SUPREME COURT STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	DATE FILED March 3, 2026 4:10 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 OPENING 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).

☒It contains 6,711 words.

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

☒In response to each issue raised, the appellee must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

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/ Shelby A. Krantz
Signature of attorney or party

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II. Whether the Board correctly determined that Proposed Initiatives 2025-2026 #191, #195, and #196 contain a single subject.

III. Whether the Board set a clear and accurate ballot title for Proposed Initiatives 2025-2026 #191, #195, and #196.[1]

STATEMENT OF THE CASE AND FACTS

Proposed Initiatives 2025-2026 #191, #195, and #196[2] propose to replace the uniform state income tax rate with a graduated income tax

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[1] Petitioner Hancock includes an issue statement regarding the fiscal impact statement in his Petition for Review. *See* Hancock Petition at 4. But that issue is not appropriate for review by this Court, so the Board does not address it here. *See* § 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.").

[2] As these initiatives are consolidated into one appeal, the Board will refer to the three initiatives in the singular as "the initiative" or "the measure" for the remainder of the brief, except where referring specifically to only one of the initiatives.

structure. *See* Record, p 37.[3] The measure also proposes to use any increased revenues from the new tax structure to supplement current levels of funding for certain programs. *Id.*

At its January 21, 2026 meeting, the Board concluded that the measure contained a single subject and set a title. *Id.* at 39. Petitioners Fields, Sopkin, and Hancock filed timely motions for rehearing. Record, #191, pp 2–33; Record, #195, pp 2–32; Record #196, pp 2–32. The Board considered the motions at its February 4, 2026 meeting, and denied all motions in their entirety. Record, p 39.

The title fixed by the Board for #191 is as follows:

> 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

[3] Where the Record citation for all three initiatives is the same, this brief will just refer to the "Record." Where the Records differ in page numbers or relevant content, the brief will refer to the Record of a specific initiative.

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:

Change in Income Taxes Owed by Income Category

Income Categories	Current Average Income Tax Owed	Proposed Average Income Tax Owed	Proposed Change in Average Income Tax Owed if Passed + or -
$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

Record #191, p 38 (this same chart appears at the end of all three initiatives' titles, so the Board will only include it once in this brief).

The title fixed by the Board for #195 is as follows:

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 taxable net income to be taxed at one rate with no added tax on income; 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.

Record #195, p 37.

The title fixed by the Board for #196 is as follows:

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 taxable net income to be taxed at one rate with no added tax on income; 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 for K-12 public school education, health care, and early child care and education programs, as a voter-approved revenue change, intended to supplement current spending levels for those purposes.

Record #196, p 37.

Petitioners now challenge whether the Board had jurisdiction to set title for the initiative, whether it contains a single subject, and whether the title complies with the clear title requirement.[4]

SUMMARY OF THE ARGUMENT

The Board had jurisdiction to set the title for the initiative, including its legislative declaration. Petitioners contend that the people of Colorado lack the authority to include non-statutory language[5] in a

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[4] Petitioner Hancock filed petitions to Initiatives #191 and #196 a day late, so this Court need not consider his arguments on those Initiatives. *Goodall v. Gentry-Cunningham*, 2024 CO 52, ¶12 (finding timeliness of appeals in Title Board cases to be jurisdictional).

[5] As opposed to a legislative declaration that is codified into statute, a "non-statutory" legislative declaration will only appear in the session laws but not in the Colorado Revised Statutes. *See, e.g.*, *Stamp v. Vail*, 172 P.3d 437, 443 n.7 (Colo. 2007) (explaining that the legislative declaration introducing amendments to a bill was not codified, but the legislative declaration introducing the original bill was; the court noted

legislative declaration. But the people have no less power to legislate than the General Assembly. Nothing in Colorado law limits the people's authority to enact a non-statutory legislative declaration.

