

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

ADVANCE COLORADO,
a Colorado non-profit,

GEORGE HANKS “HANK” BROWN,
An individual,

STEVEN WARD,
an individual,

CODY DAVIS,
an individual,

JERRY SONNENBERG,
an individual,

and

CARRIE GEITNER,
an individual,

Plaintiffs,

v.

JENA GRISWOLD, in her official capacity as
Secretary of State of Colorado,

and

JARED POLIS, in his official capacity as
Governor of Colorado,

Defendant.

COMPLAINT

The State of Colorado has mandated that all citizen-initiated ballot measures that would cut taxes must include, at the beginning of the ballot title, that the initiative “will reduce funding for state expenditures that include but are not limited to health and human services programs, K-

12 education, and corrections and judicial operations.” *See* Ballot Measure Fiscal Transparency Act of 2021, H-B 21-1321, codified at C.R.S. § 1-40-106.

This “poison-pill language” is unconstitutional compelled speech and violates Plaintiffs’ “First Amendment right to present their message undiluted by views they [do] not share.” 303 *Creative LLC v. Elenis*, No. 21-476, 600 U. S. ____ (June 30, 2023), slip. op at 8. Furthermore, “the circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as core political speech . . . in which the importance of First Amendment protections is at its zenith.” *Meyer v. Grant*, 486 U.S. 414, 421-22, 425 (1988).

Worse, the poison-pill mandatory language is tantamount to compelled *false* speech. Even under the most favorable circumstances, the language mandated by the Colorado General Assembly is never strictly and necessarily accurate; there is no guarantee that a reduction in tax rates “will reduce funding” for any particular state program. And it is provably and mathematically false as applied to the two initiatives that Plaintiff Advance Colorado is currently approved to circulate for the 2023-2024 ballot, which do not cut State general fund revenue at all.

I. PARTIES

1. Plaintiff Advance Colorado is a Colorado non-profit. It regularly sponsors and collects signatures for statewide citizen initiatives relating to a range of issues, including taxation.

2. Senator George Hanks “Hank” Brown is a registered voter in Denver County and former United States Senator for the State of Colorado and former president of University of Colorado, highlights of a more than six-decade career in public service to Colorado. He has supported ballot measures to promote fiscal responsibility.

3. Steven Ward is a registered elector in Arapahoe County, Colorado and a proponent of two citizen initiatives that are the subject of this Complaint.

4. Cody Davis is a county commissioner and registered elector in Mesa County, Colorado and has been a proponent of past citizen initiatives.

5. Jerry Sonnenberg is a county commissioner and registered elector in Logan County, Colorado and has been a proponent of past citizen initiatives.

6. Carrie Geitner is a county commissioner and registered elector of El Paso County.

7. Jena Griswold is the Colorado Secretary of State and is being sued in her official capacity because the Secretary of State is generally responsible for the electoral process in Colorado and because specifically, the Colorado Ballot Title Setting Board (“Title Board”) is convened by the Secretary of State as required by § 1-40-106, C.R.S.

8. Jared Polis is Governor of Colorado and is being sued in his official capacity.

II. JURISDICTION, VENUE AND STANDING

9. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 because this case brings claims under the Constitution of the United States.

10. Venue is proper in the District of Colorado pursuant to 28 U.S.C § 1391 because all parties are citizens of Colorado.

11. Advance Colorado has standing to bring this claim because it is currently in the process of sponsoring two separate initiatives that are subject to the unconstitutional requirements challenged here. The ballot titles for these two initiatives have been set by the Title Board for the 2023-2024 ballot cycle, and Advance Colorado has been approved to circulate these petitions to collect signatures. The two initiatives are attached to this Complaint as Exhibits A and B. Plaintiff Steven Ward is a named Proponent of these two initiatives.

12. The challenged ballot title language will force Advance Colorado and its petition circulators to present and advocate for a citizen initiative that contains a title that they believe to

be false and untrue. The only alternative would be to abandon their right under the Constitution of the State of Colorado to propose and advocate for a lawful citizen initiative.

13. This compelled speech, in and of itself, violates Advance Colorado’s First Amendment rights and is a concrete and particularized injury sufficient to support standing.

14. Furthermore, a requirement that the title of the initiative itself include a prominent disclaimer that the initiative “will” reduce funding for government-specified issues and programs has the practical effect of making it much more difficult, if not impossible, to persuade voters to provide the signatures necessary to place the measure on the ballot, which is also a concrete and particularized injury sufficient to support standing.

III. FACTUAL ALLEGATIONS

A. The Mandated Speech

15. The Colorado Constitution reserves to the people “the power to propose laws and amendments to the constitution and to enact or reject the same at the polls independent of the general assembly.” Colo. Const. art. V, § 1. “Neither the general assembly nor its committees or agencies shall have any power to require the amendment, modification, or other alteration of the text of any such proposed measure or to establish deadlines for the submission of the original draft of the text of any proposed measure.” *Id.*

16. “No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title.” *Id.* “The title for the proposed law or constitutional amendment . . . shall correctly and fairly express the true intent and meaning thereof.” C.R.S. 1-40-106(3)(b). The purpose of this title is “to capture, in short form, the proposal in plain, understandable, accurate language enabling informed voter choice.” *In re Proposed Initiative for 1999-2000 No. 29*, 972 P.2d 257, 266 (Colo. 1999).

17. Because Colorado law has always provided that the proponents of a ballot measure may advocate for a measure of their own drafting and choosing, and that the ballot title will accurately express the true intent and meaning of this measure, voters and prospective signatories understand the ballot title to summarize the intent of the proponents of that ballot measure – not to reflect the views of the majority party in the Colorado General Assembly.

18. In 2021, the Colorado Generally Assembly passed a law which provided that “for measures that reduce state tax revenue through a tax change, the ballot title must begin ‘shall there be a reduction to the (description of tax) by (the percentage by which the tax is reduced in the first full fiscal year that the measure reduces revenue) thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to (the three largest areas of program expenditure) by an estimated (projected dollar figure of revenue reduction to the state in the first full fiscal year that the measure reduces revenue) in tax revenue?’” Ballot Measure Fiscal Transparency Act of 2021, H.B. 21-1321, codified at C.R.S. § 1-40-106 (“H.B 21-1321”).

19. This legislation mandates that the ballot title “*must begin*” with this language and that it must state that the tax change “*will reduce funding*” for these specified programs. *Id.* (emphasis added). Not, “*may reduce funding*,” but “*will reduce funding*.” *Id.* (emphasis added). The only exception is if the measure includes cuts to specific, identified programs. *Id.*

20. The Title Board has held that it has no discretion to edit or eliminate this language even under circumstances where the members of the Title Board do not believe that it accurately describes the measure at issue. *See* Audio of the October 20, 2021 Rehearing, Board Member Pelegrin at 10:46, available at https://archive-video.granicus.com/csos/csos_b1e2491d-ffab-458a-b33a-140192a0f905.mp3 (“I also agree that obviously, we have to follow the statute. But I think, to the extent we can follow the statute and still try to make it clear, I think we should try to make it clearer...”).

21. During the debates over the passage of this legislation, proponents spoke candidly about their intent to interfere with the ability of their political opponents to advocate for and pass citizen initiatives that contradict the political preferences of the majority party in the General Assembly.

22. For example, Representative Chris Kennedy, a Lakewood Democrat who is a principal sponsor of the measure, described it as a “stop-the-bleeding” bill: “What we’ve seen, increasingly, is that Republicans, who have not been successful at winning majorities here at the Capitol in recent years, are increasingly turning their attention to the ballot and using that as a way to try to get government closer to the size that can be drowned in a bathtub,” he said. “We’d prefer that government not drown in the bathtub. We’d prefer that ballot measures don’t continue to chip away at our ability to fund our public schools and the other priorities that the voters of the state care about.” Jesse Paul, [Colorado Democrats Want to Use One of TABOR’s Most Effective Tax-Halting Mechanisms for Themselves](#), The Colorado Sun, May 21, 2021.

23. Plaintiff Advance Colorado is currently the sponsor of Colorado Proposed Initiative 2023-2024 #21 (“Initiative 21”) and Colorado Proposed Initiative 2023-2024 #22 (“Initiative 22”).¹

B. Initiative 22

24. On April 5, 2023, the Title Board conducted a hearing Proposed Initiative 2023-2024 #22 and set its title:

There shall be a reduction to the state sales and use tax rate by 0.34 percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to education, health care policy and financing, and higher education by an estimated \$17.7 million in tax revenue, by a change to the Colorado Revised Statutes that temporarily reduces the state sales and use tax

¹ Because Colorado law requires two registered voters to act as Proponents of an initiative, the listed proponents on the measure are Suzanne Taheri, acting as legal counsel for Advance Colorado, along with Plaintiff Steven Ward.

rate from 2.90 percent to 2.89 percent from July 1, 2024, through June 30, 2025.

25. On April 12, 2023, Advance Colorado filed a Motion for Rehearing on Initiative 2023-2024 #22 before the Title Board, attached to this Complaint as Exhibit C (compilation Exhibit, including the Title Board’s Order on Rehearing).

26. In the Motion for Rehearing, Advance Colorado argued that this title was inaccurate “[g]iven the economic projections, there are no circumstances under which the proposed state sales tax reduction can be reasonably expected to reduce funding for education, health care policy and financing, or higher education.” *Id.*

27. The reason why Initiative 22 will not reduce general fund revenue is that it is a *de minimus*, 0.01% sales tax cut that would only be in effect for a single year, and that year is projected to have tax revenue high enough to trigger a substantial refund under the Taxpayer’s Bill of Rights, Colo. Const. art X, § 20. (“TABOR”).

28. The official Fiscal Summary prepared by the non-partisan Colorado Legislative Council Staff states that “[b]ased on current forecasts, the measure is expected to reduce the amount of revenue required to be refunded to taxpayers under TABOR, with no net impact on the amount available for the budget.” Initiative 22 Fiscal Summary, Colorado Legislative Council Staff (April 19, 2023), attached to this Complaint as Exhibit D.

29. This is not a close call. The TABOR refund is projected to exceed \$1.97 billion, while the sales tax cut would reduce revenue by only \$17.7 million. These estimates would need to be inaccurate by an order of magnitude for Initiative 22 to have even a small impact on the state budget.

30. Upon rehearing, the Title Board set the final title as:

There shall be a reduction to the state sales and use tax rate by 0.61 percent,² thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to education, health care policy and financing, and higher education by an estimated \$101.9 million in tax revenue, by a change to the Colorado Revised Statutes concerning a reduction in state sales and use taxes, and, in connection therewith, reducing the state sales and use tax rate from 2.90 percent to 2.89 percent from July 1, 2024, through June 29, 2025, and eliminating the state sales and use tax for one day on June 30, 2025.

Exhibit C at 6.

31. Advance Colorado has exhausted its remedies through the Colorado administrative process.

32. Advance Colorado has also exhausted its judicial remedies under Colorado law, through an appeal of the title set for a nearly-identical proposition during the previous election cycle.

33. During the 2021-2022 election cycle, Advance Colorado sponsored a Colorado Proposed Initiative 2021-2022 # 46 (“Initiative 46”), attached to this Complaint as Exhibit E. Initiative 46 was almost identical to Initiative 22, except that it would have cut sales taxes in a different fiscal year.

34. The title for Initiative 46 was set by the Title Board in a Hearing on October 6, 2021. In a hearing on a Motion for Reconsideration on October 20, 2021, the Title Board adjusted the titles but did not remove the disputed language or incorporate the clarifications proposed by Advance Colorado. The proceedings before the Title Hearing Board are attached as Exhibit F.

35. Advance Colorado filed a Petition for Review of Final Action of Ballot Title Setting Board Concerning Proposed Initiative 2021-2022 #46 in the Colorado Supreme Court, No. 2021-SA-316.

² The fiscal note identified a single day where no tax would be collected, leading to a revised number.

36. In an Order dated April 14, 2022, the Colorado Supreme Court stated: “Upon consideration of the Petition for Review, together with the briefs filed herein, and now being sufficiently advised in the premises, IT IS ORDERED that the actions of the Title Board are AFFIRMED.” This Order is attached to this Complaint as Exhibit G, along with the associated briefing.

37. Advance Colorado chose not to circulate Initiative 46 and to instead move forward with an identical measure for the subsequent election cycle to allow adequate time for a legal challenge and the circulation of the measure.

C. Initiative 21

38. The second initiative that Advance Colorado is approved to circulate this year is Initiative 21, which does not reduce current taxes at all, but instead caps the *growth* in property taxes paid on a particular parcel to 3% a year unless there have been substantial physical improvements to the property. It was drafted in response to the large increases in their property appraisals that many Colorado landowners have faced over the last few years, which have outstripped wage growth and present serious challenges to elderly homeowners living on a fixed income.

39. On April 5, 2023, the Title Board conducted a hearing Proposed Initiative 2023-2024 #21 and set its title:

Funding available for counties, school districts, water districts, fire districts, and other districts funded, at least in part, by property taxes shall be impacted by a reduction of \$2.2 billion in property tax revenue by an amendment to the Colorado constitution and a change to the Colorado Revised Statutes concerning a 3% annual limit on property tax increases, and, in connection therewith, creating an exception to the limit if a property’s use changes or its square footage increases by more than 10%, in which case, the property is reappraised, and, beginning in fiscal year 2024-25, allowing the state to annually retain and spend up to \$100 million of excess state revenue, if any, as a voter-approved revenue change to offset

reduced property tax revenue and to reimburse local governments for fire protection.

Exhibit H at 7 (compilation exhibit of Motion for Rehearing and Order for Initiative 2023-2024 #21) .

40. Advance Colorado filed a Motion for Rehearing, In the Matter of the Title and Ballot Title and Submission Clause For Initiative 2023-2024 #21 before the Title Board on April 12, 2023. *See* Exhibit H.

41. In that Motion, Advance Colorado argued that the title was misleading because it characterized the measure as a “a reduction of \$2.2 billion in property tax revenue,” when it merely “it decreases the growth of property tax revenue.” *Id.* And, because this growth would be subject to TABOR, it would ultimately be remitted to the taxpayers absent a change of law. *Id.*

42. Because of H.B. 21-1321, the Title Board was “was prevented from properly describing the \$2.2 billion as a reduction in the growth of the taxes that must be remitted by taxpayers rather than the taxing districts receiving \$2.2 billion less from one year to the next.” *Id.*

43. In his signing statement (Exhibit I hereto),, dated July 7, 2021, Governor Jared Polis stated that he did not believe that the H.B. 21-1321 properly applied to measure that slow revenue growth, rather than cutting revenue by a determinable amount.

D. The Circulation and Signature Collection Process

44. The ballot title is a short, clear statement of the change in law that the proponents of an initiative are advocating.

45. Circulators take their proposed initiative with its ballot title on top and in all caps and speak with registered voters, seeking sufficient signatures to place the measure on the ballot.

46. Circulators speak in their own voices to explain the measure, but also show the official document with the ballot title to voters who will see this document and sign it.

47. These conversations are often short and hurried, a brief interaction on the street or outside of store, so it is crucial that speakers be allowed to communicate in a manner that is quick and straightforward. Many potential signatories are relatively unsophisticated and lack a detailed understanding of Colorado tax law and budgeting practices.

48. Although it has elements of government speech, a ballot title is fundamentally the speech of the citizens proposing and supporting the initiative – an official summary of the change of law that they have proposed and wish to place on the ballot and see enacted.

49. H.B. 21-1321 places proponents in the position of circulating a document that they believe mischaracterizes their position in a situation where such speech will either be mistaken for their own speech or be mistaken for the evaluation of non-partisan body as to the content of their chosen speech.

50. It is extremely difficult to simultaneously advocate for an initiative and argue that its title is inaccurate, especially in the often-hurried context of a petition circulation.

51. Instead of explaining their petition and advocating for its adoption, circulators and advocates will be forced to spend their time explaining why the ballot title is incorrect in stating that their initiative will be harmless to education – allowing their political opponents to shape and direct the discussion by government fiat.

52. The location of this speech in the title of the petition will create a strong imprimatur of regularity and official accuracy.

53. Because of the longstanding reputation of the Title Board as a neutral, non-partisan body that is dedicated to accurately and simply conveying the position of the proponents of an initiative, the language in the title will have outsized impact on the potential signatories on voters – although the new language was adopted by a partisan political body on a party-line vote.

54. The location of the mandated speech in front of the chosen speech of the petition’s proponents prevents them from exercising their First Amendment right not only to speak and refrain from speaking, but to select which ideas to emphasize and how to frame them.

CLAIM ONE
(42 U.S.C. § 1983)
FIRST AMENDMENT – FACIAL CHALLENGE

55. Plaintiffs reallege and incorporate by reference the allegations contained in this Complaint.

56. H.B. 21-1321 provides that “for measures that reduce state tax revenue through a tax change, the ballot title must begin ‘shall there be a reduction to the (description of tax) by (the percentage by which the tax is reduced in the first full fiscal year that the measure reduces revenue) thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to (the three largest areas of program expenditure) by an estimated (projected dollar figure of revenue reduction to the state in the first full fiscal year that the measure reduces revenue) in tax revenue.’” Ballot Measure Fiscal Transparency Act of 2021, H.B. 21-1321, codified at C.R.S. § 1-40-106 (“H.B 21-1321”).

57. This requires any person seeking to propose a citizen initiative reducing taxes to place at the front of its communication to the public a statement that its initiative “will reduce funding” for specified popular programs.

58. This speech is mandatory, and a proponent is not able to circulate a petition on this subject without also promulgating this speech.

59. It requires persons advocating a change of law to not only argue their opponent’s position, but to place that position front and center, ahead of their own speech, and locate it in the title of their own petition where it has a strong imprimatur of importance and regularity.

60. The First Amendment of the United States Constitution protects the right of the people both to speak and to remain silent.

61. The government may not set the terms of political debate by statute.

62. H.B. 21-1321 is a regulation of core political speech, subject to strict scrutiny. It is neither viewpoint neutral nor content neutral.

63. H.B. 21-1321 is a regulation of the speech regarding a ballot initiative, subject to the restrictions of the First Amendment, not a regulation of electoral procedure. *See Save Palisade Fruitlands v. Todd*, 279 F.3d 1204, 1211 (10th Cir. 2002) (“In other words, the right to free speech and the right to vote are not implicated by the state’s creation of an initiative procedure, but only by the state’s attempts to regulate speech associated with an initiative procedure”).

64. H.B. 21-1321 is compelled speech in violation of the First Amendment of the United States Constitution.

65. It is unconstitutional on its face.

66. This Court should issue Declaratory Judgment that H.B. 21-1321 is unconstitutional and unenforceable in its entirety.

67. This Court should issue an injunction requiring the Title Board to issue a new title to Initiative 21 and Initiative 22 that does not include the language set forth in H.B 21-1321 and that states the content of the initiatives clearly, simply and accurately.

