

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2019-2020 #315 (“Tobacco Tax Revenue for New State Preschool Program”)</p> <p>Petitioner: Anna Jo Haynes</p> <p>v.</p> <p>Respondents: Monica Vondruska and Jon Caldara</p> <p>and</p> <p>Title Board: Theresa Conley, David Powell, and Julie Pelegrin</p>	
<p>Attorney for Petitioner:</p> <p>Mark G. Grueskin, #14621 Recht Kornfeld, P.C. 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-573-1900 (telephone) 303-446-9400 (facsimile) mark@rklawpc.com</p>	<p>Case Number:</p>
<p style="text-align: center;">PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2019-2020 #315 (“TOBACCO TAX REVENUE FOR NEW STATE PRESCHOOL PROGRAM”)</p>	

Anna Jo Haynes (“Petitioner”), a registered elector of the State of Colorado, through her undersigned counsel, respectfully petitions this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Proposed Initiative 2019-2020 #315 (“Tobacco Tax Revenue for New State Preschool Program”), and states:

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2019-2020 #315.

Monica Vondruska and Jon Caldara (the “Proponents”) proposed Initiative 2019-2020 #315 (the “Proposed Initiative”). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, Proponents submitted final versions of the Proposed Initiative to the Secretary of State for submission to the Title Board, of which the Secretary or her designee is a member.

A Title Board hearing was held on April 15, 2020, at which time titles were set for 2019-2020 #315. On April 22, 2020, Petitioner Anna Jo Haynes filed a Motion for Rehearing, alleging that the Title Board erred in setting a ballot title because #315 violates the single subject requirement in the Colorado Constitution, and that the Title Board erred because the titles set for #315 are incomplete and misleading in describing the measure’s central features to voters. Rehearing was

held on April 23, 2020, at which time the Title Board denied the Motion for Rehearing in its entirety.

B. Jurisdiction

Petitioner is entitled to a review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioner timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1). Additionally, Petitioner timely filed this Petition for Review within five days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of: (1) the draft, amended, and final version of the initiative filed by the Proponents; (2) the original ballot title set for this measure; (3) the Motion for Rehearing filed by the Petitioner; and (4) the ruling on the Motion for Rehearing as reflected by the title and ballot title and submission clause set by the Board. Petitioner believes that the Title Board erred in denying certain aspects of the Motion for Rehearing. The matter is properly before this Court.

GROUND FOR APPEAL

The Title Board erred in setting a ballot title for #315 because the measure violates the single subject requirement of the Colorado Constitution and because the titles set by the Board are incomplete and misleading in describing the central

features of the measure to voters. The following is an advisory list of issues to be addressed in Petitioner's brief:

1. Whether the Board erred in finding the measure contains a single subject when it both: (a) reallocates certain unrelated funding and mandates its use on a preschool program; and (b) imposes a financial penalty on local jurisdictions that ban the sale of any nicotine or tobacco products in any form.
2. Whether the Board erred in describing this measure for voters ("Shall state taxes be increased by \$6,300,000 by an amendment to the Colorado Constitution and the Colorado Revised Statutes..."), given that this tax increase is not attributable to or caused "by an amendment to the Colorado Constitution."
3. Whether the Board erred in its wording of the ballot title by omitting any notice to voters about the new financial penalty on localities that ban nicotine or tobacco products in any form.
4. Whether the Board erred in its wording of the ballot title by informing voters only that certain funding to be reallocated will come from "health-related programs" without indicating, for voter understanding, major funding reductions mandated by the measure.

PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the measure contains multiple subjects and/or the titles are legally flawed, and direct the Title Board to return the measure to the Proponents or correct the title to address the deficiencies outlined by Petitioner.

Respectfully submitted this 30th day of April, 2020.

s/ Mark G. Grueskin _____

Mark G. Grueskin, #14621

RECHT KORNFELD, P.C.

1600 Stout Street, Suite 1400

Denver, CO 80202

Phone: 303-573-1900

Facsimile: 303-446-9400

Email: mark@rklawpc.com

ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2019-2020 #315 (“TOBACCO TAX REVENUE FOR NEW STATE PRESCHOOL PROGRAM”)** was sent electronically via CCEF this day, April 30, 2020, to the following:

Counsel for the Title Board:
Michael Kotlarczyk
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203

Counsel for the Proponents:
William Hobbs
Benjamin J. Larson
Ireland Stapleton Pryor & Pascoe, PC
717 17th Street, Suite 2800
Denver, CO 80202

And sent via E-Mail to:
Shayne Madsen
Independence Institute
727 E. 16th Avenue
Denver, CO 80203
shayne@i2i.org

/s Erin Holweger _____

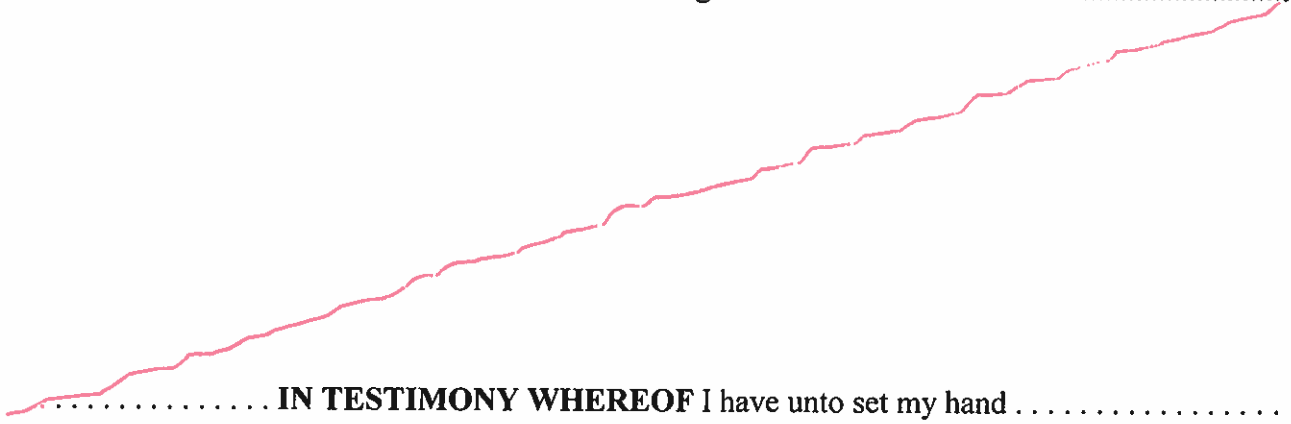


STATE OF COLORADO

DEPARTMENT OF STATE CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal impact statement and abstract, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2019-2020 #315 'Tobacco Tax Revenue for New State Preschool Program'".....



..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 27th day of April, 2020.

