

<p>Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203</p>	
<p>Original Proceeding Under C.R.S. § 1-40-107(2) Appeal from the Ballot Title Board</p>	<p>▲ COURT USE ONLY ▲</p>
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2015–2016 #143</p> <p>Petitioners: Keith Pearson and Wilson Buckley Croom</p> <p>v.</p> <p>Respondents: Jacob Williams and Frank McCurdy</p> <p>and Title Board: Suzanne Staiert, David Blake, Sharon Eubanks</p>	<p>Supreme Court Case No.: 16SA155</p>
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<p>PETITIONERS’ OPENING BRIEF ON PROPOSED INITIATIVE 2015–2016 #143 (“NEW CIGARETTE AND TOBACCO TAXES”)</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, the undersigned certifies that:

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

It contains 4,622 words.

The brief complies with C.A.R. 28(a)(7)(A).

For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record, not to an entire document, where the issue was raised and ruled on.

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/ Timothy R. Macdonald

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Attorney for Petitioners

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether the Title Board failed to set a valid title, ballot title, and submission clause for Proposed Initiative 143 because the Final Title (1) omits critical context necessary for voters to understand the magnitude of the proposed tax increase; (2) fails to disclose that the initiative limits the General Assembly's spending authority; (3) fails to specify how the proposed tax increase would be allocated among various state programs; and (4) fails to inform voters that revenue generated by the proposed tax increase is excluded from TABOR's fiscal year spending limits.

STATEMENT OF THE CASE

A. Nature of Proposed Initiative 143

If adopted, Proposed Initiative 143 would amend Article X, Section 21 of the Colorado Constitution in five material respects.

First, Initiative 143 would increase state taxes on the sale of cigarettes by wholesalers by more than 200%—from \$0.84 per pack (of 20 cigarettes) to \$2.59 per pack. Final Draft, Initiative #143, § (10)(b)(I) (Appendix to Petitioners' Opening Brief ("App.") at 1a).

Second, Initiative 143 would impose an additional statewide tax of 22% of the manufacturer's list price on the sale, use, consumption, handling, or

distribution of tobacco products by distributors. *Id.* § (10)(b)(II) (App. 1a). This proposed tax would increase the current tax rate by more than half—from 40% of the manufacturer’s list price to 62%.

Third, Initiative 143 removes the General Assembly’s power to alter the distribution of tax revenue for certain existing and new programs established by Initiative 143. *Id.* §§ (10)(c), (10)(g) (App. 1a, 3a).

Fourth, Initiative 143 mandates the distribution of the proposed tax proceeds as follows:

- 18% of revenue collected (up to \$36 million) will fund existing programs set forth in Article 10, Section 21(5) of the Colorado Constitution, *id.* § (10)(d)(I) (App. 2a);
- 16% for tobacco education, prevention, and cessation, *id.* § (10)(d)(II)(A) (App. 2a);
- 27% for tobacco-related research, *id.* § (10)(d)(II)(B) (App. 2a);
- 14% for veterans’ programs, *id.* § (10)(d)(II)(C) (App. 2a);
- 10% for child and adolescent behavioral health, *id.* § (10)(d)(II)(D) (App. 2a);
- 10% for construction, improvement, and new technologies, *id.* § (10)(d)(II)(E) (App. 2a); and
- 5% for educational loan repayment for health professionals serving rural and underserved areas in Colorado, *id.* § (10)(d)(II)(F) (App. 3a).

Fifth, Initiative 143 exempts all new revenue raised thereunder from the fiscal year spending limitations of the Taxpayer's Bill of Rights (TABOR), as set forth in Article X, Section 20 of the Colorado Constitution. *Id.* § (10)(f) (App. 3a).

If approved by the voters, Initiative 143 would become effective January 1, 2017. *Id.* § (10)(i) (App. 3a).

B. Nature of the Case, Course of Proceedings, and Disposition Below

On March 25, 2016, Proponents Jacob Williams and Frank McCurdy filed Proposed Initiative 2015–2016 #143 with the Office of Legislative Council.

A review and comment meeting was held under C.R.S. § 1-40-105(1) on April 8, 2016. Later that day, Proponents submitted the original, amended, and final versions of the Initiative to the Secretary of State for title setting. On April 20, 2016, the Title Board set the Initiative's title.

On April 27, 2016, Petitioners Keith Pearson and Wilson Buckley Croom timely filed a motion for rehearing on the basis that the title set by the Title Board was incomplete, unfair, and misleading. The Title Board held a rehearing on April 28, 2016, at which time the Title Board granted Petitioners' motion in part and denied it in part. The Final Title for Initiative 143 states:

State taxes shall be increased \$315.7 million annually by amendment to the Colorado Constitution increasing tobacco taxes, and, in connection therewith, beginning January 1, 2017, increasing taxes on cigarettes by 8.75 cents per cigarette (\$1.75 per pack of 20 cigarettes)

and on other tobacco products by 22 percent of the manufacturer's list price; and allocating specified percentages of the new tobacco tax revenue to health-related programs and tobacco education, prevention, and cessation programs currently funded by existing constitutional tobacco taxes; and also allocating new revenue for tobacco-related health research, veterans' programs, child and adolescent behavioral health, construction and technology improvements for qualified health providers, educational loan repayment for health professionals in rural and underserved areas, and health professional training tracks.

Because the Final Title is misleading and does not accurately reflect all of the central features of Initiative 143, Petitioners timely submitted the matter to this Court for review, pursuant to C.R.S. § 1-40-107(2).

SUMMARY OF ARGUMENT

When setting the title for Initiative 143, the Title Board erred in four respects, resulting in a Final Title that is misleading and does not accurately reflect critical features of Initiative 143.

1. Initiative 143 proposes to enact (and constitutionalize) the largest tax increase on cigarettes and tobacco products in Colorado history. The title, however, fails to apprise voters of the extent to which Initiative 143 would dramatically increase existing tax rates. Omitting this critical context prevents voters from understanding the magnitude of the proposed constitutional amendment—a factor this Court has recognized is significant to voters.

2. The title fails to disclose that Initiative 143 curtails the General Assembly’s budgetary power—which this Court has described as “plenary” and “absolute”—by prohibiting the legislature from reducing or reallocating current funding levels for numerous state programs.

3. The title fails to disclose Initiative 143’s mandatory funding allocations of hundreds of millions of dollars in tax revenues to specific state programs. Rather than leave voters to speculate (perhaps wrongly) about the allocation of over \$315 million in revenue, the title must disclose specific allocation percentages to avoid potential voter confusion.

4. The title fails to inform voters that the revenue spending mandated in Initiative 143 is exempt from the fiscal year spending limits imposed by TABOR. Because it is customary for ballot titles to disclose exemptions from TABOR’s spending limits, this omission in the Final Title of Initiative 143 is likely to mislead voters.

Each of these material omissions makes the title set by the Title Board incomplete and misleading. The Board’s refusal to disclose these central features in the ballot title of Initiative 143—some of which even the *proponents* of Initiative 143 sought to include in the title—is reversible error.

STANDARD OF REVIEW AND PRESERVATION OF THE ISSUE BELOW

The Title Board is required by statute to set a title that fully, fairly, and accurately informs voters of the central elements of the proposed measure, to enable them to make a considered and knowledgeable decision about its merits. *See* C.R.S. § 1-40-106(3)(b) (requiring titles to “unambiguously state the principle of the provision sought to be added” and “correctly and fairly express the true intent and meaning” of the initiative, while prohibiting titles that are “misleading” or that could cause “public confusion”). “The aim” of the title process is to “enabl[e] informed voter choice.” *In re Title, Ballot Title & Submission Clause, & Summary for 1997-98 #62*, 961 P.2d 1077, 1083 (Colo. 1998). While the Board is entitled to exercise discretion in setting a title, this Court has the duty to ensure that the title, ballot title, and submission clause “fairly reflect the proposed initiative so that petition signers and voters will not be misled.” *In re Title, Ballot Title & Submission Clause, & Summary for 1997-1998 #105*, 961 P.2d 1092, 1096 (Colo. 1998) (internal quotation marks and citation omitted).

The title must set forth “the principal features of what is being proposed” because “a material omission can create misleading titles.” *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 #258(A)*, 4 P.3d 1094, 1098 (Colo. 2000). “Eliminating a key feature of the initiative from the titles is a fatal

defect,” *id.* at 1099, and this Court will reverse the Board if the title and submission clause “contain a material and significant omission,” *In re 1997-98 #62*, 961 P.2d at 1082, or if the title fails “to summarize the central features of a proposed initiative,” *In re Title, Ballot Title & Submission Clause for 2015-2016 #73*, 2016 CO 24, ¶ 23.

Petitioners raised and preserved their challenge to the title of Initiative 143 for its failure to comply with C.R.S. § 1-40-106(3). Motion for Rehearing (App. 4a). The Title Board considered and denied Petitioners’ motion for rehearing with respect to the issues raised in this appeal.

ARGUMENT

I. THE TITLE BOARD FAILED TO SET AN ACCURATE TITLE BY OMITTING MATERIAL FEATURES OF THE PROPOSED MEASURE

A. The title is unfair and misleading because it does not disclose the existing or total proposed tax rates, thus depriving voters of context necessary to understand the proposed changes.

The title fails to apprise voters of the extent to which Initiative 143 would amend the current tax on cigarettes and other tobacco products because it does not specify the existing or total proposed tax rates that would be imposed if the voters were to approve the initiative. This omission prevents voters from understanding the magnitude of the proposed constitutional amendment. Because understanding

how the “proposed changes [would] materially alter current law . . . might well be of significance to voters,” the Title Board erred in excluding the current tax rates from the Final Title. *In re 2015-2016 #73*, 2016 CO 24, ¶ 31.

As this Court recently held in *In re 2015-2016 #73*, 2016 CO 24, ¶ 28, if a proposed measure significantly changes current law, the title must sufficiently “alert voters” of the extent of that change. Amendment 73 purported to amend the procedures for conducting a recall election. This Court struck the title because, among other reasons, it “[did] not advise voters that the number of signatures required to trigger a recall election would drop from 25% of the vote cast at the last preceding election . . . to only 5% of active registered electors in the recall area.” *Id.* at ¶ 29. The dramatic change in existing law, the Court held, “might well be of significance to voters” and must be disclosed in the title. *Id.* at ¶ 31.

The same is true here. The proposed tax increase in Initiative 143 would constitute the largest cigarette tax increase in Colorado history. The cigarette sales tax would increase more than 200%, while the use tax on other tobacco products would increase by over 50%. If enacted, the excise tax on non-cigarette tobacco products would increase to 62% of the manufacturer’s list price. (For comparison,

the excise tax on retail marijuana is 15%.¹) Collectively, the annual state tax revenue on the sale and use of cigarettes and tobacco products would increase from \$197 million to \$512.7 million under Initiative 143.²

Understanding the total tax rate and the magnitude of the proposed tax increases might well influence voters either to support or to oppose Initiative 143, depending on how the voter feels about incremental tax changes, the size of government, or the fiscal impact on tobacco consumers. As currently drafted, however, the title states only that taxes will increase by \$1.75 per pack of 20 cigarettes and by 22% of the manufacturer's list price for other tobacco products. But from what baseline and to what total amount? Voters may want to know whether the proposed tax reflects a small increase on an already large tax or, as here, a dramatic increase on existing rates. The title thus should state the existing tax rates, the total tax imposed under the initiative, or the percentage increases, any one of which would provide necessary context and avoid the possibility of voter surprise or confusion about the effect of the proposed measure.

¹ Colo. Dep't of Revenue, Excise 23, Excise Tax on Retail Marijuana (Mar. 2016), at 1, <https://www.colorado.gov/pacific/sites/default/files/Excise23.pdf>

² Colo. Dep't of Revenue, Annual Report 2015, at 46, <http://tinyurl.com/ColoradoRevenueReport2015>.

Most Colorado voters lack firsthand knowledge of how cigarettes and other tobacco products are taxed. According to the Centers for Disease Control and Prevention, only 15.7% of adult Coloradans are smokers.³ Even among those who smoke, it is unreasonable to assume that all such individuals know how much of a cigarette’s purchase price is attributable to state taxes. Current cigarette tax rates vary widely among jurisdictions across the United States—ranging from \$0.17 to \$6.16 per pack.⁴ Given these disparities, Colorado voters would be better equipped to make an informed decision about the true effect of Initiative 143 if the title were to state the current tax rate or the total proposed tax rate as context for the proposed tax increase.

When reviewing or setting titles for similar initiatives, this Court, the Title Board, and the General Assembly have long recognized that context matters in understanding the effect of a proposed measure. This Court’s decision to strike the title for Amendment 73 is simply the most recent application of this principle. For example, in 1992, the Title Board set a title explaining that the proposed measure would “reduce the allowable tax on the proceeds of limited gaming from 40% to

³ Centers for Disease Control and Prevention, Colorado Highlights, Tobacco Use, <http://tinyurl.com/h83duk8>.

⁴ Chicago has the highest combined tax rate, <https://www.tobaccofreekids.org/research/factsheets/pdf/0267.pdf>, while Missouri has the lowest, <http://www.taxadmin.org/assets/docs/Research/Rates/cigarette.pdf>.

10%.” *In re Title, Ballot Title & Submission Clause Approved Sept. 4, 1991*, 826 P.2d 1241, 1243 (Colo. 1992). Similarly, this Court approved a title on the sale of alcoholic beverages that recited existing law, finding “nothing improper in the Board’s providing information of a significant effect of existing law on the initiative.” *In re Title, Ballot Title & Submission Clause, & Summary Pertaining to the Sale of Table Wine in Grocery Stores Initiative Adopted on Mar. 24, 1982*, 646 P.2d 916, 921 (Colo. 1982). And the title for Proposition 103, as set by the General Assembly in 2011, explicitly stated that the measure would “increase[e] the rate of the state income tax imposed on all taxpayers from 4.63% to 5% . . . [and] increase[e] the rate of the state sales and use tax from 2.9% to 3%,” thereby providing voters with the necessary context to understand the scope of the proposed tax increase. *Ballot Title to Proposition 103* (App. 7a).

As these examples illustrate, it is often necessary to include “language which explains to the signers of a petition and the voter how the initiative fits in the context of existing law,” even though the specific language is not found in the text of the proposed statute. *In re Sale of Table Wine in Grocery Stores Initiative*, 646 P.2d at 921.

The Title Board was closely divided on whether to include the current tax rate on tobacco products in the Final Title. One board member was “very

sympathetic” to Petitioners’ request, explaining, “I do think voters care about the context for the amount of the increase, if for no other reason than they want to see a high tax. . . . So I actually think even if you’re not a cigarette smoker, you have an interest there, and that context is important.” Reporter’s Transcript of Proceedings before Title Board, 31:20–32:4 (App. 16a). Ultimately, the Board voted 2-1 to omit reference to the existing tax rates. *Id.* at 53:22–54:8 (App. 22a). The Board’s error resulted in an unfair and incomplete title for Initiative 143, and this Court should reverse.

B. The title fails to apprise voters of three central features of Initiative 143.

In addition to the Title Board’s error in failing to contextualize the scope of the proposed tax increases, the Final Title fails to mention three central features of Initiative 143. For the reasons set forth below, this Court should strike the title as incomplete and misleading.

1. Initiative 143 curtails the General Assembly’s plenary power to alter existing appropriations to state programs.

Initiative 143 radically restricts the General Assembly’s spending power by repealing its ability to reduce the January 1, 2016 funding levels for numerous state programs. Final Draft, Initiative #143, § (10)(g) (mandating that new tax revenues “shall not be used to supplant those [existing] appropriated revenues”) (App. 3a).

This limitation on a fundamental legislative power would constitute a profound change in law and must be disclosed in the ballot title.

“[T]he General Assembly holds plenary power to appropriate state funds, subject only to constitutional limitations.” *In re Interrogatories Submitted by the Gen. Assembly on House Bill 04-1098*, 88 P.3d 1196, 1200 (Colo. 2004). For over a century, this Court has characterized the legislature’s appropriations power as “absolute.” *Colo. Gen. Assembly v. Lamm*, 700 P.2d 508, 519 (Colo. 1985) (citing *MacManus v. Love*, 179 Colo. 218, 221, 499 P.2d 609, 610 (1972); *In re Continuing Appropriations*, 18 Colo. 192, 32 P. 272 (1893)). The spending power is enshrined in our state’s constitutional structure, *see* Colo. Const. art. V, § 33, which “vests the General Assembly with authority to determine the amount of state funds to be spent for particular purposes.” *Lamm*, 700 P.2d at 519 (internal quotation marks and citation omitted); *see also* C.R.S. §§ 24-75-402(1)(c), 24-77-106(1)(c), 43-1-112.5(1)(c) (referring to the General Assembly’s “plenary power of appropriation”).