CLAIM TWO
(42 U.S.C. § 1983)
FIRST AMENDMENT – AS APPLIED

68. Plaintiffs reallege and incorporate by reference the allegations contained in this Complaint.

69. H.B. 21-1321 provides that “for measures that reduce state tax revenue through a tax change, the ballot title must begin ‘shall there be a reduction to the (description of tax) by (the

percentage by which the tax is reduced in the first full fiscal year that the measure reduces revenue) thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to (the three largest areas of program expenditure) by an estimated (projected dollar figure of revenue reduction to the state in the first full fiscal year that the measure reduces revenue) in tax revenue.” Ballot Measure Fiscal Transparency Act of 2021, H.B. 21-1321, codified at C.R.S. § 1-40-106 (“H.B 21-1321”).

70. This requires any person seeking to propose a citizen initiative reducing taxes to place at the front of its communication to the public a statement that its initiative “will reduce funding” for specified popular programs.

71. This speech is mandatory, and a proponent is not able to circulate a petition on this subject without also promulgating this speech.

72. It requires persons advocating a change of law to not only argue their opponent’s position, but to place that position front and center, ahead of their own speech, and locate it in the title of their own petition where it has a strong imprimatur of regularity.

73. The First Amendment of the United States Constitution protects the right of the people both to speak and to remain silent.

74. The government may not set the terms of political debate by statute.

75. H.B. 21-1321 is a regulation of core political speech, subject to strict scrutiny. It is neither viewpoint neutral nor content neutral.

76. H.B. 21-1321 is a regulation of the speech regarding a ballot initiative, subject to the restrictions of the First Amendment, not a regulation of electoral procedure. *See Save Palisade Fruitlands v. Todd*, 279 F.3d 1204, 1211 (10th Cir. 2002)(“In other words, the right to free speech and the right to vote are not implicated by the state’s creation of an initiative procedure, but only by the state’s attempts to regulate speech associated with an initiative procedure”).

77. H.B. 21-1321 is compelled speech in violation of the First Amendment of the United States Constitution.

78. The compelled speech is false and inaccurate and applied to Initiatives 21 and 22.

79. Even if H.B. 21-1321 were defensible in situations where it provides accurate information to voters; it is unconstitutional as applied to situations in which the mandatory information is not strictly true and accurate.

80. There is no rational basis for requiring ballot titles to include false information, and certainly no compelling government interest.

81. H.B. 21-1321 is unconstitutional as applied to Initiative 21 and Initiative 22.

82. This Court should issue Declaratory Judgment stating that H.B. 21-1321 is unconstitutional as applied to as applied to Initiative 21 and Initiative 22.

83. This Court should issue an injunction requiring the Title Board to issue a new title to Initiative 21 and Initiative 22 that does not include the language set forth in H.B. 21-1321 and that states the content of the initiatives clearly, simply and accurately.

CLAIM THREE
COLO. CONST. ART.V, § 1

84. Plaintiffs reallege and incorporate by reference the allegations contained in this Complaint.

85. H.B. 21-1321 provides that “for measures that reduce state tax revenue through a tax change, the ballot title must begin ‘shall there be a reduction to the (description of tax) by (the percentage by which the tax is reduced in the first full fiscal year that the measure reduces revenue) thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to (the three largest areas of program expenditure) by an estimated (projected dollar figure of revenue reduction to the state in the first full fiscal year that the measure reduces revenue)

in tax revenue.” Ballot Measure Fiscal Transparency Act of 2021, H.B. 21-1321, codified at C.R.S. § 1-40-106 (“H.B 21-1321”).

86. The Colorado Constitution requires the ballot titles of citizen initiatives to have a clear title which expresses the subject of the initiative. Colo. Const. art. V, § 1 (“No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title”)

87. H.B. 21-1321 violates this constitutional requirement by mandating language that is factually inaccurate and that does not reflect the subject of the initiative.

88. It is unconstitutional both on its face and as applied.

89. This Court should issue an injunction requiring the Title Board to issue a new title to Initiative 21 and Initiative 22 that does not include the language set forth in H.B 21-1321 and that states the content of the initiatives clearly, simply and accurately.

PRAYER FOR RELIEF

WHEREFORE, based on the above allegations, Plaintiffs respectfully request that this Court grant the following relief:

- A. A final judgment in favor of Plaintiffs declaring that H.B 21-1321 is in violation of the First Amendment Constitution of the United States;
- B. A final judgment in favor of Plaintiffs declaring that H.B 21-1321 is in violation of the First Amendment Constitution of the United States as applied to Initiative 21 and Initiative 22;
- C. A final judgment in favor of Plaintiffs declaring that H.B 21-1321 is in violation of the clear title Requirement in Article V, Section 1 of the Constitution of the State of Colorado;
- D. An injunction requiring Secretary of State Griswold to convene the Colorado Ballot Title Setting Board to issue a new title to Initiative 21 and Initiative 22 that does not include the

language set forth in H.B 21-1321 and that states the content of the initiatives clearly, simply and accurately;

- E. Judgment in favor of Plaintiffs and against the Defendants on all claims;
- F. An order awarding Plaintiffs' costs, interests, and attorneys' fees incurred in connection with the commencement and prosecution of this action; and
- G. Such other relief as the Court deems just and reasonable.

GREENBERG TRAUIG, LLP

s/Jennifer H. Weddle

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JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Advance Colorado, Hank Brown, Steve Ward, Cody Davis, Jerry Sonnenberg, and Carrie Geitner

(b) County of Residence of First Listed Plaintiff Denver (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Greenberg Traurig, LLP Troy A. Eid and Harriet McConnell Retford 1144 15th Street, Suite 3300 Denver, Colorado 80202, (303) 572-6500

DEFENDANTS

Jena Griswold, Secretary of State and Jared Polis, Governor of Colorado

County of Residence of First Listed Defendant Denver (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Real Property, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C 1983

Brief description of cause: First Amendment Violation

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

2023-2024 #22 - Final

Be it enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 39-26-105, **repeal and reenact, with amendments,** (1)(a)(I)(A); and **add** (1)(a)(I)(A.5) as follows:

39-26-105. Vendor liable for tax - definitions - repeal. (1)(a)(I)(A) EXCEPT AS PROVIDED IN SUBSECTIONS (1)(a)(I)(B), (1.3), AND (1.5) OF THIS SECTION, EVERY RETAILER SHALL, IRRESPECTIVE OF THE PROVISIONS OF SECTION 39-26-106, BE LIABLE AND RESPONSIBLE FOR THE PAYMENT OF AN AMOUNT EQUIVALENT TO TWO AND NINETY ONE-HUNDREDTHS PERCENT OF ALL SALES MADE ON OR AFTER JANUARY 1, 2001, BUT BEFORE JULY 1, 2024, AND AFTER JUNE 30, 2025, BY THE RETAILER OF COMMODITIES OR SERVICES AS SPECIFIED IN SECTION 39-26-104.

(A.5) EXCEPT AS PROVIDED IN SUBSECTIONS (1)(a)(I)(B), (1.3), AND (1.5) OF THIS SECTION, EVERY RETAILER SHALL, IRRESPECTIVE OF THE PROVISIONS OF SECTION 39-26-106, BE LIABLE AND RESPONSIBLE FOR THE PAYMENT OF AN AMOUNT EQUIVALENT TO TWO AND EIGHTY-NINE ONE-HUNDREDTHS PERCENT OF ALL SALES MADE BETWEEN JULY 1, 2024, AND JUNE 30, 2025, BY THE RETAILER OF COMMODITIES OR SERVICES AS SPECIFIED IN SECTION 39-26-104.

SECTION 2. In Colorado Revised Statutes, **repeal and reenact, with amendments,** 39-26-106 (1)(a) as follows:

39-26-106. Schedule of sales tax. (1)(a)(I) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION (1), THERE IS IMPOSED UPON ALL SALES OF COMMODITIES AND SERVICES SPECIFIED IN SECTION 39-26-104 A TAX AT THE RATE OF THREE PERCENT OF THE AMOUNT OF THE SALE, TO BE COMPUTED IN ACCORDANCE WITH SCHEDULES OR SYSTEMS APPROVED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE. SAID SCHEDULES OR SYSTEMS SHALL BE DESIGNED SO THAT NO SUCH TAX IS CHARGED ON ANY SALE OF SEVENTEEN CENTS OR LESS.

(a)(II) ON AND AFTER JANUARY 1, 2001, BUT BEFORE JULY 1, 2024, AND AFTER JUNE 30, 2025, THERE IS IMPOSED UPON ALL SALES OF COMMODITIES AND SERVICES SPECIFIED IN SECTION 39-26-104 A TAX AT THE RATE OF TWO AND NINETY ONE-HUNDREDTHS PERCENT OF THE AMOUNT OF THE SALE TO BE COMPUTED IN ACCORDANCE WITH SCHEDULES OR SYSTEMS APPROVED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE. SAID SCHEDULES OR SYSTEMS SHALL BE DESIGNED SO THAT NO SUCH TAX IS CHARGED ON ANY SALE OF SEVENTEEN CENTS OR LESS.

(III) ON AND AFTER JULY 1, 2024, BUT BEFORE JUNE 30, 2025, THERE IS IMPOSED UPON ALL SALES OF COMMODITIES AND SERVICES SPECIFIED IN SECTION 39-26-104 A TAX AT THE RATE OF TWO AND EIGHTY-NINE ONE-HUNDREDTHS PERCENT OF THE AMOUNT OF THE SALE TO BE COMPUTED IN ACCORDANCE WITH SCHEDULES OR SYSTEMS APPROVED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE. SAID SCHEDULES OR SYSTEMS SHALL BE DESIGNED SO THAT NO SUCH TAX IS CHARGED ON ANY SALE OF SEVENTEEN CENTS OR LESS.

SECTION 3. In Colorado Revised Statutes, 39-26-202, **repeal and reenact, with amendments,** (1) as follows:

39-26-202. Authorization of tax. (1)(a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1)(b) AND (1)(b.5) OF THIS SECTION, THERE IS IMPOSED AND SHALL BE COLLECTED FROM EVERY

PERSON IN THIS STATE A TAX OR EXCISE AT THE RATE OF THREE PERCENT OF STORAGE OR ACQUISITION CHARGES OR COSTS FOR THE PRIVILEGE OF STORING, USING, OR CONSUMING IN THIS STATE ANY ARTICLES OF TANGIBLE PERSONAL PROPERTY PURCHASED AT RETAIL.

(b) ON AND AFTER JANUARY 1, 2001, BUT BEFORE JULY 1, 2024, AND AFTER JUNE 30, 2025, THERE IS IMPOSED AND SHALL BE COLLECTED FROM EVERY PERSON IN THIS STATE A TAX OR EXCISE AT THE RATE OF TWO AND NINETY ONE-HUNDREDTHS PERCENT OF STORAGE OR ACQUISITION CHARGES OR COSTS FOR THE PRIVILEGE OF STORING, USING, OR CONSUMING IN THIS STATE ANY ARTICLES OF TANGIBLE PERSONAL PROPERTY PURCHASED AT RETAIL.

(b.5) ON AND AFTER JULY 1, 2024, BUT BEFORE JUNE 30, 2025, THERE IS IMPOSED AND SHALL BE COLLECTED FROM EVERY PERSON IN THIS STATE A TAX OR EXCISE AT THE RATE OF TWO AND EIGHTY-NINE ONE-HUNDREDTHS PERCENT OF STORAGE OR ACQUISITION CHARGES OR COSTS FOR THE PRIVILEGE OF STORING, USING, OR CONSUMING IN THIS STATE ANY ARTICLES OF TANGIBLE PERSONAL PROPERTY PURCHASED AT RETAIL.

(c) SUCH TAX SHALL BE PAYABLE TO AND SHALL BE COLLECTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE AND SHALL BE COMPUTED IN ACCORDANCE WITH SCHEDULES OR SYSTEMS APPROVED BY SAID EXECUTIVE DIRECTOR. THE TRANSFER OF WIRELESS TELECOMMUNICATION EQUIPMENT AS AN INDUCEMENT TO ENTER INTO OR CONTINUE A CONTRACT FOR TELECOMMUNICATION SERVICES THAT ARE TAXABLE PURSUANT TO PART 1 OF THIS ARTICLE SHALL NOT BE CONSTRUED TO BE STORAGE, USE, OR CONSUMPTION OF SUCH EQUIPMENT BY THE TRANSFEROR.

SECTION 4. In Colorado Revised Statutes, 39-26-112, **repeal and reenact** (1) as follows:

39-26-112. Excess tax - remittance - repeal. (1) IF ANY VENDOR, DURING ANY REPORTING PERIOD, COLLECTS AS A TAX AN AMOUNT IN EXCESS OF THREE PERCENT OF ALL TAXABLE SALES MADE PRIOR TO JANUARY 1, 2001, TWO AND NINETY ONE-HUNDREDTHS PERCENT OF ALL TAXABLE SALES MADE ON OR AFTER JANUARY 1, 2001, AND TWO AND EIGHTY-NINE ONE-HUNDREDTHS PERCENT OF ALL TAXABLE SALES MADE ON OR AFTER JULY 1, 2024, AND TWO AND NINETY ONE-HUNDREDTHS PERCENT ON OR AFTER JUNE 30, 2025, SUCH VENDOR SHALL REMIT TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE THE FULL NET AMOUNT OF THE TAX IMPOSED IN THIS PART 1 AND ALSO SUCH EXCESS. THE RETENTION BY THE RETAILER OR VENDOR OF ANY EXCESS OF TAX COLLECTIONS OVER THE SAID PERCENTAGE OF THE TOTAL TAXABLE SALES OF SUCH RETAILER OR VENDOR, OR THE INTENTIONAL FAILURE TO REMIT PUNCTUALLY TO THE EXECUTIVE DIRECTOR THE FULL AMOUNT REQUIRED TO BE REMITTED BY THE PROVISIONS OF THIS PART 1 IS DECLARED TO BE UNLAWFUL AND CONSTITUTES A MISDEMEANOR.

SECTION 5. Effective Date:

This act takes effect on the date of the proclamation of the Governor announcing the approval, by the registered electors of the state, of the proposed initiative.

2023-2024 #21 - Final

Be it Enacted by the People of the State of Colorado:

SECTION 1. In the constitution of the state of Colorado, **amend** section 3 of article 10 as follows:

Section 3. UNIFORM TAXATION - EXEMPTIONS

(1)(a) Each property tax levy shall be uniform upon all real and personal property not exempt from taxation under this article located within the territorial limits of the authority levying the tax. The actual value of all real and personal property not exempt from taxation under this article shall be determined under general laws, which shall prescribe such methods and regulations as shall secure just and equalized valuations for assessments of all real and personal property not exempt from taxation under this article. Valuations for assessment shall be based on appraisals by assessing officers to determine the actual value of property in accordance with provisions of law, which laws shall provide that actual value be determined by appropriate consideration of cost approach, market approach, and income approach to appraisal. However, the actual value of residential real property shall be determined solely by consideration of cost approach and market approach to appraisal; and, however, the actual value of agricultural lands, as defined by law, shall be determined solely by consideration of the earning or productive capacity of such lands capitalized at a rate as prescribed by law. NO TAX REVENUE ON A PROPERTY WILL INCREASE MORE THAN THREE PERCENT ANNUALLY UNLESS THE PROPERTY IS SUBSTANTIALLY IMPROVED BY ADDING MORE THAN TEN PERCENT SQUARE FOOTAGE TO THE EXISTING BUILDINGS OR STRUCTURES OR ITS USE CHANGED IN WHICH CASE THE PROPERTY'S ACTUAL VALUE SHALL BE REAPPRAISED.

SECTION 2. In Colorado Revised Statutes, 24-33.5-1201 **add** (6) as follows:

24-33.5-1201. Division of fire prevention and control--creation--public school construction and inspection section--health facility construction and inspection section--legislative declaration.

(6) FOR THE PURPOSE OF OFFSETTING REVENUE RESULTING FROM THE CAP IN PROPERTY TAX AND TO FUND STATE REIMBURSEMENTS TO LOCAL GOVERNMENT ENTITIES FOR FIRE PROTECTION, AS AUTHORIZED BY THE VOTERS AT THE STATEWIDE ELECTION IN THE NOVEMBER 2023, IN FISCAL YEAR COMMENCING ON JULY 1, 2024 THE STATE SHALL BE AUTHORIZED TO RETAIN AND SPEND UP TO \$ONE HUNDRED MILLION PER YEAR IN REVENUE EXEMPT FROM LIMITATIONS UNDER SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

SECTION 3. Effective Date:

This act takes effect on the date of the proclamation of the Governor announcing the approval, by the registered electors of the state, of the proposed initiative.

Before the Colorado Ballot Title Setting Board

Suzanne Taheri and Steven Ward, Objector/Proponents

MOTION FOR REHEARING ON INITIATIVE 2023-2024 #22

Suzanne Taheri and Steven Ward, registered electors of the State of Colorado and proponents of Initiative 2023-2024 #22 object to the Title Board's title and ballot title and submission clause set for Initiative 2023-2024 #22, The Board met on April 5, 2023, to consider Initiative 2023-2024 #22 and set the following title:

There shall be a reduction to the state sales and use tax rate by 0.34 percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to education, health care policy and financing, and higher education by an estimated \$17.7 million in tax revenue, by a change to the Colorado Revised Statutes that temporarily reduces the state sales and use tax rate from 2.90 percent to 2.89 percent from July 1, 2024, through June 30, 2025.

Proponents object to the title as set because it is inaccurate, misleading and fails to properly reflect the central feature of the proposed measure. The title set by the Board incorrectly states that the passage of Proposed Initiative 2023-2024 #22 would reduce funding for education, health care policy and financing, and higher education. The state economist disagrees.

Current Budget Projections:

According to the most recent projections published by Colorado Legislative Council Staff (March 2023 Economic & Revenue Forecast: <https://leg.colorado.gov/sites/default/files/images/march2023forecast.pdf>), state revenues are expected to exceed the TABOR refund limit from the current fiscal year and through fiscal year 2024-2025 (See *Figure 2* at the end of this document).

Proposed Initiative 2023-2024 #22 reduces state sales tax revenue by an estimated \$17.7 million per year. A TABOR refund is only triggered when state programs are funded in excess of the prior year's levels. The economic forecast shows a projected TABOR refund in excess of \$1.5 billion for each of the next three fiscal years.

Misleading and Inaccurate Title

Given the economic projections, there are no circumstances under which the proposed state sales tax reduction can be reasonably expected to reduce funding for education, health care policy and financing, or higher education. Even if there was an impact it would be so slight as to be insignificant.

In setting the title for Proposed Initiative 2023-2024 #22, the Board failed to meet the

requirement to, “correctly and fairly express the true intent and meaning of the proposed initiative and consider the public confusion that might be caused by misleading titles.” *In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), & 245(e)*, 1 P.3d 720 (Colo. 2000); *In re Ballot Title 1999-2000 Nos. 245(f) & 245(g)*, 1 P.3d 739 (Colo. 2000) Stating that the proposed initiative reduces state spending for anything other than a TABOR refund is inaccurate and prejudicial. WHEREFORE, Initiative #22 title should be corrected in compliance with Colorado law.

