

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, Colorado 80203</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Original Proceeding Pursuant to §1-40-107(2), C.R.S. (2019) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2019- 2020, #271</p> <p>Petitioners: Kelly Brough and Tyler Sandberg,</p> <p>v.</p> <p>Respondents/Proponents: Carol Hedges and Steve Briggs,</p> <p>v.</p> <p>Ballot Title Board: Theresa Conley, David Powell, and Jason Gelender.</p>	
<p>Attorneys for Carol Hedges and Steve Briggs:</p> <p>Edward T. Ramey, #6748 Tierney Lawrence LLC 225 East 16th Avenue, Suite 350 Denver, CO 80203 Telephone: 720-242-7585 Email: eramey@tierneylawrence.com;</p>	<p>Supreme Court Case No. 2020SA93</p>
<p style="text-align: center;">ANSWER BRIEF OF RESPONDENTS/PROPONENTS CAROL HEDGES AND STEVE BRIGGS</p>	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that the brief complies with C.A.R. 28(g). It contains 2,023 words.

Further, the undersigned certifies that the brief complies with C.A.R. 28(k).

For the party raising the issue:

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

For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

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

By: s/Edward T. Ramey

TABLE OF CONTENTS

	Page
STATEMENT OF THE ISSUES PRESENTED FOR REVIEW.....	1
STATEMENT OF THE CASE.....	1
SUMMARY OF THE ARGUMENT.....	1
ARGUMENT.....	2
I. Proposed Initiative 2019-2020 #271 Contains a Single Subject.....	2
A. Standard of Review and Preservation of Issue.....	2
B. The Proposed Initiative Contains a Single Subject.....	2
II. The Title Board Set a Fair and Accurate Title that Expresses the True Intent and Meaning and Incorporates All Principal Aspects of the Measure.....	6
A. Standard of Review and Preservation of Issue.....	6
B. The Title Board Set a Fair and Accurate Title that Expresses the True Intent and Meaning and Incorporates All Principal Aspects of the Measure.....	7
CONCLUSION.....	10

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>In re Title, Ballot Title and Submission Clause for 2013-2014 #89</i> , 2014 CO 66, 328 P.3d 172 (Colo. 2014).....	3, 8
<i>In re Title, Ballot Title and Submission Clause for 2013-2014 #90</i> , 2014 CO 63, 328 P.3d 155 (Colo. 2014).....	3, 7, 8, 9
<i>In re Title, Ballot Title & Submission Clause & Summary for 1999-2000 #256</i> , 12 P.3d 246 (Colo. 2000).....	3
<i>In re Title, Ballot Title & Submission Clause & Summary for 1999-2000 #200A</i> , 992 P.2d 27 (Colo. 2000).....	3
<i>In re Proposed Initiated Constitutional Amendment Concerning Fair Fishing</i> , 877 P.2d 1355 (Colo. 1994).....	8
 Constitutional Provisions	
COLO. CONST. art. X, §20(7).....	6
COLO. CONST. art. X, §20(8)(a).....	4
 Other (reverse chronological)	
Amend. 72 (cigarette and tobacco taxes), 2016 State Ballot Information Booklet (“Blue Book”), https://leg.colorado.gov/sites/default/files/2016_bilingual_bluebook_for_the_internet_0.pdf , pp. 35-36, 40-41.....	5
Prop. BB (retention of revenue), 2015 Blue Book, https://leg.colorado.gov/sites/default/files/blue_book_for_internet_2015_0.pdf , pp. 3, 7.....	5

Amend. 68 (horse racetrack casino gambling), 2014 Blue Book,
https://leg.colorado.gov/sites/default/files/2014blue_book_for_internet.pdf,
pp. 15-18.....5

Prop. AA (retail marijuana taxes), 2013 Blue Book,
https://leg.colorado.gov/sites/default/files/2013_blue_book_english_internet.pdf,
pp. 19, 29.....5, 6

Amend. 64 (marijuana excise tax), 2012 Blue Book,
https://leg.colorado.gov/sites/default/files/2012_english_blue_book_internet_version.pdf, p. 11, 34.....5

Amend. 50 (limited gaming tax), Amend. 51 (state sales and use tax), Amend. 58
(severance tax), Amend. 59 (retention of revenue), 2008 Blue Book,
<http://hermes.cde.state.co.us/drupal/islandora/object/co:2552/datastream/OBJ/view>
pp. 7, 41, 9, 44 26, 58 29, 59-60.....5

Ref. C (retention of revenue), 2005 Blue Book,
<http://hermes.cde.state.co.us/drupal/islandora/object/co:2454/datastream/OBJ/view>
,pp. 3, 25-26.....5

Amend. 35 (tobacco tax), 2004 Blue Book,
<http://hermes.cde.state.co.us/drupal/islandora/object/co:2995/datastream/OBJ/view>
, pp. 5-6, 30-31.....5

Respondents/Proponents Carol Hedges and Steve Briggs, through counsel, respectfully submit their Answer Brief:

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Respondents/Proponents adopt the Statement presented in their Opening Brief. The Statements presented by the Petitioners and the Title Board are consistent.