Jena Griswold

SECRETARY OF STATE



Proposed Initiative 2019-2020 # _____



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

SECTION 1. In the Constitution of the State of Colorado **add** section 22 to article X as follows:

SECTION 22. REVENUES FROM EXISTING TOBACCO TAXES TO FUND A COLORADO PRESCHOOL PROGRAM. (1) THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT SINCE 2005 THERE HAVE BEEN SIGNIFICANT IMPROVEMENTS IN THE REGULATION OF THE SALE AND USE OF CIGARETTES AND TOBACCO PRODUCTS WITH THE ADOPTION OF COMPREHENSIVE SMOKE-FREE POLICIES BY STATE AND LOCAL GOVERNMENTS, THE PASSAGE OF THE FEDERAL “FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT” IN 2009 AND ADOPTION OF 2019 AMENDMENTS TO THE FEDERAL “FOOD, DRUG AND COSMETIC ACT” TO RAISE THE MINIMUM AGE OF THE SALE OF TOBACCO AND NICOTINE PRODUCTS FROM 18 YEARS OF AGE TO 21 YEARS OF AGE.

(2) THE PEOPLE FIND AND DECLARE THAT THE UNITED STATES SURGEON GENERAL HAS STATED THAT TOBACCO SMOKING IN THE UNITED STATES IS NOW AT AN ALL-TIME LOW. THE COLORADO TOBACCO EDUCATION, PREVENTION, AND CESSATION GRANT PROGRAM REVIEW COMMITTEE HAS MADE SIMILAR FINDINGS OF REDUCED TOBACCO USAGE BY COLORADANS.

(3) FINALLY, THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT EXISTING REVENUES FROM THE CIGARETTE AND TOBACCO TAXES IMPOSED BY SECTION 21 OF THIS ARTICLE X IN 2005 SHOULD BE REDISTRIBUTED TO CONTINUE TO FUND TOBACCO EDUCATION, CESSATION AND PREVENTION PROGRAMS WHERE NEEDED AND TO CONTINUE TO FUND HEALTH EDUCATION, RESEARCH AND TREATMENT PROGRAMS, BUT TO ALSO FUND A NEW PRESCHOOL PROGRAM FOR THE CHILDREN OF COLORADO AS SET FORTH HEREIN WITH NO NEW TAXES.

(4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE GENERAL ASSEMBLY SHALL ENACT AUTHORIZING LEGISLATION NO LATER THAN DECEMBER 31, 2021, TO ENABLE THE DEPARTMENT OF EDUCATION, OR SUCH OTHER DEPARTMENT OR DELEGATED ENTITY THAT IS DETERMINED BY THE GENERAL ASSEMBLY TO BE BEST QUALIFIED, TO CREATE AND ADMINISTER, USING EXISTING REVENUES, A NEW COLORADO PRESCHOOL PROGRAM IN A MANNER THAT FOSTERS THE PROGRAM’S ADMINISTRATION, CONSISTENT WITH VOTER INTENT. THE LEGISLATION SHALL CREATE THE PRESCHOOL CASH FUND IN THE STATE TREASURY. EVERY YEAR, BEGINNING WITH THE 2021-2022 FISCAL YEAR, THE SUM OF ONE HUNDRED MILLION DOLLARS FROM EXISTING TAX REVENUES COLLECTED PURSUANT TO SECTION 21, ARTICLE X MUST BE CREDITED TO THE PRESCHOOL CASH FUND, EXCEPT THAT THE PERCENTAGE OF SIXTEEN PERCENT OF REVENUES SHALL REMAIN APPROPRIATED FOR SCHOOL AND COMMUNITY BASED AND STATEWIDE TOBACCO PROGRAMS DESIGNED TO REDUCE INITIATION OF TOBACCO USE BY CHILDREN, PROMOTE CESSATION OF TOBACCO USE AMONG YOUTH AND ADULTS AND REDUCE EXPOSURE TO SECOND HAND SMOKE. SUCH REVENUES SHALL CONTINUE TO BE APPROPRIATED THROUGH THE “TOBACCO EDUCATION, PREVENTION AND CESSATION ACT” PART 8 OF ARTICLE 3.5 OF TITLE 25, COLORADO REVISED STATUTES, AND ANY SUCCESSOR ACT. NO LATER THAN DECEMBER 31, 2021, THE GENERAL ASSEMBLY SHALL ENACT LEGISLATION TO REALLOCATE THE PERCENTAGES SET FORTH IN SECTION 21 OF THIS ARTICLE X FOR THE PURPOSES SET FORTH

THEREIN AND IN THIS SECTION 22. THE PRESCHOOL CASH FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY SOLELY FOR THE DIRECT AND INDIRECT COSTS OF THE NEW COLORADO PRESCHOOL PROGRAM. THE NEW COLORADO PRESCHOOL PROGRAM AND ITS FUNDING AS PROVIDED BY THIS SUBSECTION (4) MUST SUPPLEMENT AND NOT SUPPLANT ANY EXISTING PROGRAMS AND FUNDING RELATING TO PRESCHOOL EDUCATION.

(5) ANY AUTHORIZING LEGISLATION FOR THE PRESCHOOL PROGRAM SHALL INCLUDE A MANDATE THAT, TO THE EXTENT PRACTICABLE, THE FUNDS BE USED TO FOSTER:

(I) PROGRAMMATIC ADMINISTRATION THAT ALLOWS FOR PARENT CHOICE, ENSURES SCHOOL-BASED AND COMMUNITY-BASED PROGRAMS THAT MEET QUALITY AND PROGRAM STANDARDS, PRIORITIZES COMMUNITY NEEDS IN A MANNER THAT WILL SUPPORT AND STRENGTHEN THE DIVERSITY OF BIRTH TO KINDERGARTEN SERVICE PROVIDERS, AND HELPS TO ACHIEVE STATE AND LOCAL MIXED DELIVERY GOALS;

(II) HIGH-QUALITY PROGRAMMING THAT HELPS PREPARE CHILDREN FOR KINDERGARTEN;

(III) COORDINATION WITH EXISTING EARLY CHILDHOOD SYSTEMS AND INITIATIVES AND ADVANCING ALIGNMENT WITH KINDERGARTEN THROUGH TWELFTH GRADE SYSTEMS TO SUPPORT CHILDREN'S TRANSITIONS TO SCHOOL;

(IV) OPPORTUNITIES FOR EVIDENCE-BASED PARENT, FAMILY, AND COMMUNITY ENGAGEMENT; AND

(V) AN EVALUATION OF EARLY CHILDHOOD EDUCATION PROGRAM EFFECTIVENESS, INCLUDING THE IMPACT OF PRESCHOOL ON CHILD AND FAMILY OUTCOMES.

