

<p>SUPREME COURT, STATE OF COLORADO</p> <p>2 East 14th Avenue Denver, Colorado 80203</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #298 (“Valuation for Assessments”)</p> <p><b>Petitioner:</b> Scott Wasserman and Ann Terry,</p> <p>v.</p> <p><b>Respondents:</b> Dave Davia and Michael Fields,</p> <p>and</p> <p><b>Colorado Ballot Title Setting Board:</b> Theresa Conley, Christy Chase, and Kurt Morrison.</p>	<p>▲ COURT USE ONLY ▲</p>
<p><b>Attorneys for Respondents:</b></p> <p>Sarah M. Mercer, #39367 David B. Meschke, #47728 Reilly Meyer, #59495 BROWNSTEIN HYATT FARBER SCHRECK LLP 675 15th St, Suite 2900 Denver, CO 80202 Tel: 303.223.1100 Fax: 303.223.1111 smercer@bhfs.com; dmeschke@bhfs.com; and rmeyer@bhfs.com</p>	<p>Case Number: 2024SA141</p>
<p><b>RESPONDENTS’ OPENING BRIEF</b></p>	

## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

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

It contains 1431 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

**The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).**

**For each issue raised by the appellant,** the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

**In response to each issue raised, the appellee** must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

**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/ Sarah M. Mercer*

## TABLE OF CONTENTS

	<b>Page</b>
ISSUE PRESENTED FOR REVIEW .....	1
STATEMENT OF THE CASE .....	1
SUMMARY OF THE ARGUMENT .....	2
STANDARD OF REVIEW.....	3
ARGUMENT .....	4
I.    The inclusion of residential and nonresidential property taxes in Initiative #298 does not frustrate single subject.....	5
II.   Initiative #298’s components do not pose a logrolling concern.....	8
CONCLUSION .....	9

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>In re Title, Ballot Title and Submission Clause, and Summary for 1999-00 #256, 12 P.3d 246 (Colo. 2000)</i> .....	6
<i>In re Title, Ballot Title, &amp; Submission Clause for 2009-2010 No. 45, 234 P.3d 642 (Colo. 2010)</i> .....	4
<i>In re Title, Ballot Title &amp; Submission Clause for 2015–2016 #73, 369 P.3d 565 (Colo. 2016)</i> .....	5
<i>In re Title, Ballot Title &amp; Submission Clause for 2017–2018 #4, 395 P.3d 318 (Colo. 2017)</i> .....	4
<i>Matter of Title, Ballot Title and Submission Clause, Summary Clause for 1997-1998 No. 74, 962 P.2d 927 (Colo. 1998)</i> .....	4, 7
<i>Matter of Title, Ballot Title, &amp; Submission Clause for 2013-2014 #89, 328 P.3d 172 (Colo. 2014)</i> .....	4, 8
<i>Matter of Title, Ballot Title, &amp; Submission Clause for 2021-2022 #16, 489 P.3d 1217 (Colo. 2021)</i> .....	4, 5, 7, 8
<b>Constitutional Provisions</b>	
Colo. Const. art. V, § 21 .....	7

**Statutes**

C.R.S. § 1-40-106.5(2) ..... 4  
C.R.S § 1-40-107(2) ..... 3

Respondents Dave Davia and Michael Fields (collectively, “Respondent Proponents”), through undersigned counsel, submit their Opening Brief in this original proceeding brought by Petitioners Scott Wasserman and Ann Terry challenging the actions of the Ballot Title Setting Board (“Title Board”) on Proposed Initiative 2023-2024 #298 (“Initiative #298” or the “Initiative”) (“Valuation for Assessments”).

### **ISSUE PRESENTED FOR REVIEW**

- A. Whether the Title Board erred in finding that Initiative #298 satisfies the single-subject requirement for citizen-initiated ballot measures.

### **STATEMENT OF THE CASE**

Initiative #298 is one of several measures that Respondent Proponents have proposed through the citizen initiative process with one central goal: keeping property taxes low for all Coloradans. Specifically, Initiative #298 would lower the valuation for assessment of certain taxable nonresidential real property on or after January 1, 2025, from 29 percent to 25.5 percent of actual value. The Initiative would also lower the valuation for assessment of all taxable residential real

property on or after January 1, 2025, from 7.15 percent to 5.7 percent of actual value.