Initiative 143 proposes to repeal this legislative power in part, by permanently freezing the funding levels for numerous state programs, *see* Final Draft, Initiative #143, § (10)(g) (App. 3a), and by preventing the General Assembly from reducing the current distribution of revenues derived from existing

taxes on cigarettes and tobacco products, *id.* § (10)(c) (App. 1a). Under Initiative 143, the General Assembly thus would have no say, both now and in the future, about how best to allocate hundreds of millions of dollars—perhaps billions—in state revenue.

The Final Title, however, fails to reflect this restraint on the General Assembly’s power to appropriate funds, as well as a related provision that strips the legislature of its ability to reduce existing taxes. These omissions stand in stark contrast to the title of the most recent Colorado ballot initiative involving tobacco taxes—Amendment 35 in 2004—which included *multiple* clauses noting identical limitations on the General Assembly’s powers. The title for Amendment 35 explained “that the appropriations of additional tobacco tax revenues shall be in addition to and not substituted for appropriations for such programs on January 1, 2005” and disclosed that the measure “prohibit[ed] the repeal or reduction of existing taxes imposed on cigarettes and other tobacco products.” Ballot Title to Amendment 35 (2004) (App. 24a). Similarly, the ballot title for Amendment 23 in 2000, which increased funding for public education, told voters that “moneys appropriated from the state education fund *shall not be used to supplant* the level of general fund appropriations existing on the effective date of the measure for total program education and categorical program funding.” Ballot Title to

Amendment 23 (2000) (emphasis added) (App. 25a). If these limitations on the General Assembly's appropriations power were deemed material to voters in 2000 and 2004, then they remain material in 2016.

Notably, the proponents of Initiative 143 did not object during the rehearing before the Title Board to Petitioners' request to include the language from Amendment 35 in the Final Title of Initiative 143. In fact, proponents themselves "proposed that kind of language." Reporter's Transcript at 28:3 (App. 15a). Notwithstanding the agreement among the interested parties that the Final Title should disclose these limitations on the General Assembly's powers, the Title Board declined to modify the title, thereby omitting a central feature of Initiative 143.

2. Initiative 143 mandates specific allocations of new revenue.

The Final Title also fails to disclose the required funding allocations of revenue set forth in Initiative 143. Where, as here, a title "fail[s] to convey to voters the initiative's likely impact on state spending on state programs . . . [it] may not be presented to the voters as currently written." *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 37*, 977 P.2d 845, 846 (Colo. 1999).

Initiative 143 creates an inflexible spending mandate of over \$315 million in taxpayer revenue. The manner in which those funds will be allocated is likely significant to voters in deciding whether to vote “yes” or “no” on Initiative 143. Nevertheless, the Final Title provides only that the revenue will be allocated based on “specified percentages”—a description that affords insufficient guidance to voters since percentages could range from 1% (\$3 million) to 99% (\$312 million) for each program.

Titles for similar initiatives have included specific funding allocations. For example, the title for Amendment 50 in 2008 provided that “78% of the remaining gaming tax revenue [would be allocated] for student financial aid and classroom instruction at community colleges . . . and 22% for local gaming impacts in Gilpin and Teller Counties and the cities of Central City, Black Hawk, and Cripple Creek” Ballot Title to Amendment 50 (2008) (App. 27a). The title for Amendment 58 in 2008 likewise provided that:

tax revenues [would be] credited as follows: (A) 22% to the severance tax trust fund, (B) 22% to the local government severance tax fund, and (C) 56% to a new severance tax stabilization trust fund, of which 60% is used to fund scholarships for Colorado residents attending state colleges and universities, 15% to fund the preservation of native wildlife habitat, 10% to fund renewable energy and energy efficiency programs, 10% to fund transportation projects in counties and municipalities impacted by the severance of oil and gas, and 5% to fund community drinking water and wastewater treatment grants.

Ballot Title to Amendment 58 (App. 28a). Specificity in this context enhances voter understanding of the proposed initiative and avoids potential voter confusion.

Regardless whether voters are inclined to support the proposed tax increases in Initiative 143, their decision to support the measure could turn on *how much* of the new revenue will be allocated to various programs and whether, in the voters' opinion, the initiative strikes an appropriate balance. This information is particularly important because the General Assembly will not have the power to modify these specific funding percentages in the future.

Proponents did not object to including the exact funding percentages, “as opposed to using ‘specified percentages,’” in the title. Reporter’s Transcript at 24:11–15 (App. 14a). The Title Board nevertheless declined Petitioners’ request to modify the Final Title because at least one member believed (wrongly) that including the fixed percentages would “add about eight lines” to the title. *Id.* at 33:22 (App. 17a). The insertion of specific percentages, however, could be accomplished by adding only seven *words* to the present title (additions are noted by underline):

allocating ~~specified~~ the following percentages of the new tobacco tax revenue to health-related programs and tobacco education, prevention, and cessation programs currently funded by existing constitutional tobacco taxes (34%); and also allocating new revenue for tobacco-related health research (27%), veterans’ programs (14%), child and adolescent behavioral health (10%), construction and technology

improvements for qualified health providers (10%), educational loan repayment for health professionals in rural and underserved areas, and health professional training tracks (5%)

3. Initiative 143 exempts new allocations from TABOR's spending limitations.

Lastly, the Final Title fails to inform voters that the revenue spending mandated in Initiative 143 is exempt from the fiscal year spending limits imposed by TABOR. *See* Colo. Const. art. X, § 20(7). This material omission makes the title incomplete and misleading to voters.

The omission renders the title incomplete because “voter approval of . . . governmental retention and spending of revenues which might otherwise be subject to refund under [TABOR], is a prerogative of the electorate.” *In re Title, Ballot Title & Submission Clause, & Summary for 1997-98 #30, 959 P.2d 822, 827* (Colo. 1998). The proponents of Initiative 143 intend for the new measure to expand government spending by hundreds of millions of dollars in taxpayer revenue, and this central feature must be disclosed to the voters.

The omission also renders the title misleading because voters could very well assume that the new spending measures are *not* exempt from TABOR. Indeed, that reasonable assumption is *mandated* in our state constitution: “At the time voters approved [TABOR], there was an expectation that the provisions of that initiative would defer to citizen approval or disapproval [of] certain proposed tax,

revenue, and spending measures that varied from [TABOR] limitations.” *Id.*
(internal quotation marks and citation omitted).

Consistent with that understanding, ballot titles often disclose exemptions from TABOR’s spending limitations, proving that such matters are material to informed voter choice. Notably, the 2004 ballot title for the constitutional increase on tobacco taxes in Amendment 35 specifically referenced TABOR’s spending limits. *See* Ballot Title to Amendment 35 (2004) (“excluding all additional tobacco tax revenues from fiscal year spending for purposes of section 20 of article X of the Colorado constitution; and exempting appropriations of additional tobacco tax revenues from the statutory limitation on general fund appropriations growth or any other existing spending limitation”) (App. 24a); *see also, e.g., In re Title, Ballot Title & Submission Clause, & Summary for a Petition on Sch. Fin.*, 875 P.2d 207, 217 (Colo. 1994) (“to provide that state and local revenue and spending limits do not apply to school finance moneys required by the measure”); Ballot Title to Amendment 23 (2000) (“exempting appropriations from the fund and expenditures of said appropriations from constitutional and statutory limitations”) (App. 25a); Ballot Title to Amendment 26 (2001) (“exempting the authority from constitutional revenue and spending limitations”) (App. 29a); Ballot Title to Amendment 51 (2008) (“permitting the state to retain and spend all revenues from

the new tax, notwithstanding the state spending limit”) (App. 30a); Ballot Title to Amendment 58 (2008) (“exempting revenues from the tax and related investment income from state and local government spending limits”) (App. 28a).

Disclosing exemptions to TABOR’s spending limits has become so customary in ballot titles that its omission in the Final Title of Initiative 143 is likely to mislead voters. A voter could reasonably conclude that the new \$315 million in government spending required by Initiative 143 would necessarily *decrease* existing government expenditures in other areas, such as prisons, infrastructure, or other public services. That is neither the intent nor the effect of Initiative 143. The fact that a voter could reasonably interpret the title to mandate such an outcome makes the Final Title incomplete, confusing, and misleading.

At the rehearing, the Title Board rejected Petitioners’ request to reference Initiative 143’s exemption from TABOR’s fiscal year spending limitations on the ground that the Final Title complied with TABOR’s *revenue* restrictions. Reporter’s Transcript at 20:12–18, 30:19–31:6 (App. 13a, 16a). That reasoning conflates two independent aspects of TABOR—one that governs revenue generation and one that governs spending limits. As this Court has explained, TABOR “places revenue limitations and spending limitations on state and local governments. *These provisions operate separately and independently.*” 1997-98

#30, 959 P.2d at 826 (emphasis added; internal citations omitted). Thus, even if voters are aware that Initiative 143 proposes to raise tax revenue, there is no corresponding expectation that the amendment would necessarily expand the government's spending power, as well.

Proponents did not object at the rehearing to inserting a reference to TABOR's spending limits in the title. Reporter's Transcript at 30:14–16 (App. 16a). The Title Board, however, yet again denied Petitioners' proposed language that the new revenue would be exempt from TABOR's spending limits. *See In re Proposed Initiative Amendment to Article XXIV of Constitution*, 117 Colo. 363, 365, 187 P.2d 930, 931 (1947) (Title Board erred by not including in the title language to which the parties agreed); *In re 2015-2016 #73*, 2016 CO 24, ¶ 2 (same).

PRAYER FOR RELIEF

Petitioners respectfully request that this Court find that the title, ballot title, and submission clause set for the Proposed Initiative 2015–2016 #143 are inaccurate, incomplete, unfair, and misleading and fail to reflect the true intent and meaning of the proposed measure. Petitioners ask this Court to remand the matter to the Title Board with instructions to redraft the title to account for the objections above.

Respectfully submitted this 19th day of May, 2016.

s/ Timothy R. Macdonald

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*Attorneys for Petitioners Keith
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CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2016, a true and correct copy of the foregoing was served on the following via ICCES as follows:

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<p>Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203</p>	<p style="text-align: right;">DATE FILED: May 19, 2016 5:40 PM</p>
<p>Original Proceeding Under C.R.S. § 1-40-107(2) Appeal from the Ballot Title Board</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2015–2016 #143</p> <p>Petitioners: Keith Pearson and Wilson Buckley Croom v. Respondents: Jacob Williams and Frank McCurdy</p> <p>and Title Board: Suzanne Staiert, David Blake, Sharon Eubanks</p>	<p>Supreme Court Case No.:</p> <p>16SA155</p>
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<p style="text-align: center;">APPENDIX TO PETITIONERS' OPENING BRIEF</p>	

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RECEIVED

S. WARD

APR 08 2015

2:50 P.M.

FINAL DRAFT #143

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

Colorado Secretary of State

Section 1. In the constitution of the state of Colorado, section 21 of article X, **add** (10) as follows:

Section 21. Tobacco Taxes for Health Related Purposes. (10) (a) THE PEOPLE OF COLORADO HEREBY FURTHER FIND THAT:

- (I) TOBACCO PRODUCT SALES IN THE STATE OF COLORADO HAVE INCREASED;
- (II) COLORADO'S NEED TO DETER CHILDREN AND YOUNG ADULTS FROM STARTING SMOKING IS AS CRITICAL AS EVER;
- (III) COLORADO NOW SPENDS LESS THAN HALF OF THE CENTERS FOR DISEASE CONTROL RECOMMENDED LEVEL ON TOBACCO EDUCATION AND CESSATION PROGRAMS;
- (IV) SMOKING ADVERSELY AFFECTS THE WELFARE OF COLORADANS DIRECTLY AND INDIRECTLY AND, WITHOUT FURTHER ACTION, WILL DO SO NOW AND IN THE FUTURE; AND
- (V) IT IS IN THE COLLECTIVE INTEREST OF ALL COLORADANS TO RAISE TOBACCO TAXES AND COMPETITIVELY AWARD TOBACCO TAX REVENUES TO ENHANCE THE PHYSICAL AND BEHAVIORAL HEALTH OF OUR POPULATION, TO FUND RESEARCH TO PREVENT AND CURE DISEASES SUCH AS CANCER, EMPHYSEMA, AND ALZHEIMER'S, AND TO PROVIDE PROGRAMS THAT WILL ENHANCE THE WELL-BEING OF VETERANS, AS WELL AS THOSE WHO LIVE IN RURAL AND UNDERSERVED AREAS OF OUR STATE.

(b) THERE ARE HEREBY IMPOSED THE FOLLOWING ADDITIONAL CIGARETTE AND TOBACCO TAXES, WHICH SHALL BE IN ADDITION TO THE INCREASED RATES BY SUBSECTION (2) OF THIS SECTION:

- (I) A STATEWIDE CIGARETTE TAX, ON THE SALE OF CIGARETTES BY WHOLESALERS, AT EIGHT AND THREE-QUARTERS CENTS PER CIGARETTE (\$1.75 PER PACK OF TWENTY); AND
- (II) A STATEWIDE TOBACCO PRODUCTS TAX, ON THE SALE, USE, CONSUMPTION, HANDLING, OR DISTRIBUTION OF TOBACCO PRODUCTS BY DISTRIBUTORS, AT TWENTY-TWO PERCENT OF THE MANUFACTURER'S LIST PRICE.

(c) THE CIGARETTE AND TOBACCO TAXES IMPOSED BY THIS SUBSECTION (10) SHALL BE IN ADDITION TO ANY OTHER CIGARETTE AND TOBACCO TAXES EXISTING AS OF THE EFFECTIVE DATE OF THIS SUBSECTION ON THE SALE OR USE OF CIGARETTES BY WHOLESALERS AND ON THE SALE, USE, CONSUMPTION, HANDLING, OR DISTRIBUTION OF TOBACCO PRODUCTS BY DISTRIBUTORS. SUCH EXISTING TAXES AND THEIR DISTRIBUTION SHALL NOT BE REPEALED OR REDUCED BY THE GENERAL ASSEMBLY.

(d) THE REVENUES GENERATED BY OPERATION OF THIS SUBSECTION (10)(b) SHALL BE APPROPRIATED AS FOLLOWS:

(I) EIGHTEEN PERCENT OF THE REVENUES COLLECTED UNDER THIS SUBSECTION, UP TO THIRTY-SIX MILLION DOLLARS ANNUALLY, SHALL BE ALLOCATED UNDER THE FORMULA FOR PROGRAMS SET FORTH IN SUBSECTION (5); PROVIDED, HOWEVER, ANY AMOUNT OVER THIRTY-SIX MILLION DOLLARS THAT WOULD OTHERWISE BE APPROPRIATED FOR THIS PURPOSE, BASED ON THIS EIGHTEEN PERCENT ALLOCATION, SHALL BE DISTRIBUTED PROPORTIONATELY ACCORDING TO THE RELATIVE DISTRIBUTION OF REVENUES PROVIDED BY SUBSECTION (10)(d)(II) (A)-(F).

(II) IN LIGHT OF THE ALLOCATION OF EIGHTEEN PERCENT OF REVENUES COLLECTED UNDER THIS SUBSECTION AS PROVIDED IN SUBSECTION (10)(d)(I), THE REMAINING REVENUES COLLECTED UNDER THIS SUBSECTION (10) SHALL BE APPROPRIATED IN THE FOLLOWING AMOUNTS:

(A) SIXTEEN PERCENT FOR TOBACCO EDUCATION, PREVENTION, AND CESSATION IN THE SAME MANNER AS THE REVENUE PROVIDED BY SUBSECTION (5)(c) OF THIS SECTION.

(B) TWENTY-SEVEN PERCENT FOR TOBACCO-RELATED RESEARCH INTO CARDIOVASCULAR AND PULMONARY DISEASES, CANCER, ALZHEIMER'S DISEASE, BEHAVIORAL HEALTH, MATERNAL HEALTH, AND EARLY CHILDHOOD DEVELOPMENT TO BE ADMINISTERED BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, OR ITS SUCCESSOR AGENCY, WHICH SHALL ESTABLISH FOR THIS PURPOSE GRANT-MAKING GUIDELINES AFTER CONSULTING WITH RESEARCH INSTITUTIONS THAT ARE RECOGNIZED AS AUTHORITIES IN THESE RESEARCH AREAS AND THAT SPECIALIZE IN SUCH RESEARCH. BASED ON SUCH GUIDELINES, GRANTS FROM THESE REVENUES SHALL BE AWARDED FOR IN-STATE RESEARCH BY COLORADO ENTITIES ON THE BASIS OF SCIENTIFIC MERIT AS DETERMINED BY AN OPEN, COMPETITIVE PEER REVIEW PROCESS THAT ASSURES OBJECTIVITY, CONSISTENCY, AND HIGH QUALITY RESEARCH AND ALSO EMPLOYS CONFLICT-OF-INTEREST STANDARDS THAT REPRESENT BEST PRACTICES AS UTILIZED IN THE COMPETITION FOR AND AWARD OF FEDERAL GRANTS IN THIS FIELD.