Respectfully submitted this 12th day of April, 2023.

/s Suzanne Taheri

West Group

6501 E Belleview Ave, Suite 375

Denver, CO 80111

Phone: (303) 218-7150

**IN RE: TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE
FOR INITIATIVE 2023-2024 #22
("TEMPORARY SALES TAX REDUCTION")**

Initiative Proponents;
Suzanne Taheri & Steven Ward

Objector:
Mark Grueskin

MOTION FOR REHEARING

On April 5, 2023, the Title Board set the following title for Initiative #22:

Shall there be a reduction to the state sales and use tax rate by 0.34 percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to education, health care policy and financing, and higher education by an estimated \$17.7 million in tax revenue, by a change to the Colorado Revised Statutes that temporarily reduces the state sales and use tax rate from 2.90 percent to 2.89 percent from July 1, 2024, through June 30, 2025?

The undersigned, a registered voter of the City and County of Denver, objects to titles set by the Board as set forth below.

I. The title set by the Board violates the clear title requirement for initiative titles.

The titles are incomplete or misleading in the following ways:

- (a) The titles inaccurately describe the timeframe of the measure's sales and use tax rate reduction. The title states that the reduction applies from "July 1, 2024, through June 30, 2025." Under Sections 2 and 3 of the measure, however, the sales tax reduction applies "[o]n and after July 1, 2024, but *before* June 30, 2025." See Initiative 2023-2024 #22, secs. 2 and 3, proposed C.R.S. §§ 39-26-106(1)(a)(III) and 39-26-202(1)(b.5) (emphasis added). "Before" June 30 is June 29, not June 30. See *Burton v. Stevedoring Servs. of Am.*, 196 F.3d 1070, 1074 (9th Cir. 1999) ("We do not see how 'before' in this context can mean anything but previous to in time, or earlier, or preceding in time, or any other locution one could use to say that something must happen prior to a certain date. It can hardly be taken to mean, 'on the mentioned date.'"). This reading is confirmed by the vendor liability section, which provides that "every retailer shall . . . be liable and responsible for the payment of an amount equivalent to two and eighty-nine one-hundredths percent of all sales made *between* July 1, 2024, and June 30, 2025." Initiative 2023-2024 #22, sec. 1, proposed C.R.S. § 39-26-105(1)(a)(I)(A.5) (emphasis added). "Between" means "[i]ntermediate, when used in designating time, implying the exclusion

of both first and last terminal days.” Ballantine’s Law Dictionary (defining “between”). June 30 is, in other words, “excluded.”

In the same manner, the sales and use tax rate does not reset until “after June 30, 2025,” which means on July 1, 2025. There is, therefore, no sales or use tax on June 30, 2025—the temporary rate reduction ends on June 29 and the rate does not reset until July 1. The title does not describe this feature of the measure and is, therefore, misleading and incomplete.

- (b) The titles fail to inform voters that vendors are not liable for sales tax collected on July 1, 2024, as the measure excludes that date as described above.
- (c) The title does not accurately describe that, on June 30, 2025, if a retailer collects a sales and use tax (which is not authorized on those dates), the retailer may retain the tax collected up to 2.9%. The measure states:

IF ANY VENDOR, DURING ANY REPORTING PERIOD, COLLECTS AS A TAX AN AMOUNT IN EXCESS OF . . . TWO AND NINETY ONE-HUNDREDTHS PERCENT ***ON OR*** AFTER JUNE 30, 2025, SUCH VENDOR SHALL REMIT TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE THE FULL NET AMOUNT OF THE TAX IMPOSED IN THIS PART 1 AND ALSO SUCH EXCESS.

See Initiative 2023-2024 #22, sec 4, proposed C.R.S. § 39-26-112(1) (emphasis added). Because no sales or use tax is “imposed” on June 30, 2025, under the measure, this provision does not require the vendor to remit the sales tax and instead, only remit an excess of 2.9% that is collected. The title does not describe this feature of the measure.

- (d) The inclusion of “temporary” in the title is redundant, misleading, and an impermissible catchphrase by the Board on the measure.
- a. Redundant: the title includes the specific date range for the sales and use tax rate reduction. Inclusion of the word temporary is, therefore, redundant.
 - b. Misleading: the inclusion of the word temporary is misleading because voters may read only that portion of the title and would not, therefore, understand the timeframe of the sales and use tax rate reduction they are approving. Further, the word “temporary” is vague whereas as the measure includes a timeframe.
 - c. Catchphrase: The inclusion of “temporary” is improper because the word “work[s] in favor of [the] proposal without contributing to voter understanding.” *In re Title, Ballot Title, & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 26. “Temporary” is a non-specific term that is overly inclusive of the definite period to be covered by this measure. The word thus “mask[s] the policy question” presented by the initiative, and it could easily be used as a “slogan” by the proponents of the measure as it is a “brief striking phrase[.]” *See In re Title, Ballot Title & Submission Clause*, 4 P.3d 1094, 1100 (Colo. 2000) (holding that the inclusion of “as rapidly and effectively as possible” was a catchphrase).

II. The fiscal summary is inaccurate and misleading.

As explained above, under the measure, there is *no* sales and use tax for June 30, 2025. The fiscal summary for the measure, however, states that the temporary sales tax reduction applies to June 30. It provides: “By reducing the state sales and use tax rate from 2.9 percent to 2.89 percent from July 1, 2024 to June 30, 2025, the measure reduces General Fund revenue from sales and use taxes by an estimated \$17.7 million in FY 2024-25.” The analysis refers to the entire fiscal year (“FY 2024-25”). It does not include any indication that an entire day of sales tax (June 30) has been excluded as it refers only to the “reduc[tion of] the state sales and use tax from 2.9 percent to 2.89 percent.” At a minimum, the fiscal summary should not include a material, factual inaccuracy that would be misleading.

RESPECTFULLY SUBMITTED this 12th day of April, 2023.

RECHT KORNFELD, P.C.

s/ Mark Grueskin

Mark G. Grueskin

1600 Stout Street, Suite 1400

Denver, CO 80202

Phone: 303-573-1900

Email: mark@rklawpc.com

Objector’s Address:
1600 Stout St., #1400
Denver, CO 80202

CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2023-2024 #22** was sent this day, April 12, 2023, via U.S. Mail first-class, postage prepaid to the proponents:

Suzanne Taheri & Steven Ward
6501 E. Belleview Ave, Suite 375
Denver, CO 80111

s/ Erin Holweger

Ballot Title Setting Board

Proposed Initiative 2023-2024 #22¹

The title as designated and fixed by the Board is as follows:

There shall be a reduction to the state sales and use tax rate by 0.61 percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to education, health care policy and financing, and higher education by an estimated \$101.9 million in tax revenue, by a change to the Colorado Revised Statutes concerning a reduction in state sales and use taxes, and, in connection therewith, reducing the state sales and use tax rate from 2.90 percent to 2.89 percent from July 1, 2024, through June 29, 2025, and eliminating the state sales and use tax for one day on June 30, 2025.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a reduction to the state sales and use tax rate by 0.61 percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to education, health care policy and financing, and higher education by an estimated \$101.9 million in tax revenue, by a change to the Colorado Revised Statutes concerning a reduction in state sales and use taxes, and, in connection therewith, reducing the state sales and use tax rate from 2.90 percent to 2.89 percent from July 1, 2024, through June 29, 2025, and eliminating the state sales and use tax for one day on June 30, 2025?

Hearing April 5, 2023:

Single subject approved; staff draft amended; titles set.

Board members: Theresa Conley, Kurt Morrison, Ed DeCecco

Hearing adjourned 10:52 A.M.

Rehearing April 19, 2023:

Motion for Rehearing (Proponents) denied in its entirety.

Motion for Rehearing (Grueskin) granted only to the extent that the Board made changes to the title to reflect the revised fiscal summary that was approved by the board.

Board Members: Theresa Conley, Ed DeCecco, Eric Meyer

Hearing adjourned 10:34 A.M.

¹ Unofficially captioned “**Temporary Sales Tax Reduction**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Ballot Title Setting Board

Proposed Initiative 2023-2024 #22¹

The title as designated and fixed by the Board is as follows:

There shall be a reduction to the state sales and use tax rate by 0.~~3461~~ percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to education, health care policy and financing, and higher education by an estimated \$~~17.7101.9~~ million in tax revenue, by a change to the Colorado Revised Statutes ~~that temporarily reduces concerning a reduction in state sales and use taxes, and, in connection therewith, reducing~~ the state sales and use tax rate from 2.90 percent to 2.89 percent from July 1, 2024, through June 29, 2025, and eliminating the state sales and use tax for one day on June 30, 2025.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a reduction to the state sales and use tax rate by 0.~~3461~~ percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to education, health care policy and financing, and higher education by an estimated \$~~17.7101.9~~ million in tax revenue, by a change to the Colorado Revised Statutes ~~that temporarily reduces concerning a reduction in state sales and use taxes, and, in connection therewith, reducing~~ the state sales and use tax rate from 2.90 percent to 2.89 percent from July 1, 2024, through June 29, 2025, and eliminating the state sales and use tax for one day on June 30, 2025?

Hearing April 5, 2023:

Single subject approved; staff draft amended; titles set.

Board members: Theresa Conley, Kurt Morrison, Ed DeCecco

Hearing adjourned 10:52 A.M.

Rehearing April 19, 2023:

Motion for Rehearing (Proponents) denied in its entirety.

Motion for Rehearing (Grueskin) granted only to the extent that the Board made changes to the title to reflect the revised fiscal summary that was approved by the board.

Board Members: Theresa Conley, Ed DeCecco, Eric Meyer

Hearing adjourned 10:34 A.M.

¹ Unofficially captioned “**Temporary Sales Tax Reduction**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Initiative 22

Revised Fiscal Summary

Date:	April 19, 2023	Fiscal Analyst:	Emily Dohrman (303-866-3687)
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LCS TITLE: TEMPORARY SALES TAX REDUCTION

This revised fiscal summary reflects changes adopted by the Title Board on April 19, 2023.

Fiscal Summary of Initiative 22

This fiscal summary, prepared by the nonpartisan Director of Research of the Legislative Council, contains a preliminary assessment of the measure's fiscal impact. A full fiscal impact statement for this initiative is or will be available at www.colorado.gov/bluebook. This fiscal summary identifies the following impact.

State revenue. By reducing the state sales and use tax rate from 2.9 percent to 2.89 percent from July 1, 2024 to June 29, 2025, the measure reduces General Fund revenue from sales and use taxes by an estimated \$17.7 million in FY 2024-25. The 2.9 percent sales tax is reinstated on July 1, 2025. The absence of a sales tax rate on June 30, 2025 will reduce revenue by an additional \$84.2 million in FY 2024-25, for a total revenue reduction of \$101.9 million. The measure will also reduce revenue to the marijuana tax and aviation cash funds by reducing the 2.9 percent state sales taxes on marijuana and jet and aviation fuel to 2.89 percent.

State expenditures. The measure reduces the amount of state General Fund revenue available to spend, save, or refund to taxpayers in FY 2024-25. Based on current forecasts, the measure is expected to reduce the amount of revenue required to be refunded to taxpayers under TABOR, with no net impact on the amount available for the budget. To administer the tax rate change, the measure is expected to increase General Fund expenditures for the Department of Revenue by about \$145,000 in each of FY 2023-24 and FY 2024-25.

Local government impact. The measure will reduce revenue retained within a tax increment district to finance projects utilizing state sales tax revenue and may impact local budgets within those districts.

Economic impacts. Some taxpayers will have more after-tax income available to spend or save, increasing their consumption of goods and services. For some taxpayers, the reduction in the amount of TABOR refunds received will be greater than the reduction in the amount of tax owed, reducing on net the amount of after-tax income available to spend or save. Any overall change in economic activity will depend on the net economic impact of lower tax burdens on households and businesses and reduced investment in public services.

2021-2022 #46 - Final

CDOS Received September 23, 2021 9:42 P.M. CHammack

Be it enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 39-26-105, **repeal and reenact, with amendments, (1)(a)(I)(A);** and **add (1)(a)(I)(A.5)** as follows:

39-26-105. Vendor liable for tax - definitions - repeal. (1)(a)(I)(A)

EXCEPT AS PROVIDED IN SUBSECTIONS (1)(a)(I)(B), (1.3), AND (1.5) OF THIS SECTION, EVERY RETAILER SHALL, IRRESPECTIVE OF THE PROVISIONS OF SECTION 39-26-106, BE LIABLE AND RESPONSIBLE FOR THE PAYMENT OF AN AMOUNT EQUIVALENT TO TWO AND NINETY ONE-HUNDREDTHS PERCENT OF ALL SALES MADE ON OR AFTER JANUARY 1, 2001, BUT BEFORE JANUARY 1, 2023, AND AFTER DECEMBER 31, 2024, BY THE RETAILER OF COMMODITIES OR SERVICES AS SPECIFIED IN SECTION 39-26-104.

(A.5) EXCEPT AS PROVIDED IN SUBSECTIONS (1)(a)(I)(B), (1.3), AND (1.5) OF THIS SECTION, EVERY RETAILER SHALL, IRRESPECTIVE OF THE PROVISIONS OF SECTION 39-26-106, BE LIABLE AND RESPONSIBLE FOR THE PAYMENT OF AN AMOUNT EQUIVALENT TO TWO AND EIGHTY-NINE ONE-HUNDREDTHS PERCENT OF ALL SALES MADE BETWEEN JANUARY 1, 2023, AND DECEMBER 31, 2024, BY THE RETAILER OF COMMODITIES OR SERVICES AS SPECIFIED IN SECTION 39-26-104.

SECTION 2. In Colorado Revised Statutes, **repeal and reenact, with amendments, 39-26-106 (1)(a)** as follows:

39-26-106. Schedule of sales tax. (1)(a)(I) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION (1), THERE IS IMPOSED UPON ALL SALES OF COMMODITIES AND SERVICES SPECIFIED IN SECTION 39-26-104 A TAX AT THE RATE OF THREE PERCENT OF THE AMOUNT OF THE SALE, TO BE COMPUTED IN ACCORDANCE WITH SCHEDULES OR SYSTEMS APPROVED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE. SAID SCHEDULES OR SYSTEMS SHALL BE DESIGNED SO THAT NO SUCH TAX IS CHARGED ON ANY SALE OF SEVENTEEN CENTS OR LESS.

(a)(II) ON AND AFTER JANUARY 1, 2001, BUT BEFORE JANUARY 1, 2023, AND AFTER DECEMBER 31, 2024, THERE IS IMPOSED UPON ALL SALES OF COMMODITIES AND SERVICES SPECIFIED IN SECTION 39-26-104 A TAX AT THE RATE OF TWO AND NINETY ONE-HUNDREDTHS PERCENT OF THE AMOUNT OF THE SALE TO BE COMPUTED IN ACCORDANCE WITH SCHEDULES OR SYSTEMS APPROVED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE. SAID SCHEDULES OR SYSTEMS SHALL BE DESIGNED SO THAT NO SUCH TAX IS CHARGED ON ANY SALE OF SEVENTEEN CENTS OR LESS.

(III) ON AND AFTER JANUARY 1, 2023, BUT BEFORE DECEMBER 31, 2024, THERE IS IMPOSED UPON ALL SALES OF COMMODITIES AND SERVICES SPECIFIED IN SECTION 39-26-104 A TAX AT THE RATE OF TWO AND EIGHTY-NINE ONE-HUNDREDTHS PERCENT OF THE AMOUNT OF THE SALE TO BE COMPUTED IN ACCORDANCE WITH SCHEDULES OR SYSTEMS APPROVED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE. SAID SCHEDULES OR SYSTEMS SHALL BE DESIGNED SO THAT NO SUCH TAX IS CHARGED ON ANY SALE OF SEVENTEEN CENTS OR LESS.

SECTION 3. In Colorado Revised Statutes, 39-26-202, **repeal and reenact, with amendments, (1)** as follows:

39-26-202. Authorization of tax. (1)(a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1)(b) AND (1)(b.5) OF THIS SECTION, THERE IS IMPOSED AND SHALL BE COLLECTED FROM EVERY PERSON IN THIS STATE A TAX OR EXCISE AT THE RATE OF THREE PERCENT OF STORAGE OR ACQUISITION CHARGES OR COSTS FOR THE PRIVILEGE OF STORING, USING, OR CONSUMING IN THIS STATE ANY ARTICLES OF TANGIBLE PERSONAL PROPERTY PURCHASED AT RETAIL.

(b) ON AND AFTER JANUARY 1, 2001, BUT BEFORE JANUARY 1, 2023, AND AFTER DECEMBER 31, 2024, THERE IS IMPOSED AND SHALL BE COLLECTED FROM EVERY PERSON IN THIS STATE A TAX OR EXCISE AT THE RATE OF TWO AND NINETY

ONE-HUNDREDTHS PERCENT OF STORAGE OR ACQUISITION CHARGES OR COSTS FOR THE PRIVILEGE OF STORING, USING, OR CONSUMING IN THIS STATE ANY ARTICLES OF TANGIBLE PERSONAL PROPERTY PURCHASED AT RETAIL.

(b.5) ON AND AFTER JANUARY 1, 2023, BUT BEFORE DECEMBER 31, 2024, THERE IS IMPOSED AND SHALL BE COLLECTED FROM EVERY PERSON IN THIS STATE A TAX OR EXCISE AT THE RATE OF TWO AND EIGHTY-NINE ONE-HUNDREDTHS PERCENT OF STORAGE OR ACQUISITION CHARGES OR COSTS FOR THE PRIVILEGE OF STORING, USING, OR CONSUMING IN THIS STATE ANY ARTICLES OF TANGIBLE PERSONAL PROPERTY PURCHASED AT RETAIL.

(c) SUCH TAX SHALL BE PAYABLE TO AND SHALL BE COLLECTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE AND SHALL BE COMPUTED IN ACCORDANCE WITH SCHEDULES OR SYSTEMS APPROVED BY SAID EXECUTIVE DIRECTOR. THE TRANSFER OF WIRELESS TELECOMMUNICATION EQUIPMENT AS AN INDUCEMENT TO ENTER INTO OR CONTINUE A CONTRACT FOR TELECOMMUNICATION SERVICES THAT ARE TAXABLE PURSUANT TO PART 1 OF THIS ARTICLE SHALL NOT BE CONSTRUED TO BE STORAGE, USE, OR CONSUMPTION OF SUCH EQUIPMENT BY THE TRANSFEROR.