SECTION 2. In Colorado Revised Statutes, **amend** subsection (1.7) of section 24-75-1104.5 as follows:

(1.7) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT, FOR FISCAL YEARS BEGINNING ON OR AFTER JULY 1, 2022, THE SETTLEMENT MONEYS RECEIVED BY THE STATE IN THE PRECEDING FISCAL YEAR SHALL BE ALLOCATED AS FOLLOWS. Except as otherwise provided in subsections (1.3) and (5) of this section, and except that disputed payments received by the state in the 2015-16 fiscal year or in any year thereafter are excluded from the calculation of allocations under this subsection (1.7), for the 2016-17 fiscal year and for each fiscal year thereafter, the following programs, services, and funds shall receive the following specified percentages of the total amount of settlement moneys received by the state in the preceding fiscal year:

~~(a) The Colorado nurse home visitor program created in article 6.4 of title 26, C.R.S., shall receive twenty-six and seven-tenths percent of the settlement moneys;~~

~~(b)~~(a) The children's basic health plan trust created in section 25.5-8-105, C.R.S., shall receive eighteen percent of the settlement moneys;

~~(e)(b) The university of Colorado health sciences center shall receive a base amount of fifteen and one half percent of the settlement moneys and an additional amount of two percent of the settlement moneys, and the state treasurer shall credit both THE amounts to the tobacco litigation settlement moneys health education fund, which is hereby created in the state treasury. The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund. Any unexpended and unencumbered money in the fund at the end of any fiscal year remains in the fund and shall not be credited or transferred to the general fund or any other fund. All money in the fund is subject to annual appropriation by the general assembly to the health sciences center, but the health sciences center shall use the additional amount of settlement moneys credited to the fund only for tobacco-related in-state cancer research as authorized in section 24-75-1103 (7).~~

~~(d) The Fitzsimons trust fund created in section 23-20-136 (3), C.R.S., shall receive eight percent of the settlement moneys. Subject to annual appropriation by the general assembly, the settlement moneys shall be used as specified in section 23-20-136 (5); C.R.S.~~

~~(e) The Tony Grampsas youth services program created in article 6.8 of title 26, C.R.S., shall receive seven and one half percent of the total amount of settlement moneys, which the state treasurer shall transfer to the youth services program fund created in section 26-6.8-102 (2) (d), C.R.S.;~~

~~(f) The drug assistance program created in section 25-4-1401, C.R.S., shall receive five percent of the settlement moneys;~~

~~(g) The AIDS and HIV prevention fund created in section 25-4-1405, C.R.S., shall receive three and one half percent of the settlement moneys;~~

~~(h) The supplemental tobacco litigation settlement moneys account of the Colorado immunization fund created in section 25-4-2301, C.R.S., shall receive two and one half percent of the settlement moneys;~~

~~(i)(c) The tobacco settlement defense account of the tobacco litigation settlement cash fund created in section 24-22-115 (2) (a) shall receive two and one-half percent of the settlement moneys;~~

~~(j) The supplemental state contribution fund created in section 24-50-609 (5) shall receive two and three tenths percent of the settlement moneys, which, subject to annual appropriation by the general assembly, shall be used to pay the costs of increased nonsupplemental state contributions and to provide supplements to the state contribution for state employee group benefit plans for each eligible state employee as required by section 24-50-609.5;~~

~~(k) The Colorado autism treatment fund created pursuant to section 25.5-6-805, C.R.S., shall receive two percent of the settlement moneys to pay a portion of the~~

~~state's share of the annual funding required by the "Home and Community based Services for Children with Autism Act", part 8 of article 6 of title 25.5, C.R.S.;~~

~~(d) The Colorado state veterans trust fund created in section 28-5-709, C.R.S., shall receive one percent of the settlement moneys; AND~~

~~(m) The state dental loan repayment program created in article 23 of title 25, C.R.S., shall receive one percent of the settlement moneys; and~~

~~(n) The Colorado health service corps fund created in section 25-1.5-506, C.R.S., shall receive one percent of the settlement moneys.~~

(e) THE PRESCHOOL CASH FUND REFERENCED IN SECTION 22, ARTICLE X, OF THE COLORADO CONSTITUTION, AND CREATED BY IMPLEMENTING LEGISLATION, SHALL RECEIVE THE REMAINING PERCENTAGE OF THE SETTLEMENT MONEYS.

SECTION 3. In Colorado Revised Statutes, 39-22-623, **amend** (1)(a)(II)(A) as follows:

(1) The proceeds of all money collected under this article 22, less the reserve retained for refunds, shall be credited as follows:

(a) (II) (A) Effective July 1, 1987, an amount equal to twenty-seven percent of the gross state cigarette tax shall be apportioned to incorporated cities and incorporated towns that levy taxes and adopt formal budgets and to counties. For the purposes of this section, a city and county is considered a city. The city or town share shall be apportioned according to the percentage of state sales tax revenues collected by the department of revenue in an incorporated city or town as compared to the total state sales tax collections that may be allocated to all political subdivisions in the state; the county share shall be the same as that which the percentage of state sales tax revenues collected in the unincorporated area of the county bears to total state sales tax revenues that may be allocated to all political subdivisions in the state. The department of revenue shall certify to the state treasurer, at least annually, the percentage for allocation to each city, town, and county, and the department shall apply the percentage for allocation certified in all distributions to cities, towns, and counties until changed by certification to the state treasurer. In order to qualify for distributions of state income tax money, units of local government are prohibited from imposing taxes on any person as a condition for engaging in the business of selling cigarettes, OR ENACTING BANS OF TOBACCO AND NICOTINE PRODUCTS IN ANY FORM. For purposes of this subsection (1)(a)(II), the "gross state cigarette tax" means the total tax before the discount provided for in section 39-28-104 (1). For any city, town, or county that was previously disqualified from the apportionment set forth in this subsection (1)(a)(II)(A) by reason of imposing a fee or license related to the sale of cigarettes, the city, town, or county is eligible for any allocation of money that is based on an apportionment made on or after July 1, 2019, but not for an allocation of money that is based on an apportionment made before July 1, 2019. THE TOTAL AMOUNT THAT WOULD HAVE BEEN ALLOCATED TO CITIES, TOWNS AND COUNTIES IN EACH FISCAL YEAR BUT FOR THE ADOPTION OF A BAN ON OR AFTER DECEMBER 31, 2021, SHALL BE CERTIFIED TO

THE STATE TREASURER BY THE DEPARTMENT OF REVENUE AND SHALL BE CREDITED TO THE PRESCHOOL CASH FUND REFERENCED IN SECTION 22, ARTICLE X, OF THE COLORADO CONSTITUTION.

SECTION 4. In Colorado Revised Statutes, 39-26-123, **add** (1)(c) and (3)(c) as follows:

(1) As used in this section, unless the context otherwise requires:

(c) "TOBACCO AND NICOTINE PRODUCTS" DOES NOT INCLUDE ACCESSORIES SUCH AS ROLLING PAPERS, PIPES, AND VAPE PENS.

(3) For any state fiscal year commencing on or after July 1, 2013, the state treasurer shall credit eighty-five percent of all net revenue collected under this article 26 to the old age pension fund created in section 1 of article XXIV of the state constitution. The state treasurer shall credit to the general fund the remaining fifteen percent of the net revenue, less:

(c) ONE HUNDRED PERCENT OF ALL AVAILABLE NET REVENUE ATTRIBUTABLE TO RETAIL SALES OR USE OF TOBACCO AND NICOTINE PRODUCTS ON OR AFTER JANUARY 1, 2022, WHICH THE STATE TREASURER SHALL CREDIT TO THE PRESCHOOL CASH FUND CREATED PURSUANT TO SECTION 22, ARTICLE X OF THE COLORADO CONSTITUTION.

SECTION 5. In Colorado Revised Statutes, **amend** section 39-28-110 (1) as follows:

(1) Distribution of Tax Collected. All sums of money received and collected in payment of the tax imposed by the provisions of this article, except license fees received under section 39-28-102 and the moneys collected pursuant to section 39-28-103.5, shall be transmitted to the state treasurer who shall distribute money as follows: Fifteen percent to the general fund, and eighty-five percent to the old age pension fund, EXCEPT THAT, ON AND AFTER JULY 1, 2021, THE STATE TREASURER SHALL CREDIT FIFTEEN PERCENT TO THE PRESCHOOL CASH FUND REFERENCED IN SECTION 22, ARTICLE X, OF THE STATE CONSTITUTION INSTEAD OF THE GENERAL FUND.