(C) FOURTEEN PERCENT FOR VETERANS' PROGRAMS TO ASSIST WITH THEIR WELL-BEING, INCLUDING PHYSICAL AND BEHAVIORAL HEALTH, SERVICES TO RURAL VETERANS, HOMELESSNESS PREVENTION, AND EMPLOYMENT TRANSITION SERVICES THROUGH PROGRAMS TO BE ADMINISTERED BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, OR ITS SUCCESSOR AGENCY. THE DEPARTMENT SHALL CONSULT WITH, AND CONSIDER THE EXPERTISE AND RECOMMENDATIONS OF NONPROFIT VETERANS SERVICE ORGANIZATIONS TO DETERMINE SERVICE PRIORITIES AND DEVELOP THE GRANT-MAKING PROCESS.

(D) TEN PERCENT FOR CHILD AND ADOLESCENT BEHAVIORAL HEALTH INCLUDING EVIDENCE-BASED PREVENTION, EARLY INTERVENTION, AND TREATMENT PROGRAMS TO BE ADMINISTERED BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, OR ITS SUCCESSOR AGENCY, THROUGH A GRANT-MAKING PROCESS.

(E) TEN PERCENT FOR CONSTRUCTION, IMPROVEMENT, AND NEW TECHNOLOGIES FOR ANY

QUALIFIED PROVIDER, AS DEFINED IN SECTION 25.5-3-301, COLORADO REVISED STATUTES, OR ANY SUCCESSOR ACT, THAT MEETS EITHER OF THE FOLLOWING CRITERIA: IS A COMMUNITY HEALTH CENTER AS DEFINED IN SECTION 330 OF THE PUBLIC HEALTH SERVICE ACT OR ANY SUCCESSOR ACT; OR AT LEAST FIFTY PERCENT OF THE PATIENTS SERVED BY THE QUALIFIED PROVIDER ARE UNINSURED OR MEDICALLY INDIGENT AS DEFINED IN THE COLORADO MEDICAL ASSISTANCE ACT OR ANY SUCCESSOR ACT, OR ARE ENROLLED IN THE CHILDREN'S BASIC HEALTH PLAN OR THE COLORADO MEDICAL ASSISTANCE PROGRAM OR SUCCESSOR PROGRAMS.

SUCH REVENUES SHALL BE APPROPRIATED TO THE COLORADO DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, OR ITS SUCCESSOR AGENCY, FOR THE PURPOSE OF FUNDING COLORADO HEALTH SAFETY NET INFRASTRUCTURE IMPROVEMENTS, INCLUDING ALTERATION AND RENOVATION, CONSTRUCTION, EQUIPMENT-ONLY PURCHASES, AND HEALTH INFORMATION TECHNOLOGY-RELATED HARDWARE AND SOFTWARE.

(F) FIVE PERCENT FOR EDUCATIONAL LOAN REPAYMENT FOR HEALTH PROFESSIONALS WHO WORK IN RURAL AND UNDERSERVED AREAS OF THE STATE THROUGH THE COLORADO HEALTH SERVICES CORPS, OR SUCCESSOR PROGRAM, AND PROFESSIONAL TRAINING TRACKS FOR PHYSICIANS AT TEACHING HEALTH CENTERS, DENTISTS, PEDIATRIC RESIDENCIES, PEDIATRIC PSYCHOLOGY FELLOWSHIPS, AND COMMUNITY DENTAL HEALTH COORDINATORS THROUGH PROGRAMS TO BE ADMINISTERED BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, OR ITS SUCCESSOR AGENCY.

(e) THE LEGISLATIVE RESEARCH OFFICES OF THE GENERAL ASSEMBLY SHALL ANNUALLY PUBLISH ON AN EASILY IDENTIFIED PORTION OF THE GENERAL ASSEMBLY'S WEBSITE THE NAMES OF ALL PROGRAMS FUNDED UNDER THIS SUBSECTION (10) FOR THE PREVIOUS FISCAL YEAR, THE AMOUNTS APPROPRIATED FROM THE TAXES GENERATED BY THIS SUBSECTION (10) FOR SUCH PROGRAMS, AND THE PURPOSES OF THE EXPENDITURES.

(f) ALL REVENUES RECEIVED BY OPERATION OF THIS SUBSECTION (10) SHALL BE EXCLUDED FROM FISCAL YEAR SPENDING, AS THAT TERM IS DEFINED IN SECTION 20 OF ARTICLE X OF THIS CONSTITUTION, AND THE CORRESPONDING SPENDING LIMITS UPON STATE GOVERNMENT AND ALL LOCAL GOVERNMENTS RECEIVING SUCH REVENUES.

(g) REVENUES APPROPRIATED PURSUANT TO PARAGRAPHS (10)(d)(II) (B)-(F) OF SUBSECTION (10) SHALL BE USED TO SUPPLEMENT REVENUES THAT ARE APPROPRIATED BY THE GENERAL ASSEMBLY AS OF JANUARY 1, 2016, AND SHALL NOT BE USED TO SUPPLANT THOSE APPROPRIATED REVENUES.

(h) THE GENERAL ASSEMBLY MAY ENACT SUCH LEGISLATION AS WILL FACILITATE IMPLEMENTATION OF THIS INITIATIVE.

(i) THIS SUBSECTION (10) IS EFFECTIVE JANUARY 1, 2017.

RECEIVED

APR 27 2016

S. WARD
12:07 P.M.

Colorado Secretary of State

BEFORE COLORADO STATE TITLE SETTING BOARD

In re Ballot Title and Submission Clause for 2015-2016 Initiative #143 ("New Cigarette and Tobacco Taxes")

KEITH PEARSON and WILSON BUCKLEY CROOM, Objectors.

MOTION FOR REHEARING

Pursuant to C.R.S. § 1-40-107, Objectors, Keith Pearson and Wilson Buckley Croom, registered electors of the State of Colorado, through their legal counsel, Lewis Roca Rothgerber Christie LLP, submit this Motion for Rehearing of the Title Board's April 21, 2016 decision to set the title of 2015-2016 Initiative #143 (the "Initiative"), and state:

I. The Title and Submission Clause Do Not Fairly Express the True Meaning and Intent of the Proposed State Law.

The title fails to adequately reflect the central features of the Initiative and is unfair, misleading, and fails to fairly express the true meaning and intent of the proposed constitutional amendment as follows:

1) The title fails to provide context to the voters of the magnitude of the proposed tax increases by failing to reference the amount of the existing tax on cigarettes and other tobacco products and/or the percentage increase from the current tax rate.

2) Reference to the proposed tax increase per cigarette, as opposed to per pack, is misleading because consumers cannot purchase single cigarettes, but instead purchase them in packs of 20 and should be informed of the proposed tax increase on a pack of cigarettes.

3) The title fails to reflect that the measure would take away the General Assembly's power to repeal or reduce taxes.

4) The title must reflect that the measure takes away future discretion from the General Assembly to reduce existing funding, from sources other than this measure, for the same programs designated as new beneficiaries of tobacco tax revenues under the measure.

5) The title must reflect that the Colorado Department of Health Care Policy and Financing is given broad discretionary grant-making authority to distribute the funds appropriated under the measure.

6) The use of the phrase "health construction and technology improvements" without more detail is confusing; the title should state that the measure does not specify what type of construction or improvements will be funded by the tobacco tax revenues.

7) The title should reflect that tax revenues must be appropriated to fund professional training tracks for health and dental professionals.

8) The title fails to indicate the percentage of funding the initiative devotes to each budgetary program noted in the Initiative.

9) The title fails to indicate what budgetary programs created by the Initiative are new programs and which are existing programs.

10) The title fails to inform the voters that the additional tobacco tax revenues are being exempted from TABOR's fiscal year spending limits

WHEREFORE, Objectors respectfully request that the Title Board set Initiative 143 for rehearing pursuant to C.R.S. § 1-40-107(1).

DATED: April 27, 2016.

s/Thomas M. Rogers III

Thomas M. Rogers III

Hermine Kallman

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CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2016, a true and correct copy of this **MOTION FOR REHEARING** was served on proponents via email and U.S. Mail as follows:

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Proponents

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Attorney for Proponents

s/Jonelle Martinez

TITLE AND TEXT

The ballot title below is a summary drafted by the professional staff of the offices of the Secretary of State, the Attorney General, and the legal staff for the General Assembly for ballot purposes only. The ballot title will not appear in the Colorado Revised Statutes. The text of the measure that will appear in the Colorado Revised Statutes below was drafted by the proponents of the initiative. The initiated measure is included on the ballot as a proposed change to current law because the proponents gathered the required amount of petition signatures.

Proposition 103
Temporary Tax Increase for Public Education
(Statutory Amendment)

Ballot Title: SHALL STATE TAXES BE INCREASED \$536.1 MILLION ANNUALLY IN THE FIRST FULL FISCAL YEAR AND BY SUCH AMOUNTS AS ARE RAISED ANNUALLY THEREAFTER BY AMENDMENTS TO THE COLORADO REVISED STATUTES CONCERNING A TEMPORARY INCREASE IN CERTAIN STATE TAXES FOR ADDITIONAL PUBLIC EDUCATION FUNDING, AND, IN CONNECTION THEREWITH, INCREASING THE RATE OF THE STATE INCOME TAX IMPOSED ON ALL TAXPAYERS FROM 4.63% TO 5% FOR THE 2012 THROUGH 2016 INCOME TAX YEARS; INCREASING THE RATE OF THE STATE SALES AND USE TAX FROM 2.9% TO 3% FOR A PERIOD OF FIVE YEARS COMMENCING ON JANUARY 1, 2012; REQUIRING THAT THE ADDITIONAL REVENUES RESULTING FROM THESE INCREASED TAX RATES BE SPENT ONLY TO FUND PUBLIC EDUCATION FROM PRESCHOOL THROUGH TWELFTH GRADE AND PUBLIC POSTSECONDARY EDUCATION; SPECIFYING THAT THE APPROPRIATION OF THE ADDITIONAL TAX REVENUES BE IN ADDITION TO AND NOT SUBSTITUTED FOR MONEYS OTHERWISE APPROPRIATED FOR PUBLIC EDUCATION FROM PRESCHOOL THROUGH TWELFTH GRADE AND PUBLIC POSTSECONDARY EDUCATION FOR THE 2011-12 FISCAL YEAR; AND ALLOWING THE ADDITIONAL TAX REVENUES TO BE COLLECTED, KEPT, AND SPENT NOTWITHSTANDING ANY LIMITATIONS PROVIDED BY LAW?

TITLE AND TEXT

Text of Proposal:

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

SECTION 1. Part 1 of article 77 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

Proposition 103: Temporary Tax Increase - Public Education . . . 9

REPORTER'S TRANSCRIPT OF PROCEEDINGS

April 28, 2016

Transcribed by:
LAURA L. CORNING, FCRR, CSR



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App. 8a

REPORTER'S TRANSCRIPT OF PROCEEDINGS

April 28, 2016

Transcribed by:
LAURA L. CORNING, FCRR, CSR

1 MR. WILLIAMS: Jacob Williams.
2 CHAIRPERSON STAIERT: All right. Thank
3 you.

4 And Mr. Rogers, you filed a motion for a
5 rehearing. Is there anything you wanted to add to
6 your -- to your filing?

7 MR. ROGERS: Sure. I have quite a few
8 things to talk about here.

9 If I could, I'd like to start -- well,
10 first, the objectors here are Keith Pearson and Buckley
11 Croom, and I'd like to start with the second item
12 identified in the motion for rehearing, and that is our
13 concern that the tax here in the title is stated on a
14 per-cigarette basis and not on a per-pack basis, or at
15 least there is no reference to a per-pack basis.

16 And I'd like to start by asking the -- the
17 members of the board to do a quick math problem and
18 solve what 20 times 8.75 is. If you don't have that by
19 now, then perhaps we should rethink how this title
20 is -- is set.

21 You're asking, essentially, voters and
22 potential petition signers to do that math problem to
23 determine what the -- what the real-world tax the
24 measure seeks to impose would be.

25 Of course, under 141-06(3)(b) the board is

1 * * * * *

2 (This begins the requested portion of the
3 proceedings contained within Media Unit 1.)

4 MR. BLAKE: We're live whenever you're
5 ready.

6 CHAIRPERSON STAIERT: All right. Good
7 morning. This is a meeting of the title settings
8 board. The date is April 28, 2016. The time is 10:00
9 a.m. We are in the Blue Spruce room of the Secretary
10 of State's office, 1700 Broadway.

11 I'm here today with Sharon Eubanks,
12 designee of Dan Cartin from Office of Legislative Legal
13 Services, and David Blake, designee of the Attorney
14 General Cynthia Coffman, and I am Suzanne Staiert,
15 deputy secretary of state.

16 We have a number of items on the agenda
17 today that are all rehearings. This is the final
18 meeting of the title board for the season. And the
19 first item on the agenda is 2015-2016 number 143, new
20 cigarette and tobacco taxes.

21 If the proponents could come forward and
22 just identify yourself and state whether you're
23 proponents or present.

24 MR. McCURDY: I'm Frank McCurdy. I'm a
25 proponent for 143.

1 instructed to consider public confusion that might
2 result from misleading title. Stating the proposed tax
3 here in terms of a per-cigarette tax will lead to voter
4 confusion and shouldn't be allowed.

5 The confusion, in addition to making
6 the -- the folks do math, is that the voters may be led
7 to believe that the increase per pack is 8 -- 8.75, or
8 8.75 cents and not, in fact, 20 times that amount,
9 which is the reality.

10 It's also important to note that under
11 state and federal statute, the sale of a single
12 cigarette is prohibited. So that's C.R.S.
13 24-35-503(4). That states:

14 No retailer shall sell or offer to
15 sell individual cigarettes, or any pack or
16 container of cigarettes containing fewer
17 than 20 cigarettes.

18 In federal law, federal regulation,
19 that -- something similar is found at 21 CFR
20 1140.14(d).

21 So the question is why state the tax here
22 in a -- on a transaction that is not legally
23 permissible. Instead, shouldn't the state --
24 shouldn't -- shouldn't we state that the tax -- what
25 the tax would be on the smallest unit for which there