SECTION 4. In Colorado Revised Statutes, 39-26-112, **repeal and reenact (1)** as follows:

39-26-112. Excess tax - remittance - repeal. (1) IF ANY VENDOR, DURING ANY REPORTING PERIOD, COLLECTS AS A TAX AN AMOUNT IN EXCESS OF THREE PERCENT OF ALL TAXABLE SALES MADE PRIOR TO JANUARY 1, 2001, TWO AND NINETY ONE-HUNDREDTHS PERCENT OF ALL TAXABLE SALES MADE ON OR AFTER JANUARY 1, 2001, AND TWO AND EIGHTY-NINE ONE-HUNDREDTHS PERCENT OF ALL TAXABLE SALES MADE ON OR AFTER JANUARY 1, 2023, AND TWO AND NINETY ONE-HUNDREDTHS PERCENT ON OR AFTER DECEMBER 31, 2024, SUCH VENDOR SHALL REMIT TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE THE FULL NET AMOUNT OF THE TAX IMPOSED IN THIS PART 1 AND ALSO SUCH EXCESS. THE RETENTION BY THE RETAILER OR VENDOR OF ANY EXCESS OF TAX COLLECTIONS OVER THE SAID PERCENTAGE OF THE TOTAL TAXABLE SALES OF SUCH RETAILER OR VENDOR, OR THE INTENTIONAL FAILURE TO REMIT PUNCTUALLY TO THE EXECUTIVE DIRECTOR THE FULL AMOUNT REQUIRED TO BE REMITTED BY THE PROVISIONS OF THIS PART 1 IS DECLARED TO BE UNLAWFUL AND CONSTITUTES A MISDEMEANOR.

SECTION 5. Effective Date:

This act takes effect on the date of the proclamation of the Governor announcing the approval, by the registered electors of the state, of the proposed initiative.

Ballot Title Setting Board

Proposed Initiative 2021-2022 #46¹

The title as designated and fixed by the Board is as follows:

There shall be a reduction to the state sales and use tax rate by 0.34 percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to health and human services programs, K-12 education, and corrections and judicial operations by an estimated 14.6 million dollars in tax revenue in the first full fiscal year, by a change to the Colorado Revised Statutes that reduces the state sales and use tax rate from 2.90 percent to 2.89 percent from January 1, 2023, through December 31, 2024.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a reduction to the state sales and use tax rate by 0.34 percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to health and human services programs, K-12 education, and corrections and judicial operations by an estimated 14.6 million dollars in tax revenue in the first full fiscal year, by a change to the Colorado Revised Statutes that reduces the state sales and use tax rate from 2.90 percent to 2.89 percent from January 1, 2023, through December 31, 2024?

Hearing October 6, 2021:

Single subject approved; staff draft amended; titles set.

Board members: Theresa Conley, LeeAnn Morrill, Julie Pelegrin

Hearing adjourned 1:40 P.M.

¹ Unofficially captioned “**Temporary Sales Tax Rate Reduction**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

CDOS Received: October 12, 2021 4:24 P.M. C.Hammack

Before the Colorado Ballot Title Setting Board

Suzanne Taheri and Michael Fields, Objector/Proponents

MOTION FOR REHEARING ON INITIATIVE 2021-2022 #46

Suzanne Taheri and Michael Fields, registered electors of the State of Colorado and proponents of Initiative 2021-2022 #46 object to the Title Board's title and ballot title and submission clause set for Initiative 2021-2022 #46, The Board met on October 6, 2021, to consider Initiative 2021-2022 #46 and set the following title:

There shall be a reduction to the state sales and use tax rate by 0.34 percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to health and human services programs, K-12 education, and corrections and judicial operations by an estimated 14.6 million dollars in tax revenue in the first full fiscal year, by a change to the Colorado Revised Statutes that reduces the state sales and use tax rate from 2.90 percent to 2.89 percent from January 1, 2023, through December 31, 2024.

Proponents object to the title as set because it is inaccurate, misleading and fails to properly reflect the central feature of the proposed measure. The title set by the Board incorrectly states that the passage of Proposed Initiative 2021-2022 #46 would reduce funding for health and human services programs, K-12 education, and corrections and judicial operations. The state economist disagrees.

Current Budget Projections:

According to the most recent projections published by Colorado Legislative Council Staff (June 2021 Economic & Revenue Forecast: <http://leg.colorado.gov/sites/default/files/images/junforecast.pdf>), state revenues are expected to exceed the TABOR refund limit from the current fiscal year and by an increasing amount through fiscal year 2022-2023 (See *Figure 2* at the end of this document).

Proposed Initiative 2021-2022 #46 reduces state sales tax revenue by an estimated \$14.2 million per year. A TABOR refund is only triggered when state programs are funded in excess of the prior year's levels. The economic forecast shows a projected TABOR refund in excess of \$500 million for the next three fiscal years. While Proposed Initiative 2021-2022 #46 could be accurately stated to reduce the estimated TABOR refund by \$14.2 million, the economic forecast would need to be off by 38 times the proposed tax reduction in order for the proposed tax reduction to make a dent in even one of the three listed programs.

Requirements of HB 21-1321 v. Voter Confusion

Proponents recognize the Legislature's instruction in HB 21-1321. Unfortunately, the Legislature left the Title Board in an awkward position when it wrote instructions that did not

contemplate a reduction in revenue in a year where there is a projected surplus large enough to trigger a TABOR refund. The Court, however, has previously provided clear instruction on title setting. The ballot title must clearly convey to voters the initiative's likely impact on state spending on state programs. *Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 37*, 977 P.2d 845 (Colo. 1999)

As we have already established, absent complete incompetence on the part of the state economist, the proposed title is clearly inaccurate. Despite the Legislature's instruction to the contrary, proponents have a right to an accurate title, and the Board has a duty to set the same. Proponents contend that the inaccuracy of the proposed title is so prejudicial as to interfere with their constitutional right to initiate. The potential consequences of reducing health and human services programs, K-12 education, and corrections and judicial operations far exceed any consequence of reducing a TABOR refund. Thus, any voter who reads the title as proposed will be unfairly influenced by the Board's decision to list programs for reduction despite the projection that funding for those programs will be unaffected by the proposed sales tax rate decrease. The title as set is certain to confuse voters who view a ballot title that says one thing and a Blue Book analysis that will clearly show contradictory facts.

Misleading and Inaccurate Title

Given the economic projections, there are no circumstances under which the proposed state sales tax reduction can be reasonably expected to reduce funding for health and human services programs, K-12 education, or corrections and judicial operations. Rather, there will be one reduction in state spending that comes as a result of the passage of Proposed Initiative 2021-2022 #46: spending for TABOR refunds. At worst, the title as set lies about the effects of Proposed Initiative 2021-2022 #46. At best, it is misleading. The Board is given great discretion in title setting, but it cannot expect its decision to be upheld when it sets a title that contains any statement that is outright false.

In setting the title for Proposed Initiative 2021-2022 #46, the Board failed to meet the requirement to, "correctly and fairly express the true intent and meaning of the proposed initiative and consider the public confusion that might be caused by misleading titles." *In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), & 245(e)*, 1 P.3d 720 (Colo. 2000); *In re Ballot Title 1999-2000 Nos. 245(f) & 245(g)*, 1 P.3d 739 (Colo. 2000) Stating that the proposed initiative reduces state spending for anything other than a TABOR refund is inaccurate and prejudicial.

The Board's title fails to even mention TABOR refunds as a program that may be reduced by the passage of Proposed Initiative 2021-2022 #46. Because a TABOR refund only occurs in a year where there is revenue in excess of the TABOR growth cap, the Board's failure to mention TABOR refunds as one of the three targets for reduction effectively flips the voter's perception of the initiative from something that comes as a response to excess government revenues to something that threatens the state's ability to sustain important government programs in Colorado. Regardless of whether or not this was done at the Legislature's direction, the title as set clearly flies in the face of the Title Board's duty to set a clear and accurate title that properly informs the voters of the consequences of the initiative.

Alternative Approach

If the Board insists upon listing three programs in the title despite the evidence that none of those three programs will be affected by the proposed sales tax rate reduction, then the Board must inform the voters of the insignificant magnitude of the potential effect.

The proposed state sales tax rate reduction will reduce state revenues by an estimated \$14.2 million. The Fiscal Year 2020-2021 budget gives the following expenditure figures for each of the three listed programs: Health and Human Services (combined General Fund budget expenditures for the Department of Health Care Policy and Financing, the Department of Human Services, and the Department of Public Health and Environment) - \$4,205,093,547; K-12 Education - \$3,929,010,921; and Judiciary and Corrections - \$1,421,647,159. These actual budget figures establish that even if it is incorrectly assumed that the proposed initiative will affect any of the three listed programs, its effect on even the smallest of these programs (Judiciary and Corrections) is less than 1% of the program's 2020-2021 proposed budget. (Joint Budget Committee Appropriations Report Fiscal Year 2020-21: http://leg.colorado.gov/sites/default/files/fy20-21apprept_0.pdf)

If the title incorrectly states that these three programs will see their funding adversely affected by the proposed sales tax rate reduction, the title must also inform the voters of the magnitude (or lack thereof) of the effect. The total spending for the three listed programs is \$9,555,751,627. The \$14.2 million revenue reduction is 0.14% (one dollar for every \$14,000) of the total spending for those three programs.

The proponents strongly object to the proposed language for the ballot title. However, if the Board includes the language dictated by HB 21-1321, the proponents must equally insist on adding language to demonstrate the absurdly small effect that this tax reduction could have on state programs in the near-impossible event it has any effect at all. The Board must also notify voters that there may not be any effect at all because of projected TABOR refunds. Recognizing that it is still unacceptable because it still contains false statements, the proponents offer the following language in an attempt to craft a title that is less prejudicial. We preserve our objection to the inclusion of the three programs because of the now well-established fact that there will be no effect to these programs at all:

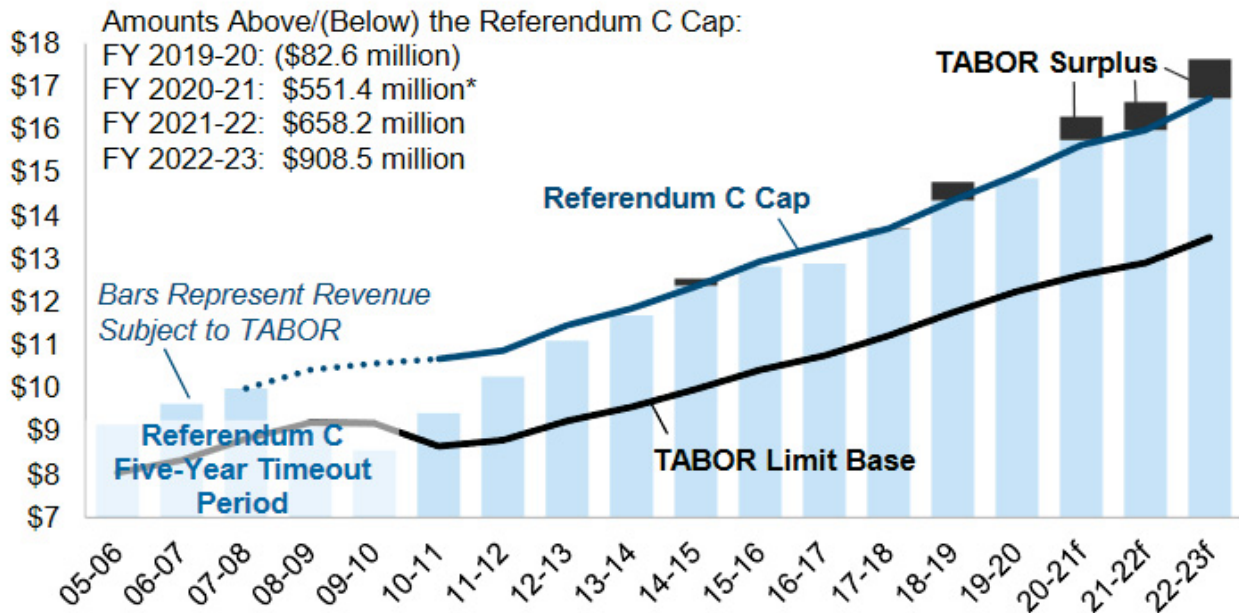
There shall be a reduction to the state sales and use tax rate by 0.34 percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to health and human services programs, K-12 education, and corrections and judicial operations by an estimated \$14.2 million dollars in tax revenue, by a change to the Colorado Revised Statutes concerning reducing the state sales and use tax rate from 2.90 percent to 2.89 percent, effective July 1, 2023; the proposed reduction in state expenditures for programs is one dollar less for every 14,000 dollars received by the programs listed above, except in years where a TABOR refund is due in which years the TABOR refund will be reduced and there would be no reduction to the departments and programs listed above.

Conclusion

These economic projections establish that Proposed Initiative 2021-2022 #46 will have no

adverse effect on state programs. Even if it is assumed that the proposed initiative would adversely affect funding for state program, the effect is so small in magnitude (one dollar for every 14,000 dollars) as to be rendered insignificant. The proposed title makes a provably false claim about the effect of the initiative. It is therefore both misleading to voters and unfair to proponents. While the adverse effect of the defective title may be mitigated by adding language that illustrates the nearly insignificant effect of the tax rate reduction on the listed programs, no title that contains the proposed language about a reduction in funding for state programs can be construed as accurate because the State’s current revenue projections show that TABOR refunds larger than the amount of the proposed tax revenue reduction will be necessary for at least the next three fiscal years.

Figure 2
TABOR Revenue, TABOR Limit Base, and the Referendum C Cap
Dollars in Billions



Source: Office of the State Controller and Legislative Council Staff. f = Forecast.
 *Refunds for the FY 2021-22 surplus will be adjusted for overrefunds in prior years.

WHEREFORE, Initiative #46 title should be corrected in compliance with Colorado law.

Respectfully submitted this 12th day of October, 2021.

/s Suzanne Taheri
/s Michael Fields
 1600 Broadway, Suite 1600
 Denver, CO 80202
staheri@mavenlawgroup.com

Ballot Title Setting Board

Proposed Initiative 2021-2022 #46¹

The title as designated and fixed by the Board is as follows:

There shall be a reduction to the state sales and use tax rate by 0.34 percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to health and human services programs, K-12 education, and corrections and judicial operations by an estimated 14.6 million dollars in tax revenue in the first full fiscal year, or will reduce the amount of the taxpayer refund if a refund is required under TABOR, by a change to the Colorado Revised Statutes that reduces the state sales and use tax rate from 2.90 percent to 2.89 percent from January 1, 2023, through December 31, 2024.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a reduction to the state sales and use tax rate by 0.34 percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to health and human services programs, K-12 education, and corrections and judicial operations by an estimated 14.6 million dollars in tax revenue in the first full fiscal year, or will reduce the amount of the taxpayer refund if a refund is required under TABOR, by a change to the Colorado Revised Statutes that reduces the state sales and use tax rate from 2.90 percent to 2.89 percent from January 1, 2023, through December 31, 2024?

Hearing October 6, 2021:

Single subject approved; staff draft amended; titles set.

Board members: Theresa Conley, LeeAnn Morrill, Julie Pelegrin

Hearing adjourned 1:40 P.M.

Rehearing October 20, 2021:

Motion for Rehearing granted only to the extent that the Board made changes to the titles.

Board members: Theresa Conley, David Powell, Julie Pelegrin

Hearing Adjourned 10:40 A.M.

¹ Unofficially captioned “**Temporary Sales Tax Rate Reduction**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

SUPREME COURT OF COLORADO 2 East 14 th Avenue Denver, CO 80203	DATE FILED: October 25, 2021 10:48 PM FILING ID: B1B5A7E687223 CASE NUMBER: 2021SA316
Petition for Review Pursuant to Colo. Rev. Stat. §1-40-107(2) Appeal from the Ballot Title Setting Board	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
In the Matter of Title, Ballot Title, and Submission Clause for Proposed Initiative 2021-2022 #46 Petitioners: Suzanne Taheri and Michael Fields v. Respondent: Theresa Conley, Julie Pelegrin, and David Powell	
Attorney for Petitioners: Suzanne M. Taheri, #23411 MAVEN LAW GROUP 1600 Broadway, Suite 1600 Denver, CO 80202 Phone Number: (303) 263-0844 Email: staheri@mavenlawgroup.com	
PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2021-2022 #46	

Suzanne Taheri and Michael Fields (“Petitioners”), through their undersigned counsel, respectfully petition this Court pursuant to §1-40-107(2), C.R.S. (2020), to review the actions of the Ballot Title Setting Board (“Title Board”) in setting the ballot title for Proposed Initiative 2021-2022 #46 (the “Proposed Initiative”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Imitative 2021-2022 #46

Proposed Initiative 2021-2022 #46 was heard by the Ballot Title Setting Board on October 6, 2021. Proponents Taheri and Fields challenged the title as set by the Board, and a rehearing was held on October 20, 2021. At the October 20, 2021 rehearing, the Title Board granted the Motion for Rehearing and made changes to the ballot title.

B. Jurisdiction

Petitioners are timely requesting a review of the actions of the Title Board by the Supreme court pursuant to §1-40-107(2), C.R.S. (2020).

As required by §1-40-107(2), C.R.S. (2020), attached to this Petition for Review are certified copies of: (1) the final copy of the Proposed Initiative as submitted to the Title Board; (2) the determinations by the Title Board at its initial hearing on the Proposed Initiative on October 6, 2021; (3) the Fiscal Summary for the Proposed Initiative prepared by the Director of Research of the Legislative Council of the General Assembly pursuant to §1-40-105.5(1.5), C.R.S. (2020); (4) the Motions for Rehearing filed by both the Petitioners and the Proponents on October 12, 2021; and (5) the determinations by the Title Board at the rehearing on October 20, 2021.

GROUND FOR REVIEW

Petitioners respectfully submit that the Title Board erred as follows:

1. The title as set by the Board is inaccurate and does not correctly and fairly express the true intent and meaning of the proposed initiative.

The Board's title for Proposed Initiative 2020-2021 #46 references three programs (K-12 education, health and human services programs, and corrections and judicial operations) that would be reduced if the voters pass the initiative. However, the fiscal summary states the following: "If revenue in one or more years exceeds the state spending limit, the measure will instead reduce the amount of revenue above the state spending limit to be refunded to taxpayers." In other words, in a year when a TABOR refund is required, the only cuts would be to the amount of the TABOR refund. The Board has a duty to set an accurate title, and the title set by the Board leads with the inaccurate notification to voters of three programs to be cut and trails with the possibility that TABOR refunds will be the only program affected. By burying the lede, the Board's title will cause unfair alarm to voters about unlikely cuts to desired programs.

2. The title as set by the Board may cause voter confusion.

Based upon the titles set by the Board, voters are unlikely to know that the proposed initiative will only affect TABOR refunds. The language, "which will reduce funding for state expenditures that include but are not limited to" implies that there will be additional programs that will be cut.

The Board's title also fails to acknowledge the relatively insignificant magnitude of the proposed cut. In the unlikely event of a cut to any of the three listed programs coming as a result of Proposed Initiative 2021-2022 #46, the amount of the cut would be so small in scale (14.6 million dollars) compared to the budget of any given one of the programs (the smallest one, Judiciary and Corrections was \$1.42 billion in 2020-2021) as to be rendered nearly meaningless.

3. To the extent the requirement of C.R.S. 1-40-106(3)(e) interfere with clear title, those requirements must be set aside.

For the reasons listed above, the Court should strike the legislative mandate for specific language to be added to the title of this initiative.

