

SUPREME COURT
STATE OF COLORADO

2 East 14th Avenue
Denver, CO 80203

Original Proceeding Pursuant to
§ 1-40-107(2), C.R.S. (2024)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative
2025-2026 #245

Petitioners: Mary Neilson and Frank
Atwood

v.

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

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Case No. 2026SA121

THE TITLE BOARD'S OPENING BRIEF

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

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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/ Lane Towery

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TABLE OF CONTENTS

	PAGE
STATEMENT OF THE ISSUE PRESENTED FOR REVIEW	1
STATEMENT OF THE CASE AND FACTS	1
I. The single subject requirement.	1
II. Initiative #245	4
SUMMARY OF THE ARGUMENT	11
ARGUMENT	11
I. The Title Board was correct: Proposed Initiative 2025-2026 #245 fails the single subject requirement.....	11
A. Standard of review and preservation.	11
B. The proposed initiative contains multiple distinct subjects.	12
CONCLUSION	18

TABLE OF AUTHORITIES

	PAGE
CASES	
<i>In re Proposed Initiative on “Public Rights in Waters II”,</i> 898 P.2d 1076 (Colo. 1995)	14, 15
<i>In re Title, Ballot Title & Submission Clause for 2001-2002 #43,</i> 46 P.3d 438 (Colo. 2002)	13, 14, 16
<i>In re Title, Ballot Title & Submission Clause for 2015–2016 #132,</i> 2016 CO 55.....	2, 3, 4, 11, 12
<i>In re Title, Ballot Title & Submission Clause for 2019-2020 #3,</i> 2019 CO 57.....	14, 17
<i>In re Title, Ballot Title & Submission Clause for 2019-2020 #3,</i> 2019 CO 107.....	11
<i>In re Title, Ballot Title & Submission Clause for 2025-2026 #158,</i> 2026 CO 13.....	2, 3, 4, 11, 12, 15
<i>In re Title, Ballot Title, & Submission Clause, Summary for 1997–1998</i> <i>#30,</i> 959 P.2d 822 (Colo. 1998)	17
<i>In re Title, Ballot Title, Submission Clause, Summary for 1997–1998</i> <i>#84,</i> 961 P.2d 456 (Colo. 1998)	17
<i>In re Title, Ballot Title & Submission Clause, & Summary for 1999-</i> <i>2000 Nos. 245(b), 245(c), 245(d) & 245(e),</i> 1 P.3d 720 (Colo. 2000)	2, 11
STATUTES	
C.R.S. § 1-40-101	8
C.R.S. § 1-40-103	4
C.R.S. § 1-40-105	6
C.R.S. § 1-40-106	5, 6

TABLE OF AUTHORITIES

	PAGE
C.R.S. § 1-40-106.5	1, 3, 6
C.R.S. § 1-40-107	6
C.R.S. § 1-40-108	8, 9
C.R.S. § 1-40-111	7
C.R.S. § 1-40-116	7, 8
C.R.S. § 1-40-117	9
C.R.S. § 1-40-118	8
C.R.S. § 1-40-119	8
C.R.S. § 1-40-124.5	9
C.R.S. § 30-11-103.5	5
C.R.S. § 31-11-102	4
C.R.S. § 31-11-104	7
CONSTITUTION	
Colo. Const. art. V, § 1.....	1, 4, 5, 6
OTHER AUTHORITIES	
<i>Hearing Before Title Board on Proposed Initiative 2025-2026 #245</i> (Mar. 18, 2026), https://tinyurl.com/mps43pzf	10
<i>Rehearing Before Title Board on Proposed Initiative 2025-2026 #245</i> (Apr. 1, 2026), https://tinyurl.com/4r49wfkh	10

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether the Title Board erred in deciding Proposed Initiative 2025-2026 #245 failed the single subject requirement.

STATEMENT OF THE CASE AND FACTS

Proponents Marty Neilson and Frank Atwood seek to circulate #245 to obtain the necessary signatures to place an initiative on the ballot. The measure proposes repealing 17 statutory sections governing the initiative and referendum procedure and replacing them with a new statute establishing a new process, enumerating new substantive rights, and creating a new civil penalty. *See Record*, p 6. The Title Board determined that it lacked jurisdiction to set title because the proposed initiative contains more than one subject. Proponents challenge the Title Board’s decision that proposed initiative #245 failed the single subject requirement.