5	<p>1 is a permissible legal sale.</p> <p>2 Two other points: Stating this figure on</p> <p>3 a per-pack basis results in a nice round figure, a</p> <p>4 \$1.75 per pack, as opposed to the 8.75 figure which is</p> <p>5 a -- a -- is a fraction. In other words, a per-pack</p> <p>6 cost provides useful information to the voter, not a</p> <p>7 math problem. And finally, I would note that the</p> <p>8 measure itself includes in a parenthetical the per</p> <p>9 pack -- per pack of 20 cost.</p> <p>10 And that's a lot. Let me just pause there</p> <p>11 if I could and see if there are questions from the</p> <p>12 board on that point.</p> <p>13 CHAIRPERSON STAIERT: I don't have any</p> <p>14 questions. I guess I'd like to hear from the</p> <p>15 proponents on that request.</p> <p>16 MR. BLAKE: Before you run away, I might</p> <p>17 have one question.</p> <p>18 CHAIRPERSON STAIERT: Go ahead.</p> <p>19 MR. BLAKE: How does it read, how is the</p> <p>20 tax at best under current law by the Department of</p> <p>21 Revenue?</p> <p>22 MR. ROGERS: There is currently a</p> <p>23 constitutional provision that imposes a 64-cent</p> <p>24 per-pack tax. So in the Constitution it's stated as a</p> <p>25 per cigarette tax, and then there is a parenthetical in</p>	7	<p>1 per-pack basis by legislative staff that the size of a</p> <p>2 pack could change, and so to tax a pack would be</p> <p>3 problematic.</p> <p>4 Likewise, I think the language proposed by</p> <p>5 Mr. Rogers is problematic because it -- to the best of</p> <p>6 my knowledge, there is no absolute requirement that</p> <p>7 here and forever packs of cigarettes will always be</p> <p>8 sold in packs of 20.</p> <p>9 I think the precedent -- and the fact that</p> <p>10 that ballot title was heavily challenged up to the</p> <p>11 Supreme Court would suggest that you don't really need</p> <p>12 the expanded language. It's -- it -- it -- it seems</p> <p>13 like it would -- it doesn't give voters the credit that</p> <p>14 they are due, and we would suggest to you that you be a</p> <p>15 little skeptical about the argument that's being made</p> <p>16 that that is the only way that voters will understand</p> <p>17 this title.</p> <p>18 CHAIRPERSON STAIERT: What about a</p> <p>19 parenthetical? Do you object to that, too?</p> <p>20 MR. GRUESKIN: If -- assuming that -- that</p> <p>21 there wouldn't be a challenge that somehow the</p> <p>22 parenthetical was inaccurate. I mean, it doesn't seem</p> <p>23 to be problematic, but it also doesn't seem to be</p> <p>24 necessary.</p> <p>25 CHAIRPERSON STAIERT: Okay. Thanks.</p>
6	<p>1 the Constitution that states the per-pack-of-20 cost.</p> <p>2 MR. GRUESKIN: Good morning, Madam Chair,</p> <p>3 members, my name is Mark Grueskin appearing on behalf</p> <p>4 of the proponents who have already introduced</p> <p>5 themselves.</p> <p>6 I don't know if Mr. Rogers is waiving all</p> <p>7 of his other arguments or if --</p> <p>8 CHAIRPERSON STAIERT: Well, I think we</p> <p>9 didn't have a -- a single-subject argument. So we can</p> <p>10 just get into the tax, then we'll go one by one.</p> <p>11 MR. GRUESKIN: Okay.</p> <p>12 CHAIRPERSON STAIERT: It just seemed like</p> <p>13 this was his biggest one, so I thought maybe --</p> <p>14 MR. GRUESKIN: Fair enough.</p> <p>15 CHAIRPERSON STAIERT: -- we'd take it up</p> <p>16 first.</p> <p>17 MR. GRUESKIN: Fair enough.</p> <p>18 I guess Mr. Rogers is a little confident</p> <p>19 in the mathematical capabilities of the voting public</p> <p>20 than I am. I don't know that it isn't a relevant</p> <p>21 number, and I would remind the board that the title for</p> <p>22 Amendment 35 used the per-cigarette figure.</p> <p>23 And the reason that was used -- the reason</p> <p>24 it was put in the initiative, as I recall, in</p> <p>25 Amendment 35 was because we had been warned on a</p>	8	<p>1 Any questions?</p> <p>2 MR. BLAKE: No.</p> <p>3 CHAIRPERSON STAIERT: Do you want to just</p> <p>4 go down the rest?</p> <p>5 MR. ROGERS: Yeah. If I can make just a</p> <p>6 couple quick points on --</p> <p>7 CHAIRPERSON STAIERT: Sure.</p> <p>8 MR. ROGERS: -- on Mr. Grueskin's</p> <p>9 comments.</p> <p>10 You know, I think the parenthetical in the</p> <p>11 language in the measure itself would be sufficient, and</p> <p>12 that is after the 8 and 3/4 cents per cigarette, we</p> <p>13 insert open paren, \$1.75 per pack of 20. That's always</p> <p>14 going to be accurate. If the size of a pack changes,</p> <p>15 then, you know, we haven't misled a voter, but we</p> <p>16 certainly have provided relevant information.</p> <p>17 Also, I -- I would just -- I looked at the</p> <p>18 2004, the -- the litigation of 2004. There were seven</p> <p>19 or eight measures. I think the measure that ended up</p> <p>20 on the ballot -- I could be wrong, but what I saw is</p> <p>21 that it -- there was no rehearing on that, it didn't go</p> <p>22 to the Supreme Court, and I couldn't find a Supreme</p> <p>23 Court opinion on the 11, 12, 13 and 14 that did go to</p> <p>24 the Supreme Court.</p> <p>25 I don't think there is any guidance from</p>

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1 the Supreme Court on this issue. I certainly didn't
 2 see any indication that this particular issue was
 3 considered and -- and accepted by the court.
 4 If I could, let -- let me go on to our
 5 next -- our next point.
 6 So the current cigarette tax in Colorado
 7 is 84 cents per pack of 20. This measure would more
 8 than triple that tax, and yet, we have -- we -- we
 9 provide the tax increase that is proposed without any
 10 context.
 11 Certainly, it may be important to a voter,
 12 it may be important to a person who has to sign a
 13 petition for this measure, to understand the tax
 14 increase in context. How much of an increase? Is it a
 15 small percentage increase on an already large tax, or
 16 is it a dramatic increase as is the case is here? For
 17 that reason we would propose that there should be a
 18 reference to the -- the current tax.
 19 So, for instance, language along the lines
 20 of, you know, increasing the per-pack tax from --
 21 from 84 cents to 2.59 per pack. You could do the same
 22 on the -- on the per-cigarette tax.
 23 I would note that this is what the General
 24 Assembly did, and refer to Proposition 103 in 2010. In
 25 the title set there not by the board but by the General

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1 Assembly. The tax was increased -- the state income
 2 tax was increased from 3 percent to 5 percent and state
 3 sales tax from 2.9 to 3 percent. That allowed the
 4 voter to understand the magnitude of the increase. On
 5 sales tax, for instance, that's about a 3 percent
 6 increase in the sales tax.
 7 You know, in the single subject context,
 8 avoiding voter surprise is an important -- it's an
 9 important basis for the single subject rules that we
 10 have. But I would submit that avoiding voter surprise
 11 is also important in the context of setting the title
 12 language. I think the voters would be terribly
 13 surprised if they knew that they had signed a petition
 14 or voted for a measure that more than tripled the tax.
 15 By the addition of a few words to the
 16 title, referencing the existing tax rate, we could
 17 avoid that confusion, we could avoid a misleading
 18 title, we could avoid voter surprise.
 19 And I'll stop there for questions and
 20 maybe to hear from Mr. Grueskin.
 21 MS. EUBANKS: Mr. Rogers, in terms of
 22 the -- the aggregate tax rate, I think this situation
 23 is a little different than the one that you referenced
 24 because my guess is the changes made in that particular
 25 initiative was amending a rate and striking that number

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1 and replacing it with a different number. And so for
 2 the title board to set a title that contrasts the
 3 existing rate to the new rate, that was all
 4 self-contained.
 5 In this situation you have statutory
 6 taxes, you have constitutionally based taxes, and then
 7 you have this proposed additional tax. And -- and so
 8 you don't have any sort of indication in this measure
 9 of what the total tax is. I mean, that would be
 10 something that the title board would be taking on
 11 themselves.
 12 Wouldn't that be a better -- something
 13 that would come up for the blue book or in the
 14 campaign?
 15 MR. ROGERS: It could come up in the blue
 16 book or the campaign. But the first step for the
 17 proponents of this measure, of course, will be to
 18 collect about 98,000 ballot signatures, and the -- the
 19 registered voter on the street presented with a request
 20 to sign a petition for this measure will not have the
 21 benefit of the blue book or any context, unless that's
 22 provided by the circulator, which frankly seems --
 23 seems unlikely. I don't imagine that it would increase
 24 the number of signatures collected to tell voters that
 25 this is a tripling of the existing tax.

12

1 As to the question of, you know, kind of
 2 requiring the board to -- to look at existing statute
 3 in the Constitution, I don't think there is any dispute
 4 here. It's -- it's 84 cents a pack. It's a set
 5 percentage on noncigarette items, loose tobacco,
 6 et cetera. So it's -- it's certainly knowable.
 7 I would also note that we are now about
 8 eight working days from the end of the legislative
 9 session. So it's not going to change -- you know, that
 10 tax rate is certainly not going to change before we get
 11 to the November ballot. So there is not a risk that we
 12 have a title that would be inaccurate by the time we
 13 get to November.
 14 MS. EUBANKS: Thank you.
 15 CHAIRPERSON STAIERT: Why don't you
 16 proceed, and then we'll take a vote.
 17 MR. ROGERS: So Section 10(b)(II) of the
 18 measure would prohibit the General Assembly from
 19 repealing or reducing the taxes that this -- the
 20 existing statutory tobacco tax. That's -- that's 20
 21 cents of the total tobacco tax that would be levied
 22 after this measure. It -- it seems that that is a
 23 central point of this measure and one that warrants
 24 inclusion in the title.
 25 You know, the TABOR amendment has limited

13	<p>1 the General Assembly's power to increase taxes, but 2 it's constitutionally granted powers to cut tax that 3 remain largely intact. 4 So here we don't simply have in this 5 measure an imposition of a tax and the corresponding 6 spending of that revenue. We're eliminating an 7 important legislative power: The power to cut a tax. 8 And it seems that a title that doesn't notify the voter 9 that that is what they're going to do is certainly 10 misleading, or it's certainly -- it would certainly be 11 an absence from the title that would result in a 12 misleading title. 13 MS. EUBANKS: Is -- is that really true? 14 Because the 2004 initiative included that same 15 provision. So hasn't that ability already been 16 eliminated so that this provision really doesn't have 17 any affect at all? 18 MR. ROGERS: It has been eliminated for, I 19 believe, the taxes that were imposed under the 2004 20 measure. But I think the voter would have every reason 21 to believe that a tax imposed under this measure is one 22 that could be reduced or eliminated by the General 23 Assembly. 24 MS. EUBANKS: Well, my recollection is 25 that the 2004 measure, I mean, it is constitutional,</p>	15	<p>1 sources other than -- existing and programs that would 2 be funded under this measure -- from being cut below 3 the January 1, 2016 levels. 4 So, again, we see that this measure would 5 take away a power that the General Assembly has under 6 our Constitution. For all the reasons I've -- I've 7 mentioned, this is something that the voters should be 8 informed about. We're talking about a substantial 9 amount of money. We're talking about a Constitution in 10 which the General Assembly has -- through which the 11 General Assembly has already been -- seen an erosion of 12 its power to control the purse strings for the State of 13 Colorado, and voters should understand that, that 14 that's what they're getting when they vote for this 15 measure. 16 So I'll keep rolling. 17 CHAIRPERSON STAIERT: Yes. 18 MR. ROGERS: At the same time that the 19 measure would take the General Assembly's power to cut 20 existing appropriations and take away the General 21 Assembly's -- the General Assembly's power to alter or 22 amend how the dollars raised -- the revenue raised 23 under this measure would be spent, the measure is 24 spending decisions to two state agents: To CDPH&E and 25 to HCFA.</p>
14	<p>1 the only way that that tax rate could be changed, 2 increased or decreased, is by voter approval. And then 3 the provision contained within there is nearest the one 4 in the current proposal, which the General Assembly 5 couldn't reduce the statutory tax rate. So I'm not 6 sure that the provision in this measure has any force 7 and effect at all because it's -- it's already 8 happened. It already happened in the 2004 amendment. 9 MR. ROGERS: Yeah. I -- I noticed that. 10 I assume that there was some reason that the proponents 11 and Mr. Grueskin included the measure again in this 12 measure, that their desire was not to create a 13 redundant provision in the Constitution. 14 In any event, it is a provision of this 15 measure. So, for instance, if the previous tobacco tax 16 were to be repealed, it would remain in the measure. 17 So I -- I think it is -- it is warranted to include it 18 here, to let voters know that they're voting to, 19 perhaps, once again, eliminate a power of the General 20 Assembly. 21 MS. EUBANKS: Thank you. 22 MR. ROGERS: Moving on to our next 23 argument, number 4: The measure in 10(g) would also 24 take away discretion from the General Assembly to 25 reduce existing funding for existing programs from</p>	16	<p>1 Typically when the General Assembly 2 appropriates money to those agencies, it has the power 3 to eliminate or reduce those proposals in future years; 4 if, for instance, the General Assembly doesn't -- 5 doesn't approve of the manner in which those agencies 6 administer the program. 7 That's not a possibility here. Until the 8 Constitution is amended, these two state agencies, 9 which are headed by unelected state officials, have the 10 power to spend this constant stream of hundreds of 11 millions of dollars a year, and there is nothing that 12 the General Assembly can do about it. That, again, 13 seems to be a central point of this measure and one 14 that should be reflected in the title. 15 Next, (d)(II)(F) of the proposal provides 16 for some of the revenue that would be generated by this 17 tax to be spent on health construction and technology 18 improvements. There is a reference to that category of 19 spending in the current title, but it, without more 20 detail, is -- is confusing. 21 The language of the measure is: 22 10 percent for construction 23 improvement in new technologies for any 24 qualified provider as defined in the 25 statute.</p>

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1 And then the measure goes on to spell out
 2 some detail. And the reference in the title to that
 3 provision is that spending would occur on health
 4 construction and technology improvements.
 5 That -- this language simply seems to be
 6 an inadequate statement of the type of spending that's
 7 contemplated. For -- for one matter, health
 8 construction and technology improvements would lead the
 9 voter to believe that those are somewhere specified in
 10 the measure, and they're not.
 11 Again, this is a -- this is a program
 12 implementation of -- which would be left to a state
 13 agency. And so for a language change on this -- this
 14 portion, we would recommend inserting "unspecified"
 15 before the measure. So it would read: Unspecified
 16 health construction and technology improvements.
 17 Next, there is one section of new spending
 18 that somehow didn't make the list of areas in which the
 19 revenue from this measure could be spent, and that is
 20 there is no reference to professional training tracks
 21 for health and dental professionals. So I'm not sure
 22 why that was treated differently and omitted, but it
 23 isn't in the title.
 24 MS. EUBANKS: Mr. Rogers, could you point
 25 out which provision of the measure contains?

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1 MR. ROGERS: Sure. That's (II)(d)(f) --
 2 sorry, (d)(II)(F).
 3 There is loan repayment, which is
 4 referenced. And then there is, later in that
 5 paragraph:
 6 Professional training tracks for
 7 physicians at teaching health centers,
 8 dentists, pediatric residency, et cetera.
 9 MS. EUBANKS: So that language doesn't
 10 refer back to the educational loan repayment?
 11 MR. ROGERS: Well, that -- that certainly
 12 was not our reading of it. But, frankly, we weren't
 13 certain what that meant, but it didn't appear to be
 14 related to the loan repayment provision. Perhaps that
 15 was the intent. I don't -- I don't believe that's
 16 terribly clear.
 17 Next -- and we're getting to the last
 18 couple here -- in -- in previous titles approved by
 19 this board where there is a smorgasbord of targets for
 20 the spending, the board's been pretty good about
 21 specifying the percentage of spending that goes to each
 22 of the programs.
 23 So, for instance, Amendment 58 in 20 --
 24 2009 used a similar approach, and in that measure,
 25 the -- the kind of cascade of the dollars was -- was

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1 specified by -- by percentage.
 2 In this measure, under 10(d), 18 percent
 3 of the revenues collected are earmarked for existing
 4 programs, and then specified percentages are allocated
 5 to a number of uses under -- under (II)(A) through (F).
 6 Yet, we have no guidance in the title as to what
 7 percentage of this really large amount of revenue, \$300
 8 million, is to be spent on each of the enumerated
 9 areas. It's a pretty simple matter to insert a
 10 percentage in front of each area.
 11 Next, the new spending under
 12 (d)(II)(A) through (F), this is a mixture, it appears,
 13 of existing programs and new programs.
 14 You know, we -- we have a public in
 15 Colorado that voted for the TABOR amendment, which was
 16 intended to limit the growth of government. We have a
 17 proposal here that would certainly create -- would grow
 18 government, would increase government spending, would
 19 create new programs and allocate funds for those
 20 programs, and, yet, we haven't told the voters that
 21 some of these are, in fact, existing programs, for
 22 instance, those already in the Constitution. But
 23 otherwise, these agencies have the opportunity to
 24 create new programs and to funnel this spending into
 25 those, and yet we don't -- we don't inform the voters

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1 of that central feature of the measure in the title.
 2 And then finally, Section (d) -- sorry,
 3 Section (f) is a debriefing provision. Now, it is
 4 commonplace for this board to include notice that the
 5 revenue raised under the measure and the spending under
 6 the measure would not be subject to Article 10, Section
 7 20, and, yet, that's not included here.
 8 We would ask that the voter be notified
 9 that the revenue and spending proposed under this
 10 measure would not be subject to the limits of TABOR.
 11 Happy to take any questions you've got.
 12 MS. EUBANKS: In terms of the debriefing
 13 provision, I mean, regardless of whether the ballot
 14 title includes that language, the effect there is,
 15 because this is a voter-approved revenue change as a
 16 tax increase, that those revenues are going to be in
 17 addition to the normal calculation of fiscal year
 18 spending growth, correct?
 19 MR. ROGERS: Well, I think that's -- I
 20 think that's right. But if I -- if I read the measure
 21 correctly, then the -- if -- if there is growth of this
 22 tax, you know, that growth would be subject to TABOR
 23 limits.
 24 As -- as I read this provision, it's just
 25 off balance sheet. So any growth in this -- in the

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1 revenue under this measure would not be subject to
 2 state fiscal year spending limitations, and it's
 3 important for the voters to understand that.
 4 MS. EUBANKS: Thank you.
 5 CHAIRPERSON STAIERT: Any other questions?
 6 All right. Mr. Grueskin, do you want to
 7 respond?
 8 MR. GRUESKIN: What would be most helpful
 9 to the board? Do you want me to go through these
 10 arguments? Do you have questions?
 11 MS. EUBANKS: I have a couple of
 12 questions.
 13 CHAIRPERSON STAIERT: Sure, why don't we
 14 do some questions.
 15 MS. EUBANKS: Mr. Grueskin, in terms of
 16 the construction -- the health construction and
 17 technology improvement, I think we struggled a little
 18 bit when we were setting the title --
 19 MR. GRUESKIN: Right.
 20 MS. EUBANKS: -- about trying to describe
 21 that particular purpose for which the new tax revenues
 22 could be spent.
 23 And whether you can clarify it, I -- I
 24 know that it relates back to -- to the qualified
 25 providers, which are certain types of medical providers

