COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE 2025-2026 #192

MOTION FOR REHEARING

On behalf of Michael A Hancock ("Objector"), registered elector of the State of Colorado, the undersigned counsel hereby submit this Motion for Rehearing for Proposed Initiative 2025-2026 #192 ("Initiative #192") pursuant to C.R.S. § 1-40-107, and as grounds therefore state as follows:

This Motion seeks the Title Board's review for four reasons: (1) the Title Board lacks jurisdiction to set a title because Initiative #192 impermissibly contains multiple separate and distinct subjects in violation of the single-subject requirement; (2) the Title Board lacks jurisdiction to set a title because Initiative #192's edits to a provision in the Taxpayer Bill of Rights ("TABOR") create a vague and confusing sentence that cannot be reasonably understood; (3) the title set for the proposed measure fails to accurately describe the measure and would mislead voters; and (4) the proposed measure's initial fiscal impact statement is misleading and prejudicial.

At its heart, this measure, like Initiatives ## 145–147 and 181 that came before it, is more than just a tax increase on millionaires. Among other subjects, it makes profound changes to TABOR, Colorado's income tax structure and laws as a whole, and alters the tax rates for certain incorporated Colorado businesses of all sizes, including small and family-owned businesses, as well as start-up companies. These are impermissible second subjects that are, at minimum, not adequately reflected in the title.

With this Motion for Rehearing, the Objector incorporates his arguments from the Motions for Rehearing filed for Initiatives ## 145, 147, and 181. The Objector also incorporates all arguments made at the Title Board rehearing for Initiative #181 held on December 17, 2025.

I. INITIATIVE #192 IMPERMISSIBLY CONTAINS MULTIPLE SEPARATE AND DISTINCT SUBJECTS IN VIOLATION OF THE SINGLE-SUBJECT REQUIREMENT.

First, and most importantly, Initiative #192 contains several distinct subjects improperly coiled in the folds that would lead to either voter surprise or impermissible logrolling.

Tellingly, although the Proponents' main goal is the create a graduated income tax system, they have represented that Initiative #192's single subject consists of a lengthy list of policy goals that include:

- creating a graduated income tax structure in Colorado for individuals, estates, trusts, and corporations, as well as via pass-through entities;
- repealing the constitutional requirement that all income be taxed at one rate;
- retaining any resulting increase in revenue as a voter-approved revenue change;
- specifying the dedicated uses for the generated revenue; and
- requiring a new audited report specifying the uses to which such revenue has been put.

As expressed in the Objector's previous Motions for Rehearing on Initiatives ## 145, 147, and 181, the mere fact that the Proponents could not distill their single subject to a simple phrase should give Title Board pause that the measure contains additional subjects coiled in the folds.

Indeed, Initiative #192 does significantly more than create a graduated income tax system. *See In re 2009–2010 #91*, 235 P.3d at 1076 (quoting *In re Title, Ballot Title & Submission Clause, & Summary for 1997–1998 #64*, 960 P.2d 1192, 1196 (Colo. 1998)) ("[W]here an initiative advances separate and distinct purposes, 'the fact that both purposes relate to a broad concept or subject is insufficient to satisfy the single subject requirement.'") (alteration in original). In addition to repealing and replacing the flat income tax rate requirement in TABOR, the measure contains the following additional subjects:

(1) Repeals the constitutional requirement that Colorado taxes "taxable net income," as opposed to gross income or other means of calculating income—and as a result, removing one of TABOR's requirements designed to slow the growth of government;
(2) Repeals the protections afforded to refund tax credits or voter approved tax credits, permitting the General Assembly to consider those as "taxable income;"
(3) Deletes the TABOR provision requiring that any changes to the state's income tax be identical across income taxpayers (i.e., individuals, estates, trusts, C-corporations, and via pass-through entities(, applying a graduated income tax to these several different categories of earners;
(4) Allows the state to retain the additional revenue from the graduated income tax in excess of that currently permitted under TABOR without express voter approval;

(5) Excludes the excess revenue collected from the TABOR cap, and thus affecting TABOR refunds;[1]
(6) Directs that the excess revenue collected from the graduated income tax be appropriated to supplement certain social programs; and
(7) Both lowers the tax rate and increases it, depending on income levels.