I. The single subject requirement.

The Colorado constitution requires all initiatives to contain “one subject, which shall be clearly expressed in its title.” Colo. Const. art. V, § 1(5.5); *see also* C.R.S. § 1-40-106.5(1)(a) (“[E]very constitutional

amendment or law proposed by initiative” must be “limited to a single subject, which shall be clearly expressed in its title.”). The Title Board may not set the titles of a proposed initiative or submit it to the voters if it contains multiple subjects. *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 Nos. 245(b), 245(c), 245(d) & 245(e)*, 1 P.3d 720, 722 (Colo. 2000).

An initiative satisfies the single subject requirement when it tends to effect or carry out one general objective or purpose. *In re Title, Ballot Title & Submission Clause for 2025-2026 #158*, 2026 CO 13, ¶ 18 (citing *In re Title, Ballot Title & Submission Clause for 2015–2016 #132*, 2016 CO 55, ¶ 15). While the initiative may include minor provisions necessary to effectuate its general objective or purpose, the subject matter of the initiative must be “necessarily and properly connected rather than disconnected or incongruous.” *Id.* (quoting *In re 2015–2016 #132*, ¶ 15).

Conversely, an initiative violates the single subject requirement when it “relates to more than one subject and has at least two distinct and separate purposes.” *Id.* at ¶ 19 (quoting *In re 2015–2016 #132*, ¶

16). It does not matter if the initiative’s purposes relate to the same general concept or subject, or if its provisions can be grouped under an overarching theme; an initiative that is susceptible to log rolling or that risks misleading voters will not satisfy the single subject requirement. *Id.* (citing *In re 2015–2016 #132*, ¶ 16).

The single subject requirement serves two functions. First, it “ensures that each proposal depends upon its own merits for passage” by preventing “log rolling” tactics: combining multiple subjects in hopes of attracting support from various faction with different or conflicting interests. *Id.* at ¶ 16 (cleaned up) (quoting *In re 2015–2016 #132*, ¶ 13); *see also* § 1-40-106.5(1)(e)(I) (explaining that the single subject requirement “forbid[s] the treatment of incongruous subjects in the same measure . . . for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits”).

Second, the single subject requirement “prevent[s] surprise and fraud from being practiced upon voters.” § 1-40-106.5(1)(e)(II). It seeks to stop the “inadvertent passage of a surreptitious provision ‘coiled up

in the folds’ of a complex initiative.” *In re 2025-2026 #158*, ¶ 17 (quoting *In re 2015–2016 #132*, ¶ 14).

II. Initiative #245

Proposed Initiative #245 amends the initiative and referendum process, and in addition changes substantive rights to petition, repeals anti-fraud rules, and adds a new civil enforcement mechanism. *See generally* Proposed Initiative #245 (“#245”), Record, p 6. The initiative proposes repealing 17 statutory sections governing the current initiative and referendum procedure, covering some, but not all, of §§ 1-40-105 to 135, and replacing them with a new statutory section. *Id.* Among the many changes proposed, the initiative would:

- Affirmatively provide “petition rights” in every local and home rule government in Colorado, Record at p 6, §(1)(1), *compare to* Colo. Const. art. V, § 1(1) (“[T]he people reserve to themselves the power to propose laws and amendments to the constitution . . .”) *and* § 1-40-103 (provisions of Title 1 related to initiatives and referenda apply to *state* ballot issues); *cf.* § 31-11-102 (statute governing municipal

initiatives “unless” otherwise provided for in charter, ordinance, or resolution); § 30-11-103.5 (same for county ballot questions);

- Dissolve the Title Board, Record, p 6, §§ (1)(1) and (4) (repealing § 1-40-106), and direct petitions to any state or local election office rather than the Secretary of State, *id.*, §§ (1)(1), (4) (repealing § 1-40-105(4)); *see also* Colo. Const. art. V, § 1(2) (“Initiative petitions for state legislation and amendments to the constitution, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state”);

- Repeal the requirement that proposed initiatives be reviewed by the legislative council and the office of the legislative legal services, and for the production of a fiscal impact statement, *see* Record, p 6, § (4) (repealing §§ 1-40-105 and 105.5);