The initiative contains the single subject of improving certain public services by replacing the uniform state income tax rate with a graduated income tax structure. The provisions of the initiative are necessarily and properly connected to that subject. Petitioners' arguments require impermissible speculation about the possible effects of this measure. The Board correctly concluded that the measure contains a single subject.

The initiative has a clear and accurate title. It summarizes the repeal of the uniform income tax rate and replacement with a graduated income tax structure and directs where the excess revenue will be spent. The title also states that its changes apply to individuals, estates, trusts, and corporations. The language from section 1-40-106(3)(g)(I), C.R.S., is properly included because it is required and, even

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that it would "treat[] the two legislative declarations as equal in authority").

if not required, not prohibited. The title need not and should not incorporate every detail of the initiative.

This Court should affirm.

ARGUMENT

I. The Title Board had jurisdiction to set title, including the legislative declaration.

A. Standard of Review and Preservation

Courts conduct a "limited review of the Title Board's actions," in which they "do not address the merits of the proposed initiative." *In re Title, Ballot Title & Submission Clause for 2021-2022 #16*, 2021 CO 55, ¶ 10 (citations and quotations omitted). Nor does the court review the initiative's "efficacy, construction, or future application." *Id.* "However, [the court] must examine the proposal sufficiently to enable review of the Title Board's action." *Id.* In doing so, courts "employ the general rules of statutory construction, giving words and phrases their plain and ordinary meanings." *Id.*

The Title Board agrees this issue is preserved. *See* Record, pp 2, 17–18.

B. Nothing in Colorado law limits the power of the people to enact a non-statutory legislative declaration.

Petitioners Fields and Sopkin argue the people of Colorado do not have the power to include a non-statutory legislative declaration in an initiated measure. *See* Record, pp 2, 17–18. Petitioner Sopkin also contends the legislative declaration is misleading and results in multiple subjects.[6] *Id.* at 17–18. Petitioners are incorrect.

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); *see also Rocky Ford v. Brown*, 293 P.2d 974, 976 (Colo. 1956) (explaining that in the initiative process, "the council or representative body is supplanted by the people who are proposing to legislate for themselves"). The

[6] The legislative declaration's relation to the single subject of the initiative is discussed below in Section II.

people, as the source of the legislature's authority, inherently have the same power to enact non-statutory legislative declarations.

Petitioners misunderstand the word "legislative" in their argument that the title of the "Legislative Declaration" is misleading because "there is no legislature involved in this declaration." Record, p 17. "Legislative" does not only refer to the General Assembly. *See Legislative*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/legislative (last visited Feb. 26, 2026) (defined as "having the power or performing the function of legislating," or "of, concerned with, or created by legislation"). This initiative is a piece of legislation. Therefore, the declaration of the people in enacting it would be properly referred to as a "legislative" declaration.

Petitioners point to the statutory provisions implementing the power of initiative and argue that no provision explicitly provides for initiatives to include material that will not be included in the actual language of the constitution or statute. Record, p 17. Those statutory provisions "must not be narrowly construed, but rather … liberally construed to effectuate their purpose and to facilitate the exercise by

electors of this most important right reserved to them by the constitution." *Colo. Project-Common Cause v. Anderson*, 495 P.2d 220, 221 (Colo. 1972). Petitioners construe the statutes narrowly to restrict the peoples' power in the absence of an explicit reservation—this is anathema to "this most important right reserved to [the people] by the constitution." *Colo. Project-Common Cause*, 495 P.2d at 221. Just as there is no explicit provision allowing the legislature to enact non-statutory legislative declarations, there need not be one for the people to do so. The Board had jurisdiction to set title to the initiative, including its legislative declaration.