These additional subjects are not necessarily or properly connected to the overall goal of a graduated income tax system. *In re Matter of Title, Ballot Title and Submission Clause for 2019–2020 #315*, 500 P.3d 363, 367 (Colo. 2020) (quoting *In re 2015–2016 #73*, 369 P.3d at 568) (in deciding whether an initiative addresses a single subject, the relevant question is if its provisions are "necessarily and properly connected rather than disconnected or incongruous"); *accord In re Title, Ballot Title & Submission Clause for 2009–2010 #91*, 235 P.3d 1071, 1077 (Colo. 2010) ("[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.").

To avoid repetition, the Objector expressly incorporates his arguments related to separate subjects from its Motion for Rehearing on Initiative #181. However, the Objector also makes the following arguments in addition to those previously raised:

A. Section 2 of the Measure (the TABOR Provision) Contains Multiple Subjects.

Section 2 of the measure strikes language in Section 20 of Article X of the Colorado Constitution to eliminate TABOR's flat income tax requirement. But rather than strike "one rate" and amend the remainder of the TABOR provision to allow the sentence to make sense, the measure strikes additional language not necessarily or properly connected to the establishment of a graduated income tax scheme. *Outcelt v. Bruce*, 961 P.2d 456, 464 (Colo. 1998) ("[T]he purpose of the single subject requirement of article V, section 1(5.5) is to prohibit the practice of putting together in one measure subjects having no necessary or proper connection for the purpose of garnering support for measures from parties who might otherwise stand in opposition.) (Kourlis, J., dissenting). Instead, Section 2 of the measure contains several subjects coiled up within its folds that have no relationship to the establishment of a graduated income tax scheme. *See In re Title, Ballot Title & Submission Clause for Proposed Initiative 2001-02 No. 43*, 46 P.3d 438, 442 (Colo. 2002) (the single subject rule helps avoid "voter surprise and fraud occasioned by

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[1] Indeed, when the legislature sought voter approval this past fall regarding the Healthy School Meals for All ("HSMA") program, it separated the proposals into two different measures. Proposition LL asked the voters permission to retain and spend surplus HSMA funds (e.g., $12.4M). Proposition MM asked voters to further limit deductions on high-income taxpayers to fund HSMA expansion, such as covering grant programs for local food, staff wages, training, and equipment.

the inadvertent passage of a surreptitious provision 'coiled up in the folds' of a complex initiative").

<u>First</u>, While Initiative #192 left in the clause "no added tax or surcharge," the stricken language in that section of TABOR does more than repeal the language that income must be taxed at one rate. It also repeals the requirement in TABOR that "net income," as opposed to other types of income measurements such as gross income, be taxed. Gross income is a taxpayer's total earnings before any deductions, while net income is the amount a taxpayer takes home after all deductions, such as taxes, insurance, and retirement contributions, are subtracted. By removing the constitutional requirement that net income is the type of income taxed, Initiative #192 would open the door to the legislature choosing to tax gross income instead. This would result in more taxes and less money in taxpayers' pockets. It also would be directly contrary to TABOR's goal of slowing the growth of government.

<u>Second</u>, Section 2 of the measure also contains another crucial subject coiled up within its folds: it repeals the protections afforded to refund tax credits or voter approved tax credits, permitting the General Assembly to consider those as "taxable income" in the future. *See In re Title, Ballot Title & Submission Clause for Proposed Initiative 2001-02 No. 43*, 46 P.3d 438, 442 (Colo. 2002) (the single subject rule helps avoid "voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision 'coiled up in the folds' of a complex initiative"). As described in more detail below, Initiative #192 contains the following change to Section 8(a) of Article X of the Colorado Constitution: "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." While the phrase "excluding refund tax credits or voter approved tax credits" falls after "one rate," the phrase does not modify "one rate," but instead modifies "all taxable income."[2] By removing the constitutional requirement that "all taxable net income" excludes "refund tax credits or voter approved tax credits," it removes any guarantee that refund or voter approved tax credits will *not* be considered taxable income.