- Require that title be set within four days, *compare* Record, p 6 § (1)(1) to § 1-40-106(1) and (3)(b) (draft must be submitted to Title Board 12 days before a meeting, and Title Board must set title within two weeks of meeting), appeals to the Supreme Court be filed within four days, and that this Court decide any appeal six days later, *compare*

Record, p 6, § (1)(1) to § 1-40-107(2) (appeals to be filed within seven days of obtaining certified record and Supreme Court to dispose of the matter “promptly”);

- Permit petitioners to appear by telephone and email, *compare* Record, p 6, § (4) to § 1-40-105(1.5) (“Both designated representatives of the proponents must appear at all review and comment meetings.”);

- Require that ballot titles be limited to 60 total words, *compare* Record, p 6, § (1)(1) to §§ 1-40-106, -106.5 (no word limit for titles);

- Require every referendum title to read simply “shall (listed sections of) (bill number) be rejected?”, *compare* Record, p 6, § (2) to §§ 1-40-106, -106.5 (no requirement);

- Require petitions to be given on “1992 forms,” *see* Record, p 6, § (1)(1);

- Prohibit petitions related to “zoning,” *compare* Record, p 6, § (3)(2) to Colo. Const. art. V, § 1 (no substantive limitations on initiatives);

- Require that local initiatives be signed by four percent of district electors in the last election, *compare* Record, p 6, § (1)(2) to § 31-11-104 (requiring five percent of registered voters of municipality);
- Prohibit random or statistical entry sampling, *compare* Record, p 6, § (1)(2) to §§ 1-40-116(4)(a) and (b)(I) (requiring the Secretary of State to examine signatures via random sampling of no less than five percent of submitted signatures and at least 4000 signatures), 1-40-116(4)(b)(II) (requiring examination of each signature only if sampling is inconclusive);
- Require that entries be “strongly presumed” to be “truly addressed district registered electors,” *compare* Record, p 6, § (1)(2) to § 1-40-116(1) (inclusion of proper affidavits to be “prima facie evidence that the signatures are genuine and true”);
- Repeal statute governing qualification and conduct of circulators and prohibit affidavit defects from affecting entries, *compare* Record, p 6, § (1)(2) to §§ 1-40-111(2)(a) (requiring any petition circulator to provide signed, notarized affidavit attesting to several

requirements) *and* 1-40-101 (declaration of anti-fraud legislative intent behind petition circulator laws);

- Permit 300 days for submitting petitions, *compare* Record, p 6, § (1)(2) *to* § 1-40-108 (petitions must be filed within 6 months of title being fixed);

- Require counting of signatures within 5 days from submission by a “neutral election office”, *compare* Record, p 6, § (1)(2) *to* §§ 1-40-116(2) and 1-40-118(1) (Secretary of State must examine signatures within 30 days);

- Permit protest of “specific itemized” signatures “on specific grounds” by only “private parties” in “the [Supreme Court] only” within five days, *compare* Record, p 6, § (1)(2) *to* § 1-40-118 (permitting protest in district court within 15 days and enumerating specific legal grounds and standards);

- Require the Supreme Court to issue a decision in 10 days, *compare* Record, p 6, § (1)(1) *to* § 1-40-119 (hearings to be held “as soon as is conveniently possible” and “concluded” within 30 days);

- Permit a five-day cure period, *compare* Record, p 6, § (1)(2) to § 1-40-117(4) (providing five-day cure period for defects in affidavits);
- Permit petitions filed by August 1 to proceed to the November election ballot, *compare* Record, p 6, § (1)(3) to § 1-40-108 (petitions must be filed three months before election);
- Require that “ballots shall print one filer and one foe web address,” *compare* Record, p 6, § (1)(3) to § 1-40-124.5 (requiring printing of ballot information book with abstract of fiscal impact statement and arguments for and against initiatives);
- Prohibit any petition fees or costs, Record, p 6, § (4), of which several are currently scattered throughout Article 40 of Title 1;
- Repeal provisions requiring personal representatives to report expenditures to paid circulators, Record, p 6, § (4) (repealing § 1-40-121); and,
- Require that anyone who stops, cites, or arrests carriers or signers peaceably petitioning in public access areas “shall be fined \$3000.00.” Record, p 6, § (4).

