

<p>SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, Colorado 80203</p>	<p>DATE FILED March 3, 2026 7:24 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>Petitioners: MICHAEL FIELDS, MICHAEL HANCOCK, REBECCA SOPKIN, and THE TABOR FOUNDATION</p> <p>v.</p> <p>Respondents: CHRIS DEGRUY KENNEDY and KIYANA NEWELL, Proponents</p> <p>and</p> <p>Ballot Title Board: THERESA CONLEY, CHRISTY CHASE, and KURT MORRISON</p>	<p>▲ COURT USE ONLY ▲</p>
<p><u>Attorneys for Respondents:</u> Edward T. Ramey, #6748 Tierney Lawrence Stiles LLC 225 East 16th Avenue, Suite 350 Denver, CO 80203 Telephone: 303-949-7676 Email: eramey@TLS.legal</p>	<p>Supreme Court Case No. 2026SA45</p>
<p>RESPONDENTS’ OPENING BRIEF IN CONSOLIDATED CASE NOS. 2026SA45, 2026SA46, and 2026SA47</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 principal brief does not exceed 9,500 words; It contains 2,563 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 Opening Brief in these consolidated proceedings:

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

As best the Respondents can determine from the Petitions for Review filed in these proceedings and the Motions for Rehearing before the Ballot Title Setting Board (“Title Board”), the issues being presented among the various Petitioners are as follows:

1. Whether each of these proposed initiatives improperly addresses more than a “single subject” by proposing to replace Colorado’s current single-rate income tax structure applicable to all individuals, estates, trusts, and domestic and foreign C corporations with a graduated income tax structure applicable to the same classes of persons and entities.
2. Whether striking the constitutional requirement that all taxable net income be taxed at one rate in Colorado constitutes an impermissible second subject not necessarily or properly connected to adopting a graduated income tax structure in Colorado.

3. Whether striking the constitutional requirement that all taxable net income be taxed at one rate in Colorado renders one or more of these proposed initiatives too vague to set title or somehow strips the Title Board of jurisdiction to set title.

4. Whether the fact that some income brackets would be taxed at a lower or higher rate – compared to the current uniform flat rate – constitutes an impermissible second subject not necessarily or properly connected to replacing the current flat rate with a graduated rate structure.

5. Whether the proposed initiatives would have the effect of separately repealing protections currently afforded to refund tax credits or voter approved tax credits.

6. Whether the proposed initiatives impermissibly address more than a single subject by allowing the state to retain and spend any additional revenue directly resulting from the proposed new graduated income tax structure.

7. Whether the proposed initiatives impermissibly address more than a single subject by dedicating the initial uses of any additional revenue directly resulting from the proposed new graduated income tax structure and stating that such additional revenue is intended to supplement, and not supplant, current levels of appropriation.

8. Whether inclusion of the table required by §1-40-106(3)(j), C.R.S. (2026), was improper in that only individual income tax rates were included or required to be included.

9. Whether inclusion of a non-statutory Legislative Declaration as Section 1 of the proposed initiatives deprived the Title Board of jurisdiction to set title.

STATEMENT OF THE CASE

This consolidated case involves multiple petitions for review of actions taken by the Title Board regarding three proposed ballot initiatives. Each of the proposed initiatives seeks to establish a graduated state income tax structure in Colorado, and, in connection therewith, remove the constitutional requirement that all income be taxed at one rate, allow any increase in revenue resulting from the new tax structure to be retained and spent, initially dedicate uses of that increased revenue, and require a public report of those amounts and uses.

An initial hearing on each of these proposed initiatives was held before the Title Board on January 21, 2026, at which time title was set for each measure. Timely motions for rehearing were filed by or on behalf of each of the Petitioners – as well as one by these Respondents (requesting a clarification in title language) – and rehearings were held before the Title Board on February 4, 2026. Respondents’

Motion was granted to the extent reflected in a change to the title, and all of the Petitioners' Motions were denied in their entirety. Each of the Petitioners timely filed Petitions for Review of the actions of the Title Board with this Court.

SUMMARY OF THE ARGUMENTS

As reflected in the Statement of the Issues Presented for Review, above, most of the matters at issue in this case involve questions of whether or not these three initiatives each address a single subject as required by COLO. CONST. art. V, §1(5.5), and §1-40-106.5, C.R.S. (2026). See, particularly, items 1, 2, 4, 5, 6, and 7 in the Statement of Issues. As discussed in more detail below, Respondents submit – and the Title Board agreed – that each of these proposed measures encompassed a single subject, *i.e.*, that the matters addressed in each measure were “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).