A brief review of the state of Colorado's actions post-TABOR reveals that the language "refund tax credits and voter-approved tax credits" refers to TABOR refunds in the form of tax credits. The Colorado Department of Revenue does not treat refundable tax credits as taxable income.[3] For example and to further

[2] Nathaniel Minor, et al., *The Taxman: In TABORS's Wake, A Conservative Civil War – With Douglas Bruce Sidelined*, COLO. PUBLIC RADIO (last visited January 28, 2026), https://taxman.cpr.org/tabor-25-the-taxman-conservative-civil-war-with-doug-bruce-sidelined.html (Bruce explaining to lawmakers and lobbyists that TABOR was not just a means to give voters the final say on all tax increases, it also contained mechanisms that cut off other methods of raising revenue); TABOR Campaign Q&A Sheet, 1992 ("Only the voters can approve tax credits. Politicians cannot use credits to distort the revenue limit.").

[3] *Child Tax Credit (CTC) & Earned Income Tax Credit (EITC) FAQs*, COLO. DEP'T OF REVENUE (last visited January 28, 2026) ("Generally, the money you get back from the earned income tax credit and the child tax credit

illustrate, the earned income tax credit ("EITC") was originally created as a temporary TABOR refund mechanism. Thus, at its creation, the EITC was a "refund tax credit" within the meaning of TABOR. As such, because Section 8(a) of Article 20 of the Colorado Constitution excluded "refund tax credits or voter-approved tax credits" as taxable income, amounts received as TABOR refunds in the form of the EITC are not themselves subject to income tax. But, if you remove this language, these credit amounts are not prohibited from being subject to income tax. This aligns with guidance issued by the Colorado Department of Revenue stating that amounts received under the EITC are not themselves subject to tax.[4]

Moreover, such specific definition of "revenue" was a critical piece of the original intent of TABOR, as described by Douglas Bruce himself. *See* D. Bruce, Rocky Mountain News interview, 1993 ("The revenue limit only works if you define revenue honestly."); Letter to Rep. Dave Owen, ColoradoBiz (Feb. 1999) ("TABOR (8)(a) says the only income tax credits allowed are refund credits or voter-approved credits."). Lacking such specificity, the General Assembly has free reign to fashion tax credits in a way as to artificially increase the revenue base.[5]

Thus, TABOR refund mechanisms, often crafted in the form of tax credits,[6] do not result in payments which are themselves subject to income tax. Striking "refund tax credits" and "voter-approved tax credits" from TABOR Section 20(8)(a) removes the constitutional prohibition on such refunds being subject to tax, in clear violation of the spirit of TABOR. This subject is not clear from the text of the measure and not included in the title set by Title Board. Voters would be surprised to learn that by voting for Initiative #192, they would be allowing the General Assembly to alter how these two tax credits, historically excluded from taxable income, are considered. Considering how important TABOR refunds are to so many Coloradans, this feature is an impermissible second subject.

<u>Third</u>, Section 2 of the measure contains yet another subject: capping the tax rate as of its passage. Pursuant to Initiative #192's strikes, Section 8(a) of Article X of the Colorado Constitution would read: "Any income tax law change after July 1, 1992 shall also require no added tax or surcharge." Although admittedly confusing, a plain reading of that provision appears to indicate that the measure would not permit the income tax rates from the statutory provisions in the measure from ever increasing. In other words, by stating that "[a]ny income tax law change after July 1, 1992 shall also ***require no added tax***," presumably, the income tax rate could never be raised. Voters would undoubtedly be confused when confronted with a graduated income tax structure, that passage of such structure would also cap the

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does not count as taxable income. This means you do not need to pay any taxes on the amount of money you get back from tax credits.").

[4] *Id.*

[5] *See* Nathaniel Minor, et al., *supra* note 2.

[6] *See* Greg Sobetski, *History of TABOR Refund Mechanisms*, LEGISLATIVE COUNCIL STAFF (Feb. 17, 2022), https://content.leg.colorado.gov/sites/default/files/r21-97_history_of_tabor_refund_mechanisms.pdf.

tax rates. The Title Board should decline to set title in the face of such confusion. *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 25*, 974 P.2d 458, 469 (Colo. 1999) ("The Board must simultaneously consider the potential public confusion that might result from misleading titles and exercise its authority in order to protect against such confusion.").

B. Applying the Graduated Income Tax to Corporations, as well as Individuals, is Multiple Subjects.

Initiative #192 also contains multiple subjects by applying the graduated income tax to not only individuals, but also several other categories of earners, including C-corporations, estates, trusts, and pass-through entities. This is not simply a policy decision from proponents. By applying a graduated income tax to multiple categories of earners, Initiative #192 falls victim to both ills that plague omnibus measures.

