

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Jon Caldara and Vanessa Rutledge, Objectors/Proponents

MOTIONS FOR REHEARING ON INITIATIVE 2023-2024 #177 AND INITIATIVE 2023-2024 #179

Jon Caldara and Vanessa Rutledge, registered electors of the State of Colorado and proponents of Proposed Initiative 2023-2024 #177 and Proposed Initiative 2023-2024 #179, by and through counsel, object to the Title Board’s title and ballot title and submission clauses set for both Proposed Initiative 2023-2024 #177 and Proposed Initiative 2023-2024 #179.

These motions are timely as the titles were set at the continued Title Board Hearing on Thursday, March 7 and therefore the filing deadline for the motions for rehearing is at 5:00 p.m. on March 14, 2024, seven days after the initial hearing. C.R.S. § 1-40-107(1)(a)(I). See also attached email from Cheryl Hammack, Boards and Commissions Program Assistant, Colorado Secretary of State.

The Board met on March 7, 2024, as a continuation of the meeting which began on March 6, 2024, to consider Initiative 2023-2024 #177 and Proposed Initiative 2023-2024 #179 and set the following titles:

Proposed Initiative 2023-2024 #177:

A reduction to the state income tax by 1.14%, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to education, health care policy and financing, and higher education by an estimated \$164.4 million in tax revenue, by a change to the Colorado Revised Statutes to reduce the state income tax rate from 4.40% to 4.35%, which will result in the estimated change in income taxes owed by individuals as identified in the table that follows:

Income Categories*	Current Average Income Tax Owed	Proposed Average Income Tax Owed	Proposed Change in Average Income Tax Owed if Passed + or -
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\$25,000 or less	\$83	\$82	-\$1
\$25,001 - \$50,000	\$784	\$775	-\$9
\$50,001 - \$100,000	\$1,899	\$1,877	-\$22
\$100,001 - \$200,000	\$4,169	\$4,121	-\$48
\$200,001 - \$500,000	\$9,241	\$9,136	-\$105
\$500,001 - \$1,000,000	\$18,733	\$18,520	-\$213
\$1,000,001 - \$2,000,000	\$29,888	\$29,548	-\$340
\$2,000,001 - \$5,000,000	\$49,465	\$48,903	-\$562

**Adjusted Gross Income reported to the federal Internal Revenue Service*

Proposed Initiative 2023-2024 #179:

A reduction to the state income tax by 9.09%, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to education, health care policy and financing, and higher education by an estimated \$1.3 billion in tax revenue, by a change to the Colorado Revised Statutes to reduce the state income tax rate from 4.40% to 4.00%, which will result in the estimated change in income taxes owed by individuals as identified in the table that follows:

Income Categories*	Current Average Income Tax Owed	Proposed Average Income Tax Owed	Proposed Change in Average Income Tax Owed if Passed + or -
\$25,000 or less	\$83	\$76	-\$7
\$25,001 - \$50,000	\$784	\$713	-\$71
\$50,001 - \$100,000	\$1,899	\$1,726	-\$173
\$100,001 - \$200,000	\$4,169	\$3790	-\$379
\$200,001 - \$500,000	\$9,241	\$8,401	-\$840
\$500,001 - \$1,000,000	\$18,733	\$17,030	-\$1,703
\$1,000,001 - \$2,000,000	\$29,888	\$27,171	-\$2,717
\$2,000,001 - \$5,000,000	\$49,465	\$44,968	-\$4,497

**Adjusted Gross Income reported to the federal Internal Revenue Service*

Proponents object to both titles as set because they are inaccurate and misleading. The titles set by the Board incorrectly state that the passage of Proposed Initiative 2023-2024 #177 and Proposed Initiative 2023-2024 #179 will reduce funding for health and human services programs, K-12 education, and corrections and judicial operations.

Current Budget Projections: According to the most recent projections published by Colorado Legislative Council Staff (December 2023 Economic & Revenue Forecast) state revenues are expected to exceed TABOR refund limits from the current fiscal year and by increasing amounts through fiscal year 2024- 2024. Proposed Initiative 2023-2024 #177 reduces income tax revenue by an estimated \$77.7 million in fiscal year 2024-2025 and other amounts in future years as specified in the Fiscal Summary #177 (attached). Proposed Initiative 2023-2024 #179 reduces income tax revenue by an estimated \$621.3 million in fiscal year 2024-2025 and other amounts in future years as specified in the Fiscal Summary #179 (attached). However, it is inconceivable that this reduction will result in actual reduced general fund funding for the listed programs and operations.

