

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</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 #168 (“State Out-of-School Learning Opportunities Program”)</p> <p>Petitioner: Kenneth Nova</p> <p>v.</p> <p>Respondents: Amber Drevon and Charles Dukes</p> <p>and</p> <p>Title Board: Theresa Conley, David Powell, and Julie Pelegren</p>	DATE FILED: February 12, 2020 5:27 PM
<p>Attorneys for Petitioner:</p> <p>Mark G. Grueskin, #14621 Thomas M. Rogers III, #28809 Recht Kornfeld, P.C. 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-573-1900 (telephone) 303-446-9400 (facsimile) mark@rklawpc.com, trey@rklawpc.com</p>	<p>Case Number:</p>
<p>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2019-2020 #168 (“STATE OUT-OF-SCHOOL LEARNING OPPORTUNITIES PROGRAM”)</p>	

Kenneth Nova (“Petitioner”), a registered elector of the State of Colorado, through 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 Initiative 2019-2020 #168 (“State Out-of-School Learning Opportunities Program”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2019-2020 #168.

Amber Drevon and Charles Dukes (hereafter “Proponents”) proposed Initiative 2019-2020 #168 (the “Proposed Initiative”). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, the Proponents submitted final versions of the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board, of which the Secretary or his designee is a member.

A Title Board hearing was held on January 15, 2020, at which time titles were set for 2019-2020 #168. On January 22, 2020, Petitioner Kenneth Nova filed a Motion for Rehearing, alleging that the titles set for #168 were misleading and omitted central features of the measure, and that the titles violated TABOR. The rehearing was held on February 5, 2020, at which time the Title Board granted in part and denied in part the Motion for Rehearing.

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 titles set by the Title Board violate the legal requirements imposed on the Board because the titles are misleading and omit central features of the measure, and because the titles violate the mandatory language requirement of TABOR, Colo. Const. art. X, sec. 20(3)(c). The following is an advisory list of issues to be addressed in Petitioner's brief:

1. Whether the titles set for Initiative #168 are legally flawed because they are misleading and omit central features of the measure, including:

 - a. The measure would create a new state agency to “oversee” the program. The titles’ reference to the new agency includes the statement that it will “ensure financial accountability and transparency”. This language is a catch phrase or slogan and must be deleted from the title.
 - b. This measure is one of a number of similar measures filed by Proponents. In light of an acknowledged drafting error, the measures use a term – “eligible contributions” – that is undefined and thus without any clear meaning. Yet, the measure’s funding mechanism is so internally unclear and even meaningless as to be inherently confusing to voters. The measure’s inherent lack of meaning in this regard is not communicated by the title.
2. Whether the titles violate the mandatory language requirement of TABOR.

 - a. The TABOR amendment, Colo. Const. art. X, sec. 20(3)(c), requires specific language to be included in the title of any measure that would raise taxes. The insertion of the words “on

corporations” into that required language in the titles violates that requirement. Those words must be eliminated.

- b. The measure’s proposed tax increase would be “phased in,” a term of art used in TABOR. It eliminates the net operating loss deduction for future losses but would permit corporations to deduct net operating losses from years before the measure takes effect.

Based on this provision, the amount of tax revenue generated by the measure will increase each year as deductible losses are used up. As a result, the use of only the expected first year’s tax increase in the titles is misleading and inconsistent with TABOR’s requirement that expected tax increase for the last year of the phase in must be included in the title. *See Colo. Const. art. X, sec. 20(3)(c).*

PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties’ briefs, this Court determine that the titles are legally flawed, and direct the Title Board to correct the title to address the deficiencies outlined in Petitioner’s briefs.

Respectfully submitted this 12th day of February, 2020.

s/ Thomas M. Rogers III

Mark G. Grueskin, #14621

Thomas M. Rogers III, #28809

RECHT KORNFELD, P.C.

1600 Stout Street, Suite 1400

Denver, CO 80202

Phone: 303-573-1900

Facsimile: 303-446-9400

Email: trey@rklawpc.com

ATTORNEYS 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
#168 (“STATE OUT-OF-SCHOOL LEARNING OPPORTUNITIES
PROGRAM”)** was sent electronically via Colorado Courts E-filing this day, February 12, 2020, to the following:

Counsel for the Title Board:

Emily Buckley
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203

Counsel for the Proponents:

Benjamin J. Larson
Ireland Stapleton
717 17th Street, Suite 2800
Denver, CO 20202

/s Erin Holweger _____



DATE FILED: February 12, 2020 5:27 PM

STATE OF COLORADO
1876
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, motions for rehearing, and the rulings thereon of the Title Board for Proposed Initiative “2019-2020 #168 ‘State Out-of-School Learning Opportunities Program’”

A handwritten signature in blue ink that reads "Jena Griswold". It is placed over a dotted line that extends from the left side of the page towards the right, ending near the Great Seal of Colorado.

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 10th day of February, 2020.



A handwritten signature in blue ink that reads "Jena Griswold". It is placed over a dotted line that extends from the left side of the page towards the right, ending near the Great Seal of Colorado.

SECRETARY OF STATE

RECEIVED 1:25 P.M.

2019-2020 #168 – Final Draft

JAN 03 2020 S.WARD

Colorado Secretary of State

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

SECTION 1. In Colorado Revised Statutes, add article 86.1 to title 22 as follows:

ARTICLE 86.1

COLORADO OUT-OF-SCHOOL LEARNING OPPORTUNITIES PROGRAM

22-86.1-101. Legislative declaration. THE VOTERS OF THE STATE OF COLORADO FIND AND DECLARE THAT:

(1) OUT-OF-SCHOOL LEARNING OPPORTUNITIES ARE CRITICAL FOR ALL COLORADO CHILDREN AND YOUTH. THESE OPPORTUNITIES, DURING PERIODS AND TIMEFRAMES OUTSIDE OF THEIR REGULAR SCHOOL SCHEDULES, PROVIDE ESSENTIAL ACADEMIC AND LIFE SKILLS FOR CHILDREN AND YOUTH TO THRIVE IN SCHOOL AND LIFE. THESE OPPORTUNITIES ARE CRITICAL TO MAINTAINING AND ENHANCING MENTAL HEALTH FOR ALL CHILDREN.

(2) PROVIDING CONSISTENT AND RELIABLE ACCESS TO OUT-OF-SCHOOL LEARNING OPPORTUNITIES TO ALL OF COLORADO'S CHILDREN WILL ALLOW FOR: TUTORING AND SUPPLEMENTAL ACADEMIC INSTRUCTION IN CORE SUBJECT AREAS, INCLUDING READING, MATHEMATICS, SCIENCE, AND WRITING; TARGETED SUPPORT FOR CHILDREN AND YOUTH WITH SPECIAL NEEDS AND LEARNING DISABILITIES; ENGLISH LANGUAGE AND FOREIGN LANGUAGE ACQUISITION; IN-DEPTH PROGRAMS THAT TEACH YOUTH NEW SKILLS IN THE CONTEXT OF OUTDOOR ACTIVITIES; CHALLENGING REAL WORLD EXPERIENCES THAT BUILD ESSENTIAL SKILL SETS; AND OTHER PROGRAMS THAT PROVIDE ACADEMIC OR ENRICHMENT OPPORTUNITIES NO LONGER OFFERED IN MANY SCHOOLS, INCLUDING MUSIC, DANCE, ARTS, AND CAREER AND TECHNICAL EDUCATION TRAINING.

(3) CREATING THE OUT-OF-SCHOOL LEARNING OPPORTUNITIES PROGRAM WILL ENSURE THAT THESE LEARNING EXPERIENCES ARE EQUALLY AVAILABLE TO ALL COLORADO STUDENTS AND THAT FAMILIES WILL HAVE THE AUTHORITY AND RESPONSIBILITY TO DIRECT PROGRAM FUNDS TO THE EXPERIENCES AND ACTIVITIES THEY BELIEVE TO BE THE BEST FIT FOR THEIR CHILD OR YOUTH.

