

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED March 3, 2026 3:37 PM</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title and Submission Clause for Proposed Initiatives 2025-2026 #191, 2025-2026 #195, 2025-2026 #196 - Graduated Income Tax</p> <p>Petitioners: Rebecca R. Sopkin, and the TABOR Foundation,</p> <p>v.</p> <p>Respondents: Chris deGruy Kennedy and Kiyana Newell</p> <p>and</p> <p>Title Board: Theresa Conley, Christy Chase, Kurt Morrison</p>	<p>COURT USE ONLY</p> <p>Case No. 26SA0045</p>
<p>PETITIONERS REBECCA R. SOPKIN AND TABOR FOUNDATION OPENING BRIEF</p>	

CERTIFICATE OF COMPLIANCE

I hereby certify that this Answer 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, I certify that:

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

It contains 4347 words (principal brief does not exceed 9500 words; reply brief does not exceed 5700 words).

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

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/ Rebecca R. Sopkin

Rebecca R. Sopkin

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On my own behalf, as a registered elector of the State of Colorado, the undersigned hereby respectfully submits to this Court the following Opening Brief as authorized by the Court's Order dated February 12, 2026 in support of my Petition to review the actions of the Ballot Title Setting Board with respect to Proposed Initiatives 2025-2026 #191, 2025-2026 #195, 2025-2026 #196 - Graduated Income Tax, pursuant to Section 1-40-107, C.R.S. The Proposed Initiatives shall hereinafter be referred to as Initiative #191, Initiative #195 and Initiative #196. All arguments below apply to all three proposed initiatives unless otherwise stated. In the interest of avoiding needless repetition, Petitioner also incorporates all of the arguments set forth by all of the petitioners.

STATEMENT OF THE ISSUES

I. THE TITLE BOARD DOES NOT HAVE JURISDICTION TO SET A TITLE FOR THE PORTION OF INITIATIVES #191, 195 AND 196 WHICH IS ENTITLED "LEGISLATIVE DECLARATION" AS IT IS EXTRALEGAL AND IS NOT PROVIDED FOR IN ANY RELEVANT LAW.

II. THE TITLE BOARD DOES NOT HAVE JURISDICTION TO SET A TITLE FOR INITIATIVES #191, 195 AND 196 AS THE CONTENTS OF THE PROPOSED INITIATIVES ARE SO VAGUE AND CONFUSING AS TO MAKE IT IMPOSSIBLE TO SET A CLEAR TITLE.

III. THE TITLE BOARD DOES NOT HAVE JURISDICTION TO SET A TITLE FOR INITIATIVES #191, 195 AND 196 AS THE INITIATIVES ARE ALL IN VIOLATION OF THE SINGLE SUBJECT RULE.

II. IF THE TITLE BOARD DOES SET A TITLE FOR THE PROPOSED INITIATIVES, THE TITLES AS SET ARE MISLEADING AND UNCLEAR.

STATEMENT OF THE CASE

A Title Board hearing was held on January 21, 2026, at which time title was set for the Proposed Initiatives. On January 28, 2026, Petitioner Rebecca R. Sopkin filed Motions for Rehearing for Proposed Initiatives #191, #195 and #196, alleging that the Title Board lacked jurisdiction as the Proposed Initiatives contained multiple subjects and the titles set were not clear and accurate, but were misleading. These Motions were based on the facts that the so-called “legislative declaration” is extraneous, misleading and involves multiple additional subjects and multiple subjects are contained in the Proposed Initiative’s effect on the tax structure of Colorado. In addition, the manner in which the Proposed Initiatives attempt to amend the Colorado Constitution is such that they are inherently confusing and therefore any title set must also be unclear and misleading. The rehearing was held on February 4, 2026, at which time the Title Board denied Petitioner’s Motions for Rehearing.

Petitioner is entitled to a review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioner timely filed the Motions for Rehearing with the Title Board. C.R.S. § 1-40-107(1). Additionally, Petitioner timely filed a Petition for Review within seven (7) days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107(2). This Opening Brief is filed pursuant to the Court’s Order of February 12, 2026.

STANDARD OF REVIEW

C.R.S. § 1-40-106.5(1)(a) requires that “every constitutional amendment or law proposed by initiative . . . be limited to a single subject, which shall be clearly expressed in its title.” C.R.S. § 1-40-106.5(1)(e)(II) further explains that this rule is intended to prohibit certain practices including “to prevent surreptitious measure and apprise the people of the subject of each measure by the title, that is, to prevent surprise and fraud from being practiced upon voters.” The Colorado Secretary of State’s website recognizes this as its website explains “the text of the measure must concern only one subject and one distinct purpose.”