Grounds for Objections: Proponents believe that the titles as set violate the requirement that initiative titles be clear and accurate and not mislead the voting public. Particularly, where, as here, there will be proposed reduction in income tax revenues in years where there will be projected surpluses large enough to trigger TABOR refunds thus rendering such statements inaccurate and misleading. Voters will be misled by the title language in Proposed Initiative 2023-2024 #177 and Proposed Initiative 2023-2024 #179 as required by H.B. 21-1321.

In addition, the title board did not specify a process for the Proponents to demonstrate their purpose in filing Proposed Initiative 2023-2024 #177 and Proposed Initiative 2023-2024 #179. C.R.S. § 1-40-106(3)(e) requires that certain language must now be inserted into the titles of “measures that reduce state tax revenue through a tax change.” C.R.S. § 1-40-106(3)(b) requires that all titles set “shall correctly and fairly express the true intent and meaning thereof.” Colorado caselaw clearly states that the title set “must correctly and fairly express the true intent and meaning of the proposed measure.” **In re Title, Ballot Title Submission Clause, Summary Pertaining to the Sale of Table Wine in Grocery Stores**, 646 P.2d 916 (Colo. 1982). Proponents are entitled to present evidence that it is not their purpose or intent to “reduce state tax revenue through a tax change.”

Both Proposed Initiative 2023-2024 #177 and Proposed Initiative 2023-2024 #179 explicitly state in their Legislative Declaration that “(1) The people find and declare that: (a) Because state law requires that excess revenues be refunded, both the state of Colorado and the taxpayers incur costs of compliance; (b) That to avoid these costs and to save Colorado taxpayers from the costs of preparing and filing unnecessary tax returns the people intend to lower the income tax rates for all taxpayers; and (c) It is in the best interest of the people of the state of Colorado to lower the income tax rates for all taxpayers.”

The Fiscal Summary of Proposed Initiative 2023-2024 #177, prepared by the Legislative Council Staff on March 1, 2024, states that the measure will have “no net impact on the amount available for the budget.” See Fiscal Summary #177 attached. The Fiscal Summary of Proposed Initiative 2023-2024 #179, prepared by the Legislative Council Staff on March 1, 2024, also

states that the measure will have “no net impact on the amount available for the budget.” See Fiscal Summary #179 attached.

Due to the fact that both Proposed Initiative 2023-2024 #177 and Proposed Initiative 2023-2024 #179 are not “measures that reduce state tax revenue through a tax change,” either by intent or effect, the language required by C.R.S. § 1-40-106(3)(e) is not required nor appropriate.

As a result the language set by the title board is both inaccurate and misleading. A more fitting title for Proposed Initiative 2023-2024 #177 would be “A change to the Colorado Revised Statutes reducing the state income tax rate from 4.40% to 4.35%.” A more fitting title for Proposed Initiative 2023-2024 #179 would be “A change to the Colorado Revised Statutes reducing the state income tax rate from 4.40% to 4.00%.”

WHEREFORE, the titles set for Proposed Initiative 2023-2024 #177 and Proposed Initiative 2023-2024 #179 should be corrected to be accurate and not misleading.

Respectfully submitted this ___th day of March, 2024.

/s/ Shayne M. Madsen
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From: Cheryl Hammack <Cheryl.Hammack@coloradosos.gov>

Date: March 11, 2024 at 9:49:25 AM MDT

To: Sally Kline <klinesally@comcast.net>

Cc: Shayne Madsen <Shayne@i2i.org>

Subject: RE: [EXTERNAL] Motion for Rehearing

Hi Sally,

Any initiative that had the initial hearing in front of the Title Board on Thursday, March 7th, the motion for rehearing would be due by 5pm on Thursday, March 14th. The filing deadline for motions for rehearing are always 7 days after the initial hearing.

Let me know if you have further questions.

Sincerely,

Cheryl

Fiscal Summary #177

https://leg.colorado.gov/sites/default/files/initiatives/2024%2523177FiscalSummary_00.pdf

Fiscal Summary #179

https://leg.colorado.gov/sites/default/files/initiatives/2024%2523179FiscalSummary_00.pdf