The Title Board first heard Initiative #298 at the April 18, 2024 Title Board hearing. The Board determined by a 3-0 vote that Initiative #298 contains a single subject and set a title. Petitioners then filed a motion for rehearing arguing that Initiative #298 violates the single-subject and clear title requirements. The Title Board heard this motion at the April 26, 2024 rehearing and granted it only to the extent the Board made changes to Initiative #298's title. Petitioners subsequently appealed.

Respondent Proponents now ask this Court to affirm the Title Board for the reasons set forth below.

### **SUMMARY OF THE ARGUMENT**

The Title Board correctly identified a single subject for Initiative #298, determined it therefore had jurisdiction over the Initiative, and set a brief and comprehensive title for the Initiative. Petitioners assert one argument: that Initiative #298 contains multiple subjects because the taxation of residential real property is separate and distinct from

the taxation of nonresidential real property, including commercial property, and that the Initiative's multiple subjects attempt to create a political coalition to secure passage of the measure (commonly referred to as "logrolling").

Based on their grounds for appeal, Petitioners present an overly narrow interpretation of the state constitutional mandates governing citizen-initiated ballot measures and property tax regulation in general. Initiative #298's inclusion of residential and nonresidential real property does not frustrate single subject or cause logrolling. Each element of Initiative #298 falls under and contributes to its single subject: keeping property taxes low.

Therefore, Respondent Proponents respectfully request that this Court affirm the Title Board's single-subject determination and the clear title it set.

### **STANDARD OF REVIEW**

This Court is vested with the authority to review the rulings of the Title Board. *See* § 1-40-107(2). As part of this review, this Court "employ[s] all legitimate presumptions in favor of the propriety of the



[Title] Board’s action.” *Matter of Title, Ballot Title, & Submission Clause for 2013-2014 #89*, 328 P.3d 172, 176 (Colo. 2014) (quoting *In re Title, Ballot Title, & Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 645 (Colo. 2010)) (alteration in original). The statutory single-subject requirement, per its own plain language, must be “liberally construed.” C.R.S. § 1-40-106.5(2). Maintaining this liberal approach to the requirement is critical “so as not to impose undue restrictions on the initiative process.” *Matter of Title, Ballot Title and Submission Clause, Summary Clause for 1997-1998 No. 74*, 962 P.2d 927, 929 (Colo. 1998). Therefore, this Court has “held repeatedly that where a proposed initiative ‘tends to effect or to carry out one general objective or purpose,’ it presents only one subject.” *Matter of Title, Ballot Title, & Submission Clause for 2021-2022 #16*, 489 P.3d 1217, 1221 (Colo. 2021) (quoting *In re Title, Ballot Title & Submission Clause for 2017–2018 #4*, 395 P.3d 318, 321 (Colo. 2017)).

## **ARGUMENT**

Petitioners appeal should be denied because the Title Board correctly determined that Initiative #298 encompasses a single subject.

In order to constitute a single subject, “an initiative’s subject matter must be necessarily and properly connected,” which occurs “[w]hen an initiative tends to effectuate one general objective or purpose.” *In re Title, Ballot Title & Submission Clause for 2015–2016 #73*, 369 P.3d 565, 568 (Colo. 2016). In reviewing whether a measure encompasses more than a single subject, courts assess whether the initiative presents either of the two “evils” the single subject requirement aims to prevent: logrolling and voter surprise. *See In re 2021-2022 #16*, 489 P.3d at 1224.

Here, the Respondent Proponents’ choice to cut the assessment rates for both residential and nonresidential property are necessarily and properly connected and central to their common objective to keep property taxes low, and neither of the two “evils” are present.

**I. The inclusion of residential and nonresidential property taxes in Initiative #298 does not frustrate single subject.**

Initiative #298 lowers property taxes for both residential and nonresidential real property by reducing their corresponding assessment rates. Broadly, there are two categories of property taxes: residential and nonresidential. Residential property taxes concern residential properties, or homes, while nonresidential concern other

property, such as commercial real property. Additionally, there are several other categories of nonresidential property that have more complex and specific treatment under Colorado's tax laws, such as mines, oil and gas, renewal energy, and agricultural property. Respondent Proponents do not seek to disturb these types of property.

Including both residential and nonresidential property taxes in one Initiative does not raise single subject concerns. These two connected categories clearly make up one single subject that voters, who may or may not be property owners, can understand. *See In re Title, Ballot Title and Submission Clause, and Summary for 1999-00 #256*, 12 P.3d 246, 254 (Colo. 2000) ("It is enough that the provisions of a proposal are connected."). Addressing both residential and nonresidential property ensures that all Coloradans can reap the benefits of lower property taxes, which is the central concern and objective of this measure. The only distinction between the two is the class of property; if the property tax statutes treated assessment rates for all property types the same, Petitioners would not even be able to make their argument. This is not enough to raise single-subject

concerns.

