

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED: May 3, 2024 1:15 PM</p>
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2024) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #245 (“Valuation for Assessments”)</p>	
<p><b>Petitioners:</b> Michael Fields and Dave Davia,</p> <p>v.</p>	<p>▲ COURT USE ONLY ▲</p>
<p><b>Respondents:</b> Scott Wasserman and Ann Adele Terry,</p>	<p>Case No. 2024SA121</p>
<p><b>Title Board:</b> Theresa Conley, Christy Chase, and Kurt Morrison.</p>	
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<p><b>THE TITLE BOARD’S OPENING BRIEF</b></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, 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 1,522 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/ Danny Rheiner*

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Danny Rheiner, #48821

Assistant Solicitor General

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## ISSUE ON REVIEW

I. Whether the Title Board correctly concluded that it lacked jurisdiction to set a title because Proposed Initiative 2023-2024 #245 has multiple subjects.

## STATEMENT OF THE CASE

Proposed Initiative 2023-2024 #245 proposes reducing *local* property taxes by \$3 billion by cutting assessment rates for residential and non-residential property. *See* Record, p 5, filed Apr. 25, 2024. Under current law, the State would be required to provide “[a]n estimated \$870 million in FY 2025-26 and \$890 million in FY 2026-27” to school districts to make up for the reduction in property tax revenue. *Id.* at 13; *see also* § 22-54-106(1)(b), C.R.S. (“[T]he state’s share of a district’s total program is the difference between the district’s total program and the district’s share of its total program.”).

Additionally, the measure proposes prohibiting the State from reducing funding to school districts due to the reductions in assessment rates. Record, p 5. In other words, the State would be unable to reduce

the more than \$800 million annual payment it would owe to school districts if the measure passed. That prohibition would reduce available funding for *state* services. *Id.* at 13.

At its April 3, 2024, meeting, the Board concluded that the measure contained a single subject and set a title. *Id.* at 5. The Board set the following ballot title and submission clause:

Shall funding available for counties, school districts, water districts, fire districts, and other districts funded, at least in part, by property taxes shall be impacted by *a reduction of \$3 billion in property tax revenue* by a change to the Colorado Revised Statutes concerning reductions in assessment rates for valuation of certain taxable property, and, in connection therewith, *reducing the assessment rate for certain nonresidential real and personal property to 25.5% of the property value; reducing the assessment rate for residential real property to 5.7% of the property value after subtracting the lesser of \$55,000 or the amount that causes the property valuation to be \$1,000; and beginning June 30, 2025, prohibiting the reduction in funding that school districts receive under the “Public School Finance Act of 1994” due to the reduction in assessment rates?*

*Id.* (emphasis added).

Objectors, Scott Wasserman and Ann Adele Terry, filed a timely motion for rehearing. *Id.* at 9. They argued that “[b]y protecting state

funding for K-12 education ... the measure” would “necessarily ... force a cut in other *state* programs to cover the cost” in “violat[ion] [of] the single subject requirement.” *Id.* at 10 (emphasis in original).

At its April 18, 2024, meeting, the Board unanimously granted the motion to reconsider in its entirety. *Id.* at 7. In granting the motion, the Board concluded that it lacked jurisdiction to set a title because the measure has multiple subjects.

Petitioner now challenges the Board’s conclusion that #245 has multiple subjects.

## **SUMMARY OF THE ARGUMENT**

The proposed measure would significantly reduce *local* property taxes, which are a major source of funding for school districts. Under current law, the State would be required to reimburse school districts for funding shortfalls resulting from the proposed property tax cut. To pay for this additional education spending, the State would be required to reduce *state* spending on other programs. The measure also prohibits the State from reducing education spending, locking in those cuts to

other programs. The proposed measure thus has two separate subjects: (1) reducing *local* property taxes and (2) reducing *state* spending.

Because the Title Board cannot set a title for a measure with multiple subjects, it correctly found that it lacked jurisdiction here.

## **ARGUMENT**

### **I. The proposed initiative contains multiple subjects.**

#### **A. Standard of review and preservation.**

“In reviewing a challenge to the Title Board’s single subject determination, [the Supreme Court] employ[s] all legitimate presumptions in favor of the Title Board’s actions.” *In re Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 2014 CO 52, ¶ 8. In doing so, the Court does “not address the merits of the proposed initiative” or “suggest how it might be applied if enacted.” *In re Title, Ballot Title, & Submission Clause for 2019-2020 #3*, 2019 CO 57, ¶ 8. Nor can the Court “determine the initiative’s efficacy, construction, or future application.” *In re 2013-2014 #76*, 2014 CO 52, ¶ 8. Instead, the Court “must examine the initiative’s wording to determine whether it



comports with the constitutional single-subject requirement.” *In re 2019-2020 #3*, 2019 CO 57, ¶ 8.

