

COLORADO TITLE SETTING BOARD

Michael Fields, Objector

MOTION FOR REHEARING ON INITIATIVE 2025-2026 #189

Michael Fields, a registered elector of the State of Colorado objects to the determination of the Title Board regarding single subject for Proposed Initiative 2025-2026 #189 (“Initiative #189”). Objector maintains that the measure does not constitute a single subject and that the Board should not have set title. Objector additionally challenges the title set by the Board.

On January 21, 2026, the Title Board considered Initiative #189. The Board found that the measure constitutes a single subject and proceeded to set title.

1. The Title Board lacked jurisdiction to set a title

Section 1 of the measure contains a legislative declaration that, if passed, would appear nowhere in law. Colo. Const. Art V, § 1 reserves to the people the power to, “propose laws and amendments to the constitution.” Section 1 of the initiative does neither. The people do not have the power to make a legislative declaration outside of a law or amendment.

2. The Measure does not contain a single subject

Initiative #189 contains multiple subjects. Objectors assert the central feature of the measure is a tax increase of \$3.6 billion dollars annually the first full fiscal year following adoption. Proponents have maintained that any tax increase is incidental.

But the measure doesn’t just increase taxes. The measure contains at least 5 subjects in its change to Colorado statute:

- 1) The measure would decrease taxes for some taxpayers and increase them for others. This is an attempt to gain support from factions that would not otherwise support the increase;
- 2) The measure taxes two separate and distinct categories of taxpayers, corporate and individual. Again, this is an attempt to gain support from factions that would not otherwise support the increase;
- 3) The measure results in the dedication of funds to specified, but incomprehensible, areas of spending unrelated to the measure and unrelated to each other. This is an attempt to gain support from factions that would not otherwise support the increase;
- 4) The tax dollars collected under the measure are authorized to be kept and spent as a voter approved revenue change. This is unrelated to the measure where the proponents state the increase is merely incidental; and

- 5) The measure requires excess revenue supplement and not supplant current spending levels across the dedicated funds.

In making the following changes to constitution it creates 4 other subjects:

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.

The sentence would read “Any income tax law change after July 1, 1992 shall also require no added tax or surcharge”

- 1) In striking the word “all” the measure uncouples the requirement that individual and corporate tax be taxed at the same rate. This is unrelated to any change made by the proponents in the measure where they leave the rates the same across the two categories;
- 2) By striking “, with” the measure eliminates the prohibition on added taxes and surcharges. The new language, “Any income tax law change after July 1, 1992 shall also require no added tax or surcharge” does not *require* added taxes or surcharges, but that is legally distinguished from a prohibition. This is unconnected to the measure.
- 3) Striking “taxable net income” allows for taxes to be assessed on something other than “net income”. This is not connected to the measure and proponents have not explained the purpose behind the change or how it is necessary to their measure.
- 4) If the Board finds there is in fact still a prohibition on “added taxes and surcharges” then striking “to be taxed” changes the structure of the sentence to now appear to prohibit any tax. This is because “income tax changes” now require no added tax. If a tax can’t be added then the tax must be zero.

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

The inclusion of both a tax increase and a tax decrease in one initiative to pass a multibillion-dollar tax hike “is precisely the logrolling dilemma that the voters intended to avoid when they adopted the [single-subject] requirements.” *In re Title, Ballot Title, & Submission Clause for 2011-2012 #3*, 2012 CO 25, ¶ 31, 274 P.3d 562, 571. The same is true for the inclusion of corporate and personal income tax. When a group of voters might well support a tax decrease for themselves but can only get it by voting for an increase for others it demonstrates that these are two subjects.

The single-subject requirement is designed to protect voters against fraud and surprise and to eliminate the practice of combining several unrelated subjects in a single measure for the purpose of enlisting support from advocates of each subject and thus securing the enactment of measures which might not otherwise be approved by voters on the basis of the merits of those discrete measures. *In re Proposed Initiative for an Amendment to the Constitution of the State of*

Colorado Adding Section 2 to Article VII (Petitions), 907 P.2d 586, 589 (Colo. 1995) *In re Proposed Initiative "Public Rights in Waters II"*, 898 P.2d 1076, 1078 (Colo. 1995) *In re Proposed Initiative on Sch. Pilot Program*, 874 P.2d 1066, 1069 (Colo. 1994).