(4) ENCOURAGING INNOVATION IN THE CREATION AND PROVISION OF OUT-OF-SCHOOL LEARNING OPPORTUNITIES WILL BENEFIT COLORADO'S CHILDREN AND YOUTH.

22-86.1-102. Definitions. AS USED IN THIS ARTICLE 86.1, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ADMINISTERING NONPROFIT" MEANS THE ORGANIZATION SELECTED BY THE AGENCY PURSUANT TO SECTION 22-86.1-103(2)(m).

(2) "AGENCY" MEANS THE COLORADO OUT-OF-SCHOOL LEARNING OPPORTUNITIES AGENCY CREATED BY SECTION 22-86.1-103.

(3) "ELIGIBLE STUDENT" MEANS A CHILD WHO TURNS FIVE YEARS OF AGE IN A QUALIFYING YEAR BUT WHO HAS NOT ATTAINED EIGHTEEN YEARS OF AGE AND WHO RESIDES IN COLORADO AND IS OR WILL BE ELIGIBLE FOR ADMISSION TO PUBLIC SCHOOL WITHIN THE STATE.

(4) "LOCAL EDUCATION PROVIDER" MEANS A SCHOOL DISTRICT, A BOARD OF COOPERATIVE SERVICES, A DISTRICT CHARTER SCHOOL, OR AN INSTITUTE CHARTER SCHOOL.

(5) "OUT-OF-SCHOOL LEARNING OPPORTUNITY" MEANS ANY PROGRAM, SERVICE, SYSTEM, ACTIVITY, OR OTHER PURSUIT OR PURCHASE THAT PROVIDES SUPPLEMENTAL EDUCATIONAL OR DEVELOPMENTAL SUPPORT TO ELIGIBLE STUDENTS OUTSIDE OF NORMAL SCHOOL OPERATIONS. "OUT-OF-SCHOOL LEARNING OPPORTUNITY" DOES NOT INCLUDE IN-SCHOOL INSTRUCTION, SERVICES, MATERIALS, CURRICULA, OR PROGRAMS PROVIDED AS PART OF A NORMAL COURSE OF STUDY CONDUCTED IN ACCORDANCE WITH A PUBLIC OR PRIVATE SCHOOL STUDENT'S COMPULSORY ATTENDANCE REQUIREMENTS

UNDER SECTION 22-33-104 OR A HOME SCHOOL STUDENT'S COMPULSORY INSTRUCTION REQUIREMENTS UNDER SECTION 22-33-104.5. "OUT-OF-SCHOOL LEARNING OPPORTUNITY" DOES NOT INCLUDE CREDIT RECOVERY PROGRAMS REGARDLESS OF THE TIME OF DAY OR DAY OF THE WEEK THEY ARE OFFERED. "OUT-OF-SCHOOL LEARNING OPPORTUNITY" DOES NOT INCLUDE PAYMENT OF IN-SCHOOL PRIVATE SCHOOL TUITION.

(6) "PARENT" MEANS A PARENT OR LEGAL GUARDIAN OF AN ELIGIBLE STUDENT.

(7) "PROGRAM" MEANS THE COLORADO OUT-OF-SCHOOL LEARNING OPPORTUNITIES PROGRAM CREATED AND ADMINISTERED UNDER THIS ARTICLE 86.1.

22-86.1-103. Out-of-school learning opportunities agency — establishment — purposes — powers.

(1) THERE IS ESTABLISHED, AS AN INDEPENDENT AGENCY IN THE DEPARTMENT OF EDUCATION, THE COLORADO OUT-OF-SCHOOL LEARNING OPPORTUNITIES AGENCY. THE AGENCY IS GOVERNED AND ADMINISTERED BY A BOARD OF DIRECTORS AND SHALL EXERCISE SUCH POWERS AND PERFORM SUCH DUTIES AND FUNCTIONS AS IF IT WERE TRANSFERRED TO THE DEPARTMENT BY A TYPE 1 TRANSFER UNDER THE PROVISIONS OF THE "ADMINISTRATIVE ORGANIZATION ACT OF 1968", ARTICLE 1 OF TITLE 24, C.R.S.

(2) THE PURPOSES AND POWERS OF THE AGENCY ARE, CONSISTENT WITH RULES AND REGULATIONS PROMULGATED BY THE BOARD OF DIRECTORS UNDER SECTION 22-86.1-104(2)(e), TO:

(a) ESTABLISH AND OVERSEE THE ADMINISTRATION OF COLORADO OUT-OF-SCHOOL LEARNING OPPORTUNITIES PROGRAM CREATED BY THIS ARTICLE 86.1;

(b) CREATE AND DEVELOP CRITERIA FOR THE PROVISION AND SELECTION OF ALLOWABLE USES FOR FUNDS DISTRIBUTED BY THE ADMINISTERING NONPROFIT, CONSISTENT WITH AND IN FURTHERANCE OF THE GOALS AND PURPOSES STATED IN SECTION 22-86.1-101, TO BE PROVIDED WITHIN THE STATE OF COLORADO FOR ELIGIBLE STUDENTS. AT A MINIMUM, THESE ALLOWABLE USES INCLUDE: TUTORING AND SUPPLEMENTAL ACADEMIC INSTRUCTION IN CORE SUBJECT AREAS, INCLUDING READING, MATHEMATICS, SCIENCE, AND WRITING; TARGETED SUPPORT FOR CHILDREN AND YOUTH WITH SPECIAL NEEDS AND LEARNING DISABILITIES; ENGLISH LANGUAGE AND FOREIGN LANGUAGE ACQUISITION; IN-DEPTH PROGRAMS THAT TEACH YOUTH NEW SKILLS IN THE CONTEXT OF OUTDOOR ACTIVITIES; CHALLENGING REAL WORLD EXPERIENCES THAT BUILD ESSENTIAL SKILL SETS; OTHER PROGRAMS THAT PROVIDE ACADEMIC OR ENRICHMENT OPPORTUNITIES INCLUDING MUSIC, DANCE, ARTS, AND CAREER AND TECHNICAL EDUCATION TRAINING; AND REASONABLE AND NECESSARY MATERIALS AND SUPPLIES TO COMPLETE OR PARTICIPATE IN AN OUT-OF-SCHOOL LEARNING OPPORTUNITY. AN ALLOWABLE USE OF FINANCIAL AID INCLUDES REASONABLE EXPENSES FOR TRANSPORTATION OF AN ELIGIBLE STUDENT TO AND FROM OUT-OF-SCHOOL LEARNING OPPORTUNITIES. IT IS THE INTENT OF THE PEOPLE THAT THE FINANCIAL AID DISTRIBUTED BY THE ADMINISTERING NONPROFIT WILL BE NEW DOLLARS TO SPEND ON NEW SERVICES AND SHALL NOT SUPPLANT EXISTING FUNDING FOR PROGRAMS AVAILABLE TO ELIGIBLE STUDENTS.

(c) CREATE AND DEVELOP CRITERIA FOR PUBLICATION, SOLICITATION, RECEIPT, AND EVALUATION BY THE ADMINISTERING NONPROFIT OF APPLICATIONS FROM POTENTIAL PROVIDERS OF OUT-OF-SCHOOL LEARNING OPPORTUNITIES UNDER THE PROGRAM. SUCH CRITERIA SHALL MAXIMIZE THE NUMBER AND DIVERSITY OF PROVIDERS THAT PARENTS AND ELIGIBLE STUDENTS CAN CHOOSE AND SHALL ALSO ENSURE THAT SMALL COMMUNITY-BASED PROVIDERS ARE ELIGIBLE AND ABLE TO PARTICIPATE IN THE PROGRAM.