SECTION 6. In Colorado Revised Statutes, **amend** section 39-28.5-108 (1) as follows:

(1) Distribution of Tax Collected. All sums of money received and collected in payment of the tax imposed by the provisions of this article, except license fees under section 39-28.5-104 and the moneys collected pursuant to 39-28.5-102.5, shall be transmitted to the state treasurer, who shall distribute such money as follows: Fifteen percent to the general fund and eight-five percent to the old age pension fund, EXCEPT THAT, ON AND AFTER JULY 1, 2021, THE STATE TREASURER SHALL CREDIT FIFTEEN PERCENT TO THE PRESCHOOL CASH FUND REFERENCED IN SECTION 22, ARTICLE X, OF THE STATE CONSTITUTION INSTEAD OF THE GENERAL FUND.

SECTION 7. In Colorado Revised statutes, **add** article 28.6 to title 39 as follows:

Article 28.6

Tobacco-derived Nicotine Vapor Product Tax

39-28.6-101. Declaration. (1) THE VOTERS OF THE STATE OF COLORADO HEREBY FIND AND DECLARE THAT:

(a) THERE HAS BEEN A SIGNIFICANT INCREASE IN THE USE OF ELECTRONIC CIGARETTES AND SIMILAR TOBACCO -DERIVED NICOTINE VAPOR PRODUCTS AMONG COLORADANS; AND

(b) SUCH PRODUCTS HAVE NOT YET BEEN SUBJECT TO A TAX AS WITH OTHER TOBACCO PRODUCTS PURCHASED AND SOLD IN THE STATE OF COLORADO.

(2) THE VOTERS OF THE STATE OF COLORADO AUTHORIZE A NEW TOBACCO-DERIVED NICOTINE VAPOR PRODUCT TAX IN ADDITION TO THE CURRENT STATE SALES TAX IMPOSED ON RETAIL SALES AND REQUIRE THAT THE GENERAL ASSEMBLY ADOPT A REGULATORY PROGRAM, INCLUDING LICENSING REQUIREMENTS, THAT FACILITATE THE IMPOSITION AND COLLECTION OF THE TAX.

39-28.6-102. Definitions. UNLESS THE CONTEXT OTHERWISE REQUIRES, ANY TERMS NOT DEFINED IN THIS ARTICLE 28.6 HAVE THE MEANINGS SET FORTH IN ARTICLE 26 OF THIS TITLE. AS USED IN THIS ARTICLE 28.6, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) “TOBACCO-DERIVED NICOTINE VAPOR PRODUCT” MEANS A NONCOMBUSTIBLE PRODUCT THAT PRODUCES A VAPOR OR AEROSOL FOR INHALATION FROM THE APPLICATION OF A HEATING ELEMENT TO A LIQUID SUBSTANCE CONTAINING TOBACCO DERIVED NICOTINE

(2) “DEPARTMENT” MEANS THE DEPARTMENT OF REVENUE.

39-28.6-103. Tax levied. ON OR AFTER JULY 1, 2021, THERE IS HEREBY IMPOSED UPON ALL SALES OF A TOBACCO-DERIVED NICOTINE VAPOR PRODUCT A TAX AT THE RATE OF TEN PERCENT OF THE AMOUNT OF THE SALE IN ADDITION TO EXISTING STATE AND LOCAL SALES TAXES.

39-28.6-104. Exempt sales. THE TOBACCO-DERIVED NICOTINE VAPOR PRODUCT TAX IMPOSED BY SECTION 39-28.6-103 DOES NOT APPLY WITH RESPECT TO ANY TOBACCO-DERIVED NICOTINE VAPOR PRODUCTS THAT, UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES, MAY NOT BE MADE SUBJECT TO TAXATION BY THIS STATE.

39-28.6-105. Creation of tobacco-derived nicotine vapor product tax program. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE GENERAL ASSEMBLY SHALL ENACT A REGULATORY STRUCTURE, INCLUDING LICENSING, TO FACILITATE THE COLLECTION OF THE TAX IMPOSED BY THIS ARTICLE 28.6 AND SHALL ADOPT CONFORMING AMENDMENTS TO THIS ARTICLE AS NECESSARY. THE GENERAL ASSEMBLY SHALL ACT NO LATER THAN DECEMBER 31, 2020. THE EXECUTIVE DIRECTOR OF THE DEPARTMENT MAY ADOPT RULES TO IMPLEMENT THE TAX IMPOSED BY THIS ARTICLE 28.6.

39-28.6-106. Distribution of tax collected. (1) THE STATE TREASURER SHALL CREDIT THE REVENUE COLLECTED PURSUANT TO THE TAX IMPOSED BY THIS ARTICLE 28.6 TO THE

PRESCHOOL CASH FUND CREATED PURSUANT TO SECTION 22 OF ARTICLE X OF THE STATE CONSTITUTION.

(2) THE VOTERS HEREBY FIND AND DECLARE THAT BECAUSE THE SALES AND USE TAX REVENUE GENERATED BY THE SALES AND USE TAX LEVIES PURSUANT TO SECTION 39-26-106 AND 39-26-202 IS SUFFICIENT TO FUND THE OLD AGE PENSION FUND AS REQUIRED BY ARTICLE XXIV OF THE STATE CONSTITUTION, THE STATE MAY CONSTITUTIONALLY CREDIT ALL REVENUE GENERATED BY THE ADDITIONAL TAX LEVIED PURSUANT TO THIS ARTICLE TO THE PRESCHOOL CASH FUND AS SPECIFIED IN SUBSECTION ONE OF THE SECTION.

SECTION 8. THIS INITIATIVE SHALL BE EFFECTIVE UPON PROCLAMATION BY THE GOVERNOR.

Ballot Title Setting Board

Proposed Initiative 2019-2020 #315¹

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

STATE TAXES SHALL BE INCREASED \$6,300,000 ANNUALLY BY AN AMENDMENT TO THE COLORADO CONSTITUTION AND A CHANGE TO THE COLORADO REVISED STATUTES CONCERNING A NEW PRESCHOOL PROGRAM THAT IS FUNDED WITH REVENUE GENERATED BY STATE TAXES ON TOBACCO AND NICOTINE PRODUCTS, AND, IN CONNECTION THEREWITH, REQUIRING THE STATE TO CREATE AND ADMINISTER THE NEW PRESCHOOL PROGRAM, WHICH MUST SUPPLEMENT EXISTING PRESCHOOL PROGRAMS AND FUNDING, AND PAYING FOR THE PROGRAM BY: 1) IMPOSING A NEW TAX ON TOBACCO-DERIVED NICOTINE VAPOR PRODUCTS; AND 2) REALLOCATING FROM CERTAIN HEALTH-RELATED PROGRAMS AND OTHER STATE PURPOSES PORTIONS OF THE EXISTING REVENUE FROM TAXES ON TOBACCO AND NICOTINE PRODUCTS AND MONEY THE STATE RECEIVES FROM TOBACCO LITIGATION SETTLEMENTS.