PRAYER FOR RELIEF

The proponents of Proposed Initiative 2021-2022 #46 are entitled to a clear and accurate ballot title. We request the following relief:

1. Strike the following language from the ballot title: “thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to health and human services programs, K-12 education, and corrections and judicial operations by an estimated 14.6 million dollars in tax revenue in the first full fiscal year, or will reduce the amount of the taxpayer refund if a refund is required under TABOR”

MAVEN LAW GROUP

s/ Suzanne Taheri
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<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED: November 15, 2021 3:30 PM FILING ID: 2672549BDD564 CASE NUMBER: 2021SA316</p>
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2021-2022) Appeal from the Ballot Title Board</p> <hr/> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2021-2022 #46</p> <p>Petitioners: Suzanne Taheri and Michael Fields</p> <p>v.</p> <p>Title Board: Theresa Conley, Julie Pelegrin, and David Powell.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>PHILIP J. WEISER, Attorney General MICHAEL KOTLARCZYK, Assistant Attorney General* Ralph L. Carr Colorado Judicial Center 1300 Broadway, 6th Floor Denver, CO 80203 Telephone: (720) 508-6187 E-Mail: mike.kotlarczyk@coag.gov Registration Number: 43250 *Counsel of Record <i>Attorneys for the Title Board</i></p>	<p>Case No. 2021SA316</p>
<p style="text-align: center;">THE TITLE BOARD’S OPENING BRIEF</p>	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, I certify that:

The brief complies with the word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 2,684 words.

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

The brief contains, under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

s/ Michael Kotlarczyk

MICHAEL KOTLARCZYK, #43250
Assistant Attorney General

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(Oct. 6, 2021), <https://tinyurl.com/eyx3jfv> 3

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether the Title Board set a clear and accurate title for Proposed Initiative 2021-2022 #46.

STATEMENT OF THE CASE

Proponents Suzanne Taheri and Michael Fields seek to circulate #46 to obtain the necessary signatures to place an initiative on the ballot. The measure proposes a .01% reduction in the sales tax rate for two years. *See* Record (Oct. 25, 2021), p 7.

A. H.B. 21-1321

Earlier this year, the General Assembly passed H.B. 21-1321. As relevant here, the legislation requires the Title Board to begin initiatives that propose a tax cut with certain mandatory language.

For measures that reduce state tax revenue through a tax change, the ballot title must begin “Shall there be a reduction to the (description of tax) by (the percentage by which the tax is reduced in the first full fiscal year that the measure reduces revenue) thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to (the three largest areas of program expenditure) by an estimated (projected dollar figure of revenue reduction to the state in the first full fiscal year that the measure reduces revenue) in tax revenue . . . ?”.

§ 1-40-106(3)(e), C.R.S. (2021). The “three largest areas of program expenditure” that must be listed in the title are the three largest recipients of operating appropriations from the general fund as listed in the Joint Budget Committee’s annual appropriations report. § 1-40-106(3)(i)(I).

This additional language required by H.B. 21-1321 “may not be considered” in determining “whether a ballot title qualifies as brief.” § 1-40-106(3)(h).

B. The hearing and rehearing on 2021-2022 #46

The Title Board held an initial hearing for #46 on October 6, 2021. The Board concluded the measure contained a single subject and set a title that included the mandatory language from H.B. 21-1321. *See Record at 4.*

In previous iterations of this measure, Proponents objected to the inclusion of the language from H.B. 21-1321. They argued that because the state projects a taxpayer refund (or “TABOR refund”) for the years 2023 and 2024, the funding for “the three largest areas of program expenditure”—namely, health and human services programs, K-12

education, and corrections and judicial operations—will not actually be reduced. *See, e.g., Hearing Before Title Board on Proposed Initiative 2021-2022 #45* (Sept. 1, 2021), <https://tinyurl.com/vxhnm4xt> (statement at 47:40). Instead, Proponents argued, their measure would more likely decrease the size of the TABOR refund. *Id.*

The Board proposed addressing this at the initial hearing on #46 by including the phrase “unless the state is required to refund excess revenue” after the language required by H.B. 21-1321. *See Hearing Before Title Board on Proposed Initiative 2021-2022 #46* (Oct. 6, 2021), <https://tinyurl.com/eyx3jfvz> (statement at 12:30). Proponents objected to that phrase as making the title “confusing,” and the Board agreed to remove it. *Id.* at 15:00-24:30. The Board left the language required by H.B. 21-1321 in the measure.

Proponents moved for a rehearing on October 12. Record at 6. Proponents argued that inclusion of the required language in H.B. 21-1321 would cause voter confusion and result in a misleading and inaccurate title. *Id.* at 6-7. Although Proponents objected at the initial hearing when the Board suggested including the possibility of a TABOR

refund in the title, the Proponents argued in their motion that “[t]he Board’s title fails to even mention TABOR refunds as a program that may be reduced by the passage of Proposed Initiative 2021-2022 #46.” *Id.* at 7. While Proponents continued to object to the inclusion of the language required by H.B. 21-1321, Proponents argued that if it had to be included, the title should conclude with the following: “except in years where a TABOR refund is due in which years the TABOR refund will be reduced and there would be no reduction to the departments and programs listed above.” *Id.* at 8.

The Title Board conducted a rehearing on #46 on October 20, 2021. The Board granted the motion for rehearing in part and modified the title by inserting the following after the H.B. 21-1321 language: “or will reduce the amount of the taxpayer refund if a refund is required under TABOR.” *Id.* at 5. The full title as set by the Board now reads:

There shall be a reduction to the state sales and use tax rate by 0.34 percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to health and human services programs, K-12 education, and corrections and judicial operations by an estimated 14.6 million dollars in tax revenue in the first full fiscal year, or will reduce the amount of the taxpayer refund

if a refund is required under TABOR, by a change to the Colorado Revised Statutes that reduces the state sales and use tax rate from 2.90 percent to 2.89 percent from January 1, 2023, through December 31, 2024.

Id. Proponents timely initiated this Court’s review under § 1-40-107(2), arguing that the title is inaccurate and confusing to voters, and asking the Court to “strike the legislative mandate for specific language to be added to the title of this initiative.” Pet. for Review (Oct. 25, 2021), p 4.

SUMMARY OF ARGUMENT

Proponents do not dispute that the Title Board applied H.B. 21-1321 according to its terms. Instead, they argue that including the language required by H.B. 21-1321 in the title for #46 creates an inaccurate and confusing title.

The title for #46 is accurate. It states the tax cut will either reduce funding for state expenditures or reduce the size of a TABOR refund, language which closely mirrors the same language Proponents suggested in their motion for rehearing before the Board. Proponents cannot dispute that, as the title states, funding for either state expenditures or a TABOR refund would be reduced if #46 is passed.

Further, the title is not confusing to voters. By its plain terms, the title states that the measure will cut funding for state expenditures or cut the size of a TABOR refund. Read as a whole, the title is not confusing. Nor does the Title Board’s decision not to include additional language concerning the relative size of the tax cut create confusion in the title, as Proponents argue. The title already mentions the size of the tax cut three different ways—as a percentage cut (.34%), as the total size of the tax cut in its first full year (\$14.6 million), and by showing the current and proposed tax rate (2.90% to 2.89%). This more than adequately advises voters of the size of the tax cut.

Finally, to the extent Proponents ask this Court to invalidate H.B. 21-1321, such relief is not available in this special statutory proceeding. This proceeding authorizes expedited Supreme Court review for the narrow purpose of “either affirming the action of the title board or reversing it.” § 1-40-107(2). A facial challenge to H.B. 21-1321 cannot be pursued in this action.

ARGUMENT

I. The title accurately describes #46 and is not confusing or misleading.

A. Standard of review and preservation.

“The Title Board is vested with considerable discretion in setting the title and the ballot title and submission clause.” *In re Title, Ballot Title & Submission Clause for 2015-2016 #156*, 2016 CO 56, ¶ 8 (quotations omitted). The Court “employ[s] all legitimate presumptions in favor of the propriety of the Title Board’s actions,” and will “only reverse the Title Board’s decision if the titles are insufficient, unfair, or misleading.” *Id.* (quotations omitted). It thus follows that the Court does not “consider whether the Title Board set the best possible title.” *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 17. Rather, the Court only “ensure[s] that the title fairly reflects the proposed initiative such that voters will not be misled into supporting or opposing the initiative because of the words that the Title Board employed.” *Id.*

The Board agrees that Proponents preserved their objections to the clarity of the title and the application of H.B. 21-1321 to this measure. Record, pp 6-9.

B. The title complies with the statute, accurately describes the measure, and is not confusing.

The title set by the Board includes the language required by H.B. 21-1321, which is codified at § 1-40-106(3)(e). Proponents do not dispute that #46 is a measure that “reduce[s] state tax revenue through a tax change” to which the statute applies. § 1-40-106(3)(e). Nor do they argue that the Title Board failed to include any of the required language from the statute. Rather, Proponents argue that, even though the Board included the statutorily required language in § 1-40-106(3)(e), the Court should nevertheless strike the title because it is inaccurate and may cause voter confusion.

The title is not inaccurate. The title states that the tax cut “will reduce funding for state expenditures . . . or will reduce the amount of the taxpayer refund if a refund is required under TABOR.” Record, p 5. Proponents themselves suggested adding similar language to the title in

their motion for rehearing. *See id.* at 8 (“except in years where a TABOR refund is due in which years the TABOR refund will be reduced and there would be no reduction to the departments and programs listed above”). While Proponents have consistently maintained that the title would be better if it made no mention of reducing funding or a TABOR refund, they cannot credibly maintain that the title is inaccurate for including language that closely mirrors their proposal before the Board. Accordingly, because the title correctly states that the measure will either reduce funding for state expenditures or will reduce a TABOR refund, the title is accurate.

Proponents have also argued that the title may cause voter confusion because (a) voters may not realize that the tax cut may only affect a TABOR refund, and (b) the title fails to mention the small scale of the tax cut. *See Pet. for Review* at 3. A title is not misleading if “the title read as a whole fairly and accurately” describes the initiative. *In re Title, Ballot Title & Submission Clause for 2009-2010 #45*, 234 P.3d 642, 649 n.3 (Colo. 2010). Here, the plain language of the title, read as whole, refutes both Proponents’ objections.

First, the title expressly says the tax cut may only affect the size of a TABOR refund. *See* Record, p 5 (“ . . . or will reduce the amount of the taxpayer refund if a refund is required under TABOR”). Voters will not be confused by something that the title directly addresses in plain English.

Second, the title will not cause voter confusion as to the size of the tax reduction because the title already addresses the size of the tax cut in plain language. The title describes the size of the tax cut in three different ways: it states that the proposed cut is a .34% cut to the sales and use tax; that the amount of the tax cut is \$14.6 million in its first full fiscal year; and that the actual rate of the tax will decrease from 2.90% to 2.89%. Proponents argue that the Board should have included additional language to emphasize how small the tax cut is, but the Board was under no obligation to include this superfluous language, because the title as drafted by the Board already accurately describes the size of the tax cut.

Proponents may wish that the Board adopted different language in describing the size of the tax cut, but the choice of particular

language is the sort of decision where the Board is owed the greatest deference. *See, e.g., In re Title, Ballot Title, & Submission Clause for 2019-2020 #315*, 2020 CO 61, ¶ 27 (“We will generally defer to the Board’s choice of language unless the titles set contain a material and significant omission, misstatement, or misrepresentation.”) (quotations omitted). Because the title already accurately describes the size of the tax cut three times, the title will not cause voter confusion by failing to include Proponents’ suggested language. *See In re 2019-2020 #3*, 2019 CO 107, ¶ 18 (“we cannot discern how voters could be confused by this title or how the effect of a yes/for or no/against vote would be unclear”).

Finally, in addition to its specific arguments about voter confusion, Proponents generally argue that including the language required by § 1-40-106(3)(e) will cause voter confusion. *See Pet. for Review* at 3. But the General Assembly rejected this position by amending § 1-40-106 to require this language for measures that propose tax cuts. It is this same statute, in § 1-40-106(3)(b), that “directs the Title Board to consider the possibility of voter confusion when setting titles.” *In re Title, Ballot Title & Submission Clause for 1997-98 #74*,

962 P.2d 927, 929 (Colo. 1998). By passing H.B. 21-1321, the General Assembly thus concluded that the inclusion of this language for measures that propose tax cuts does not cause voter confusion.

While this title does not cause voter confusion for the reasons given above, to the extent there is any conflict between -106(3)(b)'s admonishment that the Board "shall consider the public confusion that might be caused by misleading titles" and -106(3)(e)'s requirement of specific language for tax cut measures, the requirements of -106(3)(e) must prevail under two commonly accepted principles of statutory construction. First, the more recently enacted provision prevails over the older provision. *See* § 2-4-206. Second, "the more specific provision typically 'prevails as an exception to the general provision,'" *Martinez v. People*, 2020 CO 3, ¶ 18 (quoting § 2-4-205). As the more recent and more specific provision, -106(3)(e) should be given effect over the older, more general guidance that the Board should consider voter confusion.

II. To the extent the Proponents ask the Court to strike § 1-40-106(3)(e), the Court is without authority to do so.

Proponents ask this Court to “strike the legislative mandate for specific language to be added to the title of this initiative.” Pet. for Review at 4. It is unclear if Proponents are asking the Court to invalidate the statute as a whole. To the extent they are, such facial relief is not available in this special statutory proceeding under § 1-40-107(2). That statute specifies the only relief available in this proceeding: “the matter shall be disposed of promptly, consistent with the rights of the parties, either affirming the action of the title board or reversing it, in which latter case the court shall remand it with instructions, pointing out where the title board is in error.” § 1-40-107(2). Section 1-40-107(2) prescribes the Court’s power in this proceeding and thus limits the relief Proponents can obtain. *See State v. Borquez*, 751 P.2d 639, 644 (Colo. 1988) (“In an action which is entirely statutory, the procedure therein prescribed is the measure of the power of the tribunal to which jurisdiction of causes arising under the statute is given.”) (quotations omitted).

Accordingly, the Court’s “review of the Board’s action is limited to whether the title, ballot title and submission clause, and summary fairly reflect the intent of the initiative.” *In re Title, Ballot Title & Submission Clause, & Summary for a Petition on School Finance*, 875 P.2d 207, 210 (Colo. 1994). The Court previously declined to address a constitutional challenge to § 1-40-107(2) “[b]ecause such considerations are far beyond the scope of our review.” *In re Proposed Initiated Con’l Amend. Concerning Ltd. Gaming*, 873 P.2d 733, 737 n.2 (Colo. 1994), *superseded on other grounds as stated in Hayes v. Ottke*, 2013 CO 1; *see also In re Petition on School Finance*, 875 P.2d at 210 (A “constitutional challenge to the initiative is beyond the scope of this court’s review of the Board’s decisions . . . and therefore we need not address it.”). A broader challenge to H.B. 21-1321 is thus beyond this Court’s scope of review under § 1-40-107(2).

CONCLUSION

The Title Board correctly applied its governing statute, § 1-40-106, as recently amended. In doing so, it set an accurate title that is not confusing to voters. The title should be affirmed.

Respectfully submitted this 15th day of November, 2021.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S OPENING BRIEF** upon the following parties electronically via CCES, at Denver, Colorado, this 15th day of November, 2021, addressed as follows:

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<p>SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, Colorado 80203</p>	<p>DATE FILED: November 15, 2021 4:07 PM FILING ID: 4BF81D3A772EF CASE NUMBER: 2021SA316</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. §1-40-107(2) Appeal from the Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative</p> <p>Petitioners: Suzanne Taheri and Michael Fields</p> <p>v.</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Respondents: THERESA CONLEY, DAVID POWELL, and JULIE PELEGRIN</p>	<p>Supreme Court Case No. 2021SA316</p>
<p>Attorneys for Petitioners/Proponents:</p> <p>Suzanne Taheri, Reg. No. 23411 MAVEN LAW GROUP 1800 Glenarm Place, Suite 950 Denver, CO 80202 Phone: (303) 263-0844 Email: staheri@mavenlawgroup.com</p>	
<p>PETITIONERS' OPENING BRIEF</p>	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all the requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

Choose one:

It contains 4084 words.

It does not exceed 30 pages.

The brief complies with C.A.R. 28(k):

It contains under a separate heading a concise statement of the applicable standard of appellate review with citation to authority.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

/s/ Suzanne Taheri
Suzanne Taheri
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Suzanne Taheri and Michael Fields (“Petitioners/Proponents”) hereby respectfully submit this Opening Brief in objection to the title, ballot title and submission clause set by the Title Board for Proposed Initiative 2021-2022 #46 (the “Initiative” or “Measure”).

STATEMENT OF THE ISSUES PRESENTED

Whether the Title Board erred in ruling that the measure satisfies the clear title requirement in Colo. Const. Art.V § (1)(5.5).

STATEMENT OF THE CASE

The Petitioner brings this original proceeding pursuant to section 1-40-107(2), C.R.S., as an appeal of the Title Board’s decision to deny Petitioner’s Motion for Rehearing and set title for Proposed Initiative 2021-2022 #46.

The initiative amends Colorado statute. The measure, in full, states:

Be it enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 39-26-105, **repeal and reenact, with amendments**, (1)(a)(I)(A); and **add** (1)(a)(I)(A.5) as follows:

39-26-105. Vendor liable for tax - definitions - repeal. (1)(a)(I)(A)

EXCEPT AS PROVIDED IN SUBSECTIONS (1)(a)(I)(B), (1.3), AND (1.5) OF THIS SECTION, EVERY RETAILER SHALL, IRRESPECTIVE OF THE PROVISIONS OF SECTION 39-26-106, BE LIABLE AND RESPONSIBLE FOR THE PAYMENT OF AN AMOUNT EQUIVALENT TO TWO AND NINETY ONE-HUNDREDTHS PERCENT OF ALL SALES MADE ON OR AFTER JANUARY 1, 2001, BUT BEFORE JANUARY 1, 2023, AND AFTER DECEMBER 31, 2024, BY THE RETAILER OF COMMODITIES OR SERVICES AS SPECIFIED IN SECTION 39-26-104.

(A.5) EXCEPT AS PROVIDED IN SUBSECTIONS (1)(a)(I)(B), (1.3), AND (1.5) OF THIS SECTION, EVERY RETAILER SHALL, IRRESPECTIVE OF THE PROVISIONS OF SECTION 39-26-106, BE LIABLE AND RESPONSIBLE FOR THE PAYMENT OF AN AMOUNT EQUIVALENT TO TWO AND EIGHTY-NINE ONE-HUNDREDTHS PERCENT OF ALL SALES MADE BETWEEN JANUARY 1, 2023, AND DECEMBER 31, 2024, BY THE RETAILER OF COMMODITIES OR SERVICES AS SPECIFIED IN SECTION 39-26-104.