II. The proposed initiative contains a single subject.

A. Standard of review and preservation.

The Board has jurisdiction to set a title only when a measure contains a single subject. *See* COLO. CONST. art. V, § 1(5.5). This Court will "overturn the Board's finding that an initiative contains a single subject only in a clear case." *In re Title, Ballot Title, & Submission Clause for 2021-2022 #16*, 2021 CO 55, ¶ 9 (quotation marks omitted). In reviewing a challenge to the Title Board's single subject

determination, the court "employ[s] all legitimate presumptions in favor of the … Title Board's actions." *In re Title, Ballot Title, & Submission Clause for 2019-2020 #3*, 2019 CO 57, ¶ 7. In doing so, the Court does "not address the merits of the proposed initiative" or "suggest how it might be applied if enacted." *Id.*, ¶ 8. Nor can the Court "determine the initiative's efficacy, construction, or future application." *In re Title, Ballot Title, & Submission Clause for 2009-2010 #91*, 235 P.3d 1071, 1076 (Colo. 2010). Instead, the Court "must examine the initiative's wording to determine whether it comports with the constitutional single-subject requirement." *In re 2019-2020 #3*, 2019 CO 57, ¶ 8.

The Board agrees this issue is preserved. Record #191, pp 2–5, 18–19, 21–30; Records ##195 and 196, pp 2–4, 21–29.

B. The initiative contains the single subject of improving certain public services by replacing the uniform state income tax rate with a graduated income tax structure.

A ballot initiative must have a single subject. *See* COLO. CONST. art. V, § 1(5.5); § 1-40-106.5(1)(a), C.R.S. To satisfy the single-subject requirement, "an initiative's subject matter must be necessarily and properly connected rather than disconnected or incongruous." *In re Title, Ballot Title, & Submission Clause for 2015-2016 #73*, 2016 CO 24, ¶ 14. "When an initiative tends to effectuate one general objective or purpose, the initiative presents only one subject, and provisions necessary to effectuate the initiative's purpose are properly included within its text." *Id.*, ¶ 17. In contrast, "an initiative violates the single-subject requirement when it (1) relates to more than one subject and (2) has at least two distinct and separate purposes." *In re Title, Ballot Title, & Submission Clause for 2007-2008 #61*, 184 P.3d 747, 750 (Colo. 2008).

The single-subject requirement serves two purposes. *In re 2019-2020 #3*, 2019 CO 57, ¶ 11. First, it prevents measures from addressing incongruous subjects "for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the

enactment of measures that could not be carried upon their merits," § 1-40-106.5(1)(e)(I), C.R.S., a tactic known as "logrolling," *In re 2021-2022 #16*, 2021 CO 55, ¶ 16. Second, the single subject-requirement aims to prevent "voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision 'coiled up in the folds' of a complex initiative." *In re Title, Ballot Title, & Submission Clause for 2001-2002 #43*, 46 P.3d 438, 442 (Colo. 2002) (quoting § 1-40-106.5(1)(e)(II), C.R.S.).

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.[7] *See* Record, p 37. Each of the initiative's provisions are "necessarily and properly connected" and effectuate this single purpose. *See In re 2015-2016 #73*, 2016 CO 24, ¶¶ 14, 17.

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[7] Contrary to Petitioner Hancock's assertion, the single subject of this initiative is not "income tax policy." Record #191, pp 29–30; Records ##195 and 196, pp 28–29. This initiative's single subject is not "too broad or too general to be classified as a single subject." *In re Title, Ballot Title, Submission Clause, & Summary Adopted April 5, 1995 v. Hamilton*, 898 P.2d 1076, 1079–80 (Colo. 1995) (concluding that the single subject of "water" was "too broad to constitute a single subject").

Section 1 contains the people's intent in passing the initiative and previews the contents of Sections 2 through 5 of the initiative. Record, pp 40–42. It also includes factual and logical support for the policy choices made in the initiative. *Id.* Because it directly supports or summarizes the remainder of the initiative, Section 1 is necessarily and properly connected to the initiative's single subject.

Section 2 serves the initiative's purpose by repealing the constitutional requirement for a uniform income tax rate, which is necessary to implement a graduated income tax structure. *Id.* at 42.

