. Const. Art. V § 1 (2) and (4)(b).*

Overall, the proponent’s choice to strike-out language in such a haphazard manner results in an incomprehensible clause: “Any income tax law change after July 1, 1992 shall also require no added tax or surcharge.”

The Title Board cannot set title for a ballot initiative where the measure is incomprehensible. If a measure cannot be comprehended well enough to state a single subject in the title, the initiatives cannot be forwarded to the voters and must be returned to the proponent. *Outcalt v. Buckley (In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 #44)*, 977 P.2d 856, 857 (Colo. 1999).

At best, even if a Court can make sense of the new language, the changes made to the constitutional provision are surreptitious. The voters will not know, or be surprised to know, that the changes pave the way to have different tax rates between corporate and personal income tax. The voters will not know, or be surprised to know, that the way income tax is calculated could be altered. The voters will not know, or be surprised to know, that added taxes and surcharges are no longer prohibited.

Related to the logrolling concern is the requirement that voters be fully informed. A measure that logrolls “also violates the requirements that an initiative must not potentially mislead voters, that its title must not misrepresent or insufficiently inform voters so as to create confusion, and that it convey the initiative's likely impact so as to enable voter choice.” *Kemper v. Hamilton (In re Title, Ballot Title, & Submission Clause for 2011-2012 #3)*, 274 P.3d 562, 571 (Colo. 2012).

**D. Single subject objections to the constitutional change for #195 and #196**

Initiatives #195 and #196 make the following change to the final sentence in Colo.Const.Art X, § 20(8)(a):

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.~~

Upon amendment the sentence would read “Any income tax law change after July 1, 1992 shall also require all taxable net income to be taxed with no added surcharge.”

While the proponents here don't strike the word “all” that previously connected the individual and corporate rate, their strike out has the same effect. The only restriction on income tax is that it must “be taxed”. The restriction that it be taxed at the same rate across categories no longer exists. Because the tax could be different across tax categories #195 and #196 suffers from the same problem as #191.

It is similarly as incomprehensible as the amendment in #191. What does it mean that income tax must be taxed? Does this mean tax can't be zero? And what is the purpose of striking with, “no added tax”. Could a sin tax now be added to the established tax rates? These unanswered questions were never asked of, and

interpretations were never offered by, the proponents. There is nothing in the record that connects these changes to establishing a progressive income tax.

**E. Single subject objections to the statutory changes in #191.**

Each initiative contains a multitude of subjects, clearly demonstrating the type of logrolling and surreptitious provisions that the single subject requirement is designed to guard against.

1) *Increase and Decrease of Income Tax.*

The inclusion of both a tax increase and a tax decrease in one initiative to pass a multibillion-dollar tax hike “is precisely the logrolling dilemma that the voters intended to avoid when they adopted the [single-subject] requirements.” *In re Title, Ballot Title, & Submission Clause for 2011-2012 #3, supra.*

Some voters will certainly favor a tax reduction for themselves but not want to massive increase taxes for others. These are the voters the proponents are counting on to choose their own minor decrease in tax liability while implementing an imbalanced increase to higher earning individuals and businesses.

The single subject necessarily-and-properly-related test has often taken into account whether voters might favor only part of an initiative and the potential for voter surprise. *See, e.g., Smith v. Hayes (In re Title, Ballot Title & Submission Clause for 2017-2018 #4), 395 P.3d 318, 322 (Colo. 2017); Kemper v. Hamilton (In re Title,*

*Ballot Title, & Submission Clause for 2011-2012 #3*), 274 P.3d 562, 567-68 (Colo. 2012); *Howes v. Brown*, 235 P.3d 1071, 1079 (Colo. 2010).

2) *Inclusion of both Corporate and Personal Income Tax.*

The measure changes the income tax structure for both corporate and personal income tax. While TABOR currently requires corporate and personal income tax be taxed at the same rate, proponents use this measure to strike this requirement in TABOR. These two very different tax classes are no longer connected by law and there is therefore no need to connect them in the measure.

There will certainly be people that would like to increase taxes for higher earning individuals but would not want to tax small businesses or employers at a higher rate (or vice versa). These are two separate and distinct categories of taxpayers. Again, this is an attempt to gain support from factions that would not otherwise support the increase. The single subject requirement prevents proponents from seeking “to attract voters who might oppose one of these two subjects if it were standing alone.” *Hayes v. Spalding (In re Title, Ballot Title, & Submission Clause for 2013-2014 #76)*, 333 P.3d 76, 86 (Colo. 2014).