SECTION 2. In Colorado Revised Statutes, **repeal and reenact, with amendments,** 39-26-106 (1)(a) as follows:

39-26-106. Schedule of sales tax. (1)(a)(I) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION (1), THERE IS IMPOSED UPON ALL SALES OF COMMODITIES AND SERVICES SPECIFIED IN SECTION 39-26-104 A TAX AT THE RATE OF THREE PERCENT OF THE AMOUNT OF THE SALE, TO BE COMPUTED IN ACCORDANCE WITH SCHEDULES OR SYSTEMS APPROVED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE. SAID SCHEDULES OR SYSTEMS SHALL BE DESIGNED SO THAT NO SUCH TAX IS CHARGED ON ANY SALE OF SEVENTEEN CENTS OR LESS.

(a)(II) ON AND AFTER JANUARY 1, 2001, BUT BEFORE JANUARY 1, 2023, AND AFTER DECEMBER 31, 2024, THERE IS IMPOSED UPON ALL SALES OF COMMODITIES AND SERVICES SPECIFIED IN SECTION 39-26-104 A TAX AT THE RATE OF TWO AND NINETY ONE-HUNDREDTHS PERCENT OF THE AMOUNT OF THE SALE TO BE COMPUTED IN ACCORDANCE WITH SCHEDULES OR SYSTEMS APPROVED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE. SAID SCHEDULES OR SYSTEMS SHALL BE DESIGNED SO THAT NO SUCH TAX IS CHARGED ON ANY SALE OF SEVENTEEN CENTS OR LESS.

(III) ON AND AFTER JANUARY 1, 2023, BUT BEFORE DECEMBER 31, 2024, THERE IS IMPOSED UPON ALL SALES OF COMMODITIES AND SERVICES SPECIFIED IN SECTION 39-26-104 A TAX AT THE RATE OF TWO AND EIGHTY-NINE ONE-HUNDREDTHS PERCENT OF THE AMOUNT OF THE SALE TO BE COMPUTED IN ACCORDANCE WITH SCHEDULES OR SYSTEMS APPROVED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE. SAID SCHEDULES OR SYSTEMS SHALL BE DESIGNED SO THAT NO SUCH TAX IS CHARGED ON ANY SALE OF SEVENTEEN CENTS OR LESS.

SECTION 3. In Colorado Revised Statutes, 39-26-202, **repeal and reenact, with amendments,** (1) as follows:

39-26-202. Authorization of tax. (1)(a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1)(b) AND (1)(b.5) OF THIS SECTION, THERE IS IMPOSED AND SHALL BE COLLECTED FROM EVERY PERSON IN THIS STATE A TAX OR EXCISE AT THE RATE OF THREE PERCENT OF STORAGE OR ACQUISITION CHARGES OR COSTS FOR THE PRIVILEGE OF STORING, USING, OR CONSUMING IN THIS STATE ANY ARTICLES OF TANGIBLE PERSONAL PROPERTY PURCHASED AT RETAIL.

(b) ON AND AFTER JANUARY 1, 2001, BUT BEFORE JANUARY 1, 2023, AND AFTER DECEMBER 31, 2024, THERE IS IMPOSED AND SHALL BE COLLECTED FROM EVERY PERSON IN THIS STATE A TAX OR EXCISE AT THE RATE OF TWO AND NINETY ONE-HUNDREDTHS PERCENT OF STORAGE OR ACQUISITION CHARGES OR COSTS FOR THE PRIVILEGE OF STORING, USING, OR CONSUMING IN THIS STATE ANY ARTICLES OF TANGIBLE PERSONAL PROPERTY PURCHASED AT RETAIL.

(b.5) ON AND AFTER JANUARY 1, 2023, BUT BEFORE DECEMBER 31, 2024, THERE IS IMPOSED AND SHALL BE COLLECTED FROM EVERY PERSON IN THIS STATE A TAX OR EXCISE AT THE RATE OF TWO AND EIGHTY-NINE ONE-HUNDREDTHS PERCENT OF STORAGE OR ACQUISITION CHARGES OR COSTS FOR THE PRIVILEGE OF STORING, USING, OR CONSUMING IN THIS STATE ANY ARTICLES OF TANGIBLE PERSONAL PROPERTY PURCHASED AT RETAIL.

(c) SUCH TAX SHALL BE PAYABLE TO AND SHALL BE COLLECTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE AND SHALL BE COMPUTED IN ACCORDANCE WITH SCHEDULES OR SYSTEMS APPROVED BY SAID EXECUTIVE DIRECTOR. THE TRANSFER OF WIRELESS TELECOMMUNICATION EQUIPMENT AS AN INDUCEMENT TO ENTER INTO OR CONTINUE A CONTRACT FOR TELECOMMUNICATION SERVICES THAT ARE TAXABLE PURSUANT TO PART 1 OF THIS ARTICLE SHALL NOT BE CONSTRUED TO BE STORAGE, USE, OR CONSUMPTION OF SUCH EQUIPMENT BY THE TRANSFEROR.

SECTION 4. In Colorado Revised Statutes, 39-26-112, **repeal and reenact** (1) as follows:

39-26-112. Excess tax - remittance - repeal. (1) IF ANY VENDOR, DURING ANY REPORTING PERIOD, COLLECTS AS A TAX AN AMOUNT IN EXCESS OF THREE PERCENT OF ALL TAXABLE SALES MADE PRIOR TO JANUARY 1, 2001, TWO AND

NINETY ONE-HUNDREDTHS PERCENT OF ALL TAXABLE SALES MADE ON OR AFTER JANUARY 1, 2001, AND TWO AND EIGHTY-NINE ONE-HUNDREDTHS PERCENT OF ALL TAXABLE SALES MADE ON OR AFTER JANUARY 1, 2023, AND TWO AND NINETY ONE-HUNDREDTHS PERCENT ON OR AFTER DECEMBER 31, 2024, SUCH VENDOR SHALL REMIT TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE THE FULL NET AMOUNT OF THE TAX IMPOSED IN THIS PART 1 AND ALSO SUCH EXCESS. THE RETENTION BY THE RETAILER OR VENDOR OF ANY EXCESS OF TAX COLLECTIONS OVER THE SAID PERCENTAGE OF THE TOTAL TAXABLE SALES OF SUCH RETAILER OR VENDOR, OR THE INTENTIONAL FAILURE TO REMIT PUNCTUALLY TO THE EXECUTIVE DIRECTOR THE FULL AMOUNT REQUIRED TO BE REMITTED BY THE PROVISIONS OF THIS PART 1 IS DECLARED TO BE UNLAWFUL AND CONSTITUTES A MISDEMEANOR.

SECTION 5. Effective Date:

This act takes effect on the date of the proclamation of the Governor announcing the approval, by the registered electors of the state, of the proposed initiative.

Petitioners/Proponents filed an original draft of the measure on September 8, 2021. Petitioners/Proponents filed an amended draft of the Initiative with the Title Board on September 23, 2021. The Title Board considered the Initiative on October 6, 2021, and determined that it had jurisdiction to set title and set the following title:

There shall be a reduction to the state sales and use tax rate by 0.34 percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to health and human services programs, K-12 education, and corrections and judicial operations by an estimated 14.6 million dollars in tax revenue in the first full fiscal year, by a change to the Colorado Revised Statutes that reduces the state sales and use tax rate from 2.90 percent to 2.89 percent from January 1, 2023, through December 31, 2024.

Petitioners/Proponents filed a timely Motion for Rehearing on Proposed Initiative 2021-2022 #46 pursuant to section 1-40-107(1)(a), C.R.S. The Petitioners' Motion for Rehearing is at issue in this appeal.

At the Rehearing, the Title Board denied the Petitioners' Motion for Rehearing, except for modifications to the title:

There shall be a reduction to the state sales and use tax rate by 0.34 percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to health and human services programs, K-12 education, and corrections and judicial operations by an estimated 14.6 million dollars in tax revenue in the first full fiscal year, or will reduce the amount of the taxpayer refund if a refund is required under TABOR, by a change to the Colorado Revised Statutes that reduces the state sales and use tax rate from 2.90 percent to 2.89 percent from January 1, 2023, through December 31, 2024.

Petitioners subsequently filed a timely petition for review in this Court on October 25, 2021. This is the first appeal from Title language set under the new requirements of C.R.S. § 1-40-106(3)(e).¹

¹ (e) For measures that reduce state tax revenue through a tax change, the ballot title must begin "Shall there be a reduction to the (description of tax) by (the percentage by which the tax is reduced in the first full fiscal year that the measure reduces revenue) thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to (the three largest areas of program expenditure) by an estimated (projected dollar figure of revenue reduction to the state in the first full fiscal year that the measure reduces revenue) in tax revenue...?". If the ballot measure specifies the public services or programs that are to be reduced by the tax change, those public services or programs must be stated in the ballot title. If the public services or programs identified in the measure are insufficient to account for the full dollar value of the tax change in the first full fiscal year that the measure reduces revenue, then the three largest areas of program expenditure must be stated in the bill title along with the public services or programs identified in the measure. The estimates reflected in the ballot title shall not be interpreted as restrictions of the state's budgeting process.

SUMMARY OF ARGUMENT

The Title Board improperly set title by including unnecessary and confusing language in the title. The initiative simply reduces sales and use tax from 2.90 percent to 2.89 percent from the period of January 1, 2023, through December 31, 2024. This is the only feature of the measure. The scope of the measure is very clear, but the Title is not. Rather than simply describing this change, the Title contains additional provisions describing the state expenditures that may or may not be impacted by the measure.

In doing this, the Title obfuscates the central feature and includes purely speculative and confusing effects in violation of clear title requirements.

STANDARD OF REVIEW

The Court has the authority to review the Title Board's clear-title findings. *In the Matter of the Title, Ballot Title and Submission Clause for 2017-2018 No. 4*, 395 P.3d 318, 323 (Colo. 2017). Provisions relating to the initiative should be liberally construed to permit the exercise of the electors of this most important privilege. *See Brownlow v. Wunch*, 83 P. 2d 775, 777 (Colo. 1938). The clear title requirement in the constitution, as well as the statutes which implement it, must be liberally construed so as not to unduly limit or curtail the exercise of the initiative rights constitutionally reserved to the people. *Colo. Project-Common Cause v.*

Anderson, 178 Colo. 1, 495 P.2d 220 (1972); *Billings v. Buchanan*, 192 Colo. 32, 555 P.2d 176 (1976).

An illogical and inherently confusing title does not satisfy clear title requirement where voters would be confused as to the intent of the initiative and would be prevented from intelligently choosing whether to vote for or against it. *Robinson v. Dierking*, 2016 CO 56, 413 P.3d 151; Colo. Const. Art. V § 1.

LEGAL ARGUMENT

I. THE TITLE VIOLATES THE CLEAR TITLE REQUIRMENT IN COLO. CONST. ART.V § (1)(5.5).

In setting Title, the Board’s duty is “to capture, in short form, the proposal in plain, understandable, accurate language enabling informed voter choice.” *In re Proposed Initiative for 1999-2000 No. 29*, 972 P.2d 257, 266, 1999 WL 68793, at 10 (Colo. Feb. 16, 1999). Neither a court nor the board may go beyond the intent of the initiative to interpret the meaning or suggest how it would be applied if adopted. The role of the court is to determine whether the title is correct and fairly reflects the purpose of the proposed amendment. *In re Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238 (Colo.1990).

The Board is charged with the duty to act with utmost dedication to the goal of producing documents which will enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine

intelligently whether to support or oppose such a proposal. *In re Proposed Initiative Concerning “State Personnel System”*, 691 P.2d 1121 (Colo. 1984); *Matter of Election Reform Amendment*, 852 P.2d 28 (Colo. 1993).

In ruling on an inclusion of a fiscal analysis in a ballot title, the Court has held that including a fiscal impact statement must have some support in the record. *Matter of Title, Ballot Title et al.*, 831 P.2d 1301 (Colo.1992). The Court has granted the Title Board with considerable discretion in exercising its judgment on whether to include in the summary a statement that a proposed measure will have a fiscal impact on government and, if so, how to best communicate that fact without creating prejudice for or against the proposed measure. *Id.* at 1306-07.

The Court ruled on this precise issue last year, finding that requiring the Board to include language advising voters of cuts in government programs would result in a lengthy and complex title, and this would be contrary to the Board’s duty. *Haynes v. Vondruska (In re Title, Ballot Title & Submission Clause for 2019–2020 #315)*, 2020 CO 61, ¶ 31.

In so finding, the Court held that the Board is not required to set forth in a title all of the details of each funding consequence set forth in a measure. Rather, the requirement is the title must balance brevity against the requirement that the title unambiguously set forth the measure’s central features:

[a]s to petitioner’s contention that the title at issue does not advise voters regarding major cuts to programs from existing funds, we disagree that the Board was required to itemize in the title some or all of the programs that would face funding cuts. Again, requiring that level of detail in the title would render the title unnecessarily long and potentially confusing, contrary to the above-described statutory mandate.

Haynes at 2020 CO 61.

Despite the Court’s ruling, the legislature passed HB 21-1321 contrary to the clear title requirement in the Constitution. The title set in the instant case demonstrates the constitutional deficiencies of the statutory requirement.

1. *The Title is unnecessarily long and conceals the purpose of the measure.*

The measure proposes minimal changes to the schedule of sales and use tax.

It operates to temporarily reduce the tax .01 percent for a two-period. The Title should simply read:

Shall there be a change to the Colorado Revised Statutes that reduces the state sales and use tax rate from 2.90 percent to 2.89 percent from January 1, 2023, through December 31, 2024?

While these 33 words appear in the title and adequately explain the measure, there are 74 other words that confuse the voter and suggest an outcome. The majority of the Title is spent explaining minimal impacts that may or may not occur.

This is because under the requirements of C.R.S. § 1-40-106(3)(e) the Board added the language:

...a reduction to the state sales and use tax rate by 0.34 percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to health and human services programs, K-12 education, and corrections and judicial operations by an estimated 14.6 million dollars in tax revenue in the first full fiscal year, or will reduce the amount of the taxpayer refund if a refund is required under TABOR,...

Importantly, it was not the Board using its discretion that led them to make this change. It was the mandate in the statute. The record is replete with statements from the Board admitting the required language is confusing and speculative:

I am not so persuaded that the Board should get into whether or not the insignificant magnitude or what the impact should be, because I think that's, I think that's just unknown. Audio of the October 20, 2021 Rehearing, Chair Conley at 6:50.

I also agree that obviously, we have to follow the statute. But I think, to the extent we can follow the statute and still try to make it clear, I think we should try to make it more clear... I don't have a big problem with clarifying what the effect is the problem that we have, I think, is the fact that it is has to be based on last year's or the current years spending as opposed to next year's spending. Audio of the October 20, 2021 Rehearing, Board Member Pelegrin at 10:46.

And Madam Chair, I, I wouldn't be inclined to do that, because we're setting this title now. And we have a projection for next year now. This won't be on the on the ballot, if it gets onto the ballot up for another year. And we'll have no idea what projections are by then. Audio of the October 20, 2021 Rehearing, Board Member Pelegrin at 30:23.

But again, we have no choice. Audio of the October 20, 2021 Rehearing, Board Member Pelegrin at 31:31.

In following the mandated language, the Board was forced to put false information in the Title. This is because the statute requires the inclusion of

language advising voters of the three top state spending programs which *will* face reduced funding. (*emphasis added*). But according to state projections there would be no funding reductions in the years affected by the measure. Instead, there would be a TABOR overage. *Cf, p. 10*

The Board, trying to work around the statutory provision requiring it to include this false information in the Title, added additional superfluous and confusing language. After listing the three programs that will be cut the Board inserted an alternative, “or will reduce the amount of the taxpayer refund if a refund is required under TABOR.”

The discussion by the Board on this point is instructive on the chaos created by the statute:

Is it going to be reduction to these programs? Or is it going to be refund? But I think that’s what the measure does, right? It’s because under current projections, and I think that’s maybe what the blue book would do, would explain what it’s going to look like, it’s to say, you know, it’s this is going to be because we just, even though the we have a pretty wide margins, we still just don’t know, based upon what voters may do. Between when that is, you know, if this was getting on the ballot and passes, and what, you know, we’ve had unprecedented times the last couple of years, I just don’t want to get any more. I’m a little bit wary of getting more specific. Audio of the October 20, 2021 Rehearing, Chair Conley at 17:36.

I mean, I do think it is saying that there’s going to be a tax, a sales and use tax decrease. And there was, you know, again, we all acknowledge that there is now a new statutory requirement, which we see in other parts of the statute for other other languages this is not the first time that the board has had to tackle this restriction or specific language. And so it does indicate that

these you know, the new statutory language requires it to be the three programs. And so I do think, including the TABOR language is helpful. I think it does add the one I don't know what the current projection is on the ballot measure now, I can't get my brain on that. But I It feels this, I'm gonna throw this out there. This doesn't necessarily feel like the right verbage, but if a refund is required under TABOR, and like in one is projected to happen or something. Audio of the October 20, 2021 Rehearing, Chair Conley at 21:12.

So I think in terms of trying to follow both statute and our constitutional direction, to clearly state of title, I think we need to add that provision about the possibility of a taxpayer refund. And the way I read that is to say, it will reduce the funding or if a refund is required, it will reduce the amount of the refund, both of which may or may not. The first one may or may not be true in terms of if there was no taxpayer refund this year, the money would need to come out of something. And this General Assembly provided that we should tell the taxpayers that it should, if the measure itself doesn't specify where the cut is coming from, it should be coming from or logically could be coming from the top three. Therefore, we've included the top three as instructed by the statute. So if there were no TABOR refund, it is possible that yes, it would reduce the funding from those three. In this case, since there is a refund, I think it is clearer for the voters, even though it's more words, instead of just leaving it as something that isn't going to happen. Add the second explanation of what will happen if a refund is required under TABOR, which it is. So that's why I think it's more clear to include. It helps. I mean, it, it means that the title board, as I said, is meeting or attempting to meet both the requirements of the statute and the requirements of the Constitution. And I think that's our charge is to read those two together and do the best that we can. Audio of the October 20, 2021 Rehearing, Board Member Pelegrin 22:35.

I and I would say that I don't know where the cut would come from. Audio of the October 20, 2021 Rehearing, Board Member Pelegrin 29:21.

The statute took away the Board's discretion in setting clear title, in violation of the constitutional requirement. The Board freely recognized this in

their discussion. The title set in this matter was not a result of the Board using its sound discretion. It was the result of a legislative enactment that, as applied in the instant case, conflicts with Colo. Const. Art.V § (1)(5.5). As a result, the Board violated the clear title requirement.

2. *The Title does not fairly describe the measure.*

Over the objection of the proponents the Board included program cuts that are demonstrably false. At the same time the Board refused to provide context to the overall budget impacts.

Specifically, proponents requested that if the TABOR cut projection was included in the Title, so should the total projected TABOR overage.

