COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE 2025-2026 #181

MOTION FOR REHEARING

On behalf of Michael A Hancock, registered elector of the State of Colorado, the undersigned counsel hereby submit this Motion for Rehearing for Proposed Initiative 2025-2026 #181 ("Initiative #181") 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 #181's edits to a provision in the Taxpayer Bill of Rights ("TABOR") creates a vague and confusing sentence that cannot be reasonably understood; (2) the Title Board lacks jurisdiction to set a title because Initiative #181 impermissibly contains multiple separate and distinct subjects in violation of the single-subject requirement; (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 that came before it, is more than just a tax increase on millionaires. Among other subjects, it makes profound changes to TABOR 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 reflected in the title.

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

The changes the Proponents made in this version—Initiative #181—are understandable given that the Title Board found the prior version to contain multiple subjects. To avoid (i) the single-subject pitfalls that befell Initiatives ## 145-147, which struck language in TABOR prohibiting no added taxes or surcharges in the flat income tax rate, and (ii) adding constitutional language which would require the measure pass with 55% of the vote, Initiative #181 strikes only part of the last sentence in Paragraph 8(a) of TABOR. (*See* Initiative #181, § 1.) But, by doing so, the Proponents would create an ambiguous and incomprehensible sentence in TABOR that deprives the Title Board of jurisdiction to set title.

If passed, Initiative #181 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."

Although the Proponents likely intended that this change would keep the status quo on no added taxes and surcharges to the income tax rates, it is unclear what this language would actually do. For example, because the sentence keeps the word "require," does this mean that any new income tax law change must specifically include a sentence declaring there can be no added tax or surcharge? And to what? To make the sentence clear with those strike-throughs, Initiative #181 would need to at least strike the word "require" and add in a different verb, if not completely revamp the sentence structure.

Initiative #181's vague and confusing change to TABOR—a constitutional provision—means that this Title Board cannot set title. The Colorado Constitution mandates that an initiative's single subject shall be clearly expressed in its title." *In re Title, Ballot Title and Submission Clause for 2015-2016 #73*, 369 P.3d 565, 568 (Colo. 2016). The clear title standard requires that titles "allow voters, whether or not they are familiar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose the proposal." *Id.* The Board must consider the confusion that may arise from a misleading title and set titles that "correctly and fairly express the true intent and meaning" of a measure. *Id.* (quoting C.R.S. § 1-40-106(3)(b)). Based on these principles, if an initiative is so vague or confusing that its true purpose cannot be understood, then the Title Board lacks jurisdiction to set a title. The Title Board has declined to set a title on this ground in the past, and it should similarly refrain from doing so here.

II. INITIATIVE #181 IMPERMISSIBLY CONTAINS MULTIPLE SEPARATE AND DISTINCT SUBJECTS IN VIOLATION OF THE SINGLE-SUBJECT REQUIREMENT.

To make matters worse, Initiative #181 also contains several distinct subjects improperly coiled in the folds that would lead to either voter surprise or impermissible logrolling. The single-subject requirement is designed to:

> [F]orbid . . . the practice of putting together . . . subjects having no necessary or proper connection, for the purpose of enlisting in support of the [initiative] the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits.

C.R.S. § 1-40-106.5(1)(e)(I); *see also In re Title, Ballot Title & Submission Clause, for 2007–2008, #17*, 172 P.3d 871, 875 (Colo. 2007) ("We must examine sufficiently an initiative's central theme to determine whether it contains hidden purposes under a broad theme.").

Tellingly, although the Proponents' main goal is the create a graduated income tax system, they have represented that Initiative #181's single subject consists of a lengthy list of policy goals that include:

- creating a graduated income tax 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.

The fact that the Proponents could not distill their single subject to a simple phrase should at least give Title Board pause that the measure contains additional subjects coiled in the folds.

In fact, Initiative #181 actually 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) 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;
(3) Applies a graduated income tax to several different categories of earners: individuals, estates, trusts, C-corporations, and via pass-through entities;
(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] and
(6) 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 Matt 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 illustrate, these separate subjects fall victim to the ills plaguing omnibus measures.

First, this measure contains several subjects coiled up within its folds. *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"). While Initiative #181 left in the clause "no added tax or surcharge," in SECTION 1 amending TABOR, the stricken language in that section 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 #181 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.

In addition, subjects #2 and #5 above are not clear from the text of the measure. Indeed, neither of those features even made their way into the title set by Title Board. Voters would be surprised to learn that by voting for Initiative #181, they would be decoupling individual and corporate income taxes, especially considering that the measure itself proposes to keep those graduated rates the same. Voters

[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.

likewise would be surprised that by voting for the measure, they could be affecting the amount of TABOR refunds they could receive.

Second, this measure presents a serious logrolling risk as many different voters or groups may favor certain aspects while disapproving of others. *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"). For example, a voter may prefer a graduated income tax but not want to allow the state to retain income tax in excess of that currently permitted under TABOR without further express voter approval. In addition, 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. As a result, this measure is attractive to disparate groups of people that would not vote for all the various subjects contained in the measure.

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, setting a title for Initiative #181 is problematic for at least several reasons. The draft title approved at the December 3rd 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) 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 (iii) excludes the excess revenue collected from the TABOR cap, and thus affects TABOR refunds.

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 mislead 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 #181. 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.

Fourth, 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.[2] Likewise small businesses that are taxed as S-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 #181 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.

Fifth, 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 #181

[2] 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.

would result in higher taxes on the assets left to individuals grieving their lost loved ones. The title needs to explicitly describe this feature.

Sixth, 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.

Seventh, 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 initial fiscal impact statement prepared by Legislative Council Staff is misleading as to the effects of Initiative #181 on corporations, and especially small and medium-sized businesses, or start-up companies, organized as C-corporations. Specifically, in the section titled Economic Impacts, Legislative Council refers only to "business incomes." This phrasing does not adequately describe the economic impacts of the measure if implemented, as required by C.R.S. § 1-40-105.5(1.5)(a)(II). Referring only to the effected corporations as "business" does not accurately portray the extent of business impacted. Corporations impacted by Initiative #181 include corporations both large and small, as well as start-up companies, organized as C-corporations. And although not required by statute, the initial fiscal impact statement is misleading, incomplete, and prejudicial unless it includes a corresponding table addressing corporations.

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 10th day of December 2025.

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