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

SHALL STATE TAXES BE INCREASED \$6,300,000 ANNUALLY BY AN AMENDMENT TO THE COLORADO CONSTITUTION AND A CHANGE TO THE COLORADO REVISED STATUTES CONCERNING A NEW PRESCHOOL PROGRAM THAT IS FUNDED WITH REVENUE GENERATED BY STATE TAXES ON TOBACCO AND NICOTINE PRODUCTS, AND, IN CONNECTION THEREWITH, REQUIRING THE STATE TO CREATE AND ADMINISTER THE NEW PRESCHOOL PROGRAM, WHICH MUST SUPPLEMENT EXISTING PRESCHOOL PROGRAMS AND FUNDING, AND PAYING FOR THE PROGRAM BY: 1) IMPOSING A NEW TAX ON TOBACCO-DERIVED NICOTINE VAPOR PRODUCTS; AND 2) REALLOCATING FROM CERTAIN HEALTH-RELATED PROGRAMS AND OTHER STATE PURPOSES PORTIONS OF THE EXISTING REVENUE FROM TAXES ON TOBACCO AND NICOTINE PRODUCTS AND MONEY THE STATE RECEIVES FROM TOBACCO LITIGATION SETTLEMENTS?

Hearing April 15, 2020:

Single subject approved; staff draft amended; titles set.

The Board determined that the proposed initiative adds language to the state constitution. The requirement for approval by fifty-five percent of the votes cast applies to this initiative.

Hearing adjourned 7:19 p.m.

¹ Unofficially captioned “**Tobacco Tax Revenue for New State Preschool Program**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

RECEIVED

By Steven Ward at 4:05 pm, Apr 22, 2020

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Anna Jo Haynes, Objector,

vs.

Monica Vondruska and Jon Caldara, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2019-2020 #315

Anna Jo Haynes (“Objector”), a registered elector of the City & County of Denver and the State of Colorado, through undersigned counsel, submits this Motion For Rehearing on Initiative 2019-2020 #315 (“#315”), pursuant to C.R.S. § 1-40-107, and states:

I. The ballot title for this measure was set by the Title Board

On April 15, 2020, the Title Board set titles for Initiative 2019-2020 #315. The ballot title and submission clause as designated and fixed by the Board reads:

SHALL STATE TAXES BE INCREASED \$6,300,000 ANNUALLY BY AN AMENDMENT TO THE COLORADO CONSTITUTION AND A CHANGE TO THE COLORADO REVISED STATUTES CONCERNING A NEW PRESCHOOL PROGRAM THAT IS FUNDED WITH REVENUE GENERATED BY STATE TAXES ON TOBACCO AND NICOTINE PRODUCTS, AND, IN CONNECTION THEREWITH, REQUIRING THE STATE TO CREATE AND ADMINISTER THE NEW PRESCHOOL PROGRAM, WHICH MUST SUPPLEMENT EXISTING PRESCHOOL PROGRAMS AND FUNDING, AND PAYING FOR THE PROGRAM BY: 1) IMPOSING A NEW TAX ON TOBACCO-DERIVED NICOTINE VAPOR PRODUCTS; AND 2) REALLOCATING FROM CERTAIN HEALTH-RELATED PROGRAMS AND OTHER STATE PURPOSES PORTIONS OF THE EXISTING REVENUE FROM TAXES ON TOBACCO AND NICOTINE PRODUCTS AND MONEY THE STATE RECEIVES FROM TOBACCO LITIGATION SETTLEMENTS?

II. The Title Board erred in setting this ballot title.

A. Initiative #315 violates the single subject requirement in the Colorado Constitution.

1. By diverting funding from an array of unrelated programs, described in the titles only under the generalized grouping as “certain health-related programs **and other state purposes**,” (emphasis added) the measure contains multiple subjects. *In re Interrogatory Propounded by Governor Roy Romer on House Bill No. 1353, 738 P.2d*

371, 373 (Colo. 1987) (“increase in the moneys available to the state” was a “common feature that is not sufficient to qualify the bill as one containing no more than one subject”). A key purpose of the single subject requirement is to guard against “uninformed voting caused by items concealed within a lengthy or complex proposal.” *In re Proposed Initiative “Public Rights in Waters II”*, 898 P.2d 1076, 1079 (Colo. 1995). That purpose is frustrated by the Proponents’ varied choices about withdrawal of funding under #315.

2. The measure creates a nicotine vapor product tax and makes that tax and that “regulatory structure,” including “collection of the tax,” effective “[n]otwithstanding any other provision of law.” Proposed Section 39-28.6-105. This clause is intended to preempt voter adoption of a competing measure that adopts a “nicotine product” and “vaping product” tax. *See, e.g.*, Initiatives 2019-2020 #287-292. This attempt to amend and evade the current requirements in law, C.R.S. § 1-40-123(2) (“in case of adoption of conflicting provisions, the one that receives the greatest number of affirmative votes prevails in all particulars as to which there is a conflict”), is an additional subject.
3. The measure withdraws state cigarette tax revenue if a local jurisdiction enacts a ban of “tobacco and nicotine products in any form.” #315 thus creates a significant fiscal disincentive that applies solely to local jurisdictions that act to protect the health of their residents; if they ban the sale of any form of tobacco and nicotine products, they must forfeit cigarette tax revenues to which they would otherwise be entitled. These financial penalties for banning tobacco and nicotine products represent #315’s second subject.

Existing statute blocks certain local governments from getting part of the revenue that is set aside from cigarette taxes to prevent double taxation of the same product. C.R.S. §39-22-623(1)(a)(II)(A). This statute thus prevents the affected local governments from taxing cigarettes themselves and then also taking a share of the state cigarette tax revenue.

#315 has no such internal justification. In fact, this revenue restriction deals with moneys raised solely from cigarette taxes, and the ban triggers the defunding of local shares if it applies to sale of one or more tobacco and nicotine products, defined by #315 to “include[]” but not be limited to “cigarettes.” The revenue restriction and the ban thus are not directly related or necessary to one another. *See* Proposed Section 39-26-623(1)(c) (“tobacco and nicotine products’ includes cigarettes”).

B. The titles set for Initiative #315 are incomplete and misleading in describing the measure’s central features to voters.

1. The title is misleading by suggesting that the nicotine vapor product tax is either constitutional (“*SHALL STATE TAXES BE INCREASED \$6,300,000 ANNUALLY BY AN AMENDMENT TO THE COLORADO CONSTITUTION...*”) or is both constitutional and statutory (“*SHALL STATE TAXES BE INCREASED \$6,300,000*”).

ANNUALLY BY AN AMENDMENT TO THE COLORADO CONSTITUTION AND A CHANGE TO THE COLORADO REVISED STATUTES... ”). In fact, the tax is only statutory but voters would not know that important fact from the titles.