The projected cut from the initiative is 29.7 million over two years. Yet, the projected TABOR overage is 1.18 billion in 2022-2023 and 1.39 billion in 2023-2024. *Cf, at p.9.*

The proponents properly raised this at the hearing:

Can I just make one point, I think. I remember in our last, the one that's on the ballot this year, there was a big talk about making sure the magnitude that people understood the magnitude of a billion dollar cut versus 25 million for the homestead and and making sure that that was clear on what was bigger and how much that impacted it. I think similarly, if we're going to put the \$14.6 million and say or Well, you know, this might come from refunds, then putting the the refund amount to understand that this is the projected amount that it is a 14 point 6 million in a \$1.3 billion thing. So they can look at that and say, Okay, we know, we know that it could come from other stuff or this or that, but this is the magnitude of it. And I just

think that would give people more information in terms of what the projection is, if we're projecting 14 point 6 million, same people are projecting 1.3 billion in refunds, that that would be relevant for people to know. Audio of the October 20, 2021 Rehearing, Proponent Fields, at 29:27.

In declining to provide any context to the described cuts the Board does not fairly advise the voters of the issues. The unbalanced presentation in the Title has the effect of suggesting an outcome to the voters.

CONCLUSION

Petitioner respectfully requests the Court overturns the Title Board's decision and remand this matter to the Board with instructions to set clear title.

Respectfully submitted this 15th day of November 2021.

MAVEN LAW GROUP

/s/ Suzanne Taheri

Suzanne Taheri

Attorney for the Petitioner

CERTIFICATE OF SERVICE/MAILING

I hereby certify that on 15th day of November, 2021 a true and correct copy of the **PROPONENTS' OPENING BRIEF** was served via the State of Colorado's ICCES File and Serve e-filing system, email and United States mail, postage prepaid, properly addressed to the following:

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Duly signed original on file at Maven Law
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<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED: December 6, 2021 3:38 PM FILING ID: 7CCFE71192320 CASE NUMBER: 2021SA316</p>
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2021-2022) Appeal from the Ballot Title Board</p> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2021-2022 #46</p> <p>Petitioners: Suzanne Taheri and Michael Fields,</p> <p>v.</p> <p>Title Board: Theresa Conley, Julie Pelegrin, and David Powell.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>PHILIP J. WEISER, Attorney General MICHAEL KOTLARCZYK, Assistant Attorney General* Ralph L. Carr Colorado Judicial Center 1300 Broadway, 6th Floor Denver, CO 80203 Telephone: (720) 508-6187 E-Mail: mike.kotlarczyk@coag.gov Registration Number: 43250 *Counsel of Record <i>Attorneys for the Title Board</i></p>	<p>Case No. 2021SA316</p>
<p style="text-align: center;">THE TITLE BOARD’S ANSWER BRIEF</p>	

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I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, I certify that:

The brief complies with the word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 1,668 words.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

s/ Michael Kotlarczyk

MICHAEL KOTLARCZYK, #43250
Assistant Attorney General

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INTRODUCTION

The title for 2021-2022 #46 begins by stating that the measure proposes “a reduction to the state sales and use tax rate.” Record (Oct. 25, 2021), p 5. Voters will therefore have no trouble understanding the purpose and effect of #46 is to do just that: reduce the state sales and use tax rate. This should be enough to defeat Proponents’ clear title objection.

Proponents mainly argue that the title has become unclear because it includes statutorily-required language stating that the proposed tax cut will reduce funding for state expenditures. But the inclusion of this language does not make the title unclear. The title for #46 accurately states that either funding for state expenditures will be reduced or a taxpayer refund will be reduced. Because this language is correct and clear, the title should be affirmed.

ARGUMENT

I. The title satisfies the constitutional clear title requirement.

Proponents argue that by including the language required by H.B. 21-1321, the title for #46 violates the constitutional clear title requirement. Proponents' Opening Br. at 7. H.B. 21-1321 requires the Board to include certain language for initiatives that propose tax cuts, including that the measure "will reduce funding for state expenditures." § 1-40-106(3)(e), C.R.S. (2021).

"Statutes are entitled to a presumption of constitutionality, rooted in the doctrine of separation of powers, through which the judiciary respects the roles of the legislature and the executive in the enactment of laws." *Rocky Mtn. Gun Owners v. Polis*, 2020 CO 66, ¶ 30 (quotations omitted). This presumption especially applies here because the legislature has historically played a significant role in defining what constitutes a clear title. In fact, the General Assembly incorporated the clear title standard "into the statutes governing the initiative process in 1993," one year before the standard was added to the relevant

constitutional provisions. *See In re Title, Ballot Title & Submission Clause for 2007-08 #62*, 184 P.3d 52, 57 (Colo. 2008) (citing § 1-40-106(3)(b) (“[T]he title board shall consider the public confusion that might be caused by misleading titles[;] shall . . . avoid titles for which the general understanding of the effect of a ‘yes/for’ or ‘no/against’ vote will be unclear[; and] shall correctly and fairly express the true intent and meaning [of the measure.]”)).

The constitutional clear title requirement provides: “No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title” Colo. Const. art. V, § 1(5.5). The title for #46 satisfies this standard because it clearly expresses its subject. The measure proposes a .34% reduction to the state sales and use tax rate. The title begins: “There shall be a reduction to the state sales and use tax rate by 0.34 percent” Record at 5. The title thus complies with the constitutional clear title provision.

Proponents argue that H.B. 21-1321 caused the Board to draft an unconstitutionally unclear title, but their arguments all fail.

A. The title does not contain false information.

Proponents first contend that, by using the language required by H.B. 21-1321, the Board “put false information in the Title.” Proponents’ Opening Br. at 10; *see also id.* at 13. According to Proponents, because current fiscal projections show a likely TABOR refund for the two years #46’s tax cut will be in effect, the title falsely states that the tax cut “will reduce funding for state expenditures that include but are not limited to health and human services programs, K-12 education, and corrections and judicial operations.” Record at 5. This language is not false, for two reasons.

First, as argued in the Title Board’s opening brief, the title correctly states the measure will reduce funding for expenditures or will reduce the size of a TABOR refund. Board Opening Br. at 8-9. The title must be read as a whole. *See, e.g., In re Title, Ballot Title & Submission Clause for 2015-16 #63*, 2016 CO 34, ¶ 7 (Court examines “whether the title as a whole is fair, clear, and accurate”). While Proponents argue that the language required by H.B. 21-1321 in isolation is false given the likelihood of a TABOR refund, they do not argue that the title taken

as a whole is false. The Board’s discussion at the rehearing makes clear that it added the “or” clause specifically to ensure that the language required by H.B. 21-1321 would not be read in isolation and create a potentially misleading title. *See Hearing Before Title Board on Proposed Initiative 2021-2022 #46* (Oct. 20, 2021), <https://tinyurl.com/2p9p89ux>, at 22:15 (statement of J. Pelegrin).

Second, Proponents’ argument that the required language from H.B. 21-1321 is “false” is based on projections of future government revenues. But those projections may never come to pass, or other future events could counteract them. *Cf. Leece v. Griffin*, 150 Colo. 132, 135, 371 P.2d 264, 265 (1962) (“It is well settled in Colorado that one of the essential elements of . . . deceit is that there be a false representation of a material fact, which fact either exists in the present or has existed in the past”) (quotations omitted). For example, a global pandemic or other unanticipated event could significantly reduce state revenues. Or Colorado’s voters could approve a revenue change that authorizes the state government to keep any surplus. In such an event, the tax cut would reduce state expenditures. Accordingly, because Proponents’

objection is based only on projected future events that may or may not occur, they cannot establish the title is false.

B. The authority relied on by Proponents supports the Board's position.

Proponents argue that this Court's recent holding in *In re Title, Ballot Title & Submission Clause for 2019-20 #315* supports their argument that the title for #46 should not list out three separate categories of government expenditures that could be impacted by the proposed tax cut. In that case, the Court rejected an argument by opponents of the measure that the title was not clear because it did not identify the "key programs" that would face funding cuts as a result of the measure. 2020 CO 61, ¶ 32. The Court held "it was sufficient for the Board to summarize generally the category of programs from which funds" would be cut. *Id.* But that case does not support Proponents' position, and in fact supports the Board's position, for three reasons.

First, H.B. 21-1321 was not the law when the Court ruled in #315. So the Court's holding there that the Board was not required to list specific programs facing cuts has no bearing here on whether the Board

properly listed specific “categories of spending by issue area,” as statute now requires. § 1-40-106(3)(i)(I).

Second, the title approved of in #315 was more similar to the title for #46 than Proponents suggest. Just as #46 broadly lists three general categories of spending facing funding cuts, #315 specifically mentioned that its funding would come from “certain health-related programs and other state purposes” funded by current taxes on tobacco. 2020 CO 61, ¶ 3. The Court approved of this approach, where the Board “summarize[d] generally the category of programs from which funds would be reallocated”; the title for #46 does effectively the same for three categories of spending. *Id.* ¶ 32.

Third, even if the differences between the title for #315 and for #46 are material, the Court did not hold that the Board was prohibited from including further detail, only that it was not required to do so. In fact, the Court acknowledged that the Board “is given discretion in resolving interrelated problems of length, complexity, and clarity.” *Id.* ¶ 26.

C. The title is not “unnecessarily long.”

Proponents also contend that the title “is unnecessarily long,” in particular that the additional words required by H.B. 21-1321 make the title too long. Proponents’ Opening Br. at 9. But H.B. 21-1321 expressly says that the language required by the statute “may not be considered” when “determining whether a ballot title qualifies as brief.” § 1-40-106(3)(h). Notably, only statutes, and not the Constitution, expressly require brief titles. *See* § 1-40-102(10) (“‘Title’ means a brief statement that fairly and accurately represents the true intent and meaning of the proposed text of the initiative.”); § 1-40-106(3)(b) (“Ballot titles shall be brief[.]”). So the additional language required by H.B. 21-1321 cannot be counted when determining whether the title is brief, and Proponents have failed to show the remainder of the title is unduly prolix.

D. The Board was not required to provide additional “context” in the title.

Finally, Proponents object that the title does not provide sufficient “context” for the size of the tax cut. Proponents’ Opening Br. at 13-14. Proponents did not detail in their opening brief what language they

believe should have been included, and their suggested language for the title contains no additional context about the size of the proposed cut. *See id.* at 9. In any event, the Board acted within its discretion to omit any further language from the proposed title.

The title already mentions the size of the tax cut three times: as a .34 percent reduction in the sales and use tax rate; as a \$14.6 million reduction; and as a reduction of the rate from 2.90 percent to 2.89 percent. Record, p 5. Further description of the cut is simply not necessary, particularly given the Board’s obligation, and broad discretion, to balance length and complexity in its titles. *See In re 2019-20 #315*, 2020 CO 61, ¶ 32 (“requiring that level of detail in the title would render the title unnecessarily long and potentially confusing”). Additional language may be appropriate for the ballot information booklet but is not required for the title. *See Colo. Const. art. V, § 1(7.5)(a)(II)* (booklet must contain “major arguments both for and against the measure, and . . . may include any other information that would assist understanding the purpose and effect of the measure”).

CONCLUSION

The Board respectfully requests that the Court affirm the titles set by the Board.

Respectfully submitted this 6th day of December, 2021.

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/s/Michael Kotlarczyk

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S OPENING BRIEF** upon the following parties electronically via CCEF, at Denver, Colorado, this 6th day of December, 2021, addressed as follows:

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s/ Xan Serocki

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DATE FILED: December 6, 2021 3:05 PM
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CASE NUMBER: 2021SA316

<p>SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, Colorado 80203</p>	
<p>Original Proceeding Pursuant to Colo. Rev. Stat. §1-40-107(2) Appeal from the Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative</p> <p>Petitioners: Suzanne Taheri and Michael Fields</p> <p>v.</p> <p>Respondents: THERESA CONLEY, DAVID POWELL, and JULIE PELEGRIN</p>	<p>▲ COURT USE ONLY ▲</p> <p>Supreme Court Case No. 2021SA316</p>
<p>Attorneys for Petitioners/Proponents:</p> <p>Suzanne Taheri, Reg. No. 23411 MAVEN LAW GROUP 1800 Glenarm Place, Suite 950 Denver, CO 80202 Phone: (303) 263-0844 Email: staheri@mavenlawgroup.com</p>	
<p>PETITIONERS' ANSWER BRIEF</p>	

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The brief complies with C.A.R. 28(g).

Choose one:

 X It contains 1,435 words.

 It does not exceed 30 pages.

The brief complies with C.A.R. 28(k):

It contains under a separate heading a concise statement of the applicable standard of appellate review with citation to authority.

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/s/ Suzanne Taheri
Suzanne Taheri
Attorney for the Petitioner

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September 2021 Economic & Revenue Forecast
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Constitutional Provisions

Article V, Section 1, Colo. Const.6

Suzanne Taheri and Michael Fields (“Petitioners/Proponents”) hereby respectfully submit this Answer Brief in objection to the title, ballot title and submission clause set by the Title Board for Proposed Initiative 2021-2022 #46 (the “Initiative” or “Measure”).

LEGAL ARGUMENT

1. The Title set by the Title Board misleads voters by leading with program cuts that are not supported by fiscal estimates.

The language chosen by the Board and mandated by the Legislature in C.R.S. § 1-40-106(3)(e), leads with program cuts that, “include but are not limited to health and human services, K-12 education, and corrections and judicial operations by an estimated 14.6 million dollars in tax revenue in the first fiscal year...” Petitioners object to the inclusion of this language because it is false, confusing and unsupported by the record.

According to the September 2021 Economic & Revenue Forecast (https://leg.colorado.gov/sites/default/files/images/lcs/septforecast_1.pdf) by the Colorado Legislative Council Staff, state revenues are expected to exceed the TABOR refund cap through the 2022-2023 budget year. The 2022-2023 budget year projection predicts a required TABOR refund of \$1.2 billion.

The tax decrease in the proposed initiative begins on January 1, 2023, halfway into the 2022-2023 fiscal year. This covers the same period in the forecast.

Leading with the program cut language is demonstrably false and misleading. It is not cured by the inclusion of an “or” clause in the ballot title.¹ If anything this only adds to the confusion. Voters will wonder how it will reduce the refund, how the formula will apply to them and what the overall impact will be to their taxes.

The board also refused to provide context for voters to evaluate the scale of the proposed tax cut. The initiative proposes an estimated \$14.6 million tax cut. Yet, the ballot title provides no context for how this impacts the overall budget. In truth it is a small percent of any projected surplus.

Currently available fiscal estimates demonstrate that placing three programs in the title (or, in this case, four when TABOR refunds are included) is facially inaccurate given the size of the proposed tax cut in comparison to the size of each of these three programs. As previously noted, the estimated revenue impact of the proposed tax cut is \$14.6 million. By contrast, the budget for the 2021-2022 fiscal

¹ “which will reduce funding for state expenditures that include but are not limited to health and human services programs, K-12 education, and corrections and judicial operations by an estimated 14.6 million dollars in tax revenue in the first full fiscal year, or will reduce the amount of the taxpayer refund if a refund is required under TABOR,…”

year² allocates \$4.29 billion to K-12 education, \$1.49 billion to Corrections and Judicial Operations³, and \$4.5 billion to Health and Human Services.⁴

The insertion of fiscal *estimates* into the title puts the accuracy of the title at additional risk. The Board acknowledged this during the rehearing. Board member Pelegrin captured this concern best in the rehearing. Petitioners point to this in the opening brief, but the argument for the impossibility of an accurate and thus fair title is articulated so well by her comment, that it bears repeating:

And Madam Chair, I, I wouldn't be inclined to do that, because we're setting this title now. And we have a projection for next year now. This won't be on the on the ballot, if it gets onto the ballot up for another year. And *we'll have no idea what projections are by then.*" Audio of the October 20, 2021 Rehearing, Board Member Pelegrin at 30:23. [emphasis added]

Even the Title Board acknowledged that the title it set was not accurate because of the requirement to insert fiscal estimates into the title at a time when the effect of the initiative cannot be accurately forecasted.

² https://leg.colorado.gov/sites/default/files/fy21-22apprept_0.pdf, page I-19

³ Number for Corrections and Judicial Operations was derived by adding General Fund operating appropriations for Corrections (\$867,647,658) and General Fund operating appropriations for Judicial (\$624,209,011).

⁴ Numbers for Health and Human Services was derived by adding General Fund operating appropriations for: Health Care Policy and Financing (\$3,346,715,726), Human Services (\$1,108,252,446), and Public Health and Environment (\$77,598,934).

The title that the Legislature foisted upon the Title Board leaves a severe risk that voters will be misled into opposing the initiative because of the words that the Title Board employed.

The Court has a long history of affirming succinct, fair titles. In *Bruce v. Hedges (In re Title, Ballot Title & Submission Clause for 2019-2020 #3 "State Fiscal Policy")*, 2019 CO 107, the Court found that in describing a TABOR repeal, the simpler the better. The Court relied upon the long-standing principle that, “The Board’s duty in setting title is to summarize the central features of a proposed initiative.” *Id.*, at 16. The Court rejected petitioner’s argument that the Board should list the TABOR’s provisions that would be affected by the measure, finding, “listing in the title a substantial number of TABOR’s provisions, as Bruce and Banta request, would make the title excessively long and difficult to read, and it likely would confuse rather than assist voters.... Picking and choosing the provisions to include in the title would also likely result in contentions that the title is not impartial because concluding that because voters reading the title at issue would be forced to speculate whether the initiative would do any of four different things, the voters would not be able to ascertain the initiative’s intent and therefore would be unable to choose intelligently whether to vote for or against it what was included would tend to influence voters one way or the other.” *Id.*, at 16, citing *In*

re Title, Ballot Title & Submission Clause for 2015–2016 #156, 2016 CO 56, ¶ 14, 413 P.3d 151, 153–54 (concluding that because voters reading the title at issue would be forced to speculate whether the initiative would do any of four different things, the voters would not be able to ascertain the initiative’s intent and therefore would be unable to choose intelligently whether to vote for or against it).

In the past year, the Court has again affirmed this principle in *Haynes v. Vondruska (In re Title, Ballot Title & Submission Clause for 2019–2020 #315)*, 2020 CO 61, ¶ 31, finding the details of funding consequences would create an unnecessarily long and confusing title.

Upholding the title in the instant case would effectively overrule the long history of precedent set and reaffirmed in *Haynes*.

2. The Court should only consider clear title requirements

Petitioners agree with the Title Board that the Court cannot consider the constitutionality of a statute on appeal of a title. The Court’s scope of review is limited on an appeal. The Court only ensures the title, ballot title and submission clause and summary fairly reflect the proposed initiative so that petition signers and voters will not be misled. *Matter of Title, Ballot Title for 1997-1998 No. 105*, 961 P.2d 1092 (Colo.1998). The Court has declined to consider other matters not related to jurisdiction or clear title.

Petitioners do not seek to have C.R.S. § 1-40-106(3)(e) declared unconstitutional. Petitioners understand the limited scope of this Court’s review. For this reason, petitioners do not believe the Court should consider the application of the statute in its limited findings. If the general assembly had wanted the Court to apply the statute in weighing clear title, it would have expanded the Court’s jurisdiction in C.R.S. § 1-40-107(2).