Sections 3 and 4 effectuate the purpose of the measure by setting the graduated income tax rates. *Id.* at 42–45. Section 3 does so for individuals, estates, and trusts; Section 4 does so for corporations. *Id.*

Section 5 serves the initiative's purpose by (1) acknowledging that the excess revenue generated by this measure constitutes a voter-approved revenue change and thus is not part of any district base, as provided in section (7)(d) of Article X, Section 20 of the Colorado Constitution ("TABOR"), and (2) directing the excess revenue to be spent on public school education, health care, and child care. Record, pp

45–46. This is directly connected to the initiative's purpose of improving those programs through the income tax changes implemented in Sections 2 through 4.

This initiative neither relates to more than one subject nor has multiple distinct and separate purposes. *See In re 2007-08 #61*, 184 P.3d at 750. Rather, it effectuates one general purpose: improving public school education, health care, and child care by replacing the uniform state income tax rate with a graduated income tax structure.

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

Petitioners Fields, Sopkin, and Hancock argue that dedicating the increased revenue generated by the initiative to public school education, health care, and child care constitutes a second subject. Record #191, pp 2, 18–19, 23, 27–29; Records ##195 and 196, pp 2, 18–19, 23, 26–28. But the single subject of this measure is improving public school education, health care, and child care by replacing the uniform income tax with a graduated income tax structure. Directing how the increased revenue is spent is therefore central to its single subject.

This Court has held that directing revenue generated by an initiative toward specified services does not violate the single-subject-requirement. *In re Title, Ballot Title, & Submission Clause for 2019-2020 #315*, 2020 CO 61. In *In re #315*, this Court considered whether an initiative that created a new preschool program funded by taxes on tobacco products satisfied the single-subject requirement. The initiative's single subject in that case was "creating and administering a Colorado preschool program funded by state taxes on nicotine and tobacco products." *Id.* at ¶ 20. In concluding that the initiative had a single subject, the Court noted that the initiative's provisions implementing a new sales tax on vaping products and reallocating and redirecting certain cigarette and tobacco tax revenue to a new preschool program were all "implementing provisions that are necessarily and properly related" to the initiative's single subject. *Id*. Similarly here, directing the revenue generated by the initiative's changes to the income tax structure to certain services is an implementing provision and not a separate subject.

With respect to Initiatives #191 and #195, Petitioners Fields and Hancock also argue that the provision that revenue raised by the measure "must supplement and not supplant current levels of appropriations" for public education, health care, and child care creates a separate subject. Record #191, pp 3, 5, 28–29, 46; Record #195, pp 3–4, 28, 46. Regardless of its effect, this provision is an implementation detail directing how the money is to be spent and is therefore part of the measure's single subject.[8] *See In re 2019-2020 #315*, 2020 CO 61, ¶ 15 ("[A]n initiative will not be deemed to violate the single subject requirement merely because it spells out details relating to its implementation."); *see also In re Title, Ballot Title, & Submission Clause for 1999-2000 #256*, 12 P.3d 246, 257 (Colo. 2000) (declining to speculate on an initiative's future effects in a single-subject analysis).

[8] With respect to Initiative #196, this Court should reject Petitioners Fields' and Hancock's arguments for the same reason. Moreover, Initiative #196 provides only that the people's "inten[t]" is that the General Assembly will use the excess funds for public school education, health care, and child care, rather than that it must do so, so the language is not binding on the legislature. Record #196, pp 3, 4, 27, 28, 46.

D. A graduated income tax structure imposes various tax rates on different income groups; these changes are all within the initiative's single subject.

Petitioners Hancock and Fields argue that increasing tax rates for some and decreasing them for others creates separate subjects. Record, pp 2–3, 23. Petitioners are incorrect.

A graduated income tax structure requires various tax rates for different income groups. *See Graduated Tax*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("A tax employing a rate schedule with higher marginal rates for larger taxable bases."). Imposing the various tax rates in the initiative results in raising rates for some and decreasing rates for others, given Colorado's current uniform tax rate. But that does not create multiple subjects. To the contrary, decreasing rates for some and increasing them for others directly "effectuate[s] [the] general objective or purpose" of improving public services by replacing the uniform tax rate requirement with a graduated income tax structure. *See In re 2015-2016 #73*, 2016 CO 24, ¶ 17.

