

**COLORADO SUPREME COURT**

2 East 14th Avenue  
Denver, CO 80203

Original Proceeding Pursuant to  
§ 1-40-107(2), C.R.S.  
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and  
Submission Clause for Proposed Initiative  
2023-2024, #96

**Petitioners:** Scott Wasserman and Ed  
Ramey

v.

**Title Board:** Theresa Conley, Christy  
Chase, and Kurt Morrison.

PHILIP J. WEISER, Attorney General  
RUCHI KAPOOR, Reg. No. 42998  
Assistant Attorney General\*  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 6th Floor  
Denver, CO 80203  
Telephone: (720) 508-6369  
E-Mail: ruchi.kapoor@coag.gov  
\*Counsel of Record  
*Attorneys for the Title Board*

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Case No. 2023SA336

**THE TITLE BOARD'S ANSWER BRIEF**

## 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, I certify that:

The brief complies with the word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 626 words.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

*/s/ Ruchi Kapoor*

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Ruchi Kapoor, Reg. No. 42998  
Assistant Attorney General

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## REPLY ARGUMENT

Applying the language in Colo. Const. art. X, § 20 (TABOR) leads to the conclusion that proposed initiative 2023-2024 #96 creates a tax increase for Colorado citizens. Although the increase is conditional and therefore does not trigger required TABOR language, the Title Board's decision to borrow some of the language from TABOR for the title is well within the Board's discretion. The TABOR language helps clarify what the initiative does and therefore meets the liberal clear title standard.

### **I. 2023-2024 #96 creates a tax increase under the plain language of Colo. Const. art. X, § 20.**

Petitioners contend, first, that initiative #96 “cannot fairly be characterized as a ‘tax increase.’” *Petitioners’ Opening Brief*, p. 4. In support of this contention, Petitioners point to the Fiscal Summary for the Proposed Initiative which notes that state tax revenue would not be impacted unless a limit is imposed, in which case “state revenue will increase by the amount that the limit reduces statewide property tax

revenue.” *Id.* at p. 5, n. 3. This contention confuses the difference between tax revenues and tax rate.

As this Court noted in *Bickel*, a possible future reduction in tax revenues “does not decrease the tax burden on the City’s residents.” *Bickel v. City of Boulder*, 885 P.2d 215, 236 (Colo. 1994). As stated in the Board’s Opening Brief, the initial tax increase (if triggered) would create a new source of tax revenue resulting in a net tax gain to the state. *Title Board’s Opening Brief*, pp. 8-9. No state luxury real estate tax currently exists, meaning that any new luxury real estate tax would potentially increase the tax rate for citizens who own property in this category.

Petitioners insist, however, that the intent “of this measure is not to enact a new unilateral ‘tax increase;’ it would be precisely limited by its terms to counterbalancing – and neutralizing – a contemporaneous prospective and separately-engineered future tax decrease.” *Petitioners’ Opening Brief*, p. 5. This is true, but Petitioners fail to mention that the tax increase and decrease are in overall tax revenues and not in the

overall tax rate. This is the heart of the conundrum addressed by the Board in utilizing some of the TABOR language. To ensure that it was precise in its use of the language, the Board modified the TABOR phrase “shall be increased” with the word “conditionally” immediately following. Read together, it becomes clear that any tax increase would be subject to certain limited conditions.

The tax proposed by initiative #96, if triggered, would overall be revenue neutral while creating an increase in the tax rate and is therefore appropriately characterized as a tax increase.

**II. Use of the TABOR language does not obstruct voter clarity and meets the clear title standard.**

Petitioners next contend that including the TABOR language not only is unnecessary but that it affirmatively misleads voters about the nature of the tax increase. *Petitioners’ Opening Brief*, pp. 8-9.

As the Board concluded, however, partial use of the TABOR language struck a difficult balance between the necessity of informing the electorate and clearly expressing the intent of the measure. Although the TABOR language was not required to describe the

mechanism of the initiative, the phrase “shall be increased” indicates to an average voter that the initiative creates a tax rate increase for at least some Colorado citizens. This is part of the Title Board’s duty in setting the title – summarizing the central features of the proposed initiative. *See In re Title, Ballot Title, & Submission Clause for 2019-2020 #3*, 454 P.3d 1056, 1060 (Colo. 2019).

By using some of the TABOR language, the Board struck an appropriate compromise and did not affirmatively mislead voters.

### CONCLUSION

The Court should affirm the title set by the Title Board.

Respectfully submitted on this 5th day of February, 2024.

PHILIP J. WEISER  
Attorney General

*/s/ Ruchi Kapoor*

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RUCHI KAPOOR, #52998  
Assistant Attorney General  
Public Officials Unit  
Attorneys for the Title Board  
\*Counsel of Record



**CERTIFICATE OF SERVICE**

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S ANSWER BRIEF** upon all counsel of record for the parties electronically via the Colorado Courts e-Filing system on February 5, 2024.

*/s/ Carmen Van Pelt*

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