First, Initiative #192 presents a grave logrolling risk. In decoupling the various categories of earners from the same flat income tax (i.e., by deleting that "all taxable net income be taxed at one rate"), the proponents did not need to impose a graduated income tax on each category of earners. But they did. As a result, they seek to curry favor from voters who want to impose a graduated income tax system on individual income—and especially those who want to tax higher income earners (i.e., millionaires) at higher rates—to pass a measure that significantly increases the income tax burden on corporations and small businesses. *See In re Proposed Initiative "Public Rights in Waters II"*, 898 P.2d 1076, 1079 (Colo. 1995) (explaining that a central 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 interests"). It is more than possible that a voter may want to increase taxes on millionaires, but not on small and medium-sized businesses, as well as start-up companies, organized as C-corporations. This measure thus is attractive to disparate groups of people that would not vote for all the various subjects contained in the measure. This danger is not trivial. The tax burden increase will fall most heavily on corporations and small businesses, almost all of which receive over a million dollars in income, and not individual earners.

Second, and importantly, Initiative #192's logrolling risk is compounded by the fact that imposing a graduated income tax scheme on other categories of earners, and especially small businesses, is coiled up in the folds and would lead to voter surprise. *See In re Title, Ballot Title & Submission Clause for Proposed Initiative 2001-02 No. 43*, 46 P.3d 438, 442 (Colo. 2002) (the single subject rule helps avoid "voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision 'coiled up in the folds' of a complex initiative"). Neither the draft measure's text nor the title set by Title Board at the original hearing mention small businesses, which can be C-corporations, LLCs, or other types of entities. The

draft title also only references estates, trusts, and corporations once—and this is buried halfway through the title.

Critically, current law prescribing what language must be included in the title not only compounds this problem—it highlights and explains why the proponents must seek to impose a graduated income tax on individuals in its own separate measure. C.R.S. 1-40-106(3)(j) requires that "[a] ballot title for a measure that either increases or decreases the individual income tax rate must, if applicable, include the table created for the fiscal summary pursuant to section 1-40-105.5 (1.5)(a)(V)." No such table is required for an increase or decrease to the income tax rate for other categories of earners. As a result, the drafted title for Initiative #192 only describes the fiscal impact the measure would have on individual earners. This requirement in state law thus necessarily causes the impact to other earners to be minimized in the title, leaving voters with the message that the measure is focused primarily, if not exclusively, on altering the individual income tax rates. In other words, should Initiative #192 be placed in front of voters, they are most likely to misinterpret the measure as raising taxes on millionaires and vote "yes" or "no" on that basis.

Therefore, the statutory requirements for title language necessarily creates voter surprise as to the Initiative #192's impact on other types of earners and could allow the measure to pass simply on the power of the faction of voters in favor of higher taxes for millionaires. The only way to remedy this issue is to require the proponents to seek to impose a graduated income tax system on individual earners in its own measure.

C. Initiative #192's Direction of Revenue Towards Prescribed Social Programs Constitutes Multiple Subjects.

Initiative #192 additionally contains multiple subjects by not only establishing a graduated income tax system in Colorado, but also directing that excess revenue collected under such a system be directed towards certain social programs and preventing the legislature from lowering current appropriations to those programs if they wanted to appropriate the excess revenue to those programs. Initiative #192's multiple goals present a significant danger of logrolling as well as voter surprise stemming from another subject coiled up within the measure's folds.

First, Initiative #192's basic premise—instituting a graduated income tax structure and directing excess revenue from such structure towards certain prescribed social programs—contains multiple subjects coiled up within the folds. Even the statement of Initiative #192's "single subject" itself reveals this. Appropriating money to the social programs listed in Initiative #192, and doing so in this manner, is not necessarily and properly connected to the purpose of the measure: changing the income tax structure in Colorado.