<https://www.coloradosos.gov/pubs/elections/Initiatives/guide/2-BallotTitle.html#:~:text=Single%20subject%20requirement,subject%20and%20one%20distinct%20purpose.>

Originally, the-single subject rule was interpreted by the courts to mean that a proposed initiative “must effectuate or carry out only one general object or purpose.” *In re Ballot Title 2005-2006 No. 74*, 136 P.3d 237 (Colo. 2006). It has since been stated that the single-subject rule is “not violated if the matters included are necessarily or properly connected to each other.” *In re Proposed Ballot Initiative on Parental Rights*, 913 P.2d 1127 (Colo. 1996). The Colorado Supreme Court has rejected the use of “umbrella proposals” to make disparate subjects appear to be one subject. *In re Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 2014 CO 52. para. 10 (2014). This includes specifically “revenue changes.” *In re Amend TABOR 25*, 900 P.2d 121, 125-6 (Colo. 1995).

SUMMARY OF ARGUMENTS

I. THE TITLE BOARD DOES NOT HAVE JURISDICTION TO SET A TITLE FOR THE PORTION OF INITIATIVES #191, #195 AND #196 WHICH IS ENTITLED “LEGISLATIVE DECLARATION” AS IT IS EXTRALEGAL AND IS NOT PROVIDED FOR IN ANY RELEVANT LAW.

II. THE TITLE BOARD DOES NOT HAVE JURISDICTION TO SET A TITLE FOR INITIATIVES #191, #195 AND #196 AS THE CONTENTS OF THE PROPOSED INITIATIVES ARE SO VAGUE AND CONFUSING AS TO MAKE IT IMPOSSIBLE TO SET A CLEAR TITLE.

III. THE TITLE BOARD DOES NOT HAVE JURISDICTION TO SET A TITLE FOR INITIATIVES #191, #195 AND #196 AS THE INITIATIVES ARE ALL IN VIOLATION OF THE SINGLE SUBJECT RULE FOR THE FOLLOWING REASONS:

A. The “Legislative Declaration” introduces several subjects which violate the single subject rule.

B. The change in tax rate structure and the voter approved retention of excess revenue are two separate subjects.

C. The Initiatives would change existing law so that individuals, corporations and estates no longer have to be treated in the same manner by our state’s tax law.

D. Proposed Initiative #191 gives a new legislative option to tax income on a gross basis rather than a net basis is an additional separate subject.

E. Initiatives # 191, #195 and #196 all give specific direction regarding the expenditure of the additional revenue generated by the progressive tax rates included in the Initiatives. Such expenditures are additional subjects.

IV. IF THE TITLE BOARD DOES HAVE JURISDICTION TO SET TITLES FOR THE PROPOSED INITIATIVES, THE TITLES AS SET ARE MISLEADING AND UNCLEAR.

ARGUMENTS

I. THE TITLE BOARD DOES NOT HAVE JURISDICTION TO SET A TITLE FOR THE PORTION OF INITIATIVES #191, #195 AND #196 WHICH IS ENTITLED “LEGISLATIVE DECLARATION” AS IT IS EXTRALEGAL AND IS NOT PROVIDED FOR IN ANY RELEVANT LAW.

The first issue is the insertion of a “Legislative Declaration.” The “Legislative Declarations” of Initiatives #191, #195 and #196 are identical and so this discussion applies to all three Initiatives.

The Colorado Constitution clearly gives the basic procedures for the initiative process, which includes the requirement “to propose any measure by petition, every such petition shall include the full text of the measure so proposed.” Colo. Const. art. V, § 1(2).

C.R.S. § 1-40-102(4) defines the “draft” which is to be presented to the Title Board as “the typewritten proposed text of the initiative which, if passed, becomes the actual language of the constitution or statute, together with language concerning placement of the measure in the constitution or statutes.” C.R.S. § 1-40-105(1) requires initiative proponents to submit “the original typewritten draft of every initiative petition for a proposed law or amendment to the state constitution to be enacted by the people.” C.R.S. § 1-40-105(3) requires that such drafts “be worded with simplicity and clarity.”