Petitioners have also presented two arguments concerning the Title Board's jurisdiction to set titles at all for these proposed measures – see items 3 and 9 – as well as one issue involving the constitutionality of a state statute imposing a duty upon the Title Board in the context of the title setting process. See item 8.

ARGUMENTS

I. Standard of Review and Preservation of Issues.

In reviewing the actions of the Title Board, this Court “employ[s] all legitimate presumptions in favor of the propriety of the Board’s actions.” *In re Title, Ballot Title and Submission Clause for 2019-2020 #315*, 2020 CO 61, P7, 500 P.3d 363, 366 (Colo. 2020). “In reviewing a challenge to the Title Board’s single subject decision, ‘we employ all legitimate presumptions in favor of the propriety of the [Title] Board’s actions.’ [citation omitted]. We will only overturn the Title Board’s finding that an initiative contains a single subject in a clear case.” *In re Title, Ballot Title, and Submission Clause for 2011-2012 #45*, 2012 CO 26, P8, 274 P.3d 576, 579 (Colo. 2012).

Respondents do not contest the Petitioners’ preservation of the arguments enumerated above, though they defer to the Petitioners to specify the precise location(s) in the record where each issue they wish to address here was raised and addressed before the Title Board.

II. Replacing Colorado’s current single-rate income tax structure applicable to individuals, estates, trusts, and domestic and foreign C corporations with a new graduated income tax structure directed to precisely the same classes of taxpayers – with the proposed new income brackets and graduated tax rates across each class being identical – does not constitute disconnected separate subjects.

COLO. CONST. art X, §20(8)(a) (part of the “Taxpayer’s Bill of Rights”) generally requires “all taxable net income to be taxed at one rate.” No distinction is made as to whether the taxpayer is an individual, estate, trust, or corporation.

The income tax itself is statutorily imposed upon individuals, estates, and trusts by §39-22-104, C.R.S. The income tax is statutorily imposed upon corporations by §39-22-301, C.R.S. As Constitutionally required, the same flat rate is currently specified under both statutory sections. Each of the three Proposed Initiatives would replace that current flat rate with a new graduated rate structure. Rather than constituting separate subjects, these parallel amendments preserve the current practice of applying the same income tax rate to all persons and entities subject to the State’s income tax.

III. Striking the constitutional requirement that all taxable net income be taxed at one rate does not constitute an impermissible second subject not necessarily or properly connected to adopting a graduated income tax structure in Colorado.

Striking the requirement in COLO. CONST. art. X, §20(8)(a) that any income tax law change after July 1, 1992 shall also require all taxable net income to be taxed “at one rate” is not only necessarily (let alone properly) connected to adopting a graduated income tax rate structure in Colorado – it is essential to it.

There is nothing confusing or misleading about the purpose or effect of the strikeout. Strikeouts of existing language are a common tool for amendments and

repeals. *See, e.g.*, Appendix B.4, pp. 418-428 to the Colorado General Assembly’s Legislative Drafting Manual.¹ And, irrespective of the drafting method, the sole point of the proposed amendment is clearly and exclusively to repeal – not otherwise amend, revise, modify, or replace – the precise language being stricken.²

IV. There is nothing vague or misleading about striking the constitutional requirement that all taxable net income be taxed at one rate in Colorado such that the Title Board would be “stripped of jurisdiction” to set a title.

In addition to being a necessary predicate to adoption of a graduated income tax structure in Colorado, there is nothing vague or misleading about the proposed strikeout of the current constitutional requirement that all taxable net income be taxed “at one rate.” The Title Board had no difficulty understanding the proposed measures sufficiently to set titles for each.

¹ <https://content.leg.colorado.gov/sites/default/files/colorado-legislative-drafting-manual-accessible.pdf>

² Respondents understand that Petitioners would prefer to compel Respondents to insert additional amendatory language to trigger the 55% favorable vote requirement for proposed constitutional amendments per COLO. CONST. art. V, §1(4)(b). Whether by strikeout or additional language, however, this constitutional requirement by its clear language “shall not apply to an initiated constitutional amendment that is limited to repealing, in whole or in part, any provision of this constitution.”

As best Respondents can tell at this point – and could discern from the Petitioners’ rehearing motions and arguments – Petitioners are concerned with potential unintended future interpretations and applications of this strikeout. In context, Respondents submit that this should not really be a problem. More to the point, this Court has repeatedly emphasized that it is not the role of the Title Board – or this Court upon review of the Title Board’s actions – to “address the merits of a proposed initiative” nor “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, 59 (Colo. 2008).

V. The fact that some income brackets would be taxed at a lower or higher rate – compared to the current uniform flat rate – does not constitute an impermissible second subject not necessarily or properly connected to replacing the current flat rate with a graduated rate structure.