The single-subject requirement “prevent[s] surprise and fraud from being practiced upon voters.” § 1-40-106.5(1)(e)(II). An initiative contains a single subject when its provisions are “necessarily and properly connected rather than disconnected or incongruous.” *In re 2019-2020 #315*, ¶ 13 (quoting *In re Title, Ballot Title & Submission Clause for 2015-2016 #73*, 369 P.3d 565, 568, 2016 CO 24, ¶ 14); *accord In re 2009-2010 #91*, 235 P.3d at 1077 (“[W]hen an initiative's provisions seek to achieve purposes that bear no necessary or proper connection to the initiative's subject, the initiative violates the constitutional rule against multiple subjects.”).

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

To implement a progressive income tax, it is necessary and connected to alter the language in TABOR to allow for proportional taxes, but it was not necessary or connected to strike the word “all” and allow for different rates across different classes.

In fact, proponents’ measure does not provide for different rates between individual and corporate income tax and such a change cannot be said to be necessary or connected to the measure.

Alternatively, having disconnected corporate income tax from personal income tax, these two categories of income tax can no longer be considered a single subject. There would most certainly be voters that would favor raising corporate income tax while not raising personal income tax. They will now have to vote for a raise on both or choose neither.

It is also not necessary or connected to strike the method upon which taxes are assessed: “net income”, nor to strike “to be taxed.”

These changes to the constitution were not necessary or connected to the measure. Proponents appear to be attempting to strike language from TABOR to avoid the 55% vote mandate and the mandate that they collect support throughout Colorado. But the strike-out results in an awkward and unclear phrase: “Any income tax law change after July 1, 1992 shall also require no added tax or surcharge.” By changing the phrase to the new construction and striking, “with” from the phrase, the constitution at best becomes unclear. Does “shall also require no added tax or surcharge” mean that no tax or surcharge can be added, or does it simply mean what the construction says – that no tax or surcharge is required. Striking “to be taxed” now makes the measure incomprehensible.

The Title Board cannot set title for a ballot initiative where the measure is incomprehensible. If a measure cannot be comprehended well enough to state a single subject in

the title, the initiatives cannot be forwarded to the voters and must be returned to the proponent. *Outcelt v. Buckley (In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 #44)*, 977 P.2d 856, 857 (Colo. 1999).

Proponents are not required to strike language. They could simply create an exception to that section for the progressive income tax structure they seek. They choose not to do that, not because their changes are connected, but because they want to avoid adding language to the Constitution and triggering the requirements all other proponents must meet when seeking to make such alterations to the Constitution.

The changes made to the constitutional provision are surreptitious. The voters will not know, or be surprised to know, that the changes pave the way to have different tax rates between corporate and personal income tax. The voters will not know, or be surprised to know, that the way income tax is calculated could be altered.

The measure also mandates existing and future state spending by requiring the addition supplement and not supplant current funding. This spending requirement would apply to two of the states highest cost programs—public school education and health care. Mandating that public school education and health care spending remain at current levels is unconnected to the measure and is separate and distinct subject. *Outcelt v. Bruce*, 959 P.2d 822 (Colo.1998).

3. The title does not reflect the central purpose of the measure.

Should the Board hold to its determination that Initiative #189 is a single subject, Objector further asserts that the title set by the Board is inadequate to describe the purpose of the proposed initiative.

The Board set the following title for Initiative #189:

“State taxes shall 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, by an amendment to the Colorado Constitution and a change to the Colorado Revised Statutes repealing existing law and creating new law to replace the uniform state income tax rate with a graduated income tax structure, and, in connection therewith, amending the Taxpayer’s Bill of Rights to eliminate the constitutional requirement for all income to be taxed at one rate; establishing various income tax rates based on the amount of taxable income earned by individuals, estates, trusts, and corporations, while maintaining the current 4.4% tax on income from the sale of a principal residence, which will result in the estimated change in income taxes owed by individuals as identified in the following table; and authorizing the state to retain and spend any increased 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.”

If the tax increase is merely “incidental” as proponents claim then they cannot benefit from the required language in C.R.S. § 1-40-106(3)(g), “For measures that increase tax revenue for any district though a tax change and specify the public services to be funded...the ballot title shall state “in order to increase or improve levels or public services...” Under § (i)(II). “Tax change” does not mean an initiated ballot issue that results in a tax increase that is incidental to

the primary purpose. Proponents cannot have it both ways. They cannot claim the tax increase is incidental, and not the central feature, and also benefit from the language.

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

Lastly, the ballot title inappropriately mentions public school education, health care, and child care programs twice¹. Voters are informed of the target programs to be funded by the tax increase at the beginning of the title. There is no need to mention those same programs again at the end, and doing so is prejudicial to opponents.

Respectfully submitted this 28th of January, 2026.

/s/ Suzanne Taheri

West Group
Attorney for Objector

¹ The title mentions “child care services” in the opening clause and “child care programs” in the closing clause. There does not appear to be a distinction between these two different terms.