3. The Court has authority to require a fair title.

Even if the Court does consider the application of § 1-40-106(3)(e), C.R.S., General assembly cannot supersede the fundamental right to a clear and fair title granted by Article V, Section 1. The provisions of 1-40-107, C.R.S. acknowledge that the Court serves as the final check on the title setting process and notes that the purpose of the Court’s review is to protect the rights of the parties: “If filed with the clerk of the supreme court within seven days thereafter, the matter shall be disposed of promptly, *consistent with the rights of the parties*, either affirming the action of the title board or reversing it, in which latter case the court shall remand it with instructions, pointing out where the title board is in error.”

CONCLUSION

The Court has the authority to reverse title setting and to remand the matter back to the Title Board for the setting of an accurate title. Because the title set by the

Board is proven inaccurate and prejudicial, Petitioner respectfully requests the Court overturns the Title Board's decision and remand this matter to the Board with instructions to set clear title.

Respectfully submitted this 6th day of December 2021.

MAVEN LAW GROUP
/s/ Suzanne Taheri
Suzanne Taheri
Attorney for the Petitioner

CERTIFICATE OF SERVICE/MAILING

I hereby certify that on 6th day of December, 2021 a true and correct copy of the **PROPONENTS' ANSWER BRIEF** was served via the State of Colorado's ICCES File and Serve e-filing system, email and United States mail, postage prepaid, properly addressed to the following:

Michael Kotlarczyk, Esq.
Colorado Attorney General's Office
1300 Broadway, 6th Floor
Denver, CO 80203
Michael.kotlarczyk@coag.gov
Attorneys for Title Board

/s/ Suzanne Taheri _____

Suzanne Taheri

Duly signed original on file at Maven
Law Group

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: April 14, 2022 CASE NUMBER: 2021SA316
Original Proceeding Pursuant to §1-40-107(2), C.R.S. (2021-2022) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2021-2022 #46 Petitioners: Suzanne Taheri and Michael Fields, v. Title Board: Theresa Conley, Julie Pelegrin, and David Powell.	Supreme Court Case No: 2021SA316
ORDER OF COURT	

Upon consideration of the Petition for Review, together with the briefs filed herein, and now being sufficiently advised in the premises,

IT IS ORDERED that the actions of the Title Board are AFFIRMED.

BY THE COURT, EN BANC, APRIL 14, 2022.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Dianne Criswell

vs.

Suzanne Taheri and Steven Ward, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2023-2024 #21

Dianne Criswell, registered elector of the County of Denver and the State of Colorado, through her undersigned counsel, objects to the Title Board's (the "Board") title and ballot title and submission clause set for Initiative 2023-2024 #21, and states:

The Board set a title for Initiative 2023-2024 #21 on April 5, 2023. The Board designated and fixed the following ballot title and submission clause:

Funding available for counties, school districts, water districts, fire districts, and other districts funded, at least in part, by property taxes shall be impacted by a reduction of \$2.2 billion in property tax revenue by an amendment to the Colorado constitution and a change to the Colorado Revised Statutes concerning a 3% annual limit on property tax increases, and, in connection therewith, creating an exception to the limit if a property's use changes or its square footage increases by more than 10%, in which case, the property is reappraised, and, beginning in fiscal year 2024-25, allowing the state to annually retain and spend up to \$100 million of excess state revenue, if any, as a voter-approved revenue change to offset reduced property tax revenue and to reimburse local governments for fire protection.

I. This measure violates the constitutional single subject requirement.

The single-subject requirement in Article V, sec. 1(5.5) serves two purposes: (1) it ensures that the initiative "depends upon its own merits for passage"; and (2) it "protects against fraud and surprise occasioned by the inadvertent passage of a surreptitious provision 'coiled up in the folds' of a complex bill." *In re Title & Ballot Title & Submission Clause for 2005-2006 #55*, 138 P.3d 273, 277 (Colo. 2006) (citation omitted).

In applying this mandate, the Title Board must evaluate the measure to determine if it is constitutionally compliant. An initiative may not group "distinct purposes under a broad theme" to circumvent the single-subject requirement, nor can it "hide purposes unrelated to the [i]nitiative's central theme" to gain passage of a hidden provision. *Id.* at 277-78.

Proponents contend their single subject is the creation of a 3% annual limit on property tax increases. However, their measure also has an additional purpose: authorizing the state to retain and spend up to \$100 million annually to reimburse local governments for fire protection. *See*

Initiative 2023-2024 # 21, sec. 2, proposed C.R.S. § 24-33.5-1201(6). Proponents frame this authorization as an “offset” for revenue local districts lose because of the measure’s property tax cap. The provision states:

FOR THE PURPOSE OF OFFSETTING REVENUE RESULTING FROM THE CAP IN PROPERTY TAX AND TO FUND STATE REIMBURSEMENTS TO LOCAL GOVERNMENT ENTITIES FOR FIRE PROTECTION, AS AUTHORIZED BY THE VOTERS AT THE STATEWIDE ELECTION IN THE NOVEMBER 2023, IN FISCAL YEAR COMMENCING ON JULY 1, 2024 THE STATE SHALL BE AUTHORIZED TO RETAIN AND SPEND UP TO ONE HUNDRED MILLION DOLLARS PER YEAR IN REVENUE EXEMPT FROM LIMITATIONS UNDER SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

Id. Although described by Proponents as an offset, this provision is not an offset. As a verb, “offset” means “to balance; to cancel by contrary claims or sums; to counteract.” *Browne v. Indus. Claim Appeals Office*, 2021 COA 83, ¶ 36 (quoting *Lalime v. Desbiens*, 55 A.2d 121 (Vt. 1947)); see also *Ballantine’s Law Dictionary* (defining “offset” as “[a] balancing or compensating factor”). To be an offset, this provision would need to “balance,” “counteract,” or “compensat[e]” for a loss in fire protection revenue because of the measure’s cap on property tax increases.

As Proponents themselves have admitted, that is not what this provision does. Instead, this is a general authorization for the state to retain funds and spend up to \$100 million annually on fire protection reimbursements. The provision does not tie or condition the state’s authority to retain and spend this money to the property tax revenue cap: it does not require that fire districts lose any property tax revenue; it does not require that local districts spend less on fire protection efforts because of the property tax cap; and it does not limit state reimbursements to covering an actual reduction in local spending on fire protection due to the property tax cap. Indeed, local budgets for fire protection could increase and this provision would still permit the state to retain and spend the additional \$100 million annually. Proponents confirmed this is the intent of the provision during the review and comment hearing:

[Leg. Staff]: To clarify, the \$100 million retention is authorized irrespective of the actual loss to fire districts?

[Mr. Ward]: Yea.

[Leg. Staff]: So if the measure is implemented in such a way that all of the local government stakeholders that need to get together to do the implementation for this bill decide “fire districts are the most important districts and they’re going to be kept whole” and they don’t actually experience any kind of revenue reduction as a result of the measure that doesn’t change the \$100 million retention or allowance?

[Ms. Taheri]: Right.

Mar. 24, 2023, Review and Comment Hr’g, at 10:34:37 to 10:35:07.

As such, the \$100 million fire protection reimbursement authorization is “not dependent upon or connected with” the measure’s single subject of limiting increases in property taxes. See *In re the Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # 29*, 972 P.2d 257, 261 (Colo. 1999). It is intended to be and, as drafted, operates **independent of** the cap on property tax increases, which means that it does not “effect or . . . carry out one general objective or purpose.” *In re Titles, Ballot Titles, and Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, and #128*, 2022 CO 37, ¶ 13 (internal citation omitted). This case thus differs from a situation in which a measure requires the state to backfill actual lost revenue to a local district that results from a tax change. See *In re Title, Ballot Title and Submission Clause, and Summary with Regard to a Proposed Petition for an Amendment to the Constitution of the State of Colorado Adding Paragraph (D) Subsection (8) of Section 20 of Article X*, 908 P.2d 125 (Colo. 1995) (finding a single subject where a measure required “the state to replace monthly local government revenues lost **because of** the tax credit” (emphasis added)).

The second subject here violates the underlying concern behind the single subject requirement that a subject pass on its own merits and without comingling of support for another subject. See C.R.S. 1-40-106.5(1)(e)(I); *In re 1999-2000 # 29*, 972 P.2d at 261 (“Each proposal within an initiative must depend ‘on its own merits for passage.’” (internal citation omitted)). Whether and how to address property tax relief has been a recurring public policy issue in Colorado, both within the General Assembly and with proponents of ballot measures. Fire protection has a different political salience in Colorado given the risk of wildfires and recent incidents such as the Marshall fire. The inclusion of additional funding for fire protection will attract supporters who would not otherwise be sympathetic to property tax relief and thereby help tip the scales in favor of the measure, which the single subject requirement prohibits.¹

II. The title set by the Board violates the clear title requirement for initiative titles.

The titles set by the Board are incomplete or misleading in the following ways:

- (a) As explained above, Section 2 of the measure and the authorization for the state to retain and spend \$100 million annually on local district fire protection reimbursements does not operate as an “offset.” This authorization operates independent of the 3% annual limit on property tax increases. As such, it is incorrect and misleading to describe it as an “offset” for “reduced property tax revenue.”

¹ Counsel is aware that the Colorado Supreme Court affirmed the title setting for measure 2021-2022 #27, but that case should not dictate the outcome here. First, the Court’s Order summarily affirmed the Board, and, as such, there is no analysis explaining the Court’s reasoning. Second, the nature of the cases differ. Initiative #27’s “offset” related to state reimbursement for the homestead exemptions. Those exemptions are intimately related to the operation of the state’s property tax system, which raised distinct single subject issues. Fire protection funding, in contrast, is simply one activity that is funded by property tax revenues, and this measure creates a standalone new authorization for state spending on it.

- (b) The titles inaccurately describe the measure as creating an “exception to the limit” if a property’s use changes or its square footage increases by more than 10%. The measure provides only that, in such cases, the property is “reappraised.” Although these properties may be “reappraised,” the measure does not provide that such reappraisal alters or eliminates the 3% cap. It is, therefore, not an “exception” to the 3% cap and describing it as such is inaccurate and misleading.

RESPECTFULLY SUBMITTED this 12th day of April, 2023.

RECHT KORNFELD, P.C.

s/ Nathan Bruggeman

Mark G. Grueskin

Nathan Bruggeman

1600 Stout Street, Suite 1400

Denver, CO 80202

Phone: 303-573-1900

Email: mark@rklawpc.com

nate@rklawpc.com

Objector’s Address:

225 E 16th Ave, Ste 1000

Denver, CO 80203

CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2023-2024 #21** was sent this day, April 12, 2023, via first-class mail, postage prepaid to the proponents:

Suzanne Taheri & Steven Ward
6501 E. Belleview Ave, Suite 375
Denver, CO 80111

s/ Erin Holweger

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR INITIATIVE 2023-2024 #21

MOTION FOR REHEARING

On behalf of Suzanne Taheri and Steven Ward, registered electors in the State of Colorado and proponents of designated representatives for Initiative 2023-2024 #21, the undersigned counsel, hereby submits this Motion for Rehearing of the Title Board's April 5, 2023 decision.

The designated representatives assert that the titles as set violate clear title as they incorrectly describe the measure. Additionally, the Fiscal Summary for Proposed Initiative 2023-2024 #21 incorrectly states in several places that the measure will reduce local property tax revenue.

On April 5, 2023, the Title Board conducted a hearing Proposed Initiative 2023-2024 #21. The Board found a single subject and proceeded to set title as follows:

“Funding available for counties, school districts, water districts, fire districts, and other districts funded, at least in part, by property taxes shall be impacted by a reduction of \$2.2 billion in property tax revenue by an amendment to the Colorado constitution and a change to the Colorado Revised Statutes concerning a 3% annual limit on property tax increases, and, in connection therewith, creating an exception to the limit if a property's use changes or its square footage increases by more than 10%, in which case, the property is reappraised, and, beginning in fiscal year 2024-25, allowing the state to annually retain and spend up to \$100 million of excess state revenue, if any, as a voter-approved revenue change to offset reduced property tax revenue and to reimburse local governments for fire protection.”

The Title set by the Board utilizes the language statutorily prescribed language for a measure that reduces local property tax revenue through a tax change:

For measures that reduce local district property tax revenue through a tax change, the ballot title must begin “Shall funding available for counties, school districts, water districts, fire districts, and other districts funded, at least in part, by property taxes be impacted by a reduction of (projected dollar figure of property tax revenue reduction to all districts in the first full fiscal year that the measure reduces revenue) in property tax revenue...?”. The title board shall exclude any districts whose property tax revenue would not be reduced by the measure from the measure's ballot title. The estimates reflected in the ballot title shall not be interpreted as restrictions of a local district's budgeting process. §1-40-106(3)(f), C.R.S.

In using the language prescribed by statute, the Board overlooked a key component of the measure. The proposed initiative does not actively decrease property tax revenue. Rather, it decreases the *growth* of property tax revenue. It is not a straight cut in property taxes; it is a cap on the amount by which they can grow from year to year. Because it is not a tax cut, the Board must not apply the language required by §1-40-106(3)(f).

Notwithstanding the key difference between a tax rate cut which would cause a reduction in revenue from one year to the next and the proposed initiative which merely caps the *growth* of tax revenue, the title as set by the Board is misleading. The title indicates that there will be a reduction of \$2.2 billion in property tax revenue. However, that is not what the initiative does. Because the Board chose to apply the construction in the statute, it was prevented from properly describing the \$2.2 billion as a reduction in the *growth* of the taxes that must be remitted by taxpayers rather than the taxing districts receiving \$2.2 billion less from one year to the next.

Proponents understanding of the statute comports with the Governor's own signing statement which clearly states the statute does not apply to caps of tax increases.

Respectfully submitted this 12th day of April, 2023.

s/Suzanne Taheri
Suzanne Taheri
West Group
6501 E Belleview Ave, Suite 375
Denver, CO 80111
Phone: (303) 218-7150

Ballot Title Setting Board

Proposed Initiative 2023-2024 #21¹

The title as designated and fixed by the Board is as follows:

Funding available for counties, school districts, water districts, fire districts, and other districts funded, at least in part, by property taxes shall be impacted by a reduction of \$2.2 billion in property tax revenue by an amendment to the Colorado constitution and a change to the Colorado Revised Statutes concerning a 3% annual limit on property tax increases, and, in connection therewith, creating an exception to the limit if a property's use changes or its square footage increases by more than 10%, in which case, the property is reappraised, and, beginning in fiscal year 2024-25, allowing the state to annually retain and spend up to \$100 million of excess state revenue, if any, as a voter-approved revenue change to offset reduced property tax revenue and to reimburse local governments for fire protection.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall funding available for counties, school districts, water districts, fire districts, and other districts funded, at least in part, by property taxes shall be impacted by a reduction of \$2.2 billion in property tax revenue by an amendment to the Colorado constitution and a change to the Colorado Revised Statutes concerning a 3% annual limit on property tax increases, and, in connection therewith, creating an exception to the limit if a property's use changes or its square footage increases by more than 10%, in which case, the property is reappraised, and, beginning in fiscal year 2024-25, allowing the state to annually retain and spend up to \$100 million of excess state revenue, if any, as a voter-approved revenue change to offset reduced property tax revenue and to reimburse local governments for fire protection?

Hearing April 5, 2023:

Single subject approved; staff draft amended; titles set.

The Board made a technical correction to the text of the initiative.

The Board determined that the proposed initiative requires the addition of language to the Colorado Constitution; a 55% vote is required to pass.

Board members: Theresa Conley, Kurt Morrison, Ed DeCecco

Hearing adjourned 10:30 A.M.

¹ Unofficially captioned “**Limitation on Property Tax Increases**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.



JARED POLIS
GOVERNOR

136 STATE CAPITOL
DENVER, COLORADO 80203
TEL 303-866-2471
FAX 303-866-2003

July 7, 2021

Colorado House of Representatives
The 73rd General Assembly
First Regular Session
200 E. Colfax Ave.
Denver, CO 80203

Dear Honorable Members of the Colorado House of Representatives:

Today I signed House Bill 21-1321, "Concerning voter transparency requirements to increase information about the fiscal impact of statewide ballot measures that would result in a change in district revenue."

A citizen's right to initiate a measure for the ballot is sacrosanct. In Colorado, this exercise in direct democracy has a long history, dating back to the early 20th Century. Since that time, Coloradans have consistently made consequential policy at the ballot. It's not always a comfortable process for Colorado's entrenched political hierarchies, and indeed, partisans on both sides of the aisle have long lists of examples of laws they don't like that passed at the ballot. But direct democracy is a key feature of Colorado's political framework -- a framework that was in large measure shaped at the ballot by the citizens of this state -- and one that I will always champion and protect as Governor of Colorado.

Colorado has adopted modest common sense reforms to the initiative process over the years. For example, in 2016, voters passed Amendment 71, which established a higher threshold for passage of new constitutional measures. Similarly HB21-1321 modifies the procedures we use to place questions of law before the voters. My goal as governor is to protect direct access to the ballot, which is the purest, most direct expression of citizen democracy in Colorado. I also want to ensure that voters know what they are voting on -- that the ballot language is a fair and accurate description of any proposed ballot measure.

I was not comfortable with all of the changes originally included in HB21-1321, and appreciate that the sponsors scaled the bill back from its original form. I signed the measure for two reasons: 1) it protects Coloradans' access to the ballot; and 2) it makes it simpler for

Exhibit I



JARED POLIS
GOVERNOR

136 STATE CAPITOL
DENVER, COLORADO 80203
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FAX 303-866-2003

Coloradans to understand what they are voting on and what a proposed policy means for them and their families. All tax policy changes have two impacts: how much people pay and how much the government receives to pay for services. This, at a minimum, should be included in the ballot title for any tax policy proposal.

As this bill does not provide contrary guidance on applicability to measures that have already come before the Title Board, I signed this bill today with the understanding that it shall only apply prospectively pursuant to Section 2-4-202, C.R.S. Therefore, this bill will apply only to ballot measures that have *yet to have a title set* by the Title Board, not those that already have a title set.

This bill applies only to measures that increase or reduce state or local tax revenue by a determinable amount. Therefore, this legislation does not apply to measures that seek to slow the rate of increase of revenue because such measures do not necessarily result in a determinable increase or decrease in state or local revenue or funding for a particular program. *Cf. Bickel v. City of Boulder*, 885 P.2d 215, 236-37 (Colo. 1994) (where constitutional language requires a proposed tax increase to include a dollar estimate of the increase, an indeterminate description of the increase does not meet constitutional requirement).

While I am signing this bill today, I am wary of the legislature encroaching too far into the initiative process, and would veto any measure I see as intruding on citizens' right to initiate ballot measures. Likewise, I will look skeptically at legislative reform I view as undermining the express will of the voters.

I appreciate the work of the sponsors to make our ballot clearer and more precise. And whether I agree with you on the substance or not, I appreciate every citizen who undertakes the process of qualifying a measure and advocating on its behalf at the ballot.

Sincerely,

A handwritten signature in black ink that reads "Jared Polis".

Jared Polis
Governor