The “Legislative Declaration” does not fit within the definition of the “draft” which is to be submitted to the Title Board as it will not become the actual language of the constitution or statute. There is no language concerning its placement in the constitution or

statutes as it will not be so placed. There is no provision whatsoever in any of the relevant statutes for any material which is not going to “become the actual language of the constitution or statute” or which does not “concern placement of the measure” in the same to be included, reviewed, debated or ultimately submitted to potential voters along with the ballot initiatives.

The Title Board has no authorization in any relevant law to include the proponents’ extraneous statements, arguments and advertising, and we request that this Court find that the Proposed Initiatives are invalid due to the inappropriateness of the “Legislative Declarations,” the confusion that they would cause for voters, and the multiplicity of subjects which they introduce into the proposed initiatives. In the alternative, we request that this Court order the Title Board to strike all of the “Legislative Declarations,” and decline to include them in the ballot initiative materials which are submitted to voters.

At the moment, there is confusion regarding whether such “Legislative Declarations” are appropriate, and the Title Board is unsure as to what to do with them. At the Title Board Meeting where Initiatives #191, #195 and #196 had their titles first set, on January 21, 2026, the Secretary of State’s Title Board designee, Theresa Conley, stated “I don’t like the floating leg declaration” . . . “we’ve allowed it based on what the legislature does.” (audio of the January 21, 2026 Title Board meeting at 1:05:36). At the same meeting Christy Chase, the designee of the director of the office of legislative legal services stated

that the “Legislative Declaration” is “not substantive law.” (audio of the January 21, 2026 Title Board meeting at 1:09:50).

The problem is that, while the “Legislative Declaration” may not contain any material that will actually become part of the state constitution or statutes, it is not without potential impact. This declaration is basically a political advertisement for each of the initiatives which it precedes. It is full of catch phrases, arguments, statements of opinion and assertions of facts, with no counter arguments or clarifications. In contrast, the title setting process does not address the merit or lack of merit of the proposed initiatives it considers, *Say v. Baker*, 322 P.2d 317 (1958), and therefore any debate regarding the unproven assertions in the “legislative declaration” would be entirely inappropriate. However, the average voter who is considering whether to sign a ballot for a proposed initiative will be misled into believing that the legislature has been involved, presumably including their usual process of debate, and that there has been some official review of the facts contained therein. Allowing such a declaration into the title setting process opens the door for every proposed initiative to include an unreviewable advertisement for itself.

Legislative Declarations in bills before the General Assembly are actually quite different as they have a stated potential statutory interpretation role, and have accompanying guidelines to ensure that their content is appropriate. C.R.S. § 2-4-203(1)(g) lists “legislative declarations” as appropriate “aids in construction” for interpreting “ambiguous statutes.” Obviously, however, as this is specifically stated to be

helpful in “determining the intention of the general assembly,” it cannot be referencing a “legislative declaration” in a proposed ballot initiative.

It is, however, a factor in the care recommended in the Colorado Legislative Drafting Manual in the drafting of such Legislative Declarations for bills before the General Assembly. The manual, which is designed primarily for legislative drafters in the Colorado General Assembly's Office of Legislative Legal Services, contains guidelines for avoiding “poorly drafted statutes.”

<https://content.leg.colorado.gov/publications/colorado-legislative-drafting-manual>

Regarding Legislative Declarations the Manual states that:

1. A legislative declaration or legislative intent statement should serve a legitimate purpose. Statements that serve other purposes should be avoided. Encourage members to make the arguments for their bills in a position or information statement instead of in the bill.
...
5. Facts or statements in a legislative declaration or legislative intent statement should be verified for accuracy. Statistics should be avoided.
...
9. As a general principle, a legislative declaration or a legislative statement should not be written unless there is a legitimate reason for its inclusion.

Contrary to these guidelines, the “Legislative Declaration” in Initiatives #191, #195 and #196 does not serve any legitimate purpose. In fact, it violates nearly all of the guidelines for good legislative declaration drafting. It implies that our current flat tax structure is not “fair and equitable.” It contains multiple unverified statements: that a

progressive tax structure will “promote[] a vibrant statewide economy, and adequately support[] our public education, health care, and child care systems and other essential public services available to all Coloradans.” Section 1(1)(a). It cites statistics in Sections 1(1)(c), (d), (g), (h), (i). Sections 1(1)(f) and 1(2)(b)(II) flatly contradict the language in the proposed Initiatives #191, #195 and #196, Section 5 by claiming that TABOR refunds will not be impacted, when Section 5 contains “a voter approved revenue change.”