22

1 that provide primary care to certain individuals or at
 2 least are available to those individuals.
 3 Can you tell us more about how we might be
 4 able to help clarify that particular language?
 5 MR. GRUESKIN: And -- and let me say, I
 6 think that we're open to clarifications in a number of
 7 instances, and -- and maybe it would be helpful if I
 8 indicated to you where and how we might do that.
 9 I think that -- I mean, argument number 6
 10 is kind of interesting because the objectors say that
 11 the description is confusing because there isn't more
 12 detail provided.
 13 I think the measure itself as -- as you
 14 point out, says that it goes to qualified providers as
 15 defined, and I think that would indicate to voters,
 16 phrased like that, that -- that it isn't a uniform
 17 across the (unintelligible), but there are conditions
 18 specified in the measure as to what kind of -- what
 19 kind of recipients of this kind of funding there will
 20 be.
 21 You know, if we start to get into the
 22 details, community health centers and definitions under
 23 federal law, I think we'd probably lose voters. It's
 24 not as important. But I think that having some sort of
 25 add-on that suggests that there are -- you know, that

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1 there will be funding available in certain instances or
 2 under certain conditions to qualified providers, would
 3 be -- would be acceptable to the proponents.
 4 MS. EUBANKS: Do you think it might be
 5 helpful to -- and I know "qualified providers" is the
 6 terminology in the measure, but for the voters to
 7 understand that it's qualified medical providers? I
 8 mean . . .
 9 MR. GRUESKIN: I think that -- I think
 10 that would be helpful, yes.
 11 MS. EUBANKS: I mean, because they may not
 12 know -- I mean, I know in terms of the general focus of
 13 the measure is providing a lot of -- of funding for a
 14 lot of different health related purposes. To throw in
 15 "medical" may just help a little bit. Okay.
 16 MR. GRUESKIN: Can I -- can I confer for
 17 one second with the proponents?
 18 MS. EUBANKS: Sure.
 19 MR. GRUESKIN: Ms. Eubanks, maybe it would
 20 be more helpful to say "health providers" rather than
 21 "medical providers," since we're dealing with a variety
 22 of types of healthcare, and I think that would -- that
 23 would probably clarify or at least indicate limitations
 24 the voters would care about.
 25 I would also say that argument number 7,

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1 including a reference to professional training tracks
 2 for health and dental professionals, I think -- I think
 3 in the listing of programs that occurs in lines -- it
 4 actually starts in line 7 and ends on line 11, that
 5 would be fine. I think -- I don't think there would be
 6 any objection on the part of the proponents of the
 7 measure.
 8 As to item number 8 -- I know I asked for
 9 questions, but I'm trying to maybe help this along a
 10 little bit. Item number 8, I'd remind you that in
 11 Amendment 35 you did not provide percentages. Title
 12 board simply said "in specified percentages." If the
 13 board felt this was a different scenario, as opposed to
 14 using "specified percentages," we wouldn't object to
 15 that.
 16 And so those are changes in terms of those
 17 three items that we think, if the board goes in that
 18 direction, there is no objection from the proponents.
 19 MR. BLAKE: Mr. Grueskin, what about
 20 number 1? You and I had an exchange about this last
 21 week.
 22 MR. GRUESKIN: Well, I -- I was struck by
 23 the suggestion that there are going to be people who
 24 really are okay with some increase in tobacco tax
 25 and -- and not others. I don't know that there is any

25	<p>1 real-world suggestion that if you're a cigarette 2 smoker, you're okay with some tax increase but not 3 others. But perhaps that's the case. We simply don't 4 know that to be true.</p> <p>5 I think, though, that there are two legal 6 starting points for the board on this. Number one, the 7 decision that just came down from the Supreme Court, 8 Initiative Number 73, basically said:</p> <p>9 Don't put in references to existing 10 law. If what you're doing is you're 11 expanding a ballot title that already 12 requires a certain level of detail, in 13 talking about existing law, it's just going 14 to make it longer and -- and less clear.</p> <p>15 And number two --</p> <p>16 MR. BLAKE: Do you also agree that 73 17 found that we didn't include enough detail?</p> <p>18 MR. GRUESKIN: It did. It did.</p> <p>19 MR. BLAKE: Makes it a little bit of a 20 challenge to balance, right?</p> <p>21 CHAIRPERSON STAIERT: Yeah. With 73, it 22 seems like they were saying with a specified percentage 23 of signatures you have to collect, we were supposed to 24 say it's no longer going to be X, it's now going to be 25 Y. Wasn't that a part of it?</p>	27	<p>1 it's a \$315 million tax. I think under any 2 estimation -- I don't -- I don't know anybody who 3 thinks \$315 million isn't a notable number.</p> <p>4 But, in any event, I would also suggest to 5 you that this is an effect of the measure in terms of 6 standing the existing tax. We had this discussion in 7 front of the Supreme Court. I've mentioned it to the 8 board. Voters are assumed to know the law that they're 9 amending, and so they're assumed to know -- it's 10 just -- the Supreme Court says it over and over and 11 over again. Just like (unintelligible).</p> <p>12 CHAIRPERSON STAIERT: Except in some --</p> <p>13 MR. GRUESKIN: Well, yeah, there was that. 14 But I think that the notion that you have to tell them 15 what the tax is openly going to be, once you've 16 indicated, as the board suggested it might be 17 interested in doing, how much this is going to be on a 18 per-pack basis, is not necessary language.</p> <p>19 MS. EUBANKS: What about number 4, the 20 supplanting, you know, in addition to, rather than 21 substituting. I mean, there was a provision similar in 22 the title for the 2004 measure.</p> <p>23 MR. GRUESKIN: Right.</p> <p>24 MS. EUBANKS: Do you feel strongly one way 25 or the other? I mean, we had a little bit of a</p>
26	<p>1 MR. GRUESKIN: Well, there -- there were 2 two -- two issues in addition to the campaign finances. 3 One was that there was a misleading reference because 4 it didn't address resigned officials as well as 5 recalled officials.</p> <p>6 CHAIRPERSON STAIERT: Right.</p> <p>7 MR. GRUESKIN: And then there was was 8 there enough detail in and around signature 9 qualification, and I don't know -- based on this 10 (unintelligible) and my conversation with the 11 proponents in that matter yesterday, I know we're going 12 to get an opportunity to have this conversation in 13 front of the board. I'm not exactly sure that I have 14 language right here.</p> <p>15 But I think what the board -- what the 16 Court was saying is there was a radical change, a 17 radical, unexpected change that the language didn't 18 indicate. I think there are ways to address that, and 19 I think that those issues are not raised by this ballot 20 title.</p> <p>21 But I would --</p> <p>22 CHAIRPERSON STAIERT: If it's a radically 23 different tax.</p> <p>24 MR. GRUESKIN: Well, you're -- I mean, 25 you're talking about in the first line in TABOR that</p>	28	<p>1 discussion on this last week.</p> <p>2 MR. GRUESKIN: We did. And I think we had 3 even proposed that kind of language, and then after 4 conversation with the board realized that it wasn't as 5 essential, and it was being done basically because we 6 thought that there might be opponents who would take 7 that issue to the Supreme Court.</p> <p>8 The fact that there would be language in 9 there talking about supplanting existing revenue is not 10 problematic. I guess the question for the board is 11 whether it's necessary. And --</p> <p>12 MS. EUBANKS: Well, whether it's a major 13 component --</p> <p>14 MR. GRUESKIN: Yeah.</p> <p>15 MS. EUBANKS: -- of the measure.</p> <p>16 MR. GRUESKIN: But -- but there isn't -- 17 there isn't some sort of a blanket objection from 18 proponents about that because it is part of the 19 measure.</p> <p>20 MS. EUBANKS: And so if we went that 21 direction, to use the terminology that was used back in 22 the 2004 title, might be acceptable?</p> <p>23 MR. GRUESKIN: I think so, yeah. I'm 24 sorry. This is yours.</p> <p>25 If you have questions, I'll --</p>

29	<p>1 MR. BLAKE: No, no. I answered --</p> <p>2 MR. GRUESKIN: (Unintelligible.)</p> <p>3 MR. BLAKE: I asked my one question.</p> <p>4 MR. GRUESKIN: I -- I -- I don't think</p> <p>5 that the notion that the Department of Health Care</p> <p>6 Policy and Financing has grant-making authority is</p> <p>7 going to be particularly overwhelming to voters. And</p> <p>8 I would -- I would also note that the notion that there</p> <p>9 are -- that the General Assembly has absolutely no</p> <p>10 input whatsoever at any point is undermined by the fact</p> <p>11 that as to these programs, each of them, there can be a</p> <p>12 successor agency. There can be a restructuring of the</p> <p>13 of bureaucracy under the measure. We have provided for</p> <p>14 successor agencies as to each executive allocation of</p> <p>15 funds.</p> <p>16 And so the notion that there will never</p> <p>17 ever be any sort of legislative input is just wrong</p> <p>18 under the measure. And it also, I think, is contrary</p> <p>19 to what one would have to acknowledge is the inherent</p> <p>20 authority, the funding authority of the General</p> <p>21 Assembly. They can't -- they can't deprive the agency</p> <p>22 of this money, but they -- that doesn't mean that their</p> <p>23 voiceless.</p> <p>24 MS. EUBANKS: And you talked about TABOR.</p> <p>25 MR. GRUESKIN: Well, you know, I -- I -- I</p>	31	<p>1 under operation of TABOR itself as a tax increase being</p> <p>2 a voter-approved revenue change. This is the insurance</p> <p>3 to make it clear that --</p> <p>4 MR. GRUESKIN: That's exactly --</p> <p>5 MS. EUBANKS: -- these revenues aren't</p> <p>6 supposed to be counted as (unintelligible).</p> <p>7 MR. GRUESKIN: That's exactly correct.</p> <p>8 It's to ensure that my malpractice insurance premiums</p> <p>9 don't somehow take a hike.</p> <p>10 CHAIRPERSON STAIERT: All right.</p> <p>11 MR. GRUESKIN: Thank you very much.</p> <p>12 CHAIRPERSON STAIERT: Any discussion?</p> <p>13 I'm --</p> <p>14 MR. BLAKE: I'm happy to lead off, if you</p> <p>15 want.</p> <p>16 CHAIRPERSON STAIERT: That's fine. Why</p> <p>17 don't you.</p> <p>18 MR. BLAKE: Let me go through them, and</p> <p>19 then somehow we can back up.</p> <p>20 I'm very sympathetic to 1, in part because</p> <p>21 I do think voters care about the context for the amount</p> <p>22 of the increase, if for no other reason than they want</p> <p>23 to see a high tax on -- or for lack of a better word, a</p> <p>24 high (unintelligible) tax. I revert back to the</p> <p>25 marijuana where I think there was a fair amount of</p>
30	<p>1 think that the board has been -- I think the nature of</p> <p>2 this measure is that it's voter approval for a revenue</p> <p>3 change. In the last board meeting or meetings, the</p> <p>4 notion that this was somehow a central feature wasn't</p> <p>5 something that the board accepted. I'm not sure, even</p> <p>6 though we had thrown it out there as possible language,</p> <p>7 that -- that we disagree.</p> <p>8 I went back to take a look at, for</p> <p>9 instance, the title you set on Amendment 50, and there</p> <p>10 is no reference to the -- the revenue-and-spending-</p> <p>11 limit language that was in Amendment 50 but it's not in</p> <p>12 the ballot title. There is a reference to voter-</p> <p>13 approved changes.</p> <p>14 So if there is a -- a notion that we have</p> <p>15 to indicate that it's a voter-approved revenue change</p> <p>16 somehow, I don't think that's problematic. I would --</p> <p>17 I wasn't persuaded any way by the opponents that</p> <p>18 somehow that is a major provision of this measure.</p> <p>19 MS. EUBANKS: Would you categorize that</p> <p>20 provision, the provision that's in your measure, more</p> <p>21 informational? I mean, it -- it's sort of a just make</p> <p>22 it clear that the revenues are not going to be subject</p> <p>23 to the fiscal year spending limit as a voter-approved</p> <p>24 revenue change rather than making that so?</p> <p>25 I mean, that's really an operation --</p>	32	<p>1 criticism that the tax was not high enough. So I</p> <p>2 actually think even if you're not a cigarette smoker,</p> <p>3 you have an interest there, and that context is</p> <p>4 important.</p> <p>5 I agree with number 2. I think there is a</p> <p>6 suggestion -- and I did not at least hear from --</p> <p>7 objection from the proponents.</p> <p>8 I agree with Ms. Eubanks about number 3,</p> <p>9 it's not -- does not -- require a change.</p> <p>10 I didn't think number 4 required a change,</p> <p>11 but again, I heard no objection from the proponents, so</p> <p>12 I'd defer.</p> <p>13 I'm not sympathetic to number 5.</p> <p>14 I am sympathetic to number 6. And again,</p> <p>15 proponents didn't object. And I think suggested</p> <p>16 language, "qualified health providers for construction</p> <p>17 and new technology." I may have a question for</p> <p>18 Mr. Grueskin about what "improvement" means.</p> <p>19 I'm okay with changes for number 7.</p> <p>20 Number 8 -- number 8 is driven largely by</p> <p>21 the decision in number 73 that we just got this week.</p> <p>22 And I would not make changes to number 9</p> <p>23 or 10.</p> <p>24 I don't know if everybody followed that or</p> <p>25 not, but that was my . . .</p>

33	<p>1 CHAIRPERSON STAIERT: You think number 8 2 we need to specify all those percentages? 3 MR. BLAKE: I -- I think in light of 4 number 70 -- in light of the opinion we got on 73, I 5 felt like we did, nor did I hear a strong objection 6 from proponents that that would be a problem. 7 CHAIRPERSON STAIERT: I think -- I think 8 that one would be a problem, because once you start 9 dedicating the percentage of funding, then you get into 10 the wording of all of this funding. It's not going to 11 be as simple as saying 15 percent for this, you know, 12 and it's 27 percent to tobacco related research. I 13 mean, I guess that one -- but it's 14 percent to 14 veteran's programs to assist with their well-being, 15 including physical (unintelligible), you know, and then 16 you get into 10 percent per child and adolescent 17 behavioral health. 18 I think once we went down that -- 5 19 percent for educational loan repayment for health 20 professionals who work in rural and underserved areas. 21 I mean, I guess we could, but that's going 22 to add about eight lines. 23 MR. BLAKE: Well, I think the language, as 24 I went through it last night -- that was rather early 25 in the morning -- there were -- we did, in fact,</p>	35	<p>1 make of that opinion because certain things are all of 2 a sudden not relevant and certain things are, and there 3 doesn't seem to be a lot of rhyme or reason to it. 4 MR. BLAKE: There is certainly has been no 5 direction on it. 6 CHAIRPERSON STAIERT: No. So the opinion, 7 you know, we'll deal with it in that specific case, but 8 I'm not sure I would give it that much precedential 9 value to undue everything that they've said throughout 10 the last however many years. 11 I am also sympathetic to -- I'm open to 12 number 1. 13 I think number 2 makes sense to do it as a 14 paren. 15 I agree on 3, 4 and 5 as stated. And 16 number 6, I'm fine with that. 17 And then I think maybe healthcare 18 professionals, or whatever the language was we had 19 talked about earlier, but I'm not sure I'm in for 20 listing out all the percentages. 21 MS. EUBANKS: Okay. Well, number 1 I'm 22 not inclined to grant on that ground. I think that is 23 in effect, and I think that (unintelligible) appears in 24 the blue book and to the campaign on the measure. 25 I think I'm fine with including the</p>
34	<p>1 characterize each of those, and I think it -- it -- it 2 may be as simple as sticking the percentages in. I 3 don't disagree with you that it will expand the title 4 considerably, but I think that's the takeaway from the 5 opinion. I don't know how you get around it. 6 I mean, we've tried very hard to shrink 7 these and make them as concise as possible, yet, that 8 opinion seems to tell me where we're making decisions 9 about what is important and not important, we seem to 10 be erring on the side of carving things out. 11 That was my general takeaway, at least on 12 the clarity part of the opinion, which -- which I 13 wasn't very excited about reading, but so be it. 14 CHAIRPERSON STAIERT: I just don't know 15 that the opinion has a lot of -- I mean, there are 16 opinions time and time again that say that saying 17 "specified" is enough. So I think that that opinion, 18 while binding for that case, I -- I wasn't planning on 19 giving it up. 20 MR. BLAKE: Fair enough. 21 CHAIRPERSON STAIERT: You know, I guess I 22 can remand every one now, but -- 23 MR. BLAKE: Well, I just -- I was curious 24 where -- where the board was going to go with it. 25 CHAIRPERSON STAIERT: I don't know what to</p>	36	<p>1 per-pack number because it is included in the measure, 2 even though the 2004 title didn't include that figure. 3 CHAIRPERSON STAIERT: The dollar-75 per 4 pack of 20? 5 MS. EUBANKS: Yes. 6 CHAIRPERSON STAIERT: Okay. Do you want 7 to just -- 8 MS. EUBANKS: Do you want to go ahead -- 9 CHAIRPERSON STAIERT: Should we just 10 start? 11 MS. EUBANKS: -- start? Okay. 12 CHAIRPERSON STAIERT: Because we know what 13 we think. They'll know what -- 14 MS. EUBANKS: Sure. Dump it in my lap. 15 Okay. So, yes. So the change on line 4 16 is the dollar-75 per pack of 20. 17 I -- do you want to just go ahead and make 18 all the changes -- 19 CHAIRPERSON STAIERT: Yeah. 20 MS. EUBANKS: -- and then deal with it 21 that way? 22 CHAIRPERSON STAIERT: Yeah. 23 MS. EUBANKS: Okay. All right. 24 Now, if you're -- if you two are inclined 25 in terms of number 1, then perhaps you want to suggest</p>