Although there is case law suggesting that a ballot measure does not violate the single-subject requirement if it imposes new taxes and allocates revenue to fund a particular goal, those case are distinguishable from Initiative #192. For example, in *Matter of Title, Ballot Title and Submission Clause for 2019–2020 #315*, 500 P. 3d 363, 367–68 (Colo. 2020), the Colorado Supreme Court considered whether Initiative #315 contained multiple subjects. *Id.* There, the measure required that state cigarette and tobacco tax revenue is reallocated to a new preschool program. *Id.* at 363. The Court held that "the reallocation of tax revenues away from localities that ban the sale of tobacco and nicotine products" was not a separate subject, but "one means of implementing Initiative #315's single subject of creating a preschool program by redirecting tax revenues to that program." *Id.* at 368. Proposition FF, a legislatively referred measure which created the Healthy School Meals for All ("HSMA") program, and did so by reducing state income tax deductions for taxpayers earning over $300,000 within the state's current flax income tax scheme, is another example. Here, to the contrary, the redirection of revenue towards certain prescribed social programs is *not* a necessary and proper means to implementing the graduated income tax structure, which is the goal of Initiative #192. One does not logically follow from the other. Moreover, while other measures that were deemed to have a single subject did raise new taxes, they did so within the current tax schemes. Initiative #192, in contrast, would establish an entirely new graduated income tax system. This dramatic change must be placed before voters on its own merits.

Accordingly, Initiative #192's multiple goals must be accomplished through separate measures. Indeed, when the legislature sought voter approval this past fall regarding the HSMA, it separated the proposals into two different measures. Proposition LL asked the voters permission to retain and spend surplus HSMA funds (*e.g.*, $12.4M). Proposition MM asked voters to further limit deductions on high-income taxpayers to fund HSMA expansion, such as covering grant programs for local food, staff wages, training, and equipment. The same should be done here.

Second, the added language in C.R.S. 24-77-103.3(2) presents another subject coiled up in the folds of Initiative #192. The measure adds the following provision to statute:

> FOR PURPOSES OF ADMINISTERING THE DEDICATION OF EXCESS REVENUE SPECIFIED IN SUBSECTION (1) OF THIS SECTION, THERE IS HEREBY CREATED IN THE GENERAL FUND THE COLORADO FUTURE'S ACCOUNT, WHICH SHALL CONSIST OF AN AMOUNT OF MONEYS EQUAL TO THE AMOUNT OF EXCESS REVENUE SPECIFIED IN SUBSECTION (1) OF THIS SECTION. THE MONEYS IN THE ACCOUNT SHALL BE APPROPRIATED OR TRANSFERRED BY THE GENERAL ASSEMBLY FOR K-12 PUBLIC SCHOOL EDUCATION, HEALTH CARE, AND EARLY CHILD CARE AND EDUCATION PURPOSES AND **IS INTENDED TO SUPPLEMENT**

AND NOT SUPPLANT CURRENT LEVELS OF APPROPRIATIONS THERETO.

(Emphasis added). By specifying that the excess revenue appropriated to the social programs listed is intended to "supplement and not supplement current levels, Initiative #192 may tie the General Assembly's hands.[7] Thus, coiled in the folds of the measure, is the requirement that the General Assembly should continue to appropriate funds to the programs listed (public school education, health care, and child care) in the same manner as the year of Initiative #192's passage, or risk losing the ability to appropriate the excess funds at all. Necessarily, should the General Assembly lower the amount appropriated to a certain social program, the excess revenue described above cannot be lawfully appropriated to such program, as it does not "supplement" current levels of appropriations, as required by the measure's language. This is particularly concerning in times such as these, where the budget shortfall for the 2026 legislative session is estimated around $850 million[1] and the General Assembly may need to make difficult decisions regarding the funding of various programs.

D. The Broad Theme of "Income Tax Policy" Does Not Rescue Initiative #192.

Moreover, the measure is not saved by the proponents' characterization of the provisions as all falling under the umbrella topic or theme of "income tax policy" Or something similar. The Colorado Supreme Court has held that that "water," "revenue changes," and "local regulation of oil and gas development" are three examples of "overarching themes" that did not qualify as single subjects when the proposed initiatives associated with those themes contained disconnected or incongruous provisions.

Just as the theme of "water" did not satisfy the single subject rule when the measure sought to establish a so-called public trust doctrine and to impact the procedures of water conservation district elections, Initiative #192 does not satisfy the single subject rule by changing Colorado's flat income tax to a graduated one, making other changes to TABOR unrelated to a graduated income tax scheme, permitting the excess revenue generated by the graduated income tax to be retained, and dictating that revenue must be spent on certain social programs. *See In re Proposed Initiative "Public Rights in Waters II"*, 898 P.2d 1076,1080 (Colo. 1995); *see also In re Proposed Initiative Amend TABOR 25*, 900 P.2d 121, 125 (Colo. 1995) (holding that the umbrella subject of "revenue changes" did not alter the fact that the measure contained two unrelated subjects – a tax credit and changes to the procedural requirements for ballot titles); *In re Title, Ballot Title and Submission Clause for 2013–2014 #90 and #93*, 2014 CO 63, ¶ 53 (holding that "the overarching theme of 'local regulation of oil and gas development' does not qualify as a single

[7] While a similar clause was included in Initiative #271, passed by Title Board in 2020, this issue not raised in any Motions for Rehearing.

subject because the Proposed Initiatives contain disconnected and incongruous provisions that vest local governments with authority to regulate oil and gas development on the one hand and limit takings law on the other").