STATEMENT OF THE CASE

Respondents/Proponents adopt the Statement presented in their Opening Brief. The Statements presented by the Petitioners and the Title Board are consistent.

SUMMARY OF THE ARGUMENT

1. The Title Board was correct in its determination that Proposed Initiative 2019-2020 #271 contains a single subject. The initiative proposes enactment of a new graduated income tax structure in Colorado for individuals, estates, and trusts. In connection therewith, the initiative would necessarily repeal the requirement in the Colorado Constitution that all taxable net income be taxed at one rate. It would also dedicate the uses of the specific increased revenue that would result from this new income tax rate structure, require the Legislative Council and a new oversight committee to monitor and report to the public

annually on the amounts and uses of that specific revenue, and establish a commission to evaluate and report on the effects of this new income tax rate structure after ten years. There is nothing in the measure that is incongruous, not necessarily or properly connected, or surreptitious. Everything in the measure is directly tied and restricted to its central purpose.

2. The Title Board set a title for the Proposed Initiative that accurately and fairly expresses the true intent and meaning of the measure, incorporates all principal aspects of the measure, and is clear as to the meaning of a “yes” or “no” vote on the measure.

ARGUMENT

I. Proposed Initiative 2019-2020 #271 Contains a Single Subject.

A. Standard of Review and Preservation of Issue.

Respondents/Proponents adopt their statement of the standard of review as presented in their Opening Brief. The Title Board’s statement is consistent. The Petitioners, while noting the legal issue, did not address the standard of review. The issue was preserved.

B. The Proposed Initiative Contains a Single Subject.

Respondents/Proponents and the Title Board concur in their Opening Briefs that Proposed Initiative 2019-2020 #271 contains a single subject. Every provision

in the measure “tends to effect or to carry out one general objective or purpose” – Title Board Op. Br. pp. 4-5; *In re Title, Ballot Title and Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶11, 328 P.3d 155, 159 (Colo. 2014), quoting *In re Title, Ballot Title & Submission Clause & Summary for 1999-2000 #256*, 12 P.3d 246, 253 (Colo. 2000). The objective and purpose of the proposed initiative is to adopt a new graduated income tax rate structure for individuals, estates, and trusts in Colorado; everything in the measure directly facilitates or implements that purpose. Title Board Op. Br. pp. 5-6. There is nothing in the measure that does not have a “necessary or proper connection” to that central purpose. Resp./Prop. Op. Br. pp. 5-7; Title Board Op. Br. pp. 5-6. “Implementing provisions that are directly tied to an initiative’s central focus are not separate subjects.” Title Board Op. Br. pp. 5-6; *In re Title, Ballot Title and Submission Clause for 2013-2014 #89*, 2014 CO 66, ¶16, 328 P.3d 172, 178 (Colo. 2014), quoting *In re Title, Ballot Title & Submission Clause & Summary for 1999-2000 #200A*, 992 P.2d 27, 30 (Colo. 2000).

As noted by the Respondents/Proponents and by the Title Board, the purpose and subject of the proposed initiative is to establish a new graduated rate income tax structure in Colorado for individuals, estates, and trusts. Resp./Prop. Op. Br. p. 5; Title Board Op. Br. p. 5. As recited in the measure, the proposed new income

tax rate structure is designed to make the overall tax system in Colorado more fair and just by requiring taxpayers to pay similar percentages of their income in total taxes. This requires lowering the marginal income tax rate from its current level for taxpayers with lower incomes and incrementally raising the marginal income tax rates for taxpayers with higher incomes. This graduated marginal rate structure is central to the purpose of the measure, not a disconnected effort to attract support from lower income voters as suggested by the Petitioners.

As the proposed graduated income tax rate structure would be facially unconstitutional under COLO. CONST. art. X, §20(8)(a), the proposed initiative would also necessarily repeal that specific constitutional prohibition. Resp./Prop. Op. Br. p. 5; Title Board Op. Br. p. 5.

The new graduated income tax structure proposed by the initiative would have the anticipated effect of directly generating additional net revenue for the state. The initiative includes an initial dedication of uses for that incremental new revenue – and only that incremental new revenue. This is a common component of revenue measures, directly and properly connected – and precisely tailored in this

case – to the production of the new revenue itself.¹ Indeed, a failure to dedicate explicitly is itself necessarily a dedication, *e.g.*, by default to the general fund.