(d) CREATE A WAIVER PROCESS WITH ESTABLISHED CRITERIA FOR ACTIVITIES THAT FALL OUTSIDE OF THE PROGRAM'S STATUTORILY ALLOWABLE USES, TIMES WHEN ACTIVITIES MAY OCCUR, OR TYPES OF ACTIVITIES ALLOWED, AS PETITIONED BY ELIGIBLE STUDENTS OR THEIR PARENTS;

(e) CREATE AND DEVELOP CRITERIA UNDER WHICH THE ADMINISTERING NONPROFIT MUST CERTIFY PROVIDERS OF OUT-OF-SCHOOL LEARNING OPPORTUNITIES UNDER THE PROGRAM, TO INCLUDE PRE-CERTIFICATION OF LOCAL SCHOOL DISTRICTS, BOARDS OF COOPERATIVE SERVICES, AND OTHER LOCAL EDUCATION PROVIDERS. NEITHER THE ADMINISTERING NONPROFIT NOR ANY SUBSIDIARY THEREOF SHALL BE ELIGIBLE FOR CERTIFICATION AS A PROVIDER. MINIMUM REQUIREMENTS TO BE AN ELIGIBLE PROVIDER MUST INCLUDE BEING AUTHORIZED TO DO BUSINESS IN COLORADO AND CARRYING SUFFICIENT LIABILITY INSURANCE AS DETERMINED BY THE AGENCY.

(f) CREATE AND DEVELOP CRITERIA FOR THE ADMINISTERING NONPROFIT TO ESTABLISH PROCEDURES TO ENSURE STUDENT SAFETY, INCLUDING THE PROVISION OF RECENT BACKGROUND CHECKS PROVIDED THROUGH THE COLORADO BUREAU OF INVESTIGATION OR SIMILAR FEDERAL AGENCY FOR PROVIDERS WHO COME IN CONTACT WITH STUDENTS;

(g) CREATE AND DEVELOP CRITERIA FOR THE ADMINISTERING NONPROFIT TO ESTABLISH AND MANAGE PARENT-DIRECTED INDIVIDUAL LEARNING ACCOUNTS TO BE FUNDED THROUGH ELIGIBLE CONTRIBUTIONS AND OTHER GIFTS, GRANTS, AND DONATIONS TO THE ADMINISTERING NONPROFIT, TO COMPENSATE APPROVED PROVIDERS OF OUT-OF-SCHOOL LEARNING OPPORTUNITIES. THE INDIVIDUAL LEARNING ACCOUNT FUNDS, ALSO REFERRED TO IN THIS ARTICLE 86.1 AS "FINANCIAL AID" AND "FINANCIAL AID LEARNING ACCOUNTS" MUST BE PROVIDED AND ADMINISTERED BY THE ADMINISTERING NONPROFIT ON A SLIDING SCALE, WITH THE AMOUNT OF FINANCIAL AID BEING INVERSELY RELATED TO THE FAMILY INCOME AND FINANCIAL MEANS OF AN ELIGIBLE STUDENT, WITH SUCH SLIDING SCALE TO BE DETERMINED AT LEAST ONCE PER CALENDAR YEAR BY THE AGENCY AND SUBJECT TO THE MAXIMUM FINANCIAL AID AMOUNT PER ELIGIBLE STUDENT AS DETERMINED BY THE AGENCY. THIS PROGRAM IS INTENDED TO: PROVIDE GREATER FINANCIAL AID AWARDS TO MIDDLE-AND LOWER-INCOME STUDENTS WHO COULD NOT OTHERWISE AFFORD EXPANDED EDUCATIONAL SERVICES; HELP STUDENTS WHO ARE NOT PROFICIENT AT GRADE LEVEL IN READING, MATH, OR OTHER CORE ACADEMIC AREAS REACH GRADE LEVEL PROFICIENCY; AND PROVIDE ADDITIONAL LEARNING OPPORTUNITIES TO STUDENTS ATTENDING SCHOOLS THAT UNDERPERFORM STATEWIDE AVERAGES FOR ACADEMIC OUTCOMES. THE ADMINISTERING NONPROFIT SHALL HAVE CONTROL OVER WHEN AND HOW FINANCIAL AID IS DISTRIBUTED TO APPROVED PROVIDERS THAT THE PARENTS CHOOSE, SUBJECT TO ADMINISTRATIVE RULES ADOPTED BY THE BOARD. SUCH FINANCIAL AID SHALL FURTHER BE PROVIDED AND ADMINISTERED IN A MANNER THAT DOES NOT DISCRIMINATE AGAINST ANY RECIPIENT, RECIPIENT'S FAMILY, PROVIDER, OR OUT-OF-SCHOOL LEARNING OPPORTUNITY ON THE BASIS OF RACE, COLOR, RELIGIOUS AFFILIATION, NATIONAL ORIGIN, GENDER, MILITARY STATUS, SEXUAL ORIENTATION, GENDER VARIANCE, MARITAL STATUS, OR PHYSICAL OR MENTAL DISABILITY.

(h) DIRECT THE ADMINISTERING NONPROFIT TO CREATE MULTIPLE-YEAR AWARDS AS PRACTICABLE FOR STUDENTS WITH UNIQUE LEARNING NEEDS AND LOW-INCOME ELIGIBLE STUDENTS AS NECESSARY TO ENSURE ELIGIBLE STUDENTS HAVE THE ASSURANCE OF FUNDING FOR A MINIMUM OF A THREE-YEAR PERIOD REGARDLESS OF CHANGES TO THE FAMILY'S INCOME LEVEL AND TO PROVIDE STABILITY FOR STUDENTS WITH UNIQUE LEARNING NEEDS;

(i) CREATE AND DEVELOP CRITERIA FOR THE ADMINISTERING NONPROFIT TO ESTABLISH AND MANAGE A SEPARATE COMPETITIVE GRANT PROGRAM FOR NONPROFIT PROVIDERS, EXCLUDING LOCAL EDUCATIONAL PROVIDERS, THAT CURRENTLY OFFER THEIR PROGRAMS FOR FREE OR AT EXTREMELY NOMINAL AMOUNTS TO ELIGIBLE STUDENTS IN ORDER TO PROVIDE THEM WITH FUNDS TO INCREASE THE NUMBER OF STUDENTS THEY CAN SERVE, TO IMPROVE THE QUALITY OF THEIR PROGRAMS, AND TO PROVIDE FUNDING FOR INNOVATIVE AND UNIQUE PROGRAMMATIC ACTIVITIES. THIS GRANT PROGRAM MUST NOT CONSTITUTE MORE THAN FIFTEEN PERCENT OF THE TOTAL FUNDS AVAILABLE FOR DISTRIBUTION IN ANY YEAR. TO BECOME AN ELIGIBLE PROVIDER UNDER THIS GRANT PROGRAM, A NONPROFIT PROVIDER MUST DEMONSTRATE DEMAND FOR SERVICES BY FAMILIES THAT IT IS CURRENTLY UNABLE TO MEET OR THE SPECIFIC ADDITIONAL PROGRAM OFFERINGS IT WILL PROVIDE TO EXISTING STUDENTS.

