

<p>COLORADO SUPREME COURT 2 East 14<sup>th</sup> Avenue Denver, CO 80203</p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></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 (“State Income Taxes”)</p> <p><b>Petitioners:</b> Kelly Brough and Tyler Sandberg,</p> <p>v.</p> <p><b>Respondents:</b> Carol Hedges and Steve Briggs,</p> <p><b>and</b></p> <p><b>Title Board:</b> Theresa Conley, David Powell, and Jason Gelender.</p>	<p>Case No.: 2020SA93</p>
<p><i>Counsel for the Title Board:</i> PHILIP J. WEISER, Attorney General LEEANN MORRILL, First Assistant Attorney General, Reg. No. 38742* 1300 Broadway, 6th Floor Denver, CO 80203 Tel: (720) 508-6159 Email: leeann.morrill@coag.gov <i>*Counsel of Record</i></p>	<p style="text-align: center;"><b>TITLE BOARD’S OPENING BRIEF</b></p>

Respondents Theresa Conley, David Powell, and Jason Gelender,  
in their official capacities as members of the Ballot Title Board  
(collectively, the “Board”), by and through undersigned counsel, hereby  
submit their Opening Brief in this appeal:

## CERTIFICATE OF COMPLIANCE

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

A. The brief complies with C.A.R. 28(g) because it contains 1,727 words.

B. The brief complies with C.A.R. 28(a)(7)(A) because each 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, and not to an entire document, where the issue was raised and ruled on.

*/s/ LeeAnn Morrill*  
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## **STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

1. Whether the Board correctly found that Proposed Initiative 2019-2020 #271 (“#271”) contains a single subject as required by Colo. Const. Art. V, § 1(5.5).

2. Whether the title the Board set for #271 reflects the central features of the measure to accurately convey its true intent and meaning.

## **STATEMENT OF THE CASE**

Carol Hedges and Steve Briggs (the “Proponents”) seek to circulate #271 to obtain the signatures needed to place the measure on the ballot concerning state income taxes. *See* #271 Cert. Rec., at 2-4. Specifically, #271 is a proposed constitutional and statutory amendment that would replace the existing requirement that all taxable net income be taxed at one rate with a graduated state income tax system for individuals, estates, and trusts. *See id.* The new system contains provisions specifying the uses of the resulting increased tax revenue, tasking a government entity and citizen committee with monitoring and

publicly reporting on the amounts and uses of that revenue, and establishing a commission to evaluate and report on the effects of the new system after ten years. *See id.*

The board held a public hearing to consider #271 on February 19, 2020, at which it found that the measure contains a single subject and set title. *See #271 Cert. Rec.*, at 5-6. Kelly Brough and another objector timely filed motions for rehearing, *see id.* at 7-11, and Tyler Sandberg's counsel stated his objections to the Board's single subject finding and title at the public rehearing on March 4, 2020. *See id.* at 15-16. The Board denied all motions and objections except to the extent that it made changes to the title previously set for #271. *See id.* The final version of the ballot title reads:

State taxes shall be increased \$2,000,000,000 annually by an amendment to the Colorado Constitution and a change to the Colorado Revised Statutes concerning a graduated state income tax for all individual taxpayers, including joint filers, estates, and trust, and, in connection therewith, repealing the constitutional requirement for a single rate income tax; decreasing the individual income tax rate from 4.63% to 4.58% for income up to \$250,000, increasing the individual income tax rate from 4.63 to 7% for income from \$250,001 to \$500,00, from 4.63% to 7.75% for income from \$500,001 to \$1,000,000, and from 4.63% to 8.90% for income over

\$1,000,000; annually adjusting the income brackets by the percentage change in Colorado personal income; allowing the state to keep and spend the additional tax revenue generated by the tax rate changes; requiring at least 50% of the additional revenue to be used for preschool through twelfth grade public education and the remainder to be used to address the impacts of a growing population and a changing economy; and requiring the creation of a citizen's oversight committee to assure that the additional revenue is used as required and a tax review commission to report the effects of the income tax rate structure on or before 2031.

*Id.* at 15.

Ms. Brough and Mr. Sandberg (the "Petitioners") timely appealed the Board's final decision to this Court.

### **SUMMARY OF THE ARGUMENT**

The Board's actions in setting title for #271 must be affirmed because the measure contains a single subject, and the title accurately summarizes its substance and is not misleading.

## ARGUMENT

### **I. The Board correctly found that #271 contains a single subject.**

#### **A. Standard of review.**

When this Court reviews “the Title Board's single subject decision, [it] employ[s] all legitimate presumptions in favor of the propriety of the Title Board's actions. [It] will only overturn the Title Board's finding that an initiative contains a single subject in a clear case.” *In re Title, Ballot Title, & Submission Clause for 2011-2012, #45*, 274 P.3d 576, 579 (Colo. 2012) (quotation omitted).

The Board agrees that Petitioners preserved their single subject challenge by raising it in the motion for rehearing and verbal objections made at the March 4, 2020 public rehearing.