Creating a graduated income tax structure also does not constitute logrolling. Petitioner Fields argues that "when a group of

voters might well support a tax increase for themselves but can only get it by voting for an increase for others it demonstrates that these are two subjects." Record, p 3. But that view is too narrow. Voters are not being asked to vote on the effect of the measure on *individual taxpayers*. Instead, voters are being asked to vote on a graduated income tax structure for *all taxpayers*. Because the varied tax rates implemented by the initiative are necessarily and properly connected to creating a graduated income tax structure, this does not constitute logrolling. This Court should defer to the Board's single-subject determination. *In re Ballot Title, & Submission Clause for 2013-2014 #89*, 2014 CO 66 ¶ 9 (stating that this Court is "limited by the deferential standard that [it] afford[s] the Title Board's decisions").

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

Petitioners Fields and Hancock argue that Section 5, which provides that increased revenue generated by the initiative is a voter-approved revenue change that may be kept and spent under TABOR section (7)(d), constitutes a separate subject. Record, pp 2, 22. But this provision simply acknowledges that (1) TABOR section (7)(d) excludes "voter-approved revenue changes … [from] any district base," and (2) the initiative, if approved by voters, would be a voter-approved revenue change under TABOR section (7)(d). COLO. CONST. art. X, § 20(7)(d). This provision is necessarily and properly connected to the initiative's single subject.

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

Contrary to Petitioners Fields', Sopkin's, and Hancock's arguments, Record #191, pp 2, 4, 18, 22, 26–27; Records ##195 and 196, pp 2, 4, 18, 22, 25–26, imposing graduated income tax rates on both corporations and individuals does not create multiple subjects. Creating

a graduated *income tax* structure involves *income tax*. Income taxes are imposed on individuals and corporations. Therefore, codifying the graduated income tax structure for both individuals and corporations is necessarily and properly connected to the single subject.

This provision of the initiative creates neither the danger of logrolling nor of voter surprise, despite Petitioners' arguments otherwise. Record #191, pp 4, 18, 26–27; Records ##195 and 196, pp 4, 18, 25–26. The measure does not present a logrolling risk because, as just explained, corporate and individual income tax are not "unrelated," and logrolling "seek[s] to garner support from various factions by combining *unrelated* subjects in a single proposal." *In re Title, Ballot Title, & Submission Clause for 2013-2014 #89*, 2014 CO 66, ¶ 18 (emphasis added).

And the measure does not create the risk of voter surprise because the fact that it applies to both corporate and individual income taxes is not "coiled up in the folds" of the initiative. *Id.*, ¶ 13 (quoting *In re 2001-2002 #43*, 46 P.3d at 440). Rather, Sections 3 and 4 are plainly dedicated to imposing tax rates for individual and corporate income,

respectively. Record, pp 42–45. The title also explicitly refers to "taxable income earned by individuals, estates, trusts, and corporations." Record, p 37. These provisions cannot be characterized as "surreptitious." *In re 2013-2014 #89*, 2014 CO 66, ¶ 13.

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

Petitioners contend that the initiative's constitutional amendment creates additional subjects. Record #191, pp 3–4, 18, 22–26; Records ##195 and 196, pp 3–4, 18, 22–25. But the constitutional amendment is necessarily and properly connected to the single subject of repealing the uniform state income tax requirement and creating a graduated income tax. Each of Petitioners' three arguments to the contrary fail.

Section 2 of Initiative #191 amends TABOR section (8)(a) as follows:

> Any income tax law or 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.

Record #191, p 42; *see* COLO. CONST. art. X, § 20(8)(a). Section 2 of Initiatives #195 and #196 amends TABOR section (8)(a) as follows:

> 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.