(j) CREATE AND DEVELOP CRITERIA AND PROTOCOLS FOR ROLLOVER OF UNUSED FUNDS IN A LEARNING ACCOUNT FOR USE BY THE RECIPIENT IN ADDITIONAL OUT-OF-SCHOOL LEARNING OPPORTUNITIES UNDER THE PROGRAM. ANY FUNDS IN THE

INDIVIDUAL LEARNING ACCOUNT WHEN THE STUDENT NO LONGER QUALIFIES AS AN ELIGIBLE STUDENT MUST REVERT BACK TO THE ADMINISTERING NONPROFIT. INDIVIDUAL LEARNING ACCOUNT FUNDS MAY ACCUMULATE FOR THREE YEARS, BUT UPON THE START OF THE FOURTH YEAR OF FUNDING, THE ENTIRETY OF THE FUNDS, EXCEPTING THE NEWLY AWARDED FOURTH-YEAR FUNDS, REVERT BACK TO THE ADMINISTERING NONPROFIT. AT THE TIME AN ELIGIBLE STUDENT REACHES THE AGE OF EIGHTEEN, ANY FUNDS IN THAT STUDENT'S LEARNING ACCOUNT MUST REVERT BACK TO THE ADMINISTERING NONPROFIT FOR DISTRIBUTION TO OTHER ELIGIBLE STUDENTS.

(k) NO LATER THAN AUGUST 1, 2021, ESTABLISH A PROCESS TO SELECT OR CREATE THE NONPROFIT ORGANIZATION TO BE DESIGNATED PURSUANT TO PARAGRAPH (m) OF THIS SUBSECTION. THE AGENCY SHALL CREATE A NEW NONPROFIT ONLY IF THE AGENCY DETERMINES NO EXISTING NONPROFITS MEET THE QUALIFICATIONS NECESSARY TO SUCCESSFULLY ADMINISTER THE PROGRAM.

(l) ANNUALLY CONDUCT, AND MAKE PUBLICLY AVAILABLE, INDEPENDENT FINANCIAL AUDITS OF THE ADMINISTERING NONPROFIT, WHICH MAY INCLUDE INDIVIDUAL LEARNING ACCOUNTS. SUCH AUDITS MUST BE CONDUCTED BY CERTIFIED PUBLIC ACCOUNTANTS WITH EXPERIENCE AUDITING NONPROFIT ORGANIZATIONS AND MUST BE FILED WITH THE AGENCY BY THE ADMINISTERING NONPROFIT NO LATER THAN JULY 1 OF EACH YEAR FOR THE PREVIOUS CALENDAR YEAR. THE AGENCY SHALL REDACT ALL NAMES OF TAXPAYERS AND SOCIAL SECURITY NUMBERS OR TAX IDENTIFICATION NUMBERS BEFORE PUBLICLY RELEASING ANY AUDIT OR OTHER FINANCIAL REPORT.

(m) DESIGNATE AND ENTER INTO AN AGREEMENT WITH A NONPROFIT CORPORATION AUTHORIZED TO DO BUSINESS IN COLORADO THAT MEETS THE REQUIREMENTS SET FORTH IN THIS PARAGRAPH. SUCH AGREEMENT SHALL DEFINE THE RESPONSIBILITIES AND OBLIGATIONS OF THE ADMINISTERING NONPROFIT TO OPERATE AND ADMINISTER THE PROGRAM CREATED BY THIS ARTICLE 86.1 UTILIZING ELIGIBLE CONTRIBUTIONS. ANY NONPROFIT CORPORATION WITH WHICH THE AGENCY MAY CONTRACT PURSUANT TO THIS SECTION SHALL MEET THE FOLLOWING CRITERIA AND REQUIREMENTS:

(I) THE ADMINISTERING NONPROFIT MUST BE EXEMPT FROM FEDERAL INCOME TAX UNDER 26 U.S.C. § 501(c)(3) OF THE INTERNAL REVENUE CODE;

(II) THE ADMINISTERING NONPROFIT MUST BE DEEMED BY THE AGENCY TO BE CAPABLE OF EFFECTIVELY ADMINISTERING THE COLORADO OUT-OF-SCHOOL LEARNING OPPORTUNITIES PROGRAM SUBJECT TO CRITERIA ESTABLISHED BY BOARD RULES AND AS DETERMINED BY THE AGENCY. IN THE EVENT THE ADMINISTERING NONPROFIT CEASES TO BE PARTY TO AN AGREEMENT WITH THE AGENCY FOR THIS PURPOSE, OR UPON TERMINATION OF SUCH AGREEMENT, THE ADMINISTERING NONPROFIT SHALL IMMEDIATELY CEASE ANY REFERENCES OR REPRESENTATION OF ASSOCIATION WITH THE PROGRAM OR THE AGENCY. UPON TERMINATION OF ANY AGREEMENT WITH THE AGENCY, THE ADMINISTERING NONPROFIT SHALL REMIT ALL ELIGIBLE CONTRIBUTIONS IN ITS POSSESSION OR CONTROL, LESS SUCH AMOUNT AS MAY BE RETAINED PURSUANT TO SUBPARAGRAPH (IX) OF THIS PARAGRAPH OR AS MAY OTHERWISE BE SPECIFIED BY THE AGENCY IN ITS AGREEMENT WITH THE ORGANIZATION.

(III) THE ADMINISTERING NONPROFIT SHALL BE GOVERNED BY A VOLUNTEER BOARD OF DIRECTORS. MEMBERS OF THE BOARD OF DIRECTORS ARE NOT ENTITLED TO COMPENSATION, BUT MAY RECEIVE REIMBURSEMENT FOR REASONABLE OUT-OF-POCKET EXPENSES INCURRED IN THE PERFORMANCE OF THEIR BOARD DUTIES.

(IV)(A) ANY RECORDS OF THE ADMINISTERING NONPROFIT RELATED TO THE ADMINISTRATION OF THE PROGRAM SHALL BE AVAILABLE AT ALL TIMES TO THE AGENCY AND SHALL BE TREATED AS PUBLIC RECORDS SUBJECT TO DISCLOSURE UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S., UPON REQUEST MADE TO THE AGENCY;

(B) THE ADMINISTERING NONPROFIT SHALL FILE PERIODIC REPORTS DETAILING THE CONTRIBUTIONS RECEIVED AND FINANCIAL AID PROVIDED THROUGHOUT EACH CALENDAR YEAR. SUCH REPORTS SHALL BE FILED ON A TIMELINE TO BE

DETERMINED BY THE AGENCY, EXCEPT THAT THE AGENCY SHALL NOT REQUIRE THE ADMINISTERING NONPROFIT TO FILE SUCH REPORTS MORE THAN FOUR TIMES PER CALENDAR YEAR.

(C) THE ADMINISTERING NONPROFIT SHALL SUBMIT IN A TIMELY MANNER ANY INFORMATION REQUESTED BY THE AGENCY THAT RELATES TO THE PROGRAM, INCLUDING INFORMATION THAT IS REQUESTED IN SUPPORT OF ANY EVALUATION OF THE PROGRAM OR ITS ADMINISTRATION;

(V) THE ADMINISTERING NONPROFIT MAY SOLICIT AND RECEIVE ELIGIBLE CONTRIBUTIONS. THE ADMINISTERING NONPROFIT MAY ALSO SOLICIT AND RECEIVE GIFTS, GRANTS, AND DONATIONS FOR PURPOSES OF ADMINISTERING AND FUNDING THE PROGRAM. THE SOURCES AND AMOUNTS OF ALL ELIGIBLE CONTRIBUTIONS SHALL BE REPORTED PROMPTLY TO THE AGENCY. NO ELIGIBLE CONTRIBUTIONS MAY BE EARMARKED OR RESTRICTED IN ANY MANNER BY AN ELIGIBLE TAXPAYER OR CONTRIBUTOR FOR THE BENEFIT OR EXCLUSION OF ANY INDIVIDUAL OR CLASS OF RECIPIENTS OR ANY INDIVIDUAL OR CLASS OF PROVIDERS.