2. The reference to “other state purposes” in the title is so nebulous as to be entirely non-descriptive and meaningless to voters. The titles must contain an adequate summary of programs from which funds are being diverted to achieve different policy objectives. The Supreme Court requires “an initiative’s title to provide enough information that a voter, ‘whether familiar or unfamiliar with the subject matter of a particular proposal, [can] determine intelligently whether to support or oppose such a proposal.’” *In re Title, Ballot Title & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 23, 328 P.3d 155, 162 (citation omitted). This gap in providing information to voters does not meet that test.
3. If it is not a second subject, the prohibition on sharing state cigarette taxes with localities that ban the sale of “tobacco and nicotine products in any form” is a central element that must be disclosed. *See* Proposed §39-22-623(1)(a)(II)(A). A “ban” occurs whenever there is an attempt “to prohibit” or “to forbid” access to something. Webster’s New Twentieth Century Dictionary 144-45 (1976) (definition of “ban”); Black’s Law Dictionary 154 (8th ed. 2004) (defining “ban” as “[t]o prohibit, esp[ecially] by legal means”), both sources cited by *Am. Civil Liberties Union of Fla, Inc. v. Miami-Dade Cty. Sch. Bd.*, 557 F.3d 1177, 1218-19 (11th Cir. 2009).

Looking at the Denver Municipal Code as just one example, such prohibitions or “bans” are commonplace. For instance, if the measure prohibits the form of ban that applies to place of sale, Denver and other municipalities ban the sale of cigarettes through vending machines. *See* D.M.C. §24-403 (“It shall be unlawful for any person to sell or offer for sale any cigarettes or other tobacco products by use of a vending machine or other coin-operated machine”). If the measure prohibits a ban on the form of the tobacco sold, Denver and other jurisdictions ban tobacco products sales “in any form” other than the manufacturer’s packaging. *See* D.M.C. §24-405(a) (“It shall be unlawful for any person to sell tobacco products in any form or condition other than in the packaging provided by the manufacturer”).

In either instance, cities that would consider these or other prohibitions on sale would be subject to this significant change in how cigarette taxes are distributed. Voters in those cities should be informed that, by voting “yes,” they would give up access to these state revenues.

4. The titles fail to set forth the major funding cuts mandated by #315 and should, at a minimum, specify that tobacco settlement funds cannot be used by larger funding beneficiaries (those recipients that have received at least 5% of these tobacco settlement monies):
 - (a) the nurse visitor program;

- (b) cancer research and capital construction at the university of Colorado health sciences center; and
- (c) programs to reduce youth crime and violence and child abuse and neglect (referred to in #315's repeal as "the Tony Grampas youth services program").

All of these programs are reliant upon significant shares of these settlement funds. Voters should know that these specific programs are being defunded to a substantial degree due to #315, rather than having to intuit such information from the titles' obscure phrase "certain health-related programs."

If the Title Board is going to be consistent in its own title-setting practices, it will provide voters with such information about these funding uses. For example, for Initiative 2019-2020 #250, the Board set a title for a program that set up the so-called "learning opportunities" program and incorporated into the title wording to describe the uses of such funds. The titles stated these monies would "be used for out-of-school learning opportunities **such as** tutoring, supplemental instruction in core subjects, support for students with special needs, language programs, art and music, and career and technical education training." This is a non-exclusive list from the initiative itself, but that partial list was deemed by the Board to be essential to voter understanding. The board also used, but did not simply rely on, the catch-all phrase, "out-of-school learning opportunities."

Likewise, when the Title Board set the ballot title for Amendment 35 in 2004 for the constitutional tobacco tax, it listed specific programs to be funded: "expand eligibility for and increase enrollment in the children's basic health plan,... 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." If this list was appropriate for approving funds from tobacco taxes, a list of programs that stand to lose the most significant percentage shares of tobacco-related funding (namely, (a)-(c) above) is also appropriate for the ballot title for Initiative #315.

WHEREFORE, the Title Board should reverse its decisions of April 15, 2020 as to Initiative #315.

Respectfully submitted this 22nd day of April, 2020.

s/ Mark G. Grueskin
Mark G. Grueskin, #14621
Recht Kornfeld, P.C.
1600 Stout Street, Suite 1400
Denver, Colorado 80202
303-573-1900 (telephone)
mark@rklawpc.com

CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the Motion For Rehearing for Initiative 2019-2020 #315, was sent this 22nd day of April, 2020 by email to counsel of record for the designated representatives at:

William Hobbs
[BHobbs@irelandstapleton.com](mailto:WHobbs@irelandstapleton.com)

Benjamin J. Larson
blarson@irelandstapleton.com

Shayne Madsen
shayne@i2i.org

s/ Erin Holweger _____

Ballot Title Setting Board

Proposed Initiative 2019-2020 #315¹

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

STATE TAXES SHALL BE INCREASED \$6,300,000 ANNUALLY BY AN AMENDMENT TO THE COLORADO CONSTITUTION AND A CHANGE TO THE COLORADO REVISED STATUTES CONCERNING A NEW PRESCHOOL PROGRAM THAT IS FUNDED WITH REVENUE GENERATED BY STATE TAXES ON TOBACCO AND NICOTINE PRODUCTS, AND, IN CONNECTION THEREWITH, REQUIRING THE STATE TO CREATE AND ADMINISTER THE NEW PRESCHOOL PROGRAM, WHICH MUST SUPPLEMENT EXISTING PRESCHOOL PROGRAMS AND FUNDING, AND PAYING FOR THE PROGRAM BY: 1) IMPOSING A NEW TAX ON TOBACCO-DERIVED NICOTINE VAPOR PRODUCTS; AND 2) REALLOCATING FROM CERTAIN HEALTH-RELATED PROGRAMS AND OTHER STATE PURPOSES PORTIONS OF THE EXISTING REVENUE FROM TAXES ON TOBACCO AND NICOTINE PRODUCTS AND MONEY THE STATE RECEIVES FROM TOBACCO LITIGATION SETTLEMENTS.

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

SHALL STATE TAXES BE INCREASED \$6,300,000 ANNUALLY BY AN AMENDMENT TO THE COLORADO CONSTITUTION AND A CHANGE TO THE COLORADO REVISED STATUTES CONCERNING A NEW PRESCHOOL PROGRAM THAT IS FUNDED WITH REVENUE GENERATED BY STATE TAXES ON TOBACCO AND NICOTINE PRODUCTS, AND, IN CONNECTION THEREWITH, REQUIRING THE STATE TO CREATE AND ADMINISTER THE NEW PRESCHOOL PROGRAM, WHICH MUST SUPPLEMENT EXISTING PRESCHOOL PROGRAMS AND FUNDING, AND PAYING FOR THE PROGRAM BY: 1) IMPOSING A NEW TAX ON TOBACCO-DERIVED NICOTINE VAPOR PRODUCTS; AND 2) REALLOCATING FROM CERTAIN HEALTH-RELATED PROGRAMS AND OTHER STATE PURPOSES PORTIONS OF THE EXISTING REVENUE FROM TAXES ON TOBACCO AND NICOTINE PRODUCTS AND MONEY THE STATE RECEIVES FROM TOBACCO LITIGATION SETTLEMENTS?

Hearing April 15, 2020:

Single subject approved; staff draft amended; titles set.

The Board determined that the proposed initiative adds language to the state constitution. The requirement for approval by fifty-five percent of the votes cast applies to this initiative.

Hearing adjourned 7:19 p.m.