Finally, the Petitioners complain that allowing the incremental new revenue from the proposed new graduated income tax structure to be collected and spent as a voter approved revenue change comprises a separate subject. Provisions of this

¹ See, *e.g.*, Amend. 72 (cigarette and tobacco taxes), 2016 State Ballot Information Booklet (“Blue Book”), https://leg.colorado.gov/sites/default/files/2016_bilingual_bluebook_for_the_internet_0.pdf, pp. 35-36, 40-41; Prop. BB (retention of revenue), 2015 Blue Book, https://leg.colorado.gov/sites/default/files/blue_book_for_internet_2015_0.pdf, pp. 3, 7; Amend. 68 (horse racetrack casino gambling), 2014 Blue Book, https://leg.colorado.gov/sites/default/files/2014blue_book_for_internet.pdf, pp. 15-18; Prop. AA (retail marijuana taxes), 2013 Blue Book, https://leg.colorado.gov/sites/default/files/2013_blue_book_english_internet.pdf, pp. 19, 29; Amend. 64 (marijuana excise tax), 2012 Blue Book, https://leg.colorado.gov/sites/default/files/2012_english_blue_book_internet_version.pdf, p. 11, 34; Amend. 50 (limited gaming tax), 2008 Blue Book, <http://hermes.cde.state.co.us/drupal/islandora/object/co:2552/datastream/OBJ/view>, pp. 7, 41; Amend. 51 (state sales and use tax), *Id.*, pp. 9, 44; Amend. 58 (severance tax), *Id.* pp. 26, 58; Amend. 59 (retention of revenue), *Id.*, pp. 29, 59-60; Ref. C (retention of revenue), 2005 Blue Book, <http://hermes.cde.state.co.us/drupal/islandora/object/co:2454/datastream/OBJ/view>, pp. 3, 25-26; Amend. 35 (tobacco tax), 2004 Blue Book, <http://hermes.cde.state.co.us/drupal/islandora/object/co:2995/datastream/OBJ/view>, pp. 5-6, 30-31.

nature – commonly known as “de-Brucing” measures in reference to the “spending limits” and refund obligations otherwise imposed by COLO. CONST. art. X, §20(7) – are common in revenue measures,² directly connected and necessarily tailored precisely to the revenue in question, and completely meaningless without that connection. If anything, they remove the “voter surprise” that would result from an unanticipated potential triggering of a systemic refund mandate. Provisions of this nature, linked directly to a revenue measure, are the farthest thing from a separate subject.³

II. The Title Board Set a Fair and Accurate Title that Expresses the True Intent and Meaning and Incorporates All Principal Aspects of the Measure.

A. Standard of Review and Preservation of Issue.

Respondents/Proponents adopt their statement of the standard of review as presented in their Opening Brief. Petitioners’ (at least to the extent they note the

² A provision of this nature in fact appears in each of the measures listed in footnote 1, above, except Amendment 64 in 2012 – though it appears prominently in the referred legislation enacting the marijuana tax required by Amendment 64 the following year. Prop. AA (retail marijuana taxes), 2013 Blue Book, http://leg.colorado.gov/sites/default/files/2013_blue_book_english_internet.pdf, p. 29.

³ As the Petitioners have not presented single-subject arguments in their Opening Brief regarding the annual tax rate inflationary adjustments or the oversight committee or review commission, Respondents/Proponents understand those arguments, though suggested below, to have been abandoned on this appeal.

“broad discretion” of the Title Board in drafting the titles) and the Title Board’s statements are consistent. The issue was preserved.

B. The Title Board Set a Fair and Accurate Title that Expresses the True Intent and Meaning and Incorporates All Principal Aspects of the Measure.

The Petitioners raise several objections to the titles as set by the Title Board. The first is actually a criticism of the language of the initiative itself (not the title), suggesting that it is ambiguous in requiring that “at least fifty percent” of the additional revenue be dedicated to educational purposes, followed by the caveat that “the fifty percent” not be used to supplant existing appropriations for those purposes. The title clearly reflects the “at least fifty percent” dedication. The secondary – and separate – implementational caveat regarding the minimum amount so dedicated was noted by Board Member Gelender to be “reasonably harmonizable” in context and neither misleading nor confusing.⁴ The other members of the Board concurred. “The Title Board is given discretion in resolving interrelated problems of length, complexity, and clarity in setting a title and ballot title and submission clause.” *In re Title, Ballot Title and Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶24, 328 P.3d at 162. “It is not the function of the

⁴ Please see Board Member Gelender’s comments at the Title Board rehearing. https://csos.granicus.com/MediaPlayer.php?view_id=1&clip_id=151 at 2:04:52.