It is true that other Proposed Ballot Initiatives have contained “Legislative Declarations.” This is due to the uncertainty in both the Office of Legislative Services and the Title Board, regarding their authority to strike them. In addition, other Legislative Declarations, like those in Proposed Ballot Initiatives 2025-2026 # 108, 109 & 110, are shorter and simpler than the more than two (2) pages of “Legislative Declaration” included with Initiatives # 191, #195 and #196.

Overall, there is no legal authorization, in the Colorado Constitution or its statutes, for proposed ballot initiatives to contain “Legislative Declarations.” The purported “Legislative Declarations” in Initiatives # 191, #195 and #196 invalidate the Initiatives themselves.

II. THE TITLE BOARD DOES NOT HAVE JURISDICTION TO SET A TITLE FOR INITIATIVES #191, #195 AND #196 AS THE CONTENTS OF THE PROPOSED INITIATIVES ARE SO VAGUE AND CONFUSING AS TO MAKE IT IMPOSSIBLE TO SET A CLEAR TITLE.

Quite simply Proposed Initiative #191 would amend Art. X, Section 20(8)(a) of the Colorado Constitution to read: “Any income tax law change after July 1, 1992 shall also require no added tax or surcharge.” This language suggests that there can be no change in tax law which would in any way increase taxes. However, Initiative #191 then goes on to specify new tax rates, proposed changes to C.R.S. § 39-22-104, several of which do in fact increase taxes, as shown in the chart included in the Title Board’s title. The Title Board’s charge is to set a title which “enables the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose the proposal.” *In re Ballot Title 2011-2012 No 45*, 274 P. 3d 576 (Colo. 2012). However, even the members of the Office of Legislative Legal Services and the Legislative Council Staff, who are quite familiar with tax policy, were confused by the strained meaning that the proponents are trying to put upon this language. See Memorandum dated Nov. 14, 2025, re Proposed initiatives Measure 2025-2026 #181, Concerning a Graduated State Income Tax, pg. 3. It is not possible that the meaning desired by the proponents will be one the electorate can intelligently decipher so as to determine how to vote on this matter.

In order to avoid the result described above, Proposed Initiatives #195 and #196 propose in the alternative to amend Art. X, Section 20(8)(a) of the Colorado Constitution to read: “Any income tax law change after July 1, 1992 shall also require no added surcharge.” This is, unfortunately, not more clear. In fact, it may be more confusing to voters. What added surcharge is being discussed? What is the definition of a surcharge? Where the original meaning was to restrict all income taxes to a single flat rate, without any loopholes where that rate could be changed, if the single flat rate has been abolished, then, arguably, all higher rates contain a surcharge.

Neither of these sentences is clear. Their convoluted interpretations are the result of the proponents desiring to make substantial changes to the current Constitutional requirements regarding tax law, but attempting to do so only by removing language in order to avoid having to have a higher percentage of voters approve their desired changes. Unfortunately, the changes they desire cannot be clearly conveyed by the language left after certain words have been removed.

III. THE TITLE BOARD DOES NOT HAVE JURISDICTION TO SET A TITLE FOR INITIATIVES #191, #195 AND #196 AS THE INITIATIVES ARE ALL IN VIOLATION OF THE SINGLE SUBJECT RULE.

A. The “Legislative Declaration” introduces several subjects which violate the single subject rule.

The “Legislative Declarations” contained in Section 1 of Initiatives #191, #195 and #196 raise several subjects including what type of tax structure is “fair and equitable,” Section 1(1)(a), what tax system “promotes a vibrant statewide economy,” Section 1(1)(a), what is “adequate” support for various governmental functions, Section 1(1)(a), whether TABOR has limited state and local governments’ ability to “support[] teachers and care workers, build[] infrastructure, and keep[] up with a changing economy.” Section 1(1)(e). Any one of those issues could convince a voter to support a measure which may or may not affect their concerns, and all of them are clearly logrolling. Each of those statements introduces a subject which is not “necessarily or properly” connected to each other or to the purported single subject of “creating a graduated income tax” structure in Colorado.