The theme of "income tax policy" is at least as equally broad as these other improper umbrella topics, rendering the Title Board without jurisdiction to set title.

II. THE TITLE BOARD LACKS JURISDICTION TO SET A TITLE BECAUSE THE PROPOSED MEASURE IS SO VAGUE AND CONFUSING THAT IT CANNOT BE UNDERSTOOD.

As explained in detail in the Objector's Motion for Rehearing on Initiative #181, Initiative #192 suffers from the same deficiencies with its strikethrough of only a portion of the last sentence in Paragraph 8(a) of TABOR. (*See* Initiative #192, § 2.) By doing so, the Proponents create an ambiguous and incomprehensible sentence in TABOR that deprives the Title Board of jurisdiction to set title.

If passed, Initiative #192 would remove the requirement that all net income be taxed at one rate (excluding refund tax credits or voter-approved tax credits), with no added tax or surcharge, and instead have the sentence state something completely different: "*Any income tax change after July 1, 1992 shall also require no added tax or surcharge*." This change to the final sentence in Paragraph 8(a) divorces the original intent of the provision from its roots. "No added tax or surcharge" currently modifies "one rate." By removing the ", with," that phrase would instead modify "income tax law change." Initiative #192's vague and confusing change to TABOR—a constitutional provision—means that this Title Board cannot set title and it should refrain from doing so here. *See In re Title, Ballot Title and Submission Clause for 2015-2016 #73*, 369 P.3d 565, 568 (Colo. 2016).

III. THE TITLE FAILS TO ACCURATELY DESCRIBE THE MEASURE AND WOULD MISLEAD VOTERS.

Even if the Title Board were to affirm it has jurisdiction to set a title, and that the measure does not impermissibly contain multiple subjects, setting a title for Initiative #192 is problematic for at least several reasons. The draft title approved at the January 21st hearing must be amended so that the title fully and accurately captures the measure's central features and does not mislead voters. Thus, at least the following changes must be made:

First, the title does not reveal several of the subjects listed above, including that it: (i) removes the constitutional requirement that net income, as opposed to gross income, be taxed; (ii) repeals the protections afforded to refund tax credits or voter approved tax credits, permitting the General Assembly to consider those as "taxable income;" (iii) deletes the TABOR provision requiring any changes to the

state's income tax be identical across income taxpayers (i.e., individuals, estates, trusts, C-corporations, and via pass-through entities); and (iv) excludes the excess revenue collected from the TABOR cap, and thus affects TABOR refunds. Specifically, as to the third subject identified above (deletes the TABOR provision requiring any changes to the state's income tax be identical across income taxpayers (i.e., individuals, estates, trusts, C-corporations, and via pass-through entities)), the language in the title which identifies the taxpayers affected by the measure is buried within its text.

Second, the title fails to clarify the full gravity of the constitutional repeal—*i.e.*, that the measure would repeal the constitutional provision requiring a single, flat tax. Given how difficult it is to amend Colorado's Constitution, this repeal, if passed, is likely to be permanent. This dramatic change must be adequately reflected in the title.

Third, the title's inclusion of a table showing proposed changes to income taxes by income category is misleading and prejudicial. The table fails to clarify that these proposed changes apply to individuals, estates, and trusts, as well as certain incorporated businesses. As a result, the title creates the impression that the measure is simply increasing taxes on individual millionaires, rather than small and medium-sized businesses, as well as start-up companies. While the Objector understands that Legislative Council was obligated to create such a table for the initial fiscal statement, *see* C.R.S. § 1-40-105.5(1.5)(a)(V), and that a statute requires that the Title Board place that table in the title, this does not prevent the Title Board from either (a) adding language to clarify that taxes on businesses would increase or (b) creating separate tables for estates, trusts, and C-corporations.