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1 your own changes, or do you want me to work through the
 2 ones that --
 3 CHAIRPERSON STAIERT: No, I was just not
 4 objecting. But if you're not inclined, I -- I'm fine
 5 (unintelligible).
 6 MS. EUBANKS: Okay. Well --
 7 CHAIRPERSON STAIERT: I just wasn't -- I
 8 didn't have a strong feeling about it.
 9 MS. EUBANKS: Okay. In terms of number 3,
 10 I don't think there -- that's a major feature because I
 11 think it's not really doing anything.
 12 In terms of the supplanting a provision
 13 that's near and dear to my heart, based on past
 14 experience with the 2004 initiative, if the proponents
 15 are comfortable not including it, but I'm -- I don't
 16 feel strongly either way, but if you're comfortable not
 17 including it, then I'm more inclined that way.
 18 But Mr. Grueskin, do you -- would you like
 19 it in as --
 20 MR. GRUESKIN: Excuse me one moment.
 21 MS. EUBANKS: Sure.
 22 MR. GRUESKIN: I don't think that it is as
 23 critical as some of the other language in the title.
 24 MS. EUBANKS: Well, and as I said at least
 25 week's meeting, that I think that maybe the only ones

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1 that might care about this is the General Assembly.
 2 I -- I don't know that the average citizen is going to
 3 care one way or the other.
 4 MR. GRUESKIN: The other point that we
 5 made last -- last -- last time is that the measure does
 6 specify the programs, the nature of the programs that
 7 are being funded. And so that information that there
 8 is additional revenue -- and -- and the board was
 9 specific about using new revenue for the programs that
 10 are being funded, gets the message through.
 11 MS. EUBANKS: Right. I said the folks
 12 would assume that we're generating these revenues and
 13 it's to provide additional new funding for these
 14 purposes.
 15 MR. GRUESKIN: Yes.
 16 MS. EUBANKS: Okay.
 17 Number 5, I'm not inclined to grant. I am
 18 willing to clarify -- try to clarify the language about
 19 the health construction and technology improvements,
 20 and perhaps on line 10, after "improvements" we insert
 21 "for qualified health providers."
 22 MR. ROGERS: While we're there, what does
 23 "improvements" mean in (E)? It's construction
 24 improvements and new technologies, and we changed it to
 25 "health construction and technology improvements." I

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1 think at a minimum we need to strike "health" on
 2 line 9.
 3 CHAIRPERSON STAIERT: What?
 4 MR. BLAKE: Health construction, when we
 5 now have "for qualified health providers." I don't
 6 think -- I think that's the -- that's the clarity we
 7 were seeking. So I don't know what -- that the phrase
 8 is different than what we have there. Construction
 9 improvement and new technologies. What's improvement?
 10 MR. GRUESKIN: Well, we talk --
 11 MR. BLAKE: Is that physical plant
 12 improvement? Is that education improvement? Is that
 13 better lights? What is that?
 14 MR. GRUESKIN: The next paragraph talks
 15 about infrastructure improvements. So it is about --
 16 it is about the physical capacity of a facility to --
 17 MR. BLAKE: Okay.
 18 MR. GRUESKIN: -- offer service.
 19 CHAIRPERSON STAIERT: Okay.
 20 MR. BLAKE: So construction and technology
 21 improvements accurately captures what the phrase does.
 22 MR. GRUESKIN: That's correct.
 23 MR. BLAKE: I'm good with that.
 24 MR. GRUESKIN: Okay.
 25 MS. EUBANKS: So then on argument 7, in

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1 terms of that clarification, I think to accomplish that
 2 we would strike "and" on line 10 before "educational";
 3 and then after "areas" and before the period on line 11
 4 to insert a comma and -- and also insert "and"; and I
 5 think this may be accurate, "physician professional
 6 training tracks."
 7 I don't think we need to get into the
 8 details of various places at which the training tracks
 9 may occur, but I think at least that would cover that
 10 purpose, given this information about that purpose.
 11 Got some input there, Mr. Grueskin?
 12 MR. GRUESKIN: One suggestion.
 13 MS. EUBANKS: Okay.
 14 MR. GRUESKIN: The fact that this is for
 15 professionals in rural and underserved areas gets lost
 16 if that clause that you're adding isn't added in after
 17 the word "repayment" on line 11.
 18 MS. EUBANKS: So you're saying the
 19 training tracks also goes in terms of rural and
 20 underserved? Am I understanding you correctly?
 21 MR. GRUESKIN: Yes. That's correct.
 22 MS. EUBANKS: Even though that language in
 23 the measure is up by the loan repayment and it doesn't
 24 seem to be --
 25 MR. GRUESKIN: Right. I -- I think in

41	<p>1 terms of -- I -- I hear -- I hear what you're saying, 2 and I think the only issue would be that there would be 3 loan repayment -- 4 (Whispering.) 5 MR. GRUESKIN: Right. 6 The -- the point is that these 7 professional training tracks aren't limited to 8 physicians but they are -- they apply also to dentists, 9 pediatric residencies and pediatric psychology 10 fellowships. 11 So I don't think we have a problem with 12 the placement, per se, but I -- I want to make sure 13 that it is about, you know, health professional 14 training tracks or specified health professional 15 training tracks. 16 MS. EUBANKS: I don't know. Are there 17 any -- well, health profession -- I mean, when I think 18 of a health provider, I think of them generally as 19 being a professional. Do we need to -- 20 CHAIRPERSON STAIERT: So health provider 21 training tracks? 22 MS. EUBANKS: Although we do use the term 23 "health professionals" in the previous phrase about the 24 loan repayment. 25 MR. GRUESKIN: I think as -- as revised,</p>	43	<p>1 MR. GRUESKIN: Based on the number 73 2 opinion? 3 Here is the thing about the number 73 4 opinion: When you wrote the title for number 76, you 5 stated that that measure reduced the signature 6 requirement. For 73 you said that it changed it. And 7 I think that is the distinction and -- and probably the 8 reason that number 73 isn't going to be the albatross 9 around your neck for the rest of the day and the rest 10 of your lives on the title board. 11 So I -- I don't think 73 is going to 12 mandate -- I don't think -- I didn't read 73 to mandate 13 that level of specificity. 14 CHAIRPERSON STAIERT: Well, I wasn't 15 worried about my neck; I was worried about yours. I'm 16 fine taking it out. 17 MR. GRUESKIN: Fair enough. 18 CHAIRPERSON STAIERT: If there's an 19 albatross around your neck, then I -- I will -- I'm 20 happy to consider putting it in. But if you're fine 21 with it out, I don't think that there is historical 22 precedent that would require us to. 23 MR. GRUESKIN: I think that's right. If I 24 may confer with the -- 25 CHAIRPERSON STAIERT: Sure.</p>
42	<p>1 that -- that works, and it incorporates the objection 2 under paragraph 7. 3 MS. EUBANKS: Let's see. That takes us to 4 number 8. 5 I'm not really inclined to do percentages. 6 If we did percentages, I think the way -- I think it 7 could be done in a way that doesn't cause us to have to 8 rewrite the entire title. I think the first briefing 9 of purposes and programs are the purposes that 10 currently receive constitutional cigarette and tobacco 11 products tax, and so I think that amount is 16 percent. 12 And then all the other purposes, I think 13 we could do it with sort of after each purpose insert a 14 paren and the percentage, because we have the phrase 15 already saying "allocating new revenues" -- I mean, we 16 talk about the percentages, particularly 16 percent for 17 all of those purposes, and then allocating new revenue 18 for these other purposes, and we could just insert the 19 numeral percentage after each purpose without having to 20 totally rewrite it, if we want to go that way. 21 But I -- I'm really not inclined to get 22 into the specific percentages. 23 CHAIRPERSON STAIERT: And Mr. Grueskin, if 24 you want them in there based on that opinion, we can 25 write them in there. But if you're --</p>	44	<p>1 MR. GRUESKIN: -- proponents one more 2 time? 3 CHAIRPERSON STAIERT: Yeah. 4 MR. GRUESKIN: It is what it is. 5 MR. BLAKE: While Mr. Grueskin is -- I'm 6 going to seek -- look to the objectors for a suggestion 7 on number 1, which I'm not anticipating is going to do 8 very well, but I'm going to recircle back to number 1. 9 So if you want to think about some language to fix 10 number 1 while we're dealing with number 8. 11 CHAIRPERSON STAIERT: Okay. 12 MR. GRUESKIN: So I -- to the extent that 13 that was language in 2004 and the title was deemed 14 accurate and not misleading to the voters, I -- I 15 think -- I think there's precedent that we would stand 16 on. 17 CHAIRPERSON STAIERT: Okay. 18 MS. EUBANKS: I will forewarn you that I 19 don't believe that the title in 2004 was challenged on 20 those grounds. I think perhaps the only challenge in 21 2004 was -- I don't know that it -- it went to the 22 details in terms of misleading or confusion or how much 23 detail. But that's just -- a long time ago, so my 24 recollection may not be good, but I don't know. 25 MR. GRUESKIN: And -- and it's possible</p>

45	<p>1 that you're correct, but the decision of the Court was</p> <p>2 that the title was not misleading.</p> <p>3 MS. EUBANKS: So, okay. All right.</p> <p>4 Let's see, that takes us to 9, I'm not</p> <p>5 inclined, and I'm not inclined on 10 to make any</p> <p>6 changes.</p> <p>7 CHAIRPERSON STAIERT: Okay. Takes us back</p> <p>8 to 1.</p> <p>9 MR. BLAKE: Well, let me -- why don't I --</p> <p>10 why don't I make a motion to adopt these, and then</p> <p>11 we'll deal with 1, and then we'll --</p> <p>12 CHAIRPERSON STAIERT: Go ahead.</p> <p>13 MR. BLAKE: -- move on.</p> <p>14 So I will make a motion to adopt the</p> <p>15 changes as they appear here on the screen for Title</p> <p>16 2015-2016 Initiative 143.</p> <p>17 MS. EUBANKS: Should the motion be about</p> <p>18 granting a motion for rehearing?</p> <p>19 CHAIRPERSON STAIERT: Well, he still wants</p> <p>20 to go revisit 1.</p> <p>21 MS. EUBANKS: Okay. Okay. At least --</p> <p>22 okay. That's fine. I'll second it.</p> <p>23 MR. GRUESKIN: Madam Chair, can I just</p> <p>24 throw in one?</p> <p>25 CHAIRPERSON STAIERT: Well, if we can do</p>	47	<p>1 number 1, (unintelligible) number 1?</p> <p>2 MR. ROGERS: So I think this would require</p> <p>3 three changes to the title, because we've got the</p> <p>4 per-cigarette tax, we've got now the per-pack tax, and</p> <p>5 we've got the percentage on the -- on the -- on line 4.</p> <p>6 So --</p> <p>7 MR. BLAKE: You may not get me if you get</p> <p>8 too complicated because then you're going to confuse it</p> <p>9 as opposed to clarify.</p> <p>10 MR. ROGERS: Well, let's start with a --</p> <p>11 let's tackle one of these, and then figure out where --</p> <p>12 where it goes, maybe.</p> <p>13 So I think on the per-cigarette, we can</p> <p>14 simply insert a parenthetical on line 3, at the end of</p> <p>15 line 3, after 8.75 -- 8.75 cents per cigarette we could</p> <p>16 insert, open paren, from 3.2 cents to 11.95 cents per</p> <p>17 cigarette, close paren.</p> <p>18 CHAIRPERSON STAIERT: We have another</p> <p>19 paren right after that.</p> <p>20 MR. BLAKE: What are your other changes?</p> <p>21 MR. ROGERS: Well, they would be -- they</p> <p>22 would be similar. So on line 4, 1.75 per pack of 20</p> <p>23 cigarettes, I guess, comma, from 84 cents per pack to</p> <p>24 \$2.59 per pack.</p> <p>25 And then later on line 4 -- actually, on</p>
46	<p>1 this, and then if you have something --</p> <p>2 MR. GRUESKIN: It's about one of the</p> <p>3 things you're about to vote on.</p> <p>4 CHAIRPERSON STAIERT: Okay.</p> <p>5 MS. EUBANKS: Okay.</p> <p>6 MR. GRUESKIN: At line 4, the \$1.75 per</p> <p>7 pack of 20, probably say pack of 20 cigarettes.</p> <p>8 CHAIRPERSON STAIERT: You don't think</p> <p>9 that's implied by "per cigarette"?</p> <p>10 MR. GRUESKIN: I -- I would happily take</p> <p>11 one more word and take that issue out of the Supreme</p> <p>12 Court's hands.</p> <p>13 CHAIRPERSON STAIERT: Okay.</p> <p>14 MR. GRUESKIN: If the board is</p> <p>15 (unintelligible).</p> <p>16 CHAIRPERSON STAIERT: That's fine. So</p> <p>17 you're motion --</p> <p>18 MR. BLAKE: I renew my motion.</p> <p>19 MS. EUBANKS: Okay. Second.</p> <p>20 CHAIRPERSON STAIERT: All those in favor?</p> <p>21 MULTIPLE VOICES: Aye.</p> <p>22 CHAIRPERSON STAIERT: So that takes us</p> <p>23 back to number 1. Mr. Rogers, do you want to --</p> <p>24 MR. BLAKE: Do the objectors have any</p> <p>25 language to add context -- clearly add context to</p>	48	<p>1 line 5, 22 percent of the manufacturer's list price</p> <p>2 from 40 -- from 40 percent to 62-point -- 62 percent.</p> <p>3 MR. BLAKE: Are those numbers accurate,</p> <p>4 Mr. Grueskin?</p> <p>5 MR. GRUESKIN: Notwithstanding Mr. Roger's</p> <p>6 faith in the General Assembly's last eight days, I -- I</p> <p>7 don't know that -- I don't know that the -- the figures</p> <p>8 are inaccurate. The language isn't necessary. And</p> <p>9 honestly, the board -- the board doesn't know that</p> <p>10 there's not going to be a -- a bill that is filed to</p> <p>11 change the tax rate, and we can't come back.</p> <p>12 CHAIRPERSON STAIERT: There could be a</p> <p>13 special session.</p> <p>14 MR. ROGERS: There could -- on tobacco</p> <p>15 tax?</p> <p>16 CHAIRPERSON STAIERT: On tobacco.</p> <p>17 MS. EUBANKS: Well, except, regardless of</p> <p>18 what the General Assembly does, it has to still be a</p> <p>19 referred bill; it has to go to the voters for voter</p> <p>20 approval. I mean, the General Assembly cannot increase</p> <p>21 any of these taxes by itself.</p> <p>22 MR. GRUESKIN: No, but they could reduce a</p> <p>23 statutory tax.</p> <p>24 MS. EUBANKS: I don't -- how can they do</p> <p>25 that with the provision currently in the Constitution?</p>

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1 MR. GRUESKIN: Well, if -- if there is
 2 certainty that they -- they can't change those taxes,
 3 it seems to me that the context is evident from the
 4 Constitution, the -- the notion that you have to add
 5 these three phrases in order to fully describe to
 6 voters what this measure does seems to me to be really
 7 two or three bites of the same apple.
 8 We've told them what the tax is. As to
 9 the cigarettes; we've told them what the conglomerate
 10 of the increase is -- excuse me, told them what each of
 11 the two increases is; as to cigarettes, we told them
 12 what the conglomerate is as to a pack; and now we need
 13 to add on three more phrases.
 14 MS. EUBANKS: I mean, I -- I tend to agree
 15 with that. We told them it's an increase; we told them
 16 how much per cigarette; we added it up so they don't
 17 have to, you know, get out their calculators. I just
 18 don't think we need to do a whole lot --
 19 MR. BLAKE: You don't --
 20 CHAIRPERSON STAIERT: Go ahead.
 21 MR. BLAKE: You don't consider the
 22 increase of -- to a total tax rate of 62 percent is --
 23 will be viewed as significant by the voters? Do you
 24 know of anything that's taxed at 62 percent?
 25 MR. GRUESKIN: I'm not an expert in state

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1 tax rates, but I can't give you another item. But
 2 honestly, I can't -- you know, in terms of the existing
 3 tax at 40 percent, I -- that was -- that was a change
 4 in the title board didn't need to aggregate it for
 5 voters, and I don't know of anything else that is taxed
 6 at 40 -- or was taxed at 40 percent in 2004.
 7 CHAIRPERSON STAIERT: I think you're just
 8 avoiding getting into redistricting.
 9 MR. BLAKE: Up and down.
 10 MR. ROGERS: Can I take one more shot
 11 before you --
 12 MR. BLAKE: Sure. You got me, you got a
 13 sympathy here, and you got a no down there. So it
 14 seems like she's the swing vote, not me.
 15 MS. EUBANKS: Although, I -- although I
 16 can -- if we're going to go that way, then I may have
 17 suggestions on how to do it, but . . .
 18 MR. ROGERS: If there was a simpler way to
 19 do it, I think I would --
 20 MR. BLAKE: If you could do it in one --
 21 one phrase, but I think that this was my question to
 22 Mr. Grueskin last week, and his answer was, it's very
 23 complicated because you have these three different
 24 tiers, that's why I stood down last time. But --
 25 So, yeah, take your shot.

