

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Jon Caldara and Ben Murrey, Objectors/Proponents

MOTION FOR REHEARING ON INITIATIVE 2023-2024 #31

Jon Caldara and Ben Murrey, registered electors of the State of Colorado and proponents of Proposed Initiative 2023-2024 #31, by and through counsel, object to the Title Board’s title and ballot title and submission clause set for Proposed Initiative 2023-2024 #31. The Board met on April 19, 2023, to consider Initiative 2023-2024 #31 and set the following title:

Shall there be 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 \$226,300,000 in tax revenue, by a change to the Colorado Revised Statutes to reduce the state income tax rate from 4.40% to 4.35% that will result in the estimated change in income taxes owed by income category identified in the table that follows:

Initiative 31
Change in Income Taxes Owed by Income Category

Income categories*	Current average income tax owed	Proposed average income tax owed	Proposed change in average income tax owed + or -
\$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	-\$47
\$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
(Emphasis added)

Proponents object to the title as set because it is inaccurate and misleading. The title set by the Board incorrectly states that the passage of Proposed Initiative 2023-2024 #31 will reduce funding for education, health care policy and financing, and higher education, when, at the same time, current revenue projections by Legislative Council Staff (LCS) and the Office of State Planning and Budgeting (OSPb) in their revenue projections for FY 2024-2025 and FY 2025-2026 show no general fund revenue reductions. Further, the chart is based on federal income tax levels and categories, not state, and is inherently confusing to voters. See Exhibit A attached hereto and incorporated herein by reference.

As the Title Board has included these statements and the chart pursuant to state statutory law, proponents submit that this inclusion flies in the face of the information stated in the revenue projections. Such projections conclude that there will be no reduction in general fund dollars and no reduction in state programs. Such statements contradict current statutory and case law requirements that initiative title must not be “misleading” and “correctly and fairly express the true intent and meaning” of the proposed measure. CRS Sec.1-40-106; see Matter of Ballot Title 1997-1998 No. 74, 962 P2d 927 Colo. 1998.

WHEREFORE, the title set for Proposed Initiative 2023-2024 #31 should be corrected to be accurate and not misleading.

Respectfully submitted this 26th day of April, 2023.

/s/ Shayne M. Madsen
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LCS and OSPB Forecasts vs. Initiatives #13 and #14: 2024 Effective Date

(Neither Initiative #31 nor #32 force budget cuts under either state forecast.)

FY 2024-2025				
State Forecasts	GF Rev.	Ref C Cap	Refund	
Mar. LCS	17,302.7	19,121.1	2023.8	<-- Current Forecast
Mar. OSPB	16,228.5	19,121.1	720.9	<-- Current Forecast
New Forecast with Initiatives #31 and #32:				
Initiative 31 (4.35%)	-226.3		-226.3	<--Revenue Reduction
LCS	17,076.4	19,121.1	1797.5	<--New Forecast
OSPB	16,228.5	19,121.1	494.6	<--New Forecast
Initiative 32 (4.25%)	-678.8		-678.8	<--Revenue Reduction
LCS	17,076.4	19,121.1	1345.0	<--New Forecast
OSPB	15,549.7	19,121.1	42.1	<--New Forecast

In thousands of dollars

Source: December 2022 OSPB and LCS General Fund Forecast Update Differences

FY 2025-2026				
State Forecasts	GF Rev.	Ref C Cap	Refund	
Mar. LCS	?	?	?	<-- Current Forecast
Mar. OSPB	?	?	?	<-- Current Forecast
New Forecast with Initiatives #31 and #32:				
Initiative 31 (4.35%)	-158.4		-158.4	<--Revenue Reduction
LCS	?	?	?	<--New Forecast
OSPB	?	?	?	<--New Forecast
Initiative 32 (4.25%)	-475.3	?	-475.3	<--Revenue Reduction
LCS	?	?	?	<--New Forecast
OSPB	?	?	?	<--New Forecast

In thousands of dollars

Source: March 2023 OSPB and LCS General Fund Forecasts and LCS Fiscal Notes

Note: Initiative #13 & #14 revenue impacts based on LCS fiscal notes

March 2023 OSPB and LCS General Fund Forecast Update Differences
Legislative Council Staff (LCS) Forecast Less Office of State Planning and Budgeting (OSPB) Forecast
A Positive Figure Indicates the LCS Forecast is Above the OSPB Forecast
Dollars in Millions; Accrual Accounting Basis unless Otherwise Noted

