COLORADO TITLE SETTING BOARD

Michael Fields, Objector

MOTION FOR REHEARING ON INITIATIVE 2025-2026 #196

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 #196 ("Initiative #196"). 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 #196. 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 #196 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 asserts that excess revenue generated by the measure is intended to supplement and not supplant current spending levels across the dedicated funds.

In making the following changes to constitution it creates 2 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 all taxable net income to be taxed with no added surcharge" First, this proposed change alters the constitutional provision fundamentally from a prohibition against charging different taxpayers different rates to a *mandate* to tax **all income** (because under the previous construction, all income must be taxed at one rate, but nothing prohibited that rate from being zero).

Next, the provision disconnects the requirement that income taxes across different categories be taxed at the same rate. This change, unconnected to the measure, would allow for future changes at differing rates without a need to change the constitutional language. It is a complete departure from the intent and purpose of TABOR.

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 prohibit the tax rate from being set to zero at any future date. It was also not necessary to alter the requirement that income taxes across different categories be set at a different rate.

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.

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 a mandate to tax income, something that is not required under TABOR currently.

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. Perhaps most of all, the voters will not know or will be surprised to know that the measure changes TABOR fundamentally from a constitutional provision that was designed to restrict taxation to one that mandates it.

The measure also directs existing and future state spending by asserting voter intent that the addition supplement and not supplant current funding. This spending guideline would apply to two of the state's highest cost programs – public school education and health care. Directing 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 #196 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 #196:

"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 and the prohibition against added taxes 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:"

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 early child care and education services twice[1]. 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

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

West Group
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