Records ##195 and 196, p 42; *see* COLO. CONST. art. X, § 20(8)(a).[9]

First, Petitioner Hancock argues that striking "excluding refund tax credits or voter approved tax credits" creates a separate subject by removing protections on tax credit income. Record, pp 22–25. But "excluding refund tax credits or voter-approved tax credits" helps define what income is subject to the uniform tax rate. COLO. CONST. art. X, § 20(8)(a). Because this language is part and parcel of the uniform income tax rate requirement, striking it is a part of the single subject of improving certain public services by replacing the uniform state income tax rate with a graduated income tax structure. Moreover, Petitioner can only argue that deleting this phrase removes the "*guarantee* that refund or voter approved tax credits will *not* be considered taxable income," Record, p 24 (first emphasis added), because the initiative does

[9] Although the constitutional amendment in Initiative #191 differs slightly from that in Initiatives #195 and #196, the arguments in this Section II.G. of this brief apply to all three initiatives except where otherwise noted.

not actually modify whether tax credits are taxable income. This Court's "function is not to speculate on the future effects [an i]nitiative may have if it is adopted." *In re 1999-2000 #256*, 12 P.3d at 257.

Second, Petitioners Fields, Sopkin, and Hancock contend that the constitutional amendment creates an additional subject by removing the requirement that individuals and corporations be taxed uniformly.[10] Record #191, pp 2–4, 18, 26–27, Records ##195 and 196, pp 2–4, 18, 25–26. But removing 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. So, not only is this part of the single subject, but, as above, the potential impacts

[10] Despite their differences, the Petitioners argue that all three initiatives would have this effect. In Petitioner's view, Initiative #191 would do so by striking "all taxable net income to be taxed at one rate," Record #191, pp 2–4, 18, 26–27, 42, and Initiatives #195 and #196 would do so by striking "at one rate," Record ##195 and 196, pp 2–4, 18, 25–26, 42.

Petitioners complain of are speculative because the initiative imposes uniform tax rates on corporate and individual taxpayers. *In re 1999-2000 #256*, 12 P.3d at 257. This Court should decline to speculate on the future effects of this initiative and reject this argument. *See id.*

Third, with respect to Initiative #191, Petitioners Fields and Hancock argue that striking "taxable net income" creates a separate subject by removing the requirement that income tax apply to taxable net income. Record #191, p 3, 22–24. But the requirement that income tax be imposed on "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). So, striking "taxable net income" is part of Initiative #191's single subject of improving specified public services by replacing the uniform state income tax rate with a graduated income tax structure. And, as above, Initiative #191 does not redefine income, so Petitioners only argue that this "*open[s] the door* to the legislature choosing to tax gross income instead." Record #191, p 24 (emphasis added). Again, this Court need not speculate as to future effects of an initiative. *See In re 1999-2000 #256*, 12 P.3d at 257.

Fourth, with respect to Initiatives #195 and #196, Petitioner Fields argues that the amendments to TABOR section (8)(a) result in a mandate to tax all income because, if Initiative #195 or #196 passes, TABOR section (8)(a) 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." Records ##195 and 196, pp 3, 42 (emphasis added). But because "require all taxable net income to be taxed" is modified by "with no added surcharge," Initiatives #195 and #196 would not mandate a tax on all income. Rather, they would require that no surcharge be added in the event of a tax law change. This provision of Initiatives #195 and #196 thus does not create a separate subject.

For these reasons, the initiative satisfies the single-subject requirement.

III. The title set by the Board satisfies the clear title requirement.

A. Standard of review and preservation.

In the Court's "limited review" of the Board's actions, it examines an "initiative's wording to determine whether it and its title comport with the constitutional single subject and clear title requirements." *In*

re Title, Ballot Title & Submission Clause for 2019-2020 #3, 2019 CO 107, ¶ 14.

In determining whether a title is clear, the Court "ensure[s] that the title fairly reflects the proposed initiative such that voters will not be misled into supporting or opposing the initiative because of the words that the Title Board employed." *Id.*, ¶ 17. The Court does not "consider whether the Title Board set the best possible title." *Id.* The Court will reverse the title set by the Board only if it is "insufficient, unfair, or misleading." *In re Title, Ballot Title & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 8.