Fourth, absent language in the title, voters would be misled into thinking that because the title does not list certain other entities, such as S-corporations and limited liability companies, those entities would not be impacted by Initiative #189. But pass-through entities would be affected by these measures because they are usually taxed at the individual level. In other words, the title obscures the full reach and impact of the tax increase by listing some of the targets of the new tax scheme but not others—a construction that will create the plainly false impression that the owner of an LLC, for example, are not targeted by this policy. Any individual or business classification that will experience a tax increase if this measure passes should be expressly listed in the title.

Fifth, and relatedly, the title fails to include any mention of the effect on smaller businesses. Many small and mid-size businesses, as well as start-up companies, are organized as C-corporations and would clearly have their taxes increased under this measure.[8] Likewise small businesses that are taxed as S-

[8] The following are statistics prepared by the Colorado Department of Revenue: https://cdor.colorado.gov/data-and-reports/income-tax-data/corporate-statistics-of-income-reports.

corporations or LLCs would still pass along the income tax increases to their individual shareholders. The graduated income tax scheme would likely raise their taxes on their net profits. Higher taxes on smaller businesses could have drastic effects, such as decreasing the number of these family-owned businesses in the state, slowing economic growth, and killing jobs for Coloradans. Effects such as these are not inconceivable—it's famously happened in California in recent years, where so-called schemes to "tax the rich" have led employers of all sizes to cease doing business in the state. The title as drafted does not sufficiently address the significant dangers to Colorado's business landscape associated with such a dramatic corporate tax increase. Accordingly, the title must be edited to make this risk clear. Likewise, while Initiative #192 specifies that it applies to "corporations," voters may not understand that large, medium, and small businesses, as well as start-up companies, are organized as C-corporations. The title must be edited to make this clarification.

Sixth, the title's reference to "estates" is misleading and needs to be clarified. Voters are unlikely to think of "estates" as covering anything other than millionaire's estates. Rather, each time a person passes away, the person's estate will need to file an income tax return showing income earned for the assets in its possession before distributing those assets to beneficiaries. Thus, Initiative #189 would result in higher taxes on the assets left to individuals grieving their lost loved ones. The title needs to explicitly describe this feature.

Seventh, the title as drafted does not clarify that the excess portion of the revenue generated does not count toward the TABOR cap, significantly affecting and potentially eliminating the refunds voters have come to expect under TABOR. The title is also misleading in that it does not adequately explain that this measure removes the voters' right to vote on retaining excess revenue under TABOR. These are fundamental changes to TABOR that a voter would be surprised to learn. Thus, this language should be included at the outset.

Eighth, the title does not explain that the General Assembly has the discretion as to how to spend the money amongst the various services listed in the measure. Just because a certain service is listed, does not mean that the legislative will allocate any of the increased tax revenue to that particular service. Therefore, the words "at the discretion of the legislature" must be added to the title.

Therefore, the title must be amended to make these changes because otherwise the title would not "correctly and fairly express the true intent and meaning" of the measure. *See* C.R.S. § 1-40-106(3)(b). Indeed, Title Board's "duty is to ensure that the title, ballot title and submission clause, and summary fairly reflect the proposed initiative so that petition signers and voters will not be misled into support for or against a proposition by reason of the words employed by the board." *In re Ballot Title 1997–1998 # 62*, 961 P.2d 1077, 1082 (Colo. 1998) (quoting

In re Proposed Initiated Constitutional Amendment Concerning the Fair Treatment of Injured Workers Amendment, 873 P.2d 718, 719 (Colo. 1994)).

IV. THE INITIAL FISCAL IMPACT STATEMENT IS MISLEADING AND PREJUDICIAL.

Finally, the Objector incorporates his argument set forth in the Motion for Rehearing on Initiative #181 regarding the misleading, incomplete, and prejudicial initial fiscal impact statement prepared by Legislative Council Staff as to the effects of Initiative #192 on corporations, and especially small and medium-sized businesses, or start-up companies, organized as C-corporations. *See* C.R.S. § 1-40-105.5(1.5)(a)(II).

CONCLUSION

Accordingly, the Objector respectfully requests that a rehearing is set pursuant to C.R.S. § 1-40-107(1) and that the Title Board grant this Motion.

Respectfully submitted this 28th day of January 2026.

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