¹ Unofficially captioned “**Tobacco Tax Revenue for New State Preschool Program**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

*Rehearing April 23, 2020:
Motion for Rehearing denied in its entirety.
Hearing adjourned 3:54 p.m.*



**Legislative
Council Staff**
Nonpartisan Services for Colorado's Legislature

Initiative # 315

INITIAL FISCAL IMPACT STATEMENT

Date: April 13, 2020

Fiscal Analyst: Matt Bishop (303-866-4796)

LCS TITLE: TOBACCO TAX REVENUE FOR NEW STATE PRESCHOOL PROGRAM

Fiscal Impact Summary		FY 2021-22	FY 2022-23
Revenue	Preschool Cash Fund	\$6.3 million	\$6.5 million
Expenditures	General Fund	\$58.6 million	\$68.1 million
	Preschool Cash Fund	\$129.6 million	\$203.4 million
	Total	\$188.2 million	\$271.5 million
Diversions	General Fund	(\$23.3 million)	(\$38.0 million)
	Various Cash Funds	(\$100.0 million)	(\$158.9 million)
	Total	\$123.3 million	\$196.9 million

Disclaimer. This initial fiscal impact statement has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff may revise this estimate for the ballot information booklet (Blue Book) if new information becomes available.

Summary of Measure

No later than December 2021, the measure directs the General Assembly to enact legislation enabling the Colorado Department of Education (CDE) to create a new preschool program. At a minimum, the enacting legislation must mandate that the preschool program include elements of parent choice, quality standards, coordination with existing preschool programs, opportunities for family and community engagement, and evaluation of the program on child and family outcomes. Beginning with FY 2021-22, the measure diverts the majority of state revenue from taxes on tobacco products, and from payments received under the Tobacco Master Settlement Agreement, to a new Preschool Cash Fund to fund the preschool program.

Under current law, some municipalities and counties are eligible for state income tax distributions based on the proportion of sales tax collected in those jurisdictions, and the total cigarette tax collected. The measure prohibits local governments that enact bans of tobacco and nicotine products from receiving this distribution, and instead redirects the money any such local government would have received to the Preschool Cash Fund.

Special sales tax on vaping products. Beginning July 1, 2021, the measure imposes a special sales tax at a rate of 10 percent on "tobacco-derived nicotine vapor products" (vaping products), defined as a product that produces a vapor or aerosol for inhalation from the heating of a liquid substance containing tobacco-derived nicotine. The special sales tax is assessed in addition to the state's current 2.9 percent general sales tax and any applicable local taxes. All tax revenue is credited to the Preschool Cash Fund. The measure requires that the General Assembly enact a regulatory structure to facilitate collection of the tax.

State Revenue

The measure is estimated to increase state revenue by \$6.3 million in FY 2021-22 and \$6.5 million in FY 2022-23, and similar amounts in following years. Revenue is attributable to the special sales tax on vaping products and is credited to the Preschool Cash Fund. Revenue from the new tax is subject to TABOR.

Data and assumptions. Estimates are based on 2018 retail sales data for vaping products. Consumption of vaping products is assumed to increase between 2018 and 2021, when the tax takes effect. Additionally, state revenue estimates consider online sales, which are under-represented in available data. Higher consumer prices as a result of the tax are expected to decrease consumption by about 4 percent.

The available sales data for 2018 are incomplete. Further, the market for vaping products is evolving and difficult to predict. For these reasons, state revenue may be greater or lesser than the estimate in this fiscal impact statement.

State Diversions

Under current law, a variety of programs receive funding from taxes on tobacco products, and from Tobacco Master Settlement revenue. Initiative #315 diverts tobacco revenue from existing programs to the Preschool Cash Fund beginning in FY 2021-22. Table 1 shows the state revenue amounts that are diverted to the new preschool program, totaling \$123.3 million in FY 2021-22 and \$196.9 million in FY 2022-23.

Table 1
State Diversions Under Initiative #315
(in millions)

	FY 2021-22	FY 2022-23
Diversions of General Fund Tax Revenue		
Sales Tax	(\$14.8)	(\$29.5)
Cigarette Tax	(\$4.5)	(\$4.5)
Tobacco Products Tax	(\$4.0)	(\$4.0)
General Fund Subtotal	(\$23.3)	(\$38.0)
Diversions of Cash Fund Tax Revenue		
Children's Basic Health Plan and Medicaid	(\$58.5)	(\$58.5)
Prevention, Early Detection, and Treatment Fund	(\$20.4)	(\$20.4)
Primary Care Fund	(\$24.2)	(\$24.2)
Various (see description)	(\$3.8)	(\$3.8)
Cash Funds Subtotal	(\$106.9)	(\$106.9)
Tobacco Master Settlement Agreement Diversions		
Colorado Nurse Home Visitor Program	-	(\$20.5)
CU Health Sciences Center	-	(\$11.9)
Fitzsimons Trust Fund	-	(\$6.2)
Tony Gramscas Youth Services Program	-	(\$5.8)
Drug Assistance Program	-	(\$3.8)
AIDS and HIV Prevention Program	-	(\$2.7)
Colorado Immunization Fund	-	(\$1.9)
Supplemental State Contribution Fund	-	(\$1.8)
Colorado Autism Treatment Fund	-	(\$1.5)
Colorado Health Service Corps Fund	-	(\$0.8)
State Dental Loan Repayment Program	-	(\$0.8)
Remaining Balance of Tobacco Litigation Settlement Fund	-	(\$1.2)
Tobacco Master Settlement Agreement Subtotal	-	(\$58.9)
Total General Fund Diversions	(\$23.3)	(\$38.0)
Total Cash Funds Diversions	(\$106.9)	(\$165.8)
Preschool Cash Fund	\$123.3	\$196.9
Remaining Amount in Tobacco Tax Cash Fund*	\$6.9	\$6.9

* The measure requires that \$100 million of tobacco tax revenue go to the Preschool Cash Fund. The remainder is assumed to remain in the Tobacco Tax Cash Fund subject to future allocation by the General Assembly.

The following programs are affected by the diversion of state revenue:

- The Colorado Nurse Home Visitor Program in the Department of Human Services (DHS) provides in-home, visiting nurse services to first-time, low-income mothers during and after their pregnancies.
- The University of Colorado (CU) Health Sciences Center uses appropriated funds to conduct research and support faculty and student scholarships. The measure continues only the portion of the funding dedicated to tobacco-related, in-state cancer research.
- The Tony Grampsas Youth Services Program in the DHS provides funding to local organizations for prevention, intervention, and education programs for children and families designed to prevent crime and violence, marijuana use, and child abuse and neglect.
- The Drug Assistance Program in the Colorado Department of Public Health and Environment (CDPHE) provides assistance with screening, general medical, preventative, and pharmaceutical costs for qualifying individuals with HIV, AIDS, or related conditions.
- The AIDS and HIV Prevention Fund in CDPHE supports various AIDS and HIV prevention and education efforts.
- A portion of the Colorado Immunization Fund supports immunization efforts in the CDPHE.
- The Colorado Autism Treatment Fund in the Department of Health Care Policy and Financing (HCPF) supports home- and community-based health services for children with autism.
- The Primary Care Fund is used by HCPF for increasing access to primary health care via health care providers meeting certain criteria.
- The Prevention, Early Detection, and Treatment Fund supports grants related to cardiovascular and pulmonary diseases, health equity, and breast and cervical cancer screening.
- The Colorado Constitution sets aside three percent of tobacco taxes to be allocated between the General Fund, the Old Age Pension Fund, and local governments to be used for health-related purposes.

