

## COLORADO TITLE SETTING BOARD

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Michael Fields, Objector

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### **MOTION FOR REHEARING ON INITIATIVE 2025-2026 #181**

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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 #181 (“Initiative #181”). 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 December 3, 2025, the Title Board considered Initiative #181. The Board found that the measure constitutes a single subject and proceeded to set title.

1. The Measure does not contain a single subject

Initiative #181 contains multiple subjects. Objectors assert the central feature of the measure is a tax increase. Proponents have maintained that any tax increase is incidental.

The measure doesn’t just increase taxes. The measure contains at least 4 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; and
- 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.

In making the following changes to constitution it creates 3 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.

- 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 proponents 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” doesn’t require an added tax or surcharge, but that is legally distinguished from a prohibition. This is unconnected to the measure. The following examples, using the same sentence structure as proponents chose, are illustrative of the point.
    - a. Any voter identification law change after July 1, 1992, shall also require the presentation of a State of Colorado Real Id, excluding people exempt under HAVA, with no poll tax.  
 Any voter identification law change after July 1, 1992, shall also require ~~the presentation of a State of Colorado Real Id, excluding persons exempt under HAVA, with~~ no poll tax.  
 Any voter identification law change after July 1, 1992, shall also require no poll tax.
    - b. Any abortion law change after July 1, 1992, shall also require full insurance reimbursement, excluding a de minimis deductible, with no government restrictions.  
 Any abortion law change after July 1, 1992, shall also require ~~full insurance reimbursement, excluding a de minimis deductible, with~~ no government restrictions.  
 Any abortion law change after July 1, 1992, shall also require no government restrictions.
  - 3) By striking “excluding refund tax and credits or voter approved tax credits”, the measure would authorize a new method for calculating taxable net income. This is unconnected to measure.

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 that has the same rates for personal and corporate income tax, it is necessary and connected to alter the language in TABOR that requires a single rate, but it is not necessary or connected to allow for different rates across different classes.

Moreover, 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, but the strike 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 (but no tax or surcharge is prohibited)? The Title Board cannot set title for a ballot initiative where the effect is incomprehensible.

The changes made to the constitutional provision are surreptitious. Voters will not know, or be surprised to know, that a change to the added surcharge language could allow the general assembly to add surcharges (i.e. fees) to taxes without a vote of the people. 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.

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

Should the Board hold to its determination that Initiative #181 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 #147:

“State taxes shall be increased \$4.1 billion annually, in order to increase or improve levels of public services, including public school education, health care, child care, and workforce development 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 state income tax rate, and, in connection therewith, eliminating the constitutional requirement in the Taxpayer’s Bill of Rights 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, and authorizing the state to retain and spend the increased revenue for specific purposes, which will result in the estimated change in income taxes owed by individuals as identified in the following table: [table omitted]”

If the tax increase is not the single subject and 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 have this language in the title.

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

Respectfully submitted this 10<sup>th</sup> day of December, 2025.

/s/ Suzanne Taheri

West Group  
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