B. The change in tax rate structure and the voter approved retention of excess revenue are two separate subjects.

It is possible to change the tax rate structure to a graduated income tax structure while remaining either completely or very nearly revenue neutral. If this was done there would be no necessity of having the voters approve any retention of excess revenue. The proponents seek to not only “create a graduated income tax” structure, but also to increase revenue to the state. This is a completely separate subject, as can be seen by the many Proposed Ballot Referenda which have put two separate Ballot Initiatives on the ballot in tandem, giving voters the option to make a change in the fiscal structure of the state either

with or without a voter-approved excess revenue retention. See Colorado Ballot 2025, Proposition LL and Proposition MM.

https://content.leg.colorado.gov/sites/default/files/bluebook_2025_english_only_ol-accessible.pdf

C. The Initiatives would change existing law so that individuals, corporations and estates no longer have to be treated in the same manner by our state’s tax law.

Our constitution currently requires that individuals and corporations be treated in our state’s tax law in the same manner, that is with both being subject only to a flat tax rate. Under these proposed initiatives that will no longer be true. Some voters may like the idea of a graduated tax rate structure. Some other voters may want individuals and corporations to be treated differently by our state’s tax law. These proposed initiatives logroll when they entice voters with different interests to support their measure for different reasons seeking different effects of the law. These issues are not “necessarily and properly connected” as required by Colorado law. *In re 2021-2022 #16*, para. 13, 2021 CO 55, 489 P.3d 1217, 1220 (2021). Treating individuals and corporations differently is not a subject that is connected to the stated single subject of a “graduated income tax.”

This introduction of a separate issue is particularly pernicious as it is concealed from voters. The tax structures that would be instituted by the Initiatives are the same for both individuals and corporations. However, the requirement that they stay the same is being removed from our law. In the future, the legislature can, by a simple majority vote, make

significant changes so that individuals and corporations are no longer treated in the same manner and voters may be surprised that they have already authorized such change.

D. Proposed Initiative #191 gives a new legislative option to tax income on a gross basis rather than a net basis is an additional separate subject.

This is another hidden separate subject. Current law requires “all taxable net income income to be taxed at one rate.” Colo. Const. art. X, sec. 20 (8)(a). Proposed Initiative #191 would delete this language leaving “Any income tax law change after July 1, 1992 shall also require no added tax or surcharge.” This change would allow future legislatures, again, by simple majority vote, to tax income on a gross basis. This potential change, and separate subject, is currently completely hidden from voters.

E. Initiatives # 191, #195 and #196 all give specific direction regarding the expenditure of the additional revenue generated by the progressive tax rates included in the Initiatives. Such expenditures are additional subjects.

Current controlling state case law holds that tax rate changes are a separate purpose from the various proposed spending directions. *Matter of Title, Ballot Title 1997-1998 # 30*, 959 P.2d 822 (1998). Although this issue has been clouded by the various title requirements coming out of the state legislature, the underlying concern remains. Including public school education (whether limited to K-12 or not), health care and child care (including when specified to “early child care and education”) “combines different

proposals in the hopes of getting unrelated subjects passed by enlisting support for the entire initiative from advocates of the separate subjects thereby securing the enactment of subjects that could not be enacted on their merits along.” *Matter of Title, Ballot Title 1997-1998 # 30*, 959 P.2d at 825. Initiatives #191, #195 and #196 state that the additional revenue given to particular purposes “to supplement and not supplant” which therefore requires the legislature to keep spending at current levels, which is an additional subject.

IV. IF THE TITLE BOARD DOES HAVE JURISDICTION TO SET TITLES FOR THE PROPOSED INITIATIVES, THE TITLES AS SET ARE MISLEADING AND UNCLEAR.

As discussed above, the language of the Proposed Initiatives #191, #195 and #196 is inherently unclear, and therefore any title the Title Board sets will also be misleading and unclear.

CONCLUSION

Petitioner respectfully requests that, after consideration of the parties’ briefs, this Court determine that the Title Board was without jurisdiction to set a title for Proposed Initiatives as they are currently written and direct the Title Board to return the initiatives to the designated representative for lack of jurisdiction, due to violation of the constitutional single subject requirement, or, in the alternative, to correct the titles to address the deficiencies outlined in Petitioner’s briefs.

Respectfully submitted this 3rd day of March, 2026.

/s/Rebecca R. Sopkin

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing PETITIONERS REBECCA R. SOPKIN AND TABOR FOUNDATION OPENING BRIEF was filed and served upon all counsel of record via the Court's E-filing system.

/s/ Rebecca R. Sopkin
Rebecca R. Sopkin