State Expenditures

For FY 2021-22 and FY 2022-23, the measure both reallocates existing expenditures and increases state expenditures as described below.

Preschool program. As discussed in the State Diversions section, the measure reduces available funding and expenditures across multiple programs and diverts that revenue for expenditures in the CDE. For FY 2021-22, the measure diverts \$123.3 million for the new preschool program. For FY 2022-23, the measure diverts \$196.9 million. Including the additional revenue available from the new vaping tax, expenditures will total \$129.3 million in FY 2021-22 and \$203.4 million in FY 2022-23. Depending on enacting legislation, the CDE will have increased expenditures to administer the program and to distribute funding to local providers of preschool services. Additionally, for FY 2021-22 only, the Department of Revenue has a one-time expenditure increase of \$79,655 to adjust internal tax accounting software.

Programs requiring replacement funding. For FY 2021-22, the measure will require General Fund appropriations of \$58.5 million to replace funding diverted from tobacco tax revenue. For FY 2022-23, replacement funding is \$68.1 million. These programs are listed in Table 2 and described below.

Table 2
Replacement Funding Under Initiative #315
(in millions)

Program Requiring General Fund Replacement	FY 2021-22	FY 2022-23
Children's Basic Health Plan and Medicaid	\$58.5	\$58.5
Fitzsimons Trust Fund	-	\$6.2
Supplemental State Contribution Fund	-	\$1.8
Colorado Health Service Corps Fund	-	\$0.8
State Dental Loan Repayment Program	-	\$0.8
Total	\$58.5	\$68.1

- Federal law requires a state contribution to The Children's Basic Health Plan and to expand eligibility under the Colorado Medical Assistance Act.
- A portion of tobacco tax revenue in the Fitzsimons Trust Fund provides lease purchase payments associated with the relocation of the CU Health Sciences Center to the former Fitzsimons Army Base.
- The Supplemental State Contribution Fund is used by the Department of Personnel and Administration to supplement the state contribution for a group benefit plan for eligible state employees with incomes below certain thresholds.
- The Colorado Health Service Corps Fund and the State Dental Loan Repayment Program in the CDPHE offer loan repayment for qualified health professionals serving underserved clients. Even if no new contracts are offered, some continuing funding may be required for monitoring existing contracts for up to two years.

Tax administration. Expenditures for tax administration at the Department of Revenue will increase by an indeterminate amount beginning in FY 2020-21. The amount by which expenditures will increase will depend on the regulatory structure enacted by the General Assembly. Appropriations for administration will be included in the implementing legislation that creates the tax regime.

TABOR refunds. Under the March 2020 LCS forecast, the state is not expected to collect revenue above the TABOR limit in FY 2021-22, and a refund obligation is not anticipated for that year. This initiative does not change this expectation concerning refunds to taxpayers. A forecast of state revenue subject to TABOR is unavailable beyond FY 2021-22.

Local Government Impact

Local governments that are otherwise eligible for income tax redistribution based on cigarette tax revenue and that have enacted bans on tobacco and nicotine products as of December 31, 2021, will experience a reduction in revenue. As the total revenue redistributed is \$8.8 million annually,

the amount of revenue diverted from local governments to the Preschool Cash Fund is up to \$8.8 million.

Technical Note

The measure adds a statutory provision requiring the General Assembly to create a regulatory structure for the vaping product special sales tax no later than December 31, 2020. Based on the measure's effective date, this provision requires the General Assembly to act in November or December 2020, when it may not be in session. It is assumed that the measure does not require that a special session be convened, and that the regulatory structure will be enacted in the 2021 legislative session if the General Assembly is not in session in November or December. If the measure is interpreted to require that a special session be convened, additional expenditures for the Legislative Department and potentially other agencies will be required.

Economic Impacts

The measure may impact the state economy in three ways. First, the development of additional resources for preschools will increase employment opportunities for individuals in early childhood education careers. Second, many of the programs from which funds were diverted will be reduced in scope or eliminated if alternative funds are not secured, eliminating positions and corresponding economic activity. Third, the new tax on vaping products will reduce sales of those products and decrease the amounts available for consumers to spend elsewhere in the economy, or to save.

Taxpayer Impacts

The measure is expected to increase taxes paid by an average of \$1 per Colorado resident in 2022. The direct tax impact in the measure applies only to individuals who consume vaping products. Based on survey data from the Centers for Disease Control and Prevention, it is estimated that 2.8 percent of Colorado adults use vaping products. If this percentage remains constant, the measure is expected to increase taxes paid by vaping product consumers by an average of \$48 in 2022.

Effective Date

If approved by voters at the 2020 general election, this measure takes effect upon proclamation of the Governor, no later than 30 days after the official canvass of the vote is completed.

State and Local Government Contacts

Counties
Health Care Policy and Financing
Human Services
Military Affairs
Personnel
Revenue

Education
Higher Education
Law
Municipalities
Public Health and Environment
Treasury

Abstract of Initiative 315: TOBACCO TAX REVENUE FOR NEW STATE PRESCHOOL PROGRAM

The abstract includes estimates of the fiscal impact of the proposed initiative. If this initiative is to be placed on the ballot, Legislative Council Staff will prepare new estimates as part of a fiscal impact statement, which includes an abstract of that information. All fiscal impact statements are available at www.ColoradoBlueBook.com and the abstract will be included in the ballot information booklet that is prepared for the initiative.

This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of April 13, 2020, identifies the following impacts:

State revenue. The measure increases state revenue by \$6.3 million in FY 2021-22 and \$6.5 million in FY 2022-23 by imposing a new tax on vaping products. This revenue is set aside for a new preschool program.

State diversions and expenditures. For FY 2021-22, the measure diverts \$123.3 million in tax revenue for a new preschool program. For FY 2022-23, tax revenue diversions for the preschool program are \$196.9 million. The measure will require replacement funding for a portion of the tax revenue diverted from existing programs to the new preschool program. For FY 2021-22, replacement funding increases expenditures by \$58.5 million. For FY 2022-23, replacement funding increases expenditures by \$68.1 million.

Local government impact. The measure reduces funding for local governments which have enacted a ban on tobacco and nicotine products as of December 31, 2021. This revenue loss is estimated at up to \$4.4 million in FY 2021-22 and up to \$8.8 million in FY 2022-23.

Economic impacts. The development of additional resources for preschools will increase employment opportunities for individuals in early childhood education careers. Conversely, many of the programs from which funds were diverted will be reduced in scope or eliminated if alternative funds are not secured, eliminating positions and corresponding economic activity. In addition, the new tax on vaping products will decrease the amounts available for consumers of these products to spend elsewhere in the economy, or to save.

Taxpayer impacts. The measure is expected to increase taxes paid by an average of \$1 per Colorado resident in 2022. The direct tax impact of the measure applies only to individuals who consume vaping products. The measure is expected to increase taxes paid by vaping product consumers by an average of \$48 in 2022.