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1 MR. ROGERS: So a couple of things. We
 2 heard -- you had a colloquy with Mr. Grueskin about 73
 3 and about the notion that a radical change needs to be
 4 reflected in the title. If a -- if a tripling of the
 5 tax isn't a radical change, I'm not sure what is.
 6 I tell you, I am not a smoker. I have no
 7 idea what of pack of cigarettes costs. So for me, and
 8 the majority of the public who are not smokers, they
 9 have zero context in which to put 8.75 cents per
 10 cigarette or a buck-75 per pack. Is that -- is that
 11 a 5 percent increase? Is that a doubling? We don't
 12 know. I don't know.
 13 And so I think the best we can do in the
 14 title is to -- is to describe the magnitude of the
 15 increase. And I think a tripling is radical, and I
 16 think a voter or a signer on a petition would want to
 17 have that information before they sign or vote.
 18 With regard to simplifying this, we could
 19 eliminate one reference by stating the percentage
 20 increase. The percentage increase per cigarette and
 21 per pack is the same. I could, without a calculator,
 22 figure that out. But we could then do it with one
 23 reference: Increasing taxes on cigarettes, you know,
 24 by, you know, 300 percent or whatever the figure would
 25 be. And then we're down to two -- two changes to the

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1 title.
 2 It -- it also occurs to me that on the
 3 percentage on line 4, you know, the math is a little
 4 easier there, so we could say: And on other tobacco
 5 products by 22 percent, paren, over the current 40
 6 percent tax. Really very few words to add to the title
 7 to have the -- to -- to be able to convey a tremendous
 8 amount of information to the voter.
 9 MR. BLAKE: What were you suggestions,
 10 Sharon?
 11 MS. EUBANKS: My -- my suggestion -- and I
 12 don't know that I'm meeting your criteria, but I don't
 13 think that it's as helpful to contrast for the existing
 14 tax rate to the new tax rate.
 15 I think that if we went this direction, to
 16 talk about, for example, on line 3 where you're talking
 17 about the 8.75 cents per cigarette for a total
 18 per-cigarette tax of whatever that dollar amount is.
 19 And then when you get into the -- about the per pack,
 20 that it's 1.75 per pack of 20 cigarettes for a total
 21 per-pack tax of whatever that amount is.
 22 And then when you get to the tobacco
 23 products it's a little messier, just because it's a
 24 percentage, but again, you'd say for a total tax of
 25 whatever --

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1 MR. GRUESKIN: 62 percent.
 2 MS. EUBANKS: -- percent.
 3 But I just don't -- because then I think
 4 people can at least figure out, okay, well, that's the
 5 new total tax. You have the new tax rate, and the
 6 difference is the existing rate without you having to
 7 be explicit about it about it.
 8 But that's -- I -- it may not be as simple
 9 as you want.
 10 MR. BLAKE: No. That's actually where I
 11 was going.
 12 MS. EUBANKS: But I'm not inclined to do
 13 that.
 14 If -- if we take a vote on the issue, I
 15 think this is something that's left, you know, for the
 16 campaign, for the blue book. I think you're talking
 17 about an effect.
 18 MR. BLAKE: Well, do you want to do a
 19 vote?
 20 CHAIRPERSON STAIERT: Sure. Do you want
 21 to make a motion?
 22 MR. BLAKE: I would make a motion that we
 23 add language to 2015-2016 Initiative 143 to clarify the
 24 total tax rate after the changes if the initiative were
 25 to be adopted.

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1 CHAIRPERSON STAIERT: I'll second it just
 2 so we can vote. Second.
 3 All those in favor.
 4 MR. BLAKE: Aye.
 5 CHAIRPERSON STAIERT: Against.
 6 MULTIPLE VOICES: No.
 7 CHAIRPERSON STAIERT: All right. The vote
 8 fails.
 9 So that leaves what is on the screen. And
 10 why don't I read that in and see if that is the final
 11 to our changes.
 12 State taxes shall be increased 315.7
 13 million annually by an amendment to the
 14 Colorado Constitution increasing tobacco
 15 taxes, and, in connection therewith,
 16 beginning January 1, 2017, increasing taxes
 17 on cigarettes by 8.75 percent per cigarette,
 18 paren, \$1.75 per pack of 20 cigarettes,
 19 unparen, and on other tobacco products by 22
 20 percent of the manufacturer's list price.
 21 And -- oh, bummer.
 22 And allocating specified percentages
 23 of the new tobacco tax revenue to health
 24 related programs and tobacco education,
 25 prevention, and cessation programs currently

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1 funded by existing Constitution on tobacco
 2 taxes; and also allocating new revenue for
 3 tobacco related health research, veteran's
 4 programs, child and adolescent behavioral
 5 health, construction and technology
 6 improvements for qualified health
 7 professionals, educational loan repayment
 8 for health professionals in rural and
 9 underserved areas, and health professional
 10 training tracks.
 11 MR. BLAKE: Do you want to make a motion?
 12 Anyone?
 13 MS. EUBANKS: I don't care. Go ahead.
 14 MR. BLAKE: I make a motion that the --
 15 this is to grant the rehearing in part, deny in part,
 16 and adopt the title for 2015-2016 Initiative 143 as it
 17 appears on the screen.
 18 MS. EUBANKS: Second.
 19 CHAIRPERSON STAIERT: All those in favor?
 20 MULTIPLE VOICES: Aye.
 21 (This ends the requested portion of the
 22 proceedings contained within Media Unit 1.)
 23 * * * * *
 24
 25

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REPORTER CERTIFICATE

I, LAURA L. CORNING, Federal
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 ability, of the media provided to me.

I certify I am not related to any
 party herein or their counsel and have no interest in
 the result of this litigation.

Attested to by me, this 9th day of
 May, 2016.

 LAURA L. CORNING
 Federal Certified Realtime Reporter
 Certified Shorthand Reporter

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I certify I am not related to any party herein or their counsel and have no interest in the result of this litigation.

Attested to by me, this 9th day of
May, 2016.



LAURA L. CORNING
Federal Certified Realtime Reporter
Certified Shorthand Reporter

Amendment 35
Tobacco Tax Increase for Health-Related Purposes

Ballot Title: STATE TAXES SHALL BE INCREASED \$175 MILLION ANNUALLY THROUGH ADDITIONAL TOBACCO TAXES IMPOSED FOR HEALTH RELATED PURPOSES, AND, IN CONNECTION THEREWITH, AMENDING THE COLORADO CONSTITUTION TO INCREASE STATEWIDE TAXES ON THE SALE OF CIGARETTES BY WHOLESALERS OF THREE AND TWO-TENTHS CENTS PER CIGARETTE AND ON THE SALE, USE, CONSUMPTION, HANDLING, OR DISTRIBUTION OF OTHER TOBACCO PRODUCTS BY DISTRIBUTORS AT THE RATE OF TWENTY PERCENT OF THE MANUFACTURER'S LIST PRICE; INCREASING SUCH TOBACCO TAXES EFFECTIVE JANUARY 1, 2005; REQUIRING ANNUAL APPROPRIATIONS OF SPECIFIED PERCENTAGES OF THE ADDITIONAL TOBACCO TAX REVENUES TO EXPAND ELIGIBILITY FOR AND INCREASE ENROLLMENT IN THE CHILDREN'S BASIC HEALTH PLAN, TO FUND COMPREHENSIVE PRIMARY MEDICAL CARE THROUGH CERTAIN COLORADO QUALIFIED PROVIDERS, TOBACCO EDUCATION PROGRAMS, AND PREVENTION, EARLY DETECTION, AND TREATMENT OF CANCER AND CARDIOVASCULAR AND PULMONARY DISEASES, TO COMPENSATE THE STATE GENERAL FUND, THE OLD AGE PENSION FUND, AND LOCAL GOVERNMENTS FOR TOBACCO TAX LOSSES RESULTING FROM REDUCED SALES OF CIGARETTES AND TOBACCO PRODUCTS; SPECIFYING THAT THE APPROPRIATIONS OF ADDITIONAL TOBACCO TAX REVENUES SHALL BE IN ADDITION TO AND NOT SUBSTITUTED FOR APPROPRIATIONS FOR SUCH PROGRAMS ON JANUARY 1, 2005; ALLOWING THE USE OF ADDITIONAL TOBACCO TAX REVENUES FOR ANY HEALTH RELATED PURPOSE AND TO SERVE POPULATIONS ENROLLED IN THE CHILDREN'S BASIC HEALTH PLAN AND THE COLORADO MEDICAL ASSISTANCE PROGRAM AS OF JANUARY 1, 2005, UPON A DECLARATION OF A STATE FISCAL EMERGENCY BY TWO-THIRDS OF THE MEMBERS OF EACH HOUSE OF THE GENERAL ASSEMBLY AND THE GOVERNOR; PROHIBITING THE REPEAL OR REDUCTION OF EXISTING TAXES IMPOSED ON CIGARETTES AND OTHER TOBACCO PRODUCTS; EXCLUDING ALL ADDITIONAL TOBACCO TAX REVENUES FROM FISCAL YEAR SPENDING FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION; AND EXEMPTING APPROPRIATIONS OF ADDITIONAL TOBACCO TAX REVENUES FROM THE STATUTORY LIMITATION ON GENERAL FUND APPROPRIATIONS GROWTH OR ANY OTHER EXISTING SPENDING LIMITATION.

or function, that is sponsored to facilitate, in whole or in part, the purchase, sale, offer for sale, or collection of firearms at which:

(a) twenty-five or more firearms are offered or exhibited for sale, transfer, or exchange; or

(b) not less than three gun show vendors exhibit, sell, offer for sale, transfer, or exchange firearms.

(4) "Gun show promoter" means a person who organizes or operates a gun show.

(5) "Gun show vendor" means any person who exhibits, sells, offers for sale, transfers, or exchanges, any firearm at a gun show, regardless of whether the person arranges with a gun show promoter for a fixed location from which to exhibit, sell, offer for sale, transfer, or exchange any firearm.

(6) "Licensed gun dealer" means any person who is a licensed importer, licensed manufacturer, or dealer licensed pursuant to 18 U.S.C. sec. 923, as amended, as a federally licensed firearms dealer.

12-26.1-107. Appropriation. The General Assembly shall appropriate funds necessary to implement this article.

12-26.1-108. Effective date. This article shall take effect March 31, 2001.

AMENDMENT 23
FUNDING FOR PUBLIC SCHOOLS

Ballot Title: An amendment to the Colorado Constitution concerning increased funding for preschool through twelfth-grade public education, and, in connection therewith, requiring the statewide base per pupil funding for public education and funding for specifically defined categorical programs to grow annually by at least the rate of inflation plus one percentage point for fiscal years 2001-02 through 2010-11 and annually by at least the rate of inflation for fiscal years thereafter; creating a state education fund and exempting appropriations from the fund and expenditures of said appropriations from constitutional and statutory limitations; requiring the state to deposit in the state education fund all revenues collected by the state from a tax of one-third of one percent on federal taxable income of every individual, estate, trust, and corporation and exempting those revenues from the constitutional limitation on fiscal year spending; limiting the use of moneys in the state education fund to increasing the statewide base per pupil funding for public education and funding for categorical programs and to funding specified education programs, including public school building capital construction; specifying that moneys appropriated from the state education fund shall not be used to supplant the level of general fund appropriations existing on the effective date of the measure for total

program education and categorical program funding; and, for fiscal years 2001-02 through 2010-11, requiring the general assembly to increase annually the general fund appropriation for total program funding under the "Public School Finance Act of 1994", or any successor act, by at least five percent of the prior year's general fund appropriation for total program, except in fiscal years in which personal income grows less than four and one-half percent between the two previous calendar years.

Text of Proposal:

As it Enacted by the People of the State of Colorado.

Article IX of the Constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

Section 17. Education - Funding. (1) Purpose. IN STATE FISCAL YEAR 2001-2002 THROUGH STATE FISCAL YEAR 2010-2011, THE STATEWIDE BASE PER PUPIL FUNDING, AS DEFINED BY THE PUBLIC SCHOOL FINANCE ACT OF 1994, ARTICLE 54 OF TITLE 22, COLORADO REVISED STATUTES ON THE EFFECTIVE DATE OF THIS SECTION, FOR PUBLIC EDUCATION FROM PRESCHOOL THROUGH THE TWELFTH GRADE AND TOTAL STATE FUNDING FOR ALL CATEGORICAL PROGRAMS SHALL GROW ANNUALLY AT LEAST BY THE RATE OF INFLATION PLUS AN ADDITIONAL ONE PERCENTAGE POINT. IN STATE FISCAL YEAR 2011-2012, AND EACH FISCAL YEAR HEREAFTER, THE STATEWIDE BASE PER PUPIL FUNDING FOR PUBLIC EDUCATION FROM PRESCHOOL THROUGH THE TWELFTH GRADE AND TOTAL STATE FUNDING FOR ALL CATEGORICAL PROGRAMS SHALL GROW ANNUALLY AT A RATE SET BY THE GENERAL ASSEMBLY THAT IS AT LEAST EQUAL TO THE RATE OF INFLATION.

(2) Definitions. FOR PURPOSES OF THIS SECTION: (a) "CATEGORICAL PROGRAMS" INCLUDE TRANSPORTATION PROGRAMS, ENGLISH LANGUAGE PROFICIENCY PROGRAMS, EXPELLED AND AT-RISK STUDENT PROGRAMS, SPECIAL EDUCATION PROGRAMS (INCLUDING GIFTED AND TALENTED PROGRAMS), SUSPENDED STUDENT PROGRAMS, VOCATIONAL EDUCATION PROGRAMS, SMALL ATTENDANCE CENTERS, COMPREHENSIVE HEALTH EDUCATION PROGRAMS, AND OTHER CURRENT AND FUTURE ACCOUNTABLE PROGRAMS SPECIFICALLY IDENTIFIED IN STATUTE AS A CATEGORICAL PROGRAM.

(b) "INFLATION" HAS THE SAME MEANING AS DEFINED IN ARTICLE X, SECTION 20, SUBSECTION (2), PARAGRAPH (f) OF THE COLORADO CONSTITUTION.

(3) Implementation. IN STATE FISCAL YEAR 2001-2002 AND EACH FISCAL YEAR THEREAFTER, THE GENERAL ASSEMBLY MAY ANNUALLY APPROPRIATE, AND SCHOOL DISTRICTS MAY ANNUALLY EXPEND, MONIES FROM THE STATE EDUCATION FUND CREATED IN SUBSECTION (4) OF THIS SECTION. SUCH APPROPRIATIONS AND EXPENDITURES SHALL NOT

TITLES AND TEXT

(4) "PUBLIC PAYROLL SYSTEM" MEANS THE PAYROLL SYSTEM USED BY ANY PUBLIC EMPLOYER FOR PAYMENT OF WAGES, EARNINGS, OR OTHER COMPENSATION TO PUBLIC EMPLOYEES, REGARDLESS OF WHETHER SUCH SYSTEM IS ADMINISTERED DIRECTLY BY SUCH PUBLIC EMPLOYER OR BY A THIRD PARTY PURSUANT TO A CONTRACT OR OTHER ARRANGEMENT WITH SUCH PUBLIC EMPLOYER.

