COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE 2025-2026 #147

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 #147 ("Initiative #147") pursuant to C.R.S. § 1-40-107, and as grounds therefore state as follows:

This Motion seeks the Title Board's review for three reasons: (1) the Title Board lacks jurisdiction to set a title because Initiative #147 impermissibly contains multiple separate and distinct subjects in violation of the single-subject requirement; (2) the title set for the proposed measure fails to accurately describe the measure and would mislead voters; and (3) the proposed measure's initial fiscal impact statement is misleading and prejudicial.

Most critically, the measure is more than just a tax increase on millionaires. It makes profound changes to TABOR and changes the tax rates for certain incorporated businesses of all sizes, including small and family-owned businesses, as well as start-up companies, in Colorado. These are impermissible second subjects and are not reflected in the title.

I. INITIATIVE #147 IMPERMISSIBLY CONTAINS MULTIPLE SEPARATE AND DISTINCT SUBJECTS IN VIOLATION OF THE SINGLE-SUBJECT REQUIREMENT.

Initiative #147 contains several distinct subjects improperly coiled in the folds that would lead to either voter surprise or impermissible logrolling. As the Title Board knows, the single-subject requirement is designed to:

> forbid . . . 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.").

Proponents represented at the initial Title Board hearing on October 1, 2025 that Initiative #147's single subject is creating a graduated income tax for individuals, estates, trusts, and corporations and in connection therewith, repealing the constitutional requirement that all income be taxed at one rate, and retaining any resulting increase in revenue as a voter-approved revenue change. But the measure contains several other subjects not necessarily or properly connected to that stated single subject. *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.").

Although the measure generally concerns a graduated state income tax, it actually does significantly more. *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 potentially others, the measure contains the following subjects:

(1) Repeals the flat income tax rate and replaces it with a graduated income tax;
(2) Deletes the TABOR provision requiring that any changes to the state's income tax be identical changes across income taxpayers (i.e., individuals, estates, and trusts, as well as C-corporations;
(3) Applies a graduated income tax to both individuals, estates, and trusts, as well as C-corporations;
(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; and
(6) Both lowers the tax rate and increases it, depending on income levels.

These separate subjects fall victim to the ills plaguing omnibus measures.

First, 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 does not want to allow the state to retain income tax in excess of that currently permitted under TABOR without 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.

Second, 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"). For example, 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.

II. 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 #147 is problematic for at least several reasons. The draft title approved at the October 1st 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) deletes the TABOR provision requiring any changes to the state's income tax be identical across income taxpayers (i.e., individuals, estates, and trusts, as well as C-corporations) and (ii) excludes the excess revenue collected from the TABOR cap, and thus affects TABOR refunds.

Second, the title's inclusion of a chart showing proposed changes to income taxes by income category is misleading and prejudicial. The chart 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, and other nuances. While we understand that Legislative Council was obligated to create such a chart for the initial fiscal statement, it does not mean that either (a) the chart should be included within the title or (b) separate charts for estates, trusts, and C-corporations should not also be included. Moreover, the inclusion of the chart within the title is highly unusual.

Third, 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 have their taxes increased under this measure.[1] 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.

Fourth, the title must specify that it would specifically repeal the flat income tax rate in TABOR. Under C.R.S. § 1-40-106(3)(c)(II), the title must indicate whether the measure repeals existing law and use the word "repeal." Stated differently, using the language "amending the Taxpayer Bill of Rights to eliminate the constitutional requirement for all incomer to be taxed at one rate . . ." is misleading. The title must be edited to clarify that Initiative #147 repeals this constitutional requirement of TABOR. This is a fundamental change to TABOR that a voter would be surprised to learn.

Fifth, the title as drafted misleads voters as to the full extent of those affected by Initiative #147, most notably the small businesses affected. While Initiative #147 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.

Sixth, the title as drafted does not clarify that the $3.25 billion annual increase in state taxes is retained by the state or that the excess portion of the revenue 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.

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

[1] 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.

In re Proposed Initiated Constitutional Amendment Concerning the Fair Treatment of Injured Workers Amendment, 873 P.2d 718, 719 (Colo. 1994)).

III. 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 #147 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 #147 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 set pursuant to C.R.S. § 1-40-107(1) and that the Title Board grant this Motion.

Respectfully submitted this 8th day of October 2025.

/s/ Sarah M. Mercer
Sarah M. Mercer
David B. Meschke
Reilly E. Meyer
Brownstein Hyatt Farber Schreck LLP
675 15th Street, Suite 2900
Denver, Colorado 80202
(303) 223-1100
smercer@bhfs.com; dmeschke@bhfs.com;
rmeyer@bhfs.com
Attorneys for Objector Michael A. Hancock

Addresses of Objector (provided under separate cover):
Michael A. Hancock
c/o Brownstein Hyatt Farber Schreck, LLP
675 15th Street
Suite 2900
Denver, CO 80202
303-223-1219