Among the arguments posed or adopted by various of the Petitioners is that proposing replacement of the current single-rate income tax structure with a graduated rate structure under which some income levels would be taxed at a lower rate than others – and some even at a lower rate than the current flat rate – constitutes an impermissible second subject. Specifically, they characterize this as “logrolling” – the practice of “combining subjects with no necessary or proper connection for the purpose of garnering support for the initiative from various factions – that may have different or even conflicting interests – [in order to] lead

to the enactment of measures that would fail on their own merits.” *In re Title, Ballot Title and Submission Clause for 2017-2018 #4*, 2017 CO 57, P7, 395 P.3d 318, 321 (Colo. 2017).

The very nature of a graduated rate tax structure is that some taxpayers will be taxed at a lower rate than others – and perhaps, as here, some even at a lower rate than the single flat rate being replaced. That does not imply “logrolling” – which requires joinder of provisions that are “disconnected or incongruous” with “at least two distinct and separate purposes.” *Id.*, at P7, 321. There is nothing “disconnected or incongruous” in these measures, and there are no “distinct and separate purposes.”

VI. The proposed initiatives would not have the effect of separately repealing protections currently afforded to refund tax credits or voter approved tax credits.

As best Respondents can discern, this objection is grounded in a misreading by some of the Petitioners of current COLO. CONST. art X, §20(8)(a) – and thus the effect of these proposed initiatives. COLO. CONST. art X, §20(8)(a) currently requires “all taxable net income to be taxed at one rate, excluding refund tax credits or voter approved tax credits.” The effect is to exclude those credits from the constitutionally mandated “one rate” calculation. As conformity to a single rate would no longer be required under these proposed measures, this exception to the

conformity requirement would no longer have any meaning, let alone be relevant.

There is no intent to impact the specified tax credits themselves.

VII. The proposed initiatives do not impermissibly address more than a single subject by allowing the state to retain and spend any additional revenue directly resulting from the proposed new graduated income tax structure.

Various Petitioners appear to argue that allowing the State to retain and spend the additional revenue created specifically and solely by implementation of the proposed new graduated income tax structure would constitute an unrelated and impermissible second subject. These Respondents respectfully submit that it is difficult to imagine a provision more directly and “properly” connected to a State tax policy change that would result in an increase in net revenue than to address whether the State would be allowed to retain and spend – rather than immediately refund – that specific revenue.

VIII. The proposed initiatives do not impermissibly address more than a single subject by dedicating the initial uses of any additional revenue directly resulting from the proposed new graduated income tax structure and stating that such additional revenue is intended to supplement, and not supplant, current levels of appropriation.

As discussed separately above, the “single subject” requirement is intended to prohibit “combining subjects *with no necessary or proper connection* for the purpose of garnering support for the initiative from various factions – that may have different or even conflicting interests – [in order to] lead to the enactment of

measures that would fail on their own merits.” *In re Title, Ballot Title and Submission Clause for 2017-2018 #4, supra* (emphasis added). Respondents respectfully submit that a statutory dedication of initial uses for new revenue anticipated to be generated exclusively by a specific proposed tax policy change is “properly connected” to that proposed tax policy change. Importantly, it is only this specific excess revenue for which these uses are being specified.

IX. Inclusion of the table required by §1-40-106(3)(j), C.R.S. (2026), was not improper in that only individual income tax rates were included or required to be included.

Petitioners’ objection here appears to be that the Title Board did precisely what the applicable statute (in this case adopted by the people upon referral by the General Assembly) required it to do. If Petitioners find fault with these statutory requirements, the proper vehicle for addressing these issues would be an independent action – not a Title Board proceeding or review of that proceeding by this Court under §1-40-107, C.R.S.. Additionally, Petitioners have not identified any harm that they have suffered through inclusion of this table.

X. Inclusion of a non-statutory Legislative Declaration as Section 1 of the proposed initiatives did not deprive the Title Board of jurisdiction to set title.

Prefacing legislative material with a non-statutory legislative declaration is common practice. Please see section 2.7 (pp. 56-60) of the General Assembly’s

Legislative Drafting Manual.³ Petitioners have identified no harm or impropriety whatsoever from the inclusion of this Declaration in Section 1 of these proposed initiatives.

CONCLUSION

For the reasons set forth above, Respondents respectfully request 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 3rd day of March, 2026.

s/ Edward T. Ramey

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³ <https://content.leg.colorado.gov/sites/default/files/colorado-legislative-drafting-manual-accessible.pdf>

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of March, 2026, a true and correct copy of the foregoing **OPENING 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