Revenue Source	FY 2022-23			FY 2023-24			FY 2024-25		
	LCS	OSPB	Difference	LCS	OSPB	Difference	LCS	OSPB	Difference
Sales and Use Taxes ¹	\$4,602.6	\$4,605.5	-\$2.9	\$4,881.1	\$4,638.6	\$242.4	\$5,120.7	\$4,878.0	\$242.7
Individual Income Taxes	11,010.9	10,787.7	223.2	11,525.0	10,917.6	607.4	12,083.9	11,810.5	273.4
Corporate Income Taxes	1,487.3	1,483.1	4.2	1,411.3	1,151.3	260.0	1,358.7	1,406.4	-47.7
All Other Receipts (including other excise)	799.3	757.3	42.0	833.1	746.7	86.4	786.9	755.7	30.2
Less: State Education Fund diversion	-1,019.4	-951.7	-67.7	-1,036.7	-936.0	-100.7	-1,075.1	-1,025.1	-50.0
Less: Affordable Housing Fund diversion	-151.8	-144.2	-7.6	-311.0	-289.7	-21.4	-322.5	-317.2	-5.3
Total General Fund	\$16,728.9	\$16,537.7	\$191.2	\$17,302.7	\$16,228.5	\$1,074.2	\$17,951.5	\$17,508.3	\$443.3
Percent Difference	1.2%		6.6%			2.5%			
Individual Income Tax	LCS	OSPB	Difference	LCS	OSPB	Difference	LCS	OSPB	Difference
Withholding ²	\$9,299.0	\$8,981.3	\$317.7	\$9,903.4	\$9,195.6	\$707.8	\$10,458.0	\$9,854.2	\$603.8
Estimated Payments ²	1,903.9	1,820.5	83.4	1,850.6	1,524.1	326.4	1,887.6	1,743.6	144.0
Cash With Returns ²	1,597.8	1,394.9	202.9	1,484.3	1,568.8	-84.5	1,509.6	1,578.1	-68.6
Refunds ²	-2,197.8	-1,737.4	-460.4	-1,818.0	-1,805.6	-12.4	-1,875.2	-1,494.6	-380.7
Proposition FF ²		0.0		97.4	78.8	18.6	102.2	94.9	7.3
Accrual Adjustment	408.1	328.4	79.7	7.3	355.7	-348.4	1.8	34.2	-32.4
Total	\$11,010.9	\$10,787.7	\$223.2	\$11,525.0	\$10,917.6	\$607.4	\$12,083.9	\$11,810.5	\$273.4
Percent Difference	2.1%		5.6%			2.3%			
Cash Fund Revenue and TABOR Surplus¹	LCS	OSPB	Difference	LCS	OSPB	Difference	LCS	OSPB	Difference
TABOR Cash Fund Revenue	\$2,727.8	\$2,690.5	\$37.3	\$2,893.8	\$2,681.1	\$212.7	\$3,021.2	\$2,839.3	\$181.9
Percent Difference	1.4%		7.9%			6.4%			
TABOR Revenue in Excess of Ref C Cap	\$2,750.9	\$2,657.7	\$93.2	\$2,023.8	\$720.9	\$1,302.9	\$1,747.6	\$1,210.1	\$537.5
Other Forecast Differences	LCS	OSPB	Difference	LCS	OSPB	Difference	LCS	OSPB	Difference
Public School Fund from Marijuana	\$25.0	\$25.7	-\$0.7	\$25.0	\$29.1	-\$4.1	\$26.2	\$29.7	-\$3.5
Public School Fund from FML	\$72.4	\$68.8	\$3.6	\$56.3	\$43.7	\$12.6	\$58.0	\$46.1	\$11.9
SEF Income Tax Diversion	\$1,019.4	\$951.7	\$67.7	\$1,036.7	\$936.0	\$100.7	\$1,075.1	\$1,025.1	\$50.0
Reimbursements for Property Tax Exemptions ³	\$161.3	\$161.3	\$0.0	\$160.7	\$161.5	-\$0.8	\$169.2	\$172.4	-\$3.1

¹ The special sales tax on adult-use marijuana is excluded from these figures for comparison purposes.
² Cash accounting basis.
³ Reimbursements to local governments for senior homestead and disabled veteran property tax exemptions.