Moreover, these two property tax categories are frequently grouped together. For example, legislation proposed in the Colorado Legislature has historically addressed both residential and nonresidential property tax. In fact, SB24-233, which the General Assembly just recently passed in the 2024 Legislative Session, includes provisions addressing both residential and nonresidential assessment rates. Bills proposed by the Colorado Legislature are held to the same single-subject requirement as proposed citizen-initiated ballot measures. Colo. Const. art. V, § 21. Additionally, mill levies enacted by local districts apply to both residential and nonresidential property.

Petitioners simply seek to improperly complicate a simple measure. This Court has recognized that “[m]ultiple ideas might well be parsed from even the simplest proposal by applying ever more exacting levels of analytic abstraction,” but that is not the appropriate exercise under single subject review. *In re 2021-2022 #16*, 489 P.3d at 1223 (quoting *In re 1997–1998 No. 74*, 962 P.2d at 929). Indeed, Petitioners’ approach would likely require that Respondent Proponents file two

separate measures to implement their single subject: one to address the assessment rate for residential property and a second to address the assessment rate for nonresidential property tax. But that approach is not necessary because each of Initiative #298's elements is a component of the measure and carries out its general objective and purpose: keeping property taxes low for all Coloradans. *See In re 2021-2022 #16*, 489 P.3d at 1221.

## **II. Initiative #298's components do not pose a logrolling concern.**

Initiative #298 does not risk logrolling, as Petitioners suggest. As shown above, each of the Initiative's elements "relates to the same subject" of keeping property taxes low. *In re 2013-2014 #89*, 328 P.3d at 178. Additionally, its "plain language" unambiguously proposes "lowering property taxes for both residential and nonresidential real property, and "the proposal is not particularly lengthy or complex." *In re 2021-2022 #16*, 489 P.3d at 1224 (quoting *id.*). The measure "does not seek to garner support from various factions by combining unrelated subjects in a single proposal." *See In re 2013-2014 #89*, 328 P.3d at 178. Property tax rates for residential and nonresidential property are

clearly related. Ultimately, Initiative #298 is one, single proposal—a voter will either like the idea of keeping property taxes low for these classes of property, or will not.

### **CONCLUSION**

Respondent Proponents respectfully ask this Court to affirm the Title Board’s determination that it had jurisdiction to set title.

Respectfully submitted on May 10, 2024.

**BROWNSTEIN HYATT FARBER SCHRECK LLP**

*/s/ Sarah M. Mercer*

Sarah M. Mercer

David B. Meschke

Reilly E. Meyer

Brownstein Hyatt Farber Schreck LLP

675 15th St, Suite 2900

Denver, Colorado 80202

(303) 223-1100

smercercer@bhfs.com;

dmeschke@bhfs.com;

rbaum@bhfs.com

*Attorneys for Respondents Dave Davia and Michael  
Fields*

## CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2024, I electronically filed a true and correct copy of the foregoing **RESPONDENTS' OPENING BRIEF** with the clerk of Court via the Colorado Courts E-Filing system which will send notification of such filing and service upon the following:

Thomas M. rogers III, #28809  
Nathan Bruggeman, #39621  
Recht Kornfeld, P.C.  
1600 Stout Street, Suite 1400  
Denver, CO 80202  
Phone: 303-573-1900  
Email:     trey@rklawpc.com;  
              nate@rklawpc.com

Edward T. Ramey  
Tierney Lawrence Stiles LLC  
225 E. 16<sup>th</sup> Ave., Suite 350  
Denver, CO 80203  
Phone: 303-949-7676  
Email: eramey@TLS.legal

### *Counsel for Petitioners*

Michael Kotlarczyk, Esq.  
Peter Baumann, Esq.  
Kyle Holter  
Office of the Attorney General  
Ralph L. Carr Building  
Colorado Judicial Center  
1300 Broadway, 6th Floor  
Denver, CO 80203  
michael.kotlarczyk@coag.gov;  
peter.baumann@coag.gov  
kyle.holter@coag.gov

Suzanne Taheri  
West Group  
6501 E. Belleview Ave.  
Suite 375  
Denver, CO 80111  
Email: st@westglp.com

*Counsel for Title Board*

*Counsel for Respondents*

/s/ Paulette M. Chesson  
Paulette M. Chesson, Paralegal