"The Title Board is vested with considerable discretion in setting the title." *Id.* That includes "discretion in resolving interrelated problems of length, complexity, and clarity in setting a title and ballot title and submission clause." *Id.*, ¶ 24. Given this discretion, the Court "employ[s] all legitimate presumptions in favor of the propriety of the Title Board's actions." *Id.*, ¶ 25.

The Title Board agrees this issue is preserved. *See* Record #191, pp 5–6, 19–20, 30–32; Records ##195 and 196, pp 5, 19–20, 29–31.

B. The title is clear, accurate, and in compliance with statutory requirements.

Clear expression in ballot titles "prevent[s] voter confusion and ensure[s] that the title adequately expresses the initiative's intended purpose [such that] voters … should be able to determine intelligently whether to support or oppose the proposal." *In re Title, Ballot Title & Submission Clause for 2015-2016 #156*, 2016 CO 56, ¶ 11 (citation modified). "A perfect title is not necessary." *Id.*, ¶ 10.

"An appropriate general title [that] is broad enough to include all the subordinate matters considered is safer and wiser than an enumeration of several subordinate matters in the title." *Parrish v. Lamm*, 758 P.2d 1356, 1363 (Colo. 1988). "If the legislation is *germane* to the general subject expressed in the title; if it is relevant and appropriate to such subject, it does not violate the clear expression requirement." *Id.* (citation modified). But "[i]t is not essential that the title shall specify particularly each and every subdivision of the general subject. Such a requirement would lead to surprising and disastrous results." *In re Breene*, 24 P. 3, 4 (Colo. 1890).

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. Petitioners make several clear title objections, but none are availing.

First, the title adequately reflects the changes made in the initiative. Petitioners' (Fields, Sopkin, and Hancock) arguments on this point largely mirror their single subject arguments, addressed above. *See* Record #191, pp 6, 19–20, 30–32; Records ##195 and 196, pp 5, 19–20, 29–31. Their arguments also focus on the various impacts the proposed initiative will have. *See* Record #191, pp 30–31; Records ##195 and 196, pp 29–30. But "[t]he Title Board's duty in setting a title is to summarize the central features of a proposed initiative; in so doing, the Title Board is not required to explain the meaning or potential effects of the proposed initiative on the current statutory scheme." *In re 2013-2014 #90*, 2014 CO 63, ¶ 24. The title appropriately summarizes the repeal of the uniform income tax rate and replacement with a graduated income tax structure. Record, p 37. The title also explains that the initiative establishes various income tax rates for individuals,

estates, trusts, and corporations. *Id.* The title cannot (and need not) incorporate every detail of the measure. *In re Title, Ballot Title & Submission Clause, & Summary for 1997-98 #62*, 961 P.2d 1077, 1083 (Colo. 1998) (stating "an item-by-item paraphrase" would undermine any effort for a "relatively brief and plain statement"); *In re Title, Ballot Title & Submission Clause, & Summary For 1999–2000 #255*, 4 P.3d 485, 497 (Colo. 2000) (noting that the title need only include salient characteristics of the measure, not every conceivable effect).

Petitioner Hancock further argues that specific details are missing from the title, including an express listing of "[a]ny individual or business classification that will experience a tax increase if this measure passes," as well as detail on the measure's impacts on "small businesses." Record #191, pp 31–32; Records #195 and 196, 30–31. Likewise, Petitioner Hancock believes the reference to "estates" is misleading because it evokes a "millionaire's estate" but would encompass more than that. *Id.* But "particularity in the titling … is neither necessary nor desirable; generality is commendable." *Parrish*,

758 P.2d at 1363 (citation modified). The title includes the details needed to concisely convey the subject of the initiative.