At a hearing on #245, the Title Board members expressed concern that the petition contained more than a single subject, that it logrolled too many topics, was incomprehensible, and coiled changes in the folds. *See Hearing Before Title Board on Proposed Initiative 2025-2026 #245* (Mar. 18, 2026) at 1:59:20–2:07:50, <https://tinyurl.com/mps43pzf>. The Board found the initiative had multiple subjects and, therefore, the Board lacked jurisdiction to set title. *Id.* at 2:07:50–2:08:08; *also* Record, p 5.

On rehearing, Petitioners argued that the “entire single subject is defined in its title,” namely petition rights. Record, p 2; *see also Rehearing Before Title Board on Proposed Initiative 2025-2026 #245* (Apr. 1, 2026) at 1:50:43–1:51:17, <https://tinyurl.com/4r49wfkx>. The Board again expressed concern that the scope and number of changes is beyond a voter being able to answer yes or no about whether they support it. *Id.* at 1:53:28–1:53:45. The Board thus denied the motion for rehearing. *Id.* at 2:09:20–2:09:38; *also* Record, p 5.

SUMMARY OF THE ARGUMENT

The Title Board correctly concluded Proposed Initiative 2025-2026 #245 contains multiple subjects.

ARGUMENT

I. The Title Board was correct: Proposed Initiative 2025-2026 #245 fails the single subject requirement.

A. Standard of review and preservation.

In its “limited review” of the Title Board’s actions, this Court examines an initiative’s “wording” to determine whether it comports with the constitutional single subject requirement. *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 14. In conducting this limited inquiry, the Court does not “address the merits of the proposed initiative,” but looks to its text and employs the general rules of statutory construction and gives words and phrases their plain and ordinary meanings. *Id.* (quotation omitted).

This Court “employ[s] all legitimate presumptions in favor of the propriety of the Board’s actions.” *In re 2025-2026 #158*, ¶ 13 (quoting *In re 2015–2016 #132*, ¶ 10); see also *In re 1999-2000 Nos. 245(b), 245(c)*,

245(d) & 245(e), 1 P.3d at 722 (“Upon review, we treat the actions of the Board as presumptively valid.”).

The Title Board agrees this issue is preserved. *See* Record, pp 2–3.

B. The proposed initiative contains multiple distinct subjects.

An initiative violates the single subject requirement when it “relates to more than one subject and has at least two distinct and separate purposes.” *In re 2025-2026 #158*, ¶ 19 (quoting *In re 2015–2016 #132*, ¶ 16). It does not matter if the initiative’s purposes relate to the same general concept or subject, or if its provisions can be grouped under an overarching theme; an initiative that is susceptible to log rolling or that risks misleading voters will not satisfy the single subject requirement. *Id.* (citing *In re 2015–2016 #132*, ¶ 16).

This proposed initiative contains several distinct subjects and purposes. First, it expands affirmative petition rights to local governments. Second, it overhauls the process for citizen initiatives at any level. Third, though it does not repeal the requirement to circulate and gather signatures generally, it does repeal statutes regulating circulation and requiring reporting of expenditures—statutes meant to

reduce fraud and promote transparency. Fourth, it substantively limits the content of citizen initiatives by excluding zoning laws. Fifth, it substantively limits the information voters receive about initiatives by restricting title length, repealing fiscal impact statements, and removing arguments for and against from the voter information booklets. And, sixth, it creates a new civil enforcement mechanism against anyone who infringes on the circulation of petitions.

Whether or not each of those subjects could fall under the umbrella of initiatives and referenda, they evince distinct purposes. Changing the procedure to bring a citizen initiative has a distinct purpose from restricting the permissible content of initiatives, which itself has a distinct purpose from repealing anti-fraud measures, which in turn has a distinct purpose from civil enforcement to protect circulators from any intrusions.

To propose both the creation of new procedures for popular initiatives *and* the reduction of substantive areas of law susceptible to initiatives is to combine multiple subjects. On this point, *In re Title, Ballot Title & Submission Clause for 2001-2002 #43*, 46 P.3d 438 (Colo.

2002), is dispositive.¹ There, the Court held that an initiative containing many provisions all related to changing the