

COLORADO TITLE SETTING BOARD

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

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**MOTION FOR REHEARING**

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On my own behalf, as a registered elector of the State of Colorado, the undersigned hereby submits this Motion for Rehearing for Initiative 2025-2026 #181 - Graduated Income Tax, pursuant to Section 1-40-107, C.R.S., and as grounds therefore states as follows:

**I. THE TITLE BOARD DOES NOT HAVE JURISDICTION TO SET A TITLE FOR INITIATIVE #181 AS INITIATIVE #181 IMPERMISSIBLY CONTAINS MULTIPLE SEPARATE AND DISTINCT SUBJECTS IN VIOLATION OF THE SINGLE-SUBJECT REQUIREMENT.**

C.R.S. § 1-40-106.5(1)(a) requires that “every constitutional amendment or law proposed by initiative . . . be limited to a single subject, which shall be clearly expressed in its title.” C.R.S. § 1-40-106.5(1)(e)(II) further explains that this rule is intended to prohibit certain practices including “to prevent surreptitious measure and apprise the people of the subject of each measure by the title, that is, to prevent surprise and fraud from being practiced upon voters.”

In these times of growing mistrust of authority in general, and government in particular, this function of the Title Board has never been more important. The right of initiative is stated in our Constitution to be “the first power hereby reserved by the people,” Colo. Const. Art. V, sec. 1(2) and a clear and honest title is absolutely essential for the exercise of this right.

Similarly, the people of Colorado have come to cherish the rights given to them by the Taxpayer’s Bill of Rights (TABOR) in our Constitution and it continues to be extremely popular with the people of Colorado, regardless of their age or political affiliation. Therefore, initiatives which intend to repeal rights given under the Taxpayer’s Bill of Rights must be given titles which are very clear so as to avoid in any way allowing “surprise and fraud from being practiced upon voters.” The Colorado Secretary of State’s website recognizes this as its website explains “the text of the measure must concern only one subject and one distinct purpose.”

<https://www.coloradosos.gov/pubs/elections/Initiatives/guide/2-BallotTitle.html#:~:text=Single%2Dsubject%20requirement,subject%20and%20one%20distinct%20purpose.>

The proponents of Proposed Ballot Initiative #181 have stated that the point of the initiative is to change our Constitution to allow a graduated tax rate. This does require repealing the portion of the Taxpayer's Bill of Rights which requires a single tax rate. This will have the effect of changing Colorado tax policy from a straightforward simple flat rate which is enshrined as a valuable right in our state constitution, to just another statute which can, and probably will be, changed frequently by our legislature. The current proposed change uses a progressive tax rate structure, but once tax policy is moved from constitutional to statutory any conceivable tax rate structure could now be implemented if a simple majority of the legislature so desires.

Originally, the-single subject rule was interpreted by the courts to mean that a proposed initiative "must effectuate or carry out only one general object or purpose." In re Ballot Title 2005-2006 No. 74, 136 P.3d 237 (Colo. 2006). It has since been stated that the single-subject rule is "not violated if the matters included are necessarily or properly connected to each other. In re Proposed Ballot Initiative on Parental Rights, 913 P.2d 1127 (Colo. 1996). The Colorado Supreme Court has rejected the use of "umbrella proposals" to make disparate subjects appear to be one subject. In re Title, Ballot Title, & Submission Clause for 2013-2014 #76, 2014 CO 52. para. 10 (2014). This includes specifically "revenue changes." In re Amend TABOR 25, 900 P.2d 121, 125-6 (Colo. 1995).

The removal of Colorado state tax policy from its constitution in order to make it a purely statutory matter is in no way "necessarily or properly connected to" the institution of a progressive tax rate. This is easily seen by the fact that states vary widely in where their tax policy is stated and what that tax policy is. Colorado, currently has a flat tax rate on personal income which is mandated in Article X, Colorado Constitution. Alaska has no personal income tax and it derives its income primarily from property taxes and corporate income taxes as is stated in Article IX, Alaska Constitution. Mississippi has a flat tax rate on personal income which is set out by statute in Title 27, Miss. Code. Every state has its own tax policy and some are constitutional, while most are statutory. There cannot be a more clear demonstration that there is no connection of any sort between where the tax policy is set, constitutionally or statutorily, and what that policy is.

As if that was not enough, the proponents proposed initiative also states that the tax changes they propose will not only change the structure of how taxes are raised in Colorado, but also will "constitute a voter approved revenue change under" TABOR, and that "excess revenue" "shall be collected, retained, and spent." In other words, TABOR's requirement that excess revenue, over specified amounts, be returned to the taxpayers shall be permanently removed from our policy. Again, other states show that there is no necessary or proper connection between a progressive tax rate structure and the retention of revenue over constitutionally set limits, as some states have a progressive tax rate structure and have allow the retention of

revenue of any amount. See Vermont, Title 32, V.S.A. In other words, in difficult economic times the voters of Colorado will be choosing to not receive any TABOR refunds to which they are entitled if the revenue raised exceeds TABOR's limits. This is not a necessary or connected result of having a graduated tax rate. A graduated tax rate could be revenue neutral, or it could be implemented and then if the revenue exceeds TABOR's limits the required refunds could be issued. One way or another the retention of revenue exceeding TABOR's limits is a completely different subject than the structure of the tax rates by which that revenue is raised. This is precisely the type of subject that should not be in any way concealed from voters or obscured by the distractions of the other subject.

## **II. THE TITLE SET FOR INITIATIVE #181 IS NOT CLEAR AND ACCURATE BUT IS MISLEADING**

Notwithstanding whether the Proposed Ballot Initiative #181 contains more than one subject, the title of the initiative is misleading because the proposed ballot initiative itself is not clear and accurate. It would amend Art. X, Section 20(8)(a) of the Colorado Constitution to read "Any income tax law change after July 1, 1992 shall also require no added tax or surcharge." This language suggests that there can be no change in tax law which would in any way increase taxes. However, the proposed initiative then goes on to specify new tax rates, proposed change to C.R.S. § 39-22-104, several of which do in fact increase taxes, as shown in the chart included in the Title Board's title. The Title Board's charge is to set a title which "enables the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose the proposal." In re Ballot Title 2011-2012 No 45, 274 P. 3d 576 (Colo. 2012). However, even the members of the Office of Legislative Legal Services and the Legislative Council Staff, who are quite familiar with tax policy, were confused by the strained meaning that the proponents are trying to put upon this language. See Memorandum dated Nov. 14, 2025, re Proposed Initiative Measure 2025-2026 #181, Concerning a Graduated State Income Tax, pg. 3. It is not possible that the meaning desired by the proponents will be one the electorate can intelligently decipher so as to determine how to vote on this matter.

In addition, the title set does not make it clear to voters that they are approving a revenue change which will result in the forfeiture of their TABOR refunds. The board has not included language which would make this more clear such as "as a voter approved revenue change." This is an issue which voters care very deeply about and they will not appreciate being surprised that they have inadvertently waived their refund rights.

## **CONCLUSION**

Accordingly, the Objector respectfully requests that this Motion for Rehearing be granted and a rehearing set pursuant to Section 1-40-107(1), C.R.S.

Respectfully submitted this 10th day of December, 2025.

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