CDOS Received: January 28, 2026 4:50 P.M. CH
2025-2026 #189 - #196 - Motions for Rehearing (Sopkin)

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVES 2025-2026 #189-196

MOTION FOR REHEARING

This Motion for Rehearing is submitted on behalf of myself, as a registered elector of the State of Colorado, and the Independence Institute, a Colorado nonprofit corporation, pursuant to Colorado law, Section 1-40-107, C.R.S., challenging the titles and submission clauses set by the Title Board on January 21, 2026, for Proposed Initiatives 2025-2026 #189-196 - Graduated Income Tax.

As grounds therefore opponents state as follows:

I. THE TITLE BOARD DOES NOT HAVE JURISDICTION TO SET A TITLE FOR INITIATIVES #189-196 AS INITIATIVES #189-196 IMPERMISSIBLY CONTAIN MULTIPLE SEPARATE AND DISTINCT SUBJECTS IN VIOLATION OF THE SINGLE-SUBJECT REQUIREMENT.

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%2Dsubject%20requirement,subject%20and%20one%20distinct%20purpose.

There are several single subject issues which affect all of the Proposed Initiatives #189-196, and those are addressed first. The issues which affect the titles' ability to be clear and not misleading, and which affect only certain of the Proposed Initiatives are then discussed below.

A. THE SO-CALLED "LEGISLATIVE DECLARATION" IS EXTRANEOUS, MISLEADING AND INVOLVES MULTIPLE ADDITIONAL SUBJECTS

The first issue is the insertion of a supposed "Legislative Declaration." Even this title is misleading as there is no legislature involved in this declaration. 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.

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."

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. Although the legislature does occasionally include "declarations," their process is entirely separate and has its own rules, including time for discussion, debate and amendment of the declarations during the legislative process.

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.

This "Legislative Declaration" in fact, raises several subjects including what type of tax structure is "fair and equitable," what tax system "promotes a vibrant statewide economy," what is "adequate" support for various governmental functions, whether TABOR has limited state and local governments' ability to "support[] teachers and care workers, build[] infrastructure, and

keep[] up with a changing economy." 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.

The Title Board has no obligation in any relevant law to include the proponents' extraneous statements, arguments and advertising, and we request that the Board simply strike all of the "Legislative Declaration," and decline to include it in the ballot initiative materials which are submitted to voters.

B. PROPOSED INITIATIVES #189-196 INCLUDE MULTIPLE SUBJECTS IN THEIR EFFECT ON THE TAX STRUCTURE OF COLORADO

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).

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. Treating individuals and corporations differently is not a subject that is connected to the stated single subject of a "graduated income tax."

Current state law is structured so that voters receive TABOR refunds if revenues exceed specified amounts. The refund law mechanism was drafted to apply to a flat tax rate structure and it conflicts with the graduated tax rate structure proposed by these initiatives, with consequences that are themselves another separate subject. C.R.S. § 24-77-103.6.

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.

II. THE TITLE SET FOR INITIATIVES #189-196 IS NOT CLEAR AND ACCURATE BUT IS MISLEADING

Notwithstanding whether the Proposed Ballot initiatives #189-196 contains more than one subject, the title of the initiatives is misleading because the proposed ballot initiatives itself is not clear and accurate. Colorado law requires that the Title Board, and any reviewing court, use "general rules of statutory construction, 'giving words and phrases their plain and ordinary meanings." In re Title, Ballot & Submission Clause for 2021-2022 #16, para. 10, 2021 CO 55, 489 P.3d 1217, 1220.

All of these problems are caused by the proponents' desire to avoid a higher number of signatures as would be required if they were to add material to our constitution. It is not the Title Board's duty or obligation to assist them in avoiding adding material, particularly when the result the proponents seek cannot be clearly conveyed merely by striking language.

A. ISSUES PERTAINING TO "CONSTITUTIONAL REPEAL A" - #189, 190, 191, 192

These proposed ballot initiatives 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, the proposed initiatives then goes on to specify new tax rates, proposed change 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.

B. ISSUES PERTAINING TO "CONSTITUTIONAL REPEAL B" - #193, 194, 195, 196

In order to avoid the result described above, the proponents also propose 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.

CONCLUSION

Accordingly, the Objector respectfully requests that this Motion for Rehearing be granted and a rehearing set pursuant to Section 1-40-107(1), C.R.S.

Respectfully submitted this 28th day of January, 2026.

/s/Rebecca R. Sopkin

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