#### **B. Number 271 contains only one subject.**

The Colorado Constitution provides that an initiative may relate to only one subject: “No measure shall be proposed by petition containing more than one subject ....” COLO. CONST., art. V, § 1(5.5). A proposed measure that “tends to effect or to carry out one general objective or purpose presents only one subject.” *In re Ballot Title 1999-*

*2000 #25*, 974 P.2d 458, 463 (Colo. 1999). In contrast, “to constitute more than one subject, the text of the measure must relate to more than one subject and it must have at least two distinct and separate purposes which are not dependent upon or connected with each other.” *In re Title, Ballot Title, & Submission Clause for Proposed Initiative 2001-2002 #43*, 46 P.3d 438, 441 (Colo. 2002) (quotations omitted).

The Board correctly determined that #271 contains only one subject: imposing a graduated state income tax system. It accomplishes this singular objective by amending C.R.S. § 39-22-104, which is part of the Colorado Income Tax Act of 1987, to establish graduated income tax brackets and repealing the limitation in Colo. Const. Art. X, § 20(8) that prohibits such a statutory change. And while #271 includes several implementation-related provisions—such as directing the uses of net new revenue generated by the system, creating a citizen’s oversight committee to monitor and publicly report on the actual uses of that revenue, and creating a commission to review the effects of the system after ten years—none constitutes an impermissible second subject because each is tied to its central purpose. Indeed, it is well-established

that “[i]mplementing provisions that are directly tied to an initiative’s central focus are not separate subjects.” *In re Title, Ballot Title & Submission Clause for 2007-2008, #17*, 172 P.3d 871, 874 (Colo. 2007), as modified on denial of reh’g (Dec. 17, 2007) (citing *In re Title, Ballot Title & Submission Clause for 1999–2000 #258(A)*, 4 P.3d 1094, 1097 (Colo. 2000)).

Number 271 is similar to the initiative at issue in *In re Title, Ballot Title, & Submission Clause for 2013-14, #76*, 333 P.3d 76 (Colo. 2014). There, this Court took up a challenge to an initiative relating to the recall provisions for state and local officials. *Id.* at 78. The Court noted that the initiative would make “substantial changes to the manner in which state and local recall elections are triggered and conducted under constitutional and statutory law.” *Id.* at 81. These changes included “new enforcement provisions,” a new “threshold requirement for the number of valid petition signatures,” different rules regarding the “content of recall ballots,” a different “manner of filling vacancies caused by recall elections,” the “elimination of the application of existing campaign finance laws to recall petitions and elections,” and

different “[r]equirements applicable to petition circulation.” *Id.* at 81-83. Despite the large number of procedural and substantive amendments the initiative would make, the Court nevertheless held that “[c]ollectively, these changes to the manner in which recall elections are triggered and conducted constitute a single subject.” *Id.* at 83.

Number 271, like the *In re #76* initiative, contains a number of different provisions, but they all relate to one overarching goal: imposing a graduated state income tax system. Because #271 has no “hidden purpose under a broad theme,” *In re Title, Ballot Title, & Submission Clause for 2007-08, #17*, 172 P.3d 871, 875 (Colo. 2007), it concerns only one subject.

## **II. The title the Board set for #271 was proper.**

### **A. Standard of review.**

This Court does not demand that the Board “set the best possible title.” *In re Title, Ballot Title, & Submission Clause for 2009-2010, #45*, 234 P.3d 642, 648 (Colo. 2010). Rather, it “give[s] great deference to the Title Board in the exercise of its drafting authority and will reverse its

decision only if the titles are insufficient, unfair, or misleading.” *Id.*  
(citation omitted).

The Board agrees that Petitioners preserved their challenges to the substance of the title by raising them in the motion for rehearing and verbal objections made at the March 4, 2020 public rehearing.

**B. The title for #271 is fair, clear, accurate, and not misleading.**

The Colorado Constitution requires that the subject of a proposed initiative “shall be clearly expressed in its title[.]” COLO. CONST. art. V, § 1(5.5). The standard for setting clear titles is as follows:

In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a “yes” or “no” vote will be unclear. The title for the proposed law or constitutional amendment... shall correctly and fairly express the true intent and meaning thereof .... Ballot titles shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and shall be in the form of a question which may be answered “yes” (to vote in favor of the proposed law or constitutional amendment) or “no” (to vote against the proposed law or constitutional amendment) and which shall unambiguously state the principle of the provision sought to be added, amended, or repealed.

§ 1-40-106(3)(b), C.R.S. (2016). In short, a title must be fair, clear, accurate, and complete. *In re Title, Ballot Title, & Submission Clause for 2007-2008, #62*, 184 P.3d 52, 58 (Colo. 2008).

Here, the Board's title plainly expresses #271's core purpose of imposing a graduated state income tax system and details its central features. In doing so, it "enable[s] the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal." *In re Title, Ballot Title, & Submission Clause for 2009-2010, #24*, 218 P.3d 350, 356 (Colo. 2009) (quotation omitted). That is all that is required because the Board "need *not* include every detail" of the measure. *In re Title, Ballot Title, & Submission Clause for 2001-2002, #22 & #23*, 44 P.3d 213, 222 (Colo. 2002). The title set for #271 was well-within the substantial discretion this Court gives the Board.

## CONCLUSION

For the reasons given above, the Court should affirm the Board's decision regarding #271.

Respectfully submitted on this 31st day of March, 2020.

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## CERTIFICATE OF SERVICE

This is to certify that on March 31, 2020, I electronically served the foregoing **TITLE BOARD'S OPENING BRIEF** upon all counsel of record for the parties to this appeal via the Colorado Courts E-filing System:

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