Board to determine the meaning of the language of an initiative” nor “disclose every possible interpretation of the language of the initiative.” *Id.* at ¶34, 328 P.3d at 164, quoting *In re Proposed Initiated Constitutional Amendment Concerning Fair Fishing*, 877 P.2d 1355, 1362 (Colo. 1994).

Second, Petitioners argue that the initiative’s dedication of funds “to address the impacts of a growing population and changing economy” is unclear and confusing (particularly for years in which the population may not grow). As discussed above, “It is not the function of the Board to . . . disclose every possible interpretation of the language of the initiative.” *In re Title, Ballot Title and Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶34, 328 P.3d at 164. “Nor do we review the initiative’s ‘efficacy, construction, or future application,’ as those issues do not come up unless and until the voters approve the amendment.” *In re Title, Ballot Title and Submission Clause for 2013-2014 #89*, 2014 CO 66, ¶10, 328 P.3d at 176 (Colo. 2014). This is particularly the case when the language clearly evidences an intent to allow some room for future legislative interpretation, application, and discretion.

Third, Petitioners argue that a title cannot be set because the initiative “is silent as to who determines how the revenue is split between education funding and ‘addressing the impacts of a growing population and changing economy.’” The

Title Board concurred with Board Member Gelender’s observation that the measure changes nothing whatsoever regarding the current budgeting processes, that the legislature was generally understood to exercise this power, and that titles do not generally include a recitation of items not being altered in some fashion by the underlying measure.⁵ The Board was correct that there is nothing in the proposed initiative that would alter or affect the current budgetary and legislative processes. The Board is not required to explain the current process. *In re Title, Ballot Title and Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶24, 328 P.3d at 162.

Finally, Petitioners argue that the Title Board “inaccurately describes the second and third graduated individual income tax brackets proposed by the initiative as being ‘from \$250,001 to \$500,000’ and ‘from \$500,001 to \$1,000,000’” rather than “over \$250,000” and “over \$500,000.” Board Member Gelender explained that the adopted title language accorded with both Colorado Department of Revenue and Internal Revenue Service practice of automatically rounding cents up or down to the nearest dollar (that smaller entries would in fact autocorrect in this fashion) and was therefore most accurate, understandable, and

⁵ Title Board rehearing, Mar. 4, 2020: https://csos.granicus.com/MediaPlayer.php?view_id=1&clip_id=151 at 2:01:10.

consistent with common practice.⁶ While Respondents/Proponents and the other members of the Board were persuaded, Petitioners continue to advance this objection. Respondents/Proponents respectfully submit that Mr. Gelender and the other Board members are correct and that the title is most accurate in a practical sense and understandable to the voters as set.

Respondents/Proponents respectfully submit that the actions of the Title Board in formulating the title, ballot title and submission clause were well within the discretion accorded it by this Court, and that the titles are fair and accurate, express the true meaning and intent of the proposed initiative, and incorporate all principal aspects of the proposed measure.

CONCLUSION

The Respondents/Proponents respectfully request the Court to affirm the actions of the Title Board.

⁶ Title Board rehearing, Mar. 4, 2020:
https://csos.granicus.com/MediaPlayer.php?view_id=1&clip_id=151 at 1:58:20.

Respectfully submitted this 20th day of April, 2020.

s/Edward T. Ramey

Edward T. Ramey, #6748

Tierney Lawrence LLC

225 East 16th Avenue, Suite 350

Denver, CO 80203

Telephone: 720-242-7585

Email: eramey@tierneylawrence.com

**ATTORNEYS FOR
RESPONDENTS/PROponents**

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of April, 2020, a true and correct copy of the foregoing was filed and served via the Court's E-filing system upon the following:

Sarah M. Mercer (#39367)
Christopher O. Murray (#39340)
Julian R. Ellis, Jr. (#47571)
Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, Colorado 80202
Email: smercer@bhfs.com
Attorneys for Petitioner Brough

Gwendolyn A. Benevento (#34190)
Suzanne Staiert (#23411)
Maven Law Group
1800 Glenarm Place, Suite 950
Denver, Colorado 80202
Email: gbenevento@mavenlawgroup.com
Attorneys for Petitioner Sandberg

Michael Kotlarczyk (#43250)
Assistant Attorney General
Public Officials Unit
Colorado Attorney General's Office
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, Colorado 80203
Email: mike.kotlarczyk@coag.gov
Attorneys for Respondent Ballot Title Setting Board

s/Edward T. Ramey
Edward T. Ramey