4) *Authorizes excess revenue to be kept and spent as a voter approved revenue change for specific programs.*

Proponents have been clear that the purpose of their measure is to establish a progressive income tax and any tax increase is incidental. If the purpose of the measure is not a tax increase, then the provisions dedicating revenue to specific programs is disconnected. So too is the provision authorizing the state to keep and spend excess funds as a voter approved revenue change.

5) *Requires excess revenue supplement and not supplant current spending levels across the dedicated funds.*<sup>4</sup>

The measure also mandates existing and future state spending by directing (e.g. requiring) the additional revenue supplement and not supplant current funding of specified programs. This spending change would apply to two of the state’s highest cost programs—public school education and health care. Mandating that public school education and health care spending remain at current levels is unconnected to the measure and is a separate and distinct subject. *Outcalt v. Bruce*, 959 P.2d 822 (Colo.1998); see also *In re Title, Ballot Title and Submission Clause for 2009-2010 # 91*, 235 P.3d 1071, 1079 (Colo. 2010).

Requiring the General Assembly to supplement and not supplant the funding for mirrors the circumstances in *In re the Title, Ballot Title and Submission Clause*,

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<sup>4</sup> Initiative #196 does not “require” excess revenue to supplement and not supplant current spending levels. Rather, #196 states that the funds are “intended” to supplement and not supplant current spending levels.

*and Summary for 1997-98 # 84, 961 P.2d 456, 460 (Colo. 1998).* There, the initiative provided for tax cuts, but it also effectively required spending state spending programs. The Court held that combining the issues was “precisely the types of mischief which the single subject requirement was intended to prevent.” *Id.* Voters “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. Here voters would be surprised to learn that they are mandating current levels of funding to large state programs which will then impact efficiencies within the programs and negatively impact other programs that are not protected

### **III. The title does not reflect the central purpose of the measure.**

#### **A. Standard of review.**

“No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title.” Colo. Const. Art. V, § 1 (5.5). “The title for the proposed law or constitutional amendment . . . shall correctly and fairly express the true intent and meaning thereof.” C.R.S. § 1-40-106(3)(b). The purpose of this title 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 (Colo. 1999).*

The title and submission clause should allow voters, whether or not they are familiar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose the proposal. *Cordero v. Leahy (In re Title, Ballot Title & Submission Clause for 2013-2014 #90)*, 328 P.3d 155, 162 (Colo. 2014). Thus, "[i]n setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a 'yes/for' or 'no/against' vote will be unclear." C.R.S. § 1-40-106(3)(b) (2015). In addition, the title must "correctly and fairly express the true intent and meaning" of the initiative. *Id.*

In determining whether a title is clear, the Court does not consider whether the Title Board set the best possible title. *Cordero v. Leahy (In re Title, Ballot Title & Submission Clause for 2013-2014 #90)*, 328 P.3d 155, 162 (Colo. 2014). But the measure must fairly reflect the proposed initiative such that voters will not be misled into supporting or opposing the initiative because of the words employed by the Title Board. *Id.*

The Title Board is afforded discretion in resolving problems of length, complexity, and clarity in designating a title and ballot title and submission clause. *Id.* The Board's duty is to summarize the central features of a proposed initiative. *Id.* The Board, however, need not explain the meaning or potential effects of the proposed

initiative on the current statutory scheme. *Id.* But, the title must fairly reflect the proposed initiative such that voters will not be misled into supporting or opposing the initiative because of the words employed by the Title Board. *Id.*

**B. An “incidental” tax increase is not entitled to the language required in § 1-40-106(3)(g).**

In 2021, the Colorado Generally Assembly, in a bill sponsored by then state representative and now proponent Kennedy, passed a law which provided that “(I) For measures that increase tax revenue for any district through a tax change and specify the public services to be funded by the increased revenue, after the language required by section 20 (3)(c) of article X of the state constitution, the ballot title shall state “in order to increase or improve levels of public services, including (the public service specified in the measure)...”. For measures that increase tax revenue for any district through a tax change and do not specify the public services to be funded by the increased revenue, after the language required by section 20 (3)(c) of article X of the state constitution, the ballot title shall state “in order to increase or improve levels of public services...”. Ballot Measure Fiscal Transparency Act of 2021, H.B. 21-1321, codified at C.R.S. § 1-40-106 (“H.B 21-1321”).