Second, Petitioner Fields argues the title cannot use the language provided by section 1-40-106(3)(g), C.R.S., if the tax increase is incidental to the central purpose of the bill. Record #191, pp 5–6; Records ##195 and 196, p 5. Section 1-40-106(3)(g)(I), C.R.S., provides:

> 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)...".

A "tax change" is defined as:

> any initiated ballot issue or initiated ballot question that has a primary purpose of lowering or increasing tax revenues collected by a district, …. "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.

§ 1-40-106(3)(i)(II), C.R.S.

But the tax rate changes (and related revenue increases) in the initiative are central to the single subject of the bill. They are not

incidental. So, section 1-40-106(3)(g), C.R.S., applies to this initiative, and its language is appropriately employed in the title.

In any case, even if the tax change were incidental, this statutory provision does not provide that *only* measures that increase tax revenue through a tax change may use the provided language. Rather, it provides that measures that increase tax revenue through a tax change must use this language. The ballot language is not exclusively available to the tax changes specified by that statute. *See* § 1-40-106(3)(g)(II), C.R.S. So, even if the initiative does not effect a tax change that *requires* the use of the language in section 1-40-106(3)(g)(I), C.R.S., using that language does not render the title unclear.

Third, Petitioner Fields argues the title is "prejudicial to opponents" because it mentions the programs that will be funded by the excess revenue twice. Record #191, p 6; Records ##195 and 196, p 5. Nothing about these programs being discussed twice in the title prejudices opponents because both instances are necessary to understand the initiative. The first mention of these programs is in the first clause of the title: "Shall state taxes be increased $3.6 billion

annually, in order to increase or improve levels of public services, including public school education, health care, and child care services." Record, p 37. This clause introduces the subject of the bill. The second time the programs are mentioned, it is to describe how the initiative will actually function: "authorizing the state to retain and spend any increased revenues from the new tax structure, as a voter-approved revenue change, to supplement current levels of funding for public school education, health care, and child care programs." Both instances help voters understand what the initiative does. This same pattern is also reflected in the two references to the repeal of the uniform income tax rate. *See* Record, p 38 (title includes "repealing existing law and creating new law to replace the uniform state income tax rate" in describing subject of bill and "amending the Taxpayer's Bill of Rights to eliminate the constitutional requirement for all income to be taxed at one rate" in describing how the initiative functions).

Fourth, Petitioner Hancock argues the title's inclusion of the table showing proposed changes to income taxes is misleading and prejudicial because it does not explicitly note that the changes would be on all

income taxes. Record #191, p 31; Records ##195 and 196, p 30. The table is titled "Change in Income Taxes Owed by Income Category." Record, p 37. The table follows the initiative's title language, which notes that the table identifies "the estimated change in income taxes owed by individuals." This is sufficiently clear and will not mislead voters.[11]

Fifth, Petitioner Hancock argues the title does not explain that the legislature has discretion in how to spend excess revenues among the enumerated services under the measure. Record #191, p 32; Records #195 and 196, p 31. The title states the revenues will be used "to increase or improve levels of public services, including public school education, health care, and child care services." Record, p 37. And Section 5 of the initiative requires that the General Assembly "shall" appropriate those funds for the named programs. Record, p 46. The title and initiative language make clear that the General Assembly must use this revenue for the named services but has discretion in its distribution among those services. Nothing about the title's language would suggest

[11] This table must be included for measures affecting the individual income tax rate under section 1-40-105.5(1.5)(a)(V), C.R.S.

to voters that these programs would have to be equally funded. The voters will not be misled.

In sum, the initiative's title clearly expresses the single subject of the measure and fairly reflects what voters would be asked to approve. The Court should affirm the Board and reject Petitioners' clear expression challenge. *In re Title, Ballot Title & Submission Clause 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 Initiative 2025-2026 #191, #195, and #196.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **THE TITLE BOARD'S OPENING BRIEF** upon all counsel of record by Colorado Courts E-filing (CCE), this 3rd day of March, 2026.

/s/Dave Sluss