

COLORADO TITLE SETTING BOARD

Michael Fields, Objector

MOTION FOR REHEARING ON INITIATIVE 2025-2026 #145

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 #145 (“Initiative #145”). 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 October 1, 2025, the Title Board considered Initiative #145. 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 #145 contains multiple subjects. Objectors assert the central feature of the measure is a tax increase of \$3.25 billion dollars. But the measure doesn’t just increase taxes. It also decreases taxes for some taxpayers, through a graduated income tax scheme, in attempt to gain support from factions that would not otherwise support the increase.

At the initial hearing the petitioners asserted the central feature of the measure was a graduated income tax and the resulting tax increase was merely incidental:

“The point of this measure is to create a graduated income, not to increase revenue, not to favor this group or that group, but to create a graduated income, which we're addressing the constitutional prohibition, we create a graduated tax. It is incidental in some of this that if we're moving from one flat rate to a graduated rate, some rates might go down, some rates might go up” October 1, Audio,19:45.

It is absurd to argue that tax increase of \$3.25 billion dollars is incidental. A graduated income tax could easily be implemented without such an increase. Proponents realize the only way they can pass such an increase is to lower taxes for a group of voters that would not otherwise support the increase.

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 \$3.25 billion 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. 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.

Further, Initiative #145 directs the additional “incidental” revenue it generates to a set of four disparate programs and twelve purposes:

- (2) The excess revenue specified in subsection (1) of this section shall be collected, retained, and spent for the following programs and purposes:
 - (a) Public school education, including:
 - (I) Improving kindergarten through 12th grade, early childhood, and post-secondary education programs;
 - (II) Increasing teacher pay;
 - (b) Healthcare, including:
 - (I) Replacing Medicaid funding lost due to recent federal legislation, and paying for implementation of new federal requirements;
 - (II) Increasing funding for primary care, behavioral health and rural healthcare;
 - (III) Supporting healthcare, long-term care, and other supports for older adults and people with disabilities;
 - (III)[sic] Investing in innovative programs to reduce health insurance premiums;
 - (c) Child care, including:
 - (I) Supports for childcare workforce;
 - (II) Programs to help families afford childcare; and
 - (d) Public safety, including
 - (I) Programs to address homelessness and food insecurity;
 - (II) Substance abuse prevention, treatment, and recovery programs;
 - (III) Early intervention programs to prevent youth violence; and
 - (IV) Wildfire and flood mitigation and resiliency programs;

These programs are in no way connected to the proponent’s stated central purpose of establishing a progressive income tax. Further, the programs are not connected to each other, and the purposes aren’t even connected to the programs they fall under. Rather this appears to be a random list of programs that the proponents hope will garner support for their measure.

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).

Finally, the measure strikes a sentence from Colo. Const. Art. X, Section 20(8)(a) (“TABOR”). “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.” This section does two things: 1) through the word “all” it ties personal and corporate income tax together; and 2) it requires that both to be taxed at one rate. Without this section 17 of Article X allows for proportional taxes and allows for different rates across different classes.

To implement the measure it was necessary to alter the language in TABOR to allow for a proportional taxes, but it was not necessary or connected to allow for different rates across different classes. The measure does even attempt to establish different rates across different classes. This change has no connection to the rest of the measure.

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.

The single-subject requirement also “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)).

It cannot be said that striking the language to disconnect personal and corporate income tax is dependent or connected with the rest of the measure. It was just more convenient for proponents to strike it than to clarify the language in a way that was connected to their measure.

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

Should the Board hold to its determination that Initiative #145 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 #145:

“State taxes shall be increased \$3.25 billion annually, in order to increase or improve levels of public services, including public school education, health care, child care, and public safety services, by an amendment to the Colorado Constitution and a change to the Colorado Revised Statutes modifying and repealing existing law and creating new law to impose a graduated state income tax

on individuals, estates, trusts, and corporations starting January 1, 2027, 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, establishing various income tax rates based on the amount of taxable income earned by the taxpayer, and authorizing the state to retain and spend, for specified purposes, any resulting increase in revenue, which will result in the estimated change in income taxes owed by individuals as identified in the following table: [table omitted]"

The title as set by the Board fails to accurately assert the purpose of the initiative. The purpose is an income tax increase connected to a graduated income tax.

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.

If the language is not removed in its entirety then protestor requests the actual purposes rather than purported programs be listed to avoid misleading voters.

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

Respectfully submitted this 8th day of October, 2025.

/s/ Suzanne Taheri

West Group
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