The Title Board agrees this issue is preserved. *See Record*, pp 5-12.

**B. The measure reduces both local property taxes and state spending.**

The Title Board has jurisdiction to set a title only when a measure contains a single subject. *See* COLO. CONST. art. V, § 1(5.5). The single subject requirement “forbids the joining of incongruous subjects in the same measure.” *In re Title, Ballot Title & Submission Clause, & Summary for 1997-98 # 84*, 961 P.2d 456, 458 (Colo. 1998) (cleaned up). “Additionally, the single subject requirement is intended to protect voters against surprise and fraud.” *Id.*

In *In re 1997-98 # 84*, the Court considered a pair of measures that would “lower various state and *local* taxes and would require the state to replace affected local revenue loss.” *Id.* at 457 (emphasis added). The measures also clarified that “the state’s revenue replacement obligation is subject to all tax and spending limits.” *Id.*

The Court explained that “[b]ecause of the spending and revenue limitations contained in” TABOR, “the state w[ould] be able to replace *local revenues* lost through tax cuts only if it reduce[d] existing *state spending* on state programs.” *Id.* at 460 (emphasis added). It therefore concluded that the measures contained multiple subjects. *Id.* “First, the initiatives provide[d] for [local] tax cuts.” *Id.* “Second, the initiatives impose[d] mandatory reductions in *state spending* on state programs.” *Id.* (emphasis added).

The Court noted that “[w]hile requiring the state to replace affected *local revenue* in itself sufficiently relates to a tax cut, requiring the state separately to *reduce its spending on state programs* is not ‘dependent upon and clearly related’ to the tax cut.” *Id.* (citation omitted) (emphasis added). It further found that “[v]oters would be surprised to learn that by voting for *local tax cuts*, they also had required the reduction, and possible eventual elimination, of *state programs*.” *Id.* at 460-61 (emphasis added). Because “[t]hat type of hidden subject is not permitted under” the single subject requirement,

the Court concluded that “the initiatives [we]re not constitutional.” *Id.* at 461.

The Court’s analysis here is controlled by *In re 1997-98 # 84*. As noted in the fiscal summary, “[t]he measure obligates a significant portion of the state budget to reimburse lost property tax revenue to school districts, *which will reduce available funding for other state services.*”<sup>1</sup> Record, p 13 (emphasis added). The measure therefore contains two separate subjects: (1) reducing *local* property taxes and (2) reducing *state* spending on other programs. *See In re 1997-98 # 84*, 961 P.2d at 460.

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<sup>1</sup> Unlike the measures considered in *In re 1997-98 # 84*, the measures here do not contain language specifically stating that “the state’s revenue replacement obligation is subject to all tax and spending limits.” *Id.* at 457. However, the absence of that language should not change the Court’s analysis. All proposed laws, including ballot initiatives, are subject to TABOR’s tax and spending limits, unless they specifically ask the voters to suspend those requirements. The proposed measure does no such thing. Thus, the concern that requiring the State to replace lost local revenue will lead to cuts in state services is equally relevant here.

As this Court has explained, “requiring the state separately to reduce its *spending on state programs* is not ‘dependent upon and clearly related’ to [a local] tax cut.” *Id.* (citation omitted) (emphasis added). The measure here would do exactly that. Because current law, § 22-54-106(1)(b), requires the State to make up the portion of a school district’s budget that is not covered by local property tax revenue, passage of the measure would force the State to pay more than \$800 million annually to school districts. Record, p 13. Further, because the measure prohibits the State from reducing funding to school districts, *id.* at 5, the State would have no choice but to reduce *state* spending on other programs to make up this shortfall. This reduction in *state* spending constitutes a separate subject from reducing *local* property taxes. See *In re 1997-98 # 84*, 961 P.2d at 460.

This Court has also noted that “[v]oters would be surprised to learn that by voting for *local tax cuts*, they also had required the reduction, and possible eventual elimination, of *state programs*.” *Id.* at 460-61. That surprise would occur here because the ballot title does not

inform voters that approving *local* tax cuts will require a reduction of more than \$800 million in *state* spending. Because “[t]hat type of hidden subject is not permitted under” the single subject requirement, the Title Board correctly concluded that Proposed Initiative 2023-2024 #245 had multiple subjects, depriving the Board of jurisdiction to set a title. *See id.* at 461.

## CONCLUSION

The Court should affirm the Title Board’s conclusion that it lacked jurisdiction to set a title.

Respectfully submitted on this 3rd day of May, 2024.

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*/s/ Danny Rheiner*

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**CERTIFICATE OF SERVICE**

This is to certify that on May 3, 2024, a true and correct copy of the foregoing **TITLE BOARD'S OPENING BRIEF** was duly filed and electronically served upon all counsel of record for the parties who have entered their appearance in this matter to date through the Colorado Courts E-Filing System.

*/s/ Carmen Van Pelt*

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