Subsection (h) of the statute then alters long standing constitutional interpretation of clear title by exempting the mandated language from a determination of whether a ballot title qualifies as brief for purposes of section 1-40-102 (10). *Id.*

The title board relied upon this statutory requirement in setting title. However, the title board erred in applying the statute where proponents stated that the tax increase was merely “incidental” to the measure’s purpose of establishing a graduated income tax. Exempted from the mandate for this language is any “incidental” tax increases:

“Tax change” means any initiated ballot issue or initiated ballot question that has a primary purpose of lowering or increasing tax revenues collected by a district, including a reduction or increase of tax rates, mill levies, assessment ratios, or other measures, including matters pertaining to tax classification, definitions, credits, exemptions, monetary thresholds, qualifications for taxation, or any combination thereof, that reduce or increase a district’s tax collections. “Tax change” does not mean an initiated ballot issue or initiated ballot question that results in a decrease or increase in revenue to a district in which such decrease or increase is *incidental* to the primary purpose of the initiated ballot issue or initiated ballot question. *Id.* (emphasis added)

Here, proponents unequivocally stated the increase was, in fact, “incidental”.

Proponents cannot then benefit from the mandated language in C.R.S. § 1-40-106(3)(g).

The ballot title not only mentions the programs in the single subject, it repeats them again at the end of the title, further emphasizing the unnecessary catch phrases.

The problem with the title is further compounded by the chart required by C.R.S § 1-40-105.5(j):

A ballot title for a measure that either increases or decreases the individual income tax rate must, if applicable, include the table created for the fiscal summary pursuant to section 1-40-105.5 (1.5)(a)(V). C.R.S. § 1-40-106.

Proponent Kennedy, also a sponsor of that resolution, was quoted at the time stating:

“There are a number of components (last year) where we reached agreement with the governor,” said Kennedy, a Lakewood lawmaker who also worked on last year’s bill. “But he expressed some concern about the idea of printing a table where it breaks down the value of the tax benefit or the tax increase to different income brackets ... on the ballot itself. So, this year, what we’ve introduced is a bill that’s going to refer this question to the voters so that the governor doesn’t have to weigh in on it.” <https://coloradosun.com/2022/05/02/democrats-jared-polis-income-tax/>

The article also states that “Liberal members of the House and Senate would like to see him [i.e., Polis] embrace changes that would make the state’s tax code more progressive by charging wealthier Coloradans more compared to their lower-income neighbors.” One purpose of Prop GG was to assist with a future measure to implement a graduated income tax system.

These mandated provisions cloud clear title requirements. Rather than informing voters of the central purposes of the measure, the title already 186 words long (not including the chart), contains 33 words dedicated to purported program improvements that may or may not happen and have no measurable results.

**C. The ballot language fails to properly capture the totality of changes made to TABOR, as cited above in the single subject argument.**

While the title includes unnecessary and confusing provisions, the title does little to inform voters that the changes to TABOR. Voters are not informed that the measure will allow for different tax rates across categories. Voters are not informed that the tax basis upon which income tax is assessed is no longer set in TABOR. Voter are not informed that the prohibition on added taxes and surcharges is now discretionary instead of prohibited. Voters will be misinformed and confused by the title.

### **CONCLUSION**

The Title Board lacked jurisdiction to set title because the initiative contains non-legislative provision and does not comply with single subject. Each Initiative makes sweeping changes to the Colorado constitution that are unconnected to their measure.

The ballot title set by the board contains information that is not required or helpful to the electorate while omitting important constitutional changes to TABOR.

For all the foregoing reasons, the Court should reverse the Title Board's findings on Proposed Initiatives #191, #195, and #196.

Respectfully submitted March 3, 2026.

s/Suzanne Taheri  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 3<sup>rd</sup> day of March 2026, a true and correct copy of the **OPENING BRIEF OF PETITIONER MICHAEL FIELDS** was served via the Colorado Court's E-Filing System to the following:

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