SECTION 3. ALLOWABLE PUBLIC PAYROLL DEDUCTIONS. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO PUBLIC PAYROLL SYSTEM SHALL TAKE ANY PAYROLL DEDUCTION FROM THE PAYROLL COMPENSATION OF ANY PUBLIC EMPLOYEE EXCEPT FOR THE FOLLOWING:

- (A) DEDUCTIONS REQUIRED BY FEDERAL LAW, INCLUDING BY WAY OF EXAMPLE BUT NOT LIMITATION, FOR SOCIAL SECURITY AND MEDICARE;
- (B) TAX WITHHOLDINGS;
- (C) JUDICIAL LIENS AND GARNISHMENTS, INCLUDING COURT-ORDERED CHILD SUPPORT, DOMESTIC SUPPORT, AND MAINTENANCE OBLIGATIONS AND PAYMENTS;
- (D) DEDUCTIONS FOR INDIVIDUAL OR GROUP HEALTH BENEFITS OR OTHER INSURANCE;
- (E) DEDUCTIONS FOR PENSION OR RETIREMENT PLANS OR SYSTEMS, OR OTHER SAVINGS OR INVESTMENT PROGRAMS; AND
- (F) CHARITABLE DEDUCTIONS.

SECTION 4. SELF-EXECUTING, SEVERABILITY, CONFLICTING PROVISIONS. ALL PROVISIONS OF THIS ARTICLE ARE SELF-EXECUTING AND SEVERABLE, AND SHALL SUPERSEDE CONFLICTING STATE CONSTITUTIONAL, STATE STATUTORY, LOCAL CHARTER, ORDINANCE, OR RESOLUTION, AND OTHER STATE AND LOCAL PROVISIONS.

SECTION 5. EFFECTIVE DATE. THE PROVISIONS OF THIS ARTICLE SHALL TAKE EFFECT UPON THE PROCLAMATION OF THE GOVERNOR.

Amendment 50
Limited Gaming in Central City, Black Hawk, and Cripple
Creek
(Constitutional Amendment)

Ballot Title: SHALL THERE BE AN AMENDMENT TO THE COLORADO CONSTITUTION CONCERNING VOTER-APPROVED REVISIONS TO LIMITED GAMING, AND, IN CONNECTION THEREWITH, ALLOWING THE LOCAL VOTERS IN CENTRAL CITY, BLACK HAWK, AND CRIPPLE CREEK TO EXTEND CASINO HOURS OF OPERATION, APPROVED GAMES TO INCLUDE ROULETTE AND CRAPS OR BOTH, AND MAXIMUM SINGLE BETS UP TO \$100; ADJUSTING DISTRIBUTIONS TO CURRENT GAMING FUND RECIPIENTS FOR GROWTH IN GAMING TAX REVENUE DUE TO VOTER-APPROVED REVISIONS IN GAMING; DISTRIBUTING 78% OF THE REMAINING GAMING TAX REVENUE FROM THIS AMENDMENT FOR STUDENT FINANCIAL AID AND CLASSROOM INSTRUCTION AT COMMUNITY COLLEGES ACCORDING TO THE PROPORTION OF THEIR RESPECTIVE STUDENT ENROLLMENTS, AND 22% FOR LOCAL GAMING IMPACTS IN GILPIN AND TELLER COUNTIES AND THE CITIES OF CENTRAL CITY, BLACK HAWK, AND CRIPPLE CREEK ACCORDING TO THE PROPORTION OF INCREASED TAX REVENUE FROM VOTER-APPROVED REVISIONS IN EACH CITY OR COUNTY; AND REQUIRING ANY INCREASE IN GAMING TAXES FROM THE LEVELS IMPOSED AS OF JULY 1, 2008 TO BE APPROVED AT A STATEWIDE ELECTION, IF LOCAL VOTERS IN ONE OR MORE CITIES HAVE APPROVED ANY REVISION TO LIMITED GAMING?

Text of Measure:

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

SECTION 1. Section 9 (3) (d), (4) (b), and (5) (a), and (5) (b) (II) of article XVIII of the constitution of the state of Colorado are amended to read:

Section 9. Limited gaming permitted. (3) Limited gaming shall be subject to the following:

(d) Limited gaming operations shall be prohibited between the hours of 2:00 o'clock a.m. and 8:00 o'clock a.m., UNLESS SUCH HOURS ARE REVISED AS PROVIDED IN SUBSECTION (7) OF THIS SECTION.

(4) As certain terms are used in regards to limited gaming:

(b) "Limited gaming" means the use of slot machines and the card games of blackjack and poker, each game having a maximum single bet of five dollars, UNLESS SUCH GAMES OR SINGLE BETS ARE REVISED AS PROVIDED IN SUBSECTION (7) OF THIS SECTION.

COMPENSATION ACT OF COLORADO, ARTICLES 40 TO 47 OF THIS TITLE. THE INJURED EMPLOYEE SHALL HAVE A RIGHT TO A JURY TRIAL ON ALL ISSUES OF FACT, IF DEMANDED IN ACCORDANCE WITH THE COLORADO RULES OF CIVIL PROCEDURE. THE COURT OR JURY MAY AWARD THE INJURED EMPLOYEE COMPENSATORY AND EXEMPLARY DAMAGES, INCLUDING DAMAGES FOR PAST AND FUTURE PECUNIARY LOSSES, PAIN AND SUFFERING, EMOTIONAL DISTRESS, INCONVENIENCE, MENTAL ANGUISH, LOSS OF ENJOYMENT OF LIFE, AND OTHER NONPECUNIARY LOSSES, PROVIDED THAT THE EMPLOYEE SHALL NOT BE ENTITLED TO A DOUBLE RECOVERY FOR THE SAME LOSSES FOR WHICH THE EMPLOYEE HAS ALREADY BEEN COMPENSATED UNDER THE WORKERS' COMPENSATION ACT.

(4) "EMPLOYER" AND "EMPLOYEE" SHALL HAVE THE MEANINGS SET FORTH IN SECTION 8-4-101, EXCEPT THAT THIS SECTION SHALL APPLY ONLY TO EMPLOYERS THAT REGULARLY EMPLOY TEN OR MORE EMPLOYEES IN THE STATE OF COLORADO.

Amendment 58
Severance Taxes on the Oil and Natural Gas Industry
(Statutory Amendment)

Ballot Title: SHALL STATE TAXES BE INCREASED \$321.4 MILLION ANNUALLY BY AN AMENDMENT TO THE COLORADO REVISED STATUTES CONCERNING THE SEVERANCE TAX ON OIL AND GAS EXTRACTED IN THE STATE, AND, IN CONNECTION THEREWITH, FOR TAXABLE YEARS COMMENCING ON OR AFTER JANUARY 1, 2009, CHANGING THE TAX TO 5% OF TOTAL GROSS INCOME FROM THE SALE OF OIL AND GAS EXTRACTED IN THE STATE WHEN THE AMOUNT OF ANNUAL GROSS INCOME IS AT LEAST \$300,000; ELIMINATING A CREDIT AGAINST THE SEVERANCE TAX FOR PROPERTY TAXES PAID BY OIL AND GAS PRODUCERS AND INTEREST OWNERS; REDUCING THE LEVEL OF PRODUCTION THAT QUALIFIES WELLS FOR AN EXEMPTION FROM THE TAX; EXEMPTING REVENUES FROM THE TAX AND RELATED INVESTMENT INCOME FROM STATE AND LOCAL GOVERNMENT SPENDING LIMITS; AND REQUIRING THE TAX REVENUES TO BE CREDITED AS FOLLOWS: (A) 22% TO THE SEVERANCE TAX TRUST FUND, (B) 22% TO THE LOCAL GOVERNMENT SEVERANCE TAX FUND, AND (C) 56% TO A NEW SEVERANCE TAX STABILIZATION TRUST FUND, OF WHICH 60% IS USED TO FUND SCHOLARSHIPS FOR COLORADO RESIDENTS ATTENDING STATE COLLEGES AND UNIVERSITIES, 15% TO FUND THE PRESERVATION OF NATIVE WILDLIFE HABITAT, 10% TO FUND RENEWABLE ENERGY AND ENERGY EFFICIENCY PROGRAMS, 10% TO FUND TRANSPORTATION PROJECTS IN COUNTIES AND MUNICIPALITIES IMPACTED BY THE SEVERANCE OF OIL AND GAS, AND 5% TO FUND COMMUNITY DRINKING WATER AND WASTEWATER TREATMENT GRANTS?

Text of Measure:

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

SECTION 1. 39-29-101, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-29-101. Legislative declaration. (4) IT IS THE INTENT OF THE PEOPLE OF THIS STATE THAT THE ADDITIONAL REVENUE GENERATED BY ELIMINATING THE TAX CREDIT GIVEN TO OIL AND GAS PRODUCERS AND INTEREST OWNERS FOR PROPERTY TAXES PAID AND CHANGING THE SEVERANCE TAX STRUCTURE AS APPROVED BY A VOTE OF THE PEOPLE AT THE 2008 GENERAL ELECTION SHALL SUPPLEMENT, RATHER THAN SUPPLANT, CURRENT APPROPRIATIONS TO THE FOLLOWING ENUMERATED PURPOSES AND SHALL BE USED TO PROVIDE FUNDING FOR THE FOLLOWING PUBLIC PURPOSES: SCHOLARSHIPS FOR STUDENTS ATTENDING STATE COLLEGES AND UNIVERSITIES; THE PRESERVATION OF WILDLIFE HABITAT; RENEWABLE AND CLEAN ENERGY PROJECTS; TRANSPORTATION PROJECTS IN COMMUNITIES IMPACTED BY OIL AND GAS PRODUCTION; AND COMMUNITY DRINKING WATER AND WASTEWATER TREATMENT GRANTS. IT IS THE FURTHER INTENT OF THE PEOPLE OF THE STATE THAT THE PROGRAMS CURRENTLY FUNDED BY THE SEVERANCE TAX NOT BE ADVERSELY IMPACTED BY THE DISTRIBUTION OF THE ADDITIONAL REVENUE GENERATED BY THE CHANGES TO THE SEVERANCE TAX APPROVED BY A VOTE OF THE PEOPLE AT THE 2008 GENERAL ELECTION, WHICH IS REFLECTED IN THE DISTRIBUTION SET FORTH IN SECTION 39-29-108 (2.3).

SECTION 2. 39-29-105 (1) (b), Colorado Revised Statutes, is amended, and the said 39-29-105 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

39-29-105. Tax on severance of oil and gas. (1) (b) In addition to any other tax, there shall be levied, collected, and paid for each taxable year commencing on or after January 1, 2000, BUT PRIOR TO JANUARY 1, 2009, a tax upon the gross income attributable to the sale of oil and gas severed from the earth in this state; except that oil produced from any wells that produce fifteen barrels per day or less of oil and gas produced from wells that produce ninety thousand cubic feet or less of gas per day for the average of all producing days for such oil or gas production during the taxable year shall be exempt from the tax. Nothing in this paragraph (b) shall exempt a producer of oil and gas from submitting a production employee report as required by section 39-29-110 (1) (d) (I). The tax for oil and gas shall be at the following rates of the gross income:

**AMENDMENT 26
SURPLUS REVENUE TO TEST I-70
FIXED GUIDEWAY**

BALLOT TITLE: AN AMENDMENT TO THE COLORADO REVISED STATUTES CONCERNING THE FUNDING OF A TESTING AND PLANNING PROGRAM FOR A HIGH-SPEED FIXED GUIDEWAY TRANSPORTATION SYSTEM, AND, IN CONNECTION THEREWITH, REQUIRING \$50 MILLION OF EXCESS STATE REVENUES COLLECTED DURING THE 2000-2001 STATE FISCAL YEAR TO BE CREDITED TO A NEWLY CREATED FIXED GUIDEWAY TECHNOLOGY DEVELOPMENT FUND; AUTHORIZING THE COLORADO INTERMOUNTAIN FIXED GUIDEWAY AUTHORITY TO EXPEND MONEYS FROM THE FUND UNTIL DECEMBER 31, 2004, TO DESIGN AND TEST A HIGH-SPEED FIXED GUIDEWAY TRANSPORTATION SYSTEM, INCLUDING BUT NOT LIMITED TO A MONORAIL SYSTEM, TO ENSURE REVIEW AND APPROVAL OF THE SYSTEM UNDER FEDERAL SAFETY STANDARDS, AND TO CONDUCT PLANNING STUDIES, INCLUDING STUDIES OF THE DESIGN, FINANCE, CONSTRUCTION, AND OPERATION OF A FIXED GUIDEWAY SYSTEM CONNECTING DENVER INTERNATIONAL AIRPORT AND EAGLE COUNTY AIRPORT; REQUIRING ANY MONEYS IN THE FUND NOT EXPENDED BY THE AUTHORITY TO BE REFUNDED TO THE STATE ON JANUARY 1, 2005; EXEMPTING THE AUTHORITY FROM CONSTITUTIONAL REVENUE AND SPENDING LIMITATIONS; AUTHORIZING THE AUTHORITY TO EXPEND ANY STATE FUNDS THAT IT MAY RECEIVE; AND DELAYING THE TERMINATION OF THE AUTHORITY FROM JANUARY 1, 2004 UNTIL JANUARY 1, 2005.

Text of Proposed Statutory Amendment

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

SECTION 1. Section 32-16-106(1), Colorado Revised Statutes,

Amendment 51
State Sales Tax Increase for Services for People
with Developmental Disabilities
(Statutory Amendment)

Ballot Title: SHALL STATE TAXES BE INCREASED \$186.1 MILLION ANNUALLY AFTER FULL IMPLEMENTATION BY AN AMENDMENT TO THE COLORADO REVISED STATUTES CONCERNING AN INCREASE IN THE STATE SALES AND USE TAX TO PROVIDE FUNDING FOR LONG-TERM SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES, AND, IN CONNECTION THEREWITH, INCREASING THE RATE OF THE STATE SALES AND USE TAX BEGINNING ON JULY 1, 2009, BY ONE-TENTH OF ONE PERCENT IN EACH OF THE NEXT TWO FISCAL YEARS; PERMITTING THE STATE TO RETAIN AND SPEND ALL REVENUES FROM THE NEW TAX, NOTWITHSTANDING THE STATE SPENDING LIMIT; REQUIRING AN AMOUNT EQUAL TO THE NET REVENUE FROM THE NEW TAX TO BE DEPOSITED IN THE NEWLY CREATED DEVELOPMENTAL DISABILITIES LONG-TERM SERVICES CASH FUND; REQUIRING THE MONEY IN THE FUND TO BE USED TO PROVIDE LONG-TERM SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES; AND PROHIBITING REDUCTIONS IN THE LEVEL OF STATE APPROPRIATIONS IN THE ANNUAL GENERAL APPROPRIATION BILL EXISTING ON THE EFFECTIVE DATE OF THIS MEASURE FOR LONG-TERM SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES?

Text of Measure:

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

SECTION 1. Statement of Intent. (1) It is the intent of the People of the State of Colorado in enacting this initiative to eliminate the waiting lists for the continuum of long-term services for persons who, through no fault of their own, have developmental disabilities, including Autism, Cerebral Palsy, Down Syndrome and Mental Retardation. Long term health care services and supports at a minimum could include a place to live, help with daily living tasks, early intervention care, nursing services, training and employment. Providing funding to end Colorado's waiting lists for children and adults with developmental disabilities will enable them to receive the necessary supports to live with dignity and be fully included in community life.

(2) As of November 2007 more than twelve thousand children and adults who have developmental disabilities were on waiting lists for long-term health care services and supports. Many of these children and adults wait more than ten years before receiving care. Many individuals need almost constant guidance and assistance due to behavioral or mental health problems, a lack of adaptive skills, major medical issues, and absence of family support. Further, many need assistance to eat, dress, bathe or use the bathroom. Some cannot speak or read and are seriously limited in their ability to express their needs. Still others are young children with autism who cannot access early intervention services that are so desperately needed and proven to be effective. Many of these children and adults and the families who care for them are at the point of an acute crisis due to their unfulfilled needs. The state does not provide back-up options for those in crisis, leaving many with no help at all.

(3) The People find the current circumstances unacceptable and do hereby enact a slight increase in the rate of the state sales and use tax – an amount equal to one or two pennies on a ten dollar purchase – to be phased in over a two-year period. The People acknowledge that current system infrastructure is insufficient to address the needs of all those on the waiting lists. A phased-in increase of revenue will allow time to build capacity in the current system to better serve those in need. It is the intent of the People that the revenues generated by this initiative be used to serve additional persons with developmental disabilities except in the event of a declaration of a state fiscal emergency as provided herein.

SECTION 2. Article 10.5 of title 27, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 8
DEVELOPMENTAL DISABILITIES LONG-TERM SERVICES CASH FUND

27-10.5-801. Definitions. AS USED IN THIS PART 8, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "EXEMPT NET REVENUE" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 39-26-123 (1) (a), C.R.S.

(2) "DEVELOPMENTAL DISABILITIES" INCLUDE BUT ARE NOT LIMITED TO CONDITIONS DEFINED IN SECTION 27-10.5-102 (11) (a), AUTISM, CEREBRAL PALSY, DOWN SYNDROME, AND MENTAL RETARDATION.