(VI) SUBJECT TO CRITERIA DETERMINED AND ESTABLISHED BY THE AGENCY, THE ADMINISTERING NONPROFIT SHALL DEVELOP, ESTABLISH, AND MANAGE SYSTEMS AND PROCEDURES FOR PUBLICATION, SOLICITATION, RECEIPT, EVALUATION, AND SELECTION OF APPLICATIONS FROM POTENTIAL PROVIDERS OF OUT-OF-SCHOOL LEARNING OPPORTUNITIES UNDER THE PROGRAM TO WHICH PARENTS MAY DIRECT FINANCIAL AID; ENTER INTO AGREEMENTS AND CONTRACTS AS NECESSARY WITH APPROVED PROVIDERS OF OUT-OF-SCHOOL LEARNING OPPORTUNITIES UNDER THE PROGRAM; DEVELOP, ESTABLISH, AND MANAGE A SYSTEM FOR RECEIPT, PROCESSING, AND EVALUATION OF APPLICATIONS FROM ELIGIBLE STUDENTS; PROVIDE SERVICES DIRECTLY OR THROUGH THIRD-PARTY CONTRACT TO ASSIST ELIGIBLE STUDENTS, PARENTS, AND THEIR FAMILIES IN NAVIGATING AND SELECTING AMONG AVAILABLE OUT-OF-SCHOOL LEARNING OPPORTUNITIES; THROUGH THIRD-PARTY CONTRACTS PROVIDE TECHNICAL, PROGRAMMATIC, AND CAPACITY BUILDING EXPERTISE AND FUNDING TO INCREASE THE NUMBER AND QUALITY OF PROVIDERS; ESTABLISH AND MANAGE INDIVIDUAL LEARNING ACCOUNTS, TO BE FUNDED THROUGH ELIGIBLE CONTRIBUTIONS TO THE ADMINISTERING NONPROFIT, TO PAY APPROVED PROVIDERS OF APPROVED OUT-OF-SCHOOL LEARNING OPPORTUNITIES; AND PROVIDE, DIRECTLY OR BY CONTRACT, TECHNOLOGY SERVICES, SUBJECT TO CRITERIA ESTABLISHED AND DETERMINED BY THE AGENCY, FOR PURPOSES OF MONITORING AND TRACKING THE USE OF INDIVIDUAL LEARNING ACCOUNTS BY ELIGIBLE STUDENTS AND APPROVED PROVIDER PERFORMANCE AND PAYMENTS.

(VII) EXCEPT AS PROVIDED IN SUBPARAGRAPH (IX) OF THIS PARAGRAPH, NO MORE THAN TEN PERCENT OF THE ELIGIBLE CONTRIBUTIONS RECEIVED BY THE ADMINISTERING NONPROFIT IN ANY CALENDAR YEAR MAY BE SPENT ON ADMINISTRATIVE EXPENSES. ON OR AFTER JANUARY 1, 2024, THE AGENCY SHALL, IN CONSULTATION WITH THE ADMINISTERING NONPROFIT, REVIEW THE PERCENTAGE OF ELIGIBLE CONTRIBUTIONS THAT CAN BE SPENT ON ADMINISTRATIVE EXPENSES AND MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY REGARDING ANY APPROPRIATE CHANGES TO SUCH PERCENTAGE.

(VIII) FINANCIAL AID WILL BE DISTRIBUTED INTO INDIVIDUAL LEARNING ACCOUNTS AS DIRECTED BY THE AGENCY. THIS MAY OCCUR ONE TIME OR MULTIPLE TIMES EACH YEAR AS DIRECTED BY THE AGENCY AND MUST BE MADE PUBLIC BY THE AGENCY IN A REASONABLE MANNER; AND

(IX) ELIGIBLE CONTRIBUTIONS RECEIVED BY THE ORGANIZATION PRIOR TO JANUARY 1, 2022, MUST BE RETAINED BY THE ADMINISTERING NONPROFIT SOLELY FOR ADMINISTRATIVE AND ORGANIZATIONAL START-UP PURPOSES. ALL ELIGIBLE CONTRIBUTIONS RECEIVED BY THE ORGANIZATION PRIOR TO JANUARY 1, 2022 NOT EXPENDED ON ADMINISTRATIVE AND ORGANIZATION START-UP PURPOSES MUST BE TRANSFERRED TO THE OUT-OF-SCHOOL LEARNING OPPORTUNITIES FUND CREATED IN SECTION 22-86.1-105. AFTER JANUARY 1, 2022, FUNDS ARE AVAILABLE FOR ELIGIBLE STUDENTS.

(3) THE AGENCY SHALL BE SUBJECT TO ALL REQUIREMENTS OF THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S.

(4) THE AGENCY MAY SOLICIT AND RECEIVE GIFTS, GRANTS, AND DONATIONS, WHICH MAY BE RETAINED AND SPENT ON ADMINISTRATIVE EXPENSES, INCLUDING SALARIES AND OFFICE EXPENSES, REIMBURSEMENTS TO MEMBERS OF THE AGENCY BOARD OF DIRECTORS, ROUTINE BUSINESS EXPENSES SUCH AS INSURANCE, ACCOUNTING, AND LEGAL EXPENSES, AND ANY SIMILAR OVERHEAD EXPENSES INCURRED BY THE AGENCY.

(5) (a) THE AGENCY SHALL ENSURE THAT THE OUT-OF-SCHOOL LEARNING OPPORTUNITIES PROGRAM IS ADMINISTERED IN A MANNER THAT:

- (I) PROVIDES ASSISTANCE TO INDIVIDUAL STUDENTS, NOT ANY PARTICULAR INSTITUTION;
- (II) DOES NOT ENHANCE IDEOLOGICAL ENDS OF ANY PARTICULAR INSTITUTION, INCLUDING ANY SECTARIAN INSTITUTION, WHILE ALSO NOT DISCRIMINATING AGAINST ANY RECIPIENT'S, RECIPIENT'S FAMILY'S, OR PROVIDER'S RELIGIOUS AFFILIATION;
- (III) ENSURES THAT THE PROGRAM DOES NOT REQUIRE ANY COURSES IN RELIGION OR THEOLOGY THAT TEND TO INDOCTRINATE OR PROSELYTIZE; AND
- (IV) DOES NOT DENY ANY ENTITY THE PROGRAM'S BENEFITS BASED SOLELY ON THE ENTITY'S RELIGIOUS CHARACTER.

(b) NOTHING IN THIS SUBSECTION (5) GIVES ANY PERSON A PRIVATE CAUSE OF ACTION.

22-86.1-104. Out-of-school learning opportunities agency — board of directors — powers and duties. (1)(a) THE AGENCY IS GOVERNED AND ADMINISTERED BY A BOARD OF DIRECTORS THAT CONSISTS OF EIGHT MEMBERS APPOINTED BY THE GOVERNOR. THE SPEAKER OR MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES, WHOMEVER IS NOT AFFILIATED WITH THE SAME POLITICAL PARTY AS THE GOVERNOR, SHALL PRESENT THE GOVERNOR WITH A LIST OF EIGHT CANDIDATES, WHICH INCLUDES AT LEAST TWO CANDIDATES FROM THE WESTERN SLOPE AND TWO CANDIDATES FROM THE EASTERN PLAINS. THE GOVERNOR SHALL SELECT FOUR MEMBERS FROM THE LIST OF CANDIDATES. FOR THE BOARD AS A WHOLE, THE GOVERNOR SHALL ENSURE THAT THE BOARD INCLUDES AT LEAST TWO MEMBERS FROM THE WESTERN SLOPE AND TWO MEMBERS FROM THE EASTERN PLAINS. THE INITIAL APPOINTMENTS TO THE BOARD OF DIRECTORS MUST BE COMPLETED BY FEBRUARY 1, 2021. MEMBERS SERVE FOR THREE-YEAR TERMS, EXCEPT THAT THE FOUR MEMBERS APPOINTED TO THE FIRST BOARD WHO WERE NOT FROM THE LIST OF CANDIDATES SERVE FOR TWO YEARS. IF THERE IS A VACANCY OF A MEMBER WHO WAS SELECTED FROM THE LIST OF CANDIDATES, THE SPEAKER OR MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES, WHOMEVER IS NOT AFFILIATED WITH THE SAME POLITICAL PARTY AS THE GOVERNOR, SHALL PRESENT THE GOVERNOR WITH TWO CANDIDATES FROM WHICH TO SELECT A REPLACEMENT. MEMBERS OF THE BOARD MAY NOT DURING THEIR TERMS OF SERVICE BE EMPLOYED BY OR CONTRACT WITH ORGANIZATIONS, PUBLIC AGENCIES, OR INDIVIDUALS THAT PROVIDE OR OFFER TO PROVIDE OUT-OF-SCHOOL LEARNING OPPORTUNITIES UNDER THE PROGRAM. MEMBERS OF THE BOARD MAY SERVE UP TO THREE CONSECUTIVE TERMS, AND MEMBERS SHALL BE SUBJECT TO REMOVAL AS PROVIDED IN ARTICLE IV, SECTION 6, OF THE COLORADO CONSTITUTION.

(b) MEMBERS OF THE BOARD ARE NOT ENTITLED TO COMPENSATION, BUT THEY SHALL BE PROVIDED REASONABLE PER DIEM AND REIMBURSEMENT FOR EXPENSES INCURRED IN FURTHERANCE OF THEIR RESPONSIBILITIES AS MEMBERS OF THE BOARD.

(2) THE BOARD SHALL HAVE THE FOLLOWING POWERS AND DUTIES:

(a) TO HIRE AN EXECUTIVE DIRECTOR AND STAFF;

(b) TO ESTABLISH AND OVERSEE THE PROGRAM CREATED BY THIS ARTICLE 86.1, ASSURING THAT AS MUCH FUNDING AS PRACTICABLE IS DEDICATED TO THE PROVISION OF FINANCIAL AID AND ASSISTANCE TO ELIGIBLE STUDENTS AND THEIR FAMILIES IN FINDING AND SELECTING AVAILABLE OUT-OF-SCHOOL LEARNING OPPORTUNITIES;

(c) TO PERFORM ALL SUCH ACTIONS AS MAY BE NECESSARY AND APPROPRIATE TO CARRY OUT THE DUTIES AND RESPONSIBILITIES SPECIFIED IN SECTION 22-86.1-103;

(d) TO OBTAIN THE SERVICES OF EXPERT CONSULTANTS AS NECESSARY AND APPROPRIATE FOR THE PERFORMANCE OF ITS DUTIES AND RESPONSIBILITIES;

(e) TO PROMULGATE RULES AND REGULATIONS IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, AS ARE NECESSARY OR EXPEDIENT FOR THE CONDUCT OF ITS AFFAIRS AND GENERALLY FOR THE ADMINISTRATION OF THE PROGRAM ESTABLISHED BY THIS ARTICLE 86.1;

(f) TO SUE AND BE SUED IN ITS OWN NAME;

(g) TO INCUR DEBTS, LIABILITIES, AND OBLIGATIONS, SUBJECT TO ANY LIMITATIONS IMPOSED THEREON PURSUANT TO LAW;

(h) TO PROVIDE FOR THE NECESSARY EXPENSES OF THE BOARD IN THE EXERCISE OF ITS POWERS AND THE PERFORMANCE OF ITS DUTIES AND TO REIMBURSE A BOARD MEMBER FOR NECESSARY AND APPROPRIATE EXPENSES INCURRED IN THE PERFORMANCE OF THE BOARD MEMBERS' DUTIES;

(i) TO PROVIDE FOR THE PROPER KEEPING OF ACCOUNTS AND RECORDS AND FOR BUDGETING OF FUNDS; AND

(j) TO ACT AS A PUBLIC ENTITY FOR PURPOSES OF THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24, C.R.S.

22-86.1-105. Out-of-school learning opportunities fund — creation — crediting of money to fund — use of fund. (1) THE OUT-OF-SCHOOL LEARNING OPPORTUNITIES FUND IS HEREBY CREATED IN THE STATE TREASURY. THE PRINCIPAL OF THE FUND CONSISTS OF ALL MONEY TRANSFERRED OR CREDITED TO THE FUND PURSUANT TO SECTION 39-22-504 (7). ALL INTEREST AND INCOME EARNED ON THE DEPOSIT AND INVESTMENT OF MONEY IN THE FUND SHALL BE CREDITED TO THE FUND AND SHALL NOT BE TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND AT THE END OF ANY FISCAL YEAR.

(2) THE MONEY CREDITED TO THE FUND, INCLUDING ANY INCOME AND INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF SUCH MONEY, SHALL BE EXEMPT FROM ANY RESTRICTION ON SPENDING, REVENUE, OR APPROPRIATIONS, INCLUDING THE RESTRICTIONS OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

(3) ALL MONEY IN THE FUND ARE CONTINUOUSLY APPROPRIATED TO THE AGENCY FOR OUT-OF-SCHOOL LEARNING OPPORTUNITIES FOR ELIGIBLE STUDENTS AS DEFINED IN SECTION 22-86.1-102, AND THE ADMINISTRATIVE AND OPERATIONAL EXPENSES OF THE AGENCY.

22-86.1-106. Repeal and reauthorization. THIS ARTICLE 86.1 IS REPEALED, EFFECTIVE JANUARY 1, 2036, UNLESS IT IS CONTINUED OR REESTABLISHED BY THE GENERAL ASSEMBLY ACTING BY BILL PRIOR TO SAID DATE.

SECTION 2. In Colorado Revised Statutes, 39-22-504, add (7) as follows:

39-22-504. Net operating losses. (7) (a) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, FOR TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2021, BUT PRIOR TO JANUARY 1, 2036, NO NET OPERATING LOSS

DEDUCTION SHALL BE ALLOWED FOR CORPORATIONS, EXCEPT THAT NET OPERATING LOSSES FOR PRIOR TAX YEARS MAY BE CARRIED FORWARD IN ACCORDANCE WITH THIS SECTION.

(b) AT THE END OF EACH FISCAL YEAR THE STATE TREASURER SHALL TRANSFER TO THE OUT-OF-SCHOOL LEARNING OPPORTUNITIES FUND CREATED IN SECTION 22-86.1-105 THE ADDITIONAL AMOUNT OF NET TAX REVENUE RECEIVED IN SUCH FISCAL YEAR ATTRIBUTABLE TO PROHIBITING DEDUCTIONS FOR NET OPERATING LOSSES AS PROVIDED IN SUBSECTION (7)(a) OF THIS SECTION, AS DETERMINED BY THE EXECUTIVE DIRECTOR.

(c) REVENUES COLLECTED UNDER THIS SUBSECTION (7), AS AUTHORIZED BY THE VOTERS AT THE STATEWIDE ELECTION IN NOVEMBER 2020 SHALL BE RETAINED AND SPENT BY THE STATE AS A VOTER-APPROVED REVENUE CHANGE AND SHALL BE EXEMPT FROM ALL REVENUE, SPENDING, AND OTHER LIMITATIONS UNDER SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION OR ANY OTHER LAW.

Ballot Title Setting Board

Proposed Initiative 2019-2020 #168¹

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

STATE TAXES SHALL BE INCREASED \$151.7 MILLION ANNUALLY ON CORPORATIONS IN THE FIRST FULL FISCAL YEAR, AND BY SUCH AMOUNTS THAT ARE RAISED THEREAFTER, BY A CHANGE TO THE COLORADO REVISED STATUTES THAT LIMITS CERTAIN CORPORATE TAX DEDUCTIONS IN ORDER TO CREATE AN OUT-OF-SCHOOL LEARNING OPPORTUNITIES PROGRAM FOR COLORADO CHILDREN, AND, IN CONNECTION THEREWITH, PROVIDING PARENT-DIRECTED FINANCIAL AID TO 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; REQUIRING THE AWARD OF FINANCIAL AID TO PRIORITIZE LOW AND MIDDLE-INCOME STUDENTS; CREATING AN INDEPENDENT AGENCY TO OVERSEE THE PROGRAM TO ENSURE FINANCIAL ACCOUNTABILITY AND TRANSPARENCY AND TO SELECT A NONPROFIT TO ADMINISTER THE PROGRAM; TEMPORARILY ELIMINATING THE NET OPERATING LOSS DEDUCTION FOR CORPORATIONS TO FUND THE PROGRAM; AND EXEMPTING THE INCREASED TAX REVENUE FROM ALL REVENUE AND SPENDING LIMITATIONS AS A VOTER-APPROVED REVENUE CHANGE.

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

SHALL STATE TAXES BE INCREASED \$151.7 MILLION ANNUALLY ON CORPORATIONS IN THE FIRST FULL FISCAL YEAR, AND BY SUCH AMOUNTS THAT ARE RAISED THEREAFTER, BY A CHANGE TO THE COLORADO REVISED STATUTES THAT LIMITS CERTAIN CORPORATE TAX DEDUCTIONS IN ORDER TO CREATE AN OUT-OF-SCHOOL LEARNING OPPORTUNITIES PROGRAM FOR COLORADO CHILDREN, AND, IN CONNECTION THEREWITH, PROVIDING PARENT-DIRECTED FINANCIAL AID TO 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; REQUIRING THE AWARD OF FINANCIAL AID TO PRIORITIZE LOW AND MIDDLE-INCOME STUDENTS; CREATING AN INDEPENDENT AGENCY TO OVERSEE THE PROGRAM TO ENSURE FINANCIAL ACCOUNTABILITY AND TRANSPARENCY AND TO

¹ Unofficially captioned “State Out-of-School Learning Opportunities Program” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

SELECT A NONPROFIT TO ADMINISTER THE PROGRAM; TEMPORARILY ELIMINATING THE NET OPERATING LOSS DEDUCTION FOR CORPORATIONS TO FUND THE PROGRAM; AND EXEMPTING THE INCREASED TAX REVENUE FROM ALL REVENUE AND SPENDING LIMITATIONS AS A VOTER-APPROVED REVENUE CHANGE?

Hearing January 15, 2020:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 11:31 a.m.

RECEIVED S.WARD
JAN 22 2020 5:05 P.M.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD Colorado Secretary of State

Kenneth Nova, Objector,

vs.

Amber Drevon and Charles Dukes, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2019-2020 #168

Kenneth Nova, registered elector of the State of Colorado, through legal counsel, Recht Kornfeld P.C., objects to the Title Board's title and ballot title and submission clause set for Initiative 2019-20 #168.

The Title Board set a title for Initiative 2019-2020 #168 on January 15, 2020. The Board designated and fixed the following ballot title and submission clause:

SHALL STATE TAXES BE INCREASED \$151.7 MILLION ANNUALLY ON CORPORATIONS IN THE FIRST FULL FISCAL YEAR, AND BY SUCH AMOUNTS THAT ARE RAISED THEREAFTER, BY A CHANGE TO THE COLORADO REVISED STATUTES THAT LIMITS CERTAIN CORPORATE TAX DEDUCTIONS IN ORDER TO CREATE AN OUT-OF-SCHOOL LEARNING OPPORTUNITIES PROGRAM FOR COLORADO CHILDREN, AND, IN CONNECTION THEREWITH, PROVIDING PARENT-DIRECTED FINANCIAL AID TO 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; REQUIRING THE AWARD OF FINANCIAL AID TO PRIORITIZE LOW AND MIDDLE-INCOME STUDENTS; CREATING AN INDEPENDENT AGENCY TO OVERSEE THE PROGRAM TO ENSURE FINANCIAL ACCOUNTABILITY AND TRANSPARENCY AND TO SELECT A NONPROFIT TO ADMINISTER THE PROGRAM; TEMPORARILY ELIMINATING THE NET OPERATING LOSS DEDUCTION FOR CORPORATIONS TO FUND THE PROGRAM; AND EXEMPTING THE INCREASED TAX REVENUE FROM ALL REVENUE AND SPENDING LIMITATIONS AS A VOTER-APPROVED REVENUE CHANGE?

I. The titles set are legally flawed because the titles fail to inform voters of certain central elements of the measure or misstate those aspects of the Initiative #168.

A. The titles are misleading and must be corrected in order to accurately and fairly describe this initiative.

1. The titles states twice that the elimination of the NOL deduction will “offset” the costs of creating the Program. This is false. The word “offset” suggests an equal and opposite impact. In fact, the Initial Fiscal Impact Statement for the measure indicates that the State will gain over \$250 million more from the elimination of the NOL Deduction than it will lose from the new income tax credit over the first three-and-a-half years after #168 becomes effective. Over the next six years, the State will lose over \$600 million as the result of the measure. The use of the term “offset” to describe the effect of the NOL Deduction will mislead voters.
2. The titles note that the elimination of the NOL Deduction will be “temporary”. While strictly true, the use of this term is misleading. The Program would operate until it sunsets on January 1, 2036. The elimination of the NOL Deduction would sunset on the same date. Referring to the NOL Deduction as “temporary” without including the fact that the Program is just as temporary is misleading. It suggests that a temporary tax increase will pay for a perpetual Program. Moreover, it is misleading to call the elimination of a tax deduction is “temporary” when the time period is more than 15 years.
3. The list of some of the learning programs to be funded is misleading, given that it is non-exclusive and designed to lure voters to support the measure based on this partial list of funding objectives. The list of programs is also misleading and inaccurate because the listed learning opportunities would not be available if the same opportunities are offered as part of an in-school educational program at a given school. *See Proposed Section 22-86.1-102(7).*
4. The terminology of “individual learning account” is inherently misleading, as it suggests a fund that is controlled by the individual, as in “individual retirement account.” *See Proposed Section 22-86.1-103(2)(m)(V)* (“No eligible contribution may be earmarked... for the benefit of... any individual or class of recipients”) at p. 5 of Initiative. The Board is not permitted to use misleading language in the titles, even if it is found in the initiative text, if that language will “impede voter understanding.” *Id.*
5. The use of the phrase “and by such amounts that are raised thereafter” in the title is misleading. The phrase suggests that the tax increase in the measure is perpetual when it will actually end after 2035. The language should be changed to “and by such amounts that are raised through 2035.”

B. The titles omit central features of the measure.

1. The titles do not state the appointing authorities (the governor and either the Speaker or the Minority Leader of the House of Representatives) of what is otherwise portrayed to be an “independent” agency. *See Proposed Section 22-86.1-104(1)(a)* at p. 6 of Initiative.
2. The titles do not state that parents do not control the so-called “parent-directed” individual accounts and should state that the administering nonprofit has sole control of how and when the funds are distributed to approved providers. *See Proposed Section 22-86.1-103(2)(m)(V)* at p. 5 of Initiative (“No eligible contribution may be earmarked... for the benefit of... any individual or class of recipients”); *Proposed Section 22-86.1-103(2)(g)* at p. 3 of Initiative (non-profit “shall have control over when and how financial aid is distributed”).
3. The titles do not state that parents cannot direct money to the so-called “parent-directed” accounts of their own choice, given that parents are expressly restricted to contributing to the administering nonprofit, which will have sole control of the funds and funding decisions that do not benefit specific children. *See Proposed Section 22-86.1-103(2)(m)(V)* (“No eligible contribution may be earmarked... for the benefit of... any individual or class of recipients”) at p. 5 of Initiative.
4. The titles do not state that money in a so-called “parent-directed” account is based on a “sliding scale,” which is contingent on family income and financial means of the eligible student. *See Proposed Section 22-86.1-103(2)(g)* at p. 3 of Initiative (financial aid is conditioned on “a sliding scale” which is “inversely related to the family income and financial means of an eligible student”).
5. The titles are silent on the fact that unused funds must revert – without condition or limitation on their use – to the administering non-profit. *See Proposed Section 22-86.1-103(2)(j)* at pp. 3-4 of Initiative (“Any funds in the individual learning account when the student no longer qualifies as an eligible student shall revert back to the administering non-profit”).
6. The titles do not state that certain eligible contributions, which must be sent by the administering non-profit to the agency within the Department of Education, are not specifically de-Bruced and therefore *are* subject to the State’s spending limits found in TABOR and other applicable laws. *See Proposed Section 22-86.1-103(2)(m)(II)* at p. 4 of Initiative (“Upon termination of any agreement with the agency, the administering non-profit shall remit all eligible contributions in its possession or control...”).
7. The titles do not state that “parent-directed individual learning accounts” cannot be funded with revenue generated by the elimination of the NOL Deduction. Instead, these accounts may only “be funded through eligible contributions and

other gifts, grants and donations to the administering nonprofit.” *See* Proposed Section 22-86.1-103(2)(g). “Eligible contributions” is an undefined term used repeatedly in the measure, but it cannot be read to include revenue generated by the elimination (in #168) or reduction (in #170) of the NOL Deduction.

8. The titles do not state that upon termination of any agreement with the agency, the administering nonprofit may retain all funds generated by the elimination of the NOL Deduction. *See* Proposed Section 22-86.1-103(m)(II). Only “eligible contributions” must be remitted.
9. The titles do not state that the measure does not limit the use of revenue generated by the elimination of the NOL Deduction for administrative expenses. *See* Proposed Section 22-86.1-103(m)(VII). The measure only limits the percentage of “eligible contributions” that may be spent on administrative expenses.

A ballot title is invalid where it is “so general that it does not contain sufficient information to enable voters to determine intelligently whether to support or oppose the initiative.” *In re Title, Ballot Title and Submission Clause for 2015-2016 #73, 2016 CO 24, ¶34* (Colo. 2016). This title suffers from that infirmity.

II. The titles violate TABOR.

The titles violate the Taxpayer’s Bill of Rights in two ways. First, TABOR requires specific language to be included in the title of any measure that would raise taxes. Colo. Const. art. X, sec. 20(3)(c). The insertion of the words “on corporations” into that required language in the titles violates the requirement. Those words must be eliminated.

Second, the elimination of the NOL Deduction is phased in. Taxpayers would be able to carry forward losses from earlier years but would not be able to carry forward losses incurred after the effective date of the measure. As a result, the measure will generate more revenue each year as taxpayers use up deductible losses from years before the measure’s effective date. Also, the elimination is temporary. Under these circumstances, TABOR requires the amount of the tax increase from the final year (2035) to be included in the title. Colo. Const. art. X, sec. 20(3)(c). The use of the first full fiscal year increase violates TABOR.

WHEREFORE, the titles set January 15, 2020 should be reversed, due to a lack of needed information and material misrepresentations about #168.

RESPECTFULLY SUBMITTED this 22nd day of January, 2020.

RECHT KORNFELD, P.C.

s/ Thomas M. Rogers III

Thomas M. Rogers III
Mark G. Grueskin
1600 Stout Street, Suite 1400
Denver, CO 80202
Phone: 303-573-1900
Email: trey@rklawpc.com
mark@rklawpc.com

Objector's Address:

355 South 44th St.
Boulder, CO 80305

CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2019-2020 #168** was sent this day, January 22, 2020, via U.S. Mail postage prepaid to the proponents at:

Amber Drevon
20756 E. Eastman Ave.
Aurora, CO 80013

Charles Dukes
11745 Kitteridge St.
Commerce City, CO 80022

s/ Erin Holweger
Erin Holweger

Ballot Title Setting Board

Proposed Initiative 2019-2020 #168¹

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

STATE TAXES SHALL BE INCREASED \$151.7 MILLION ANNUALLY ON CORPORATIONS IN THE FIRST FULL FISCAL YEAR, AND BY SUCH AMOUNTS THAT ARE RAISED THEREAFTER, BY A CHANGE TO THE COLORADO REVISED STATUTES THAT LIMITS CERTAIN CORPORATE TAX DEDUCTIONS IN ORDER TO CREATE AN OUT-OF-SCHOOL LEARNING OPPORTUNITIES PROGRAM FOR COLORADO CHILDREN, AND, IN CONNECTION THEREWITH, PROVIDING PARENT-DIRECTED FINANCIAL AID TO 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; REQUIRING THE AWARD OF FINANCIAL AID TO PRIORITIZE LOW AND MIDDLE-INCOME STUDENTS; CREATING A STATE AGENCY INDEPENDENT OF THE DEPARTMENT OF EDUCATION TO OVERSEE THE PROGRAM TO ENSURE FINANCIAL ACCOUNTABILITY AND TRANSPARENCY AND TO SELECT A NONPROFIT TO ADMINISTER THE PROGRAM; REPEALING THE PROGRAM IN 2035; ELIMINATING UNTIL 2035 THE NET OPERATING LOSS DEDUCTION FOR CORPORATIONS TO FUND THE PROGRAM; AND EXEMPTING THE INCREASED TAX REVENUE FROM ALL REVENUE AND SPENDING LIMITATIONS AS A VOTER-APPROVED REVENUE CHANGE.

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

SHALL STATE TAXES BE INCREASED \$151.7 MILLION ANNUALLY ON CORPORATIONS IN THE FIRST FULL FISCAL YEAR, AND BY SUCH AMOUNTS THAT ARE RAISED THEREAFTER, BY A CHANGE TO THE COLORADO REVISED STATUTES THAT LIMITS CERTAIN CORPORATE TAX DEDUCTIONS IN ORDER TO CREATE AN OUT-OF-SCHOOL LEARNING OPPORTUNITIES PROGRAM FOR COLORADO CHILDREN, AND, IN CONNECTION THEREWITH, PROVIDING PARENT-DIRECTED FINANCIAL AID TO 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; REQUIRING THE AWARD OF FINANCIAL AID TO PRIORITIZE LOW AND MIDDLE-INCOME STUDENTS; CREATING AN INDEPENDENT STATE AGENCY INDEPENDENT OF THE DEPARTMENT OF EDUCATION TO OVERSEE THE PROGRAM TO ENSURE

¹ Unofficially captioned “State Out-of-School Learning Opportunities Program” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

FINANCIAL ACCOUNTABILITY AND TRANSPARENCY AND TO SELECT A NONPROFIT TO ADMINISTER THE PROGRAM; REPEALING THE PROGRAM IN 2035; TEMPORARILY ELIMINATING UNTIL 2035 THE NET OPERATING LOSS DEDUCTION FOR CORPORATIONS TO FUND THE PROGRAM; AND EXEMPTING THE INCREASED TAX REVENUE FROM ALL REVENUE AND SPENDING LIMITATIONS AS A VOTER-APPROVED REVENUE CHANGE?

Hearing January 15, 2020:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 11:31 a.m.

Rehearing February 5, 2020:

Motion for Rehearing granted only to the extent that the Board made changes to the titles; denied in all other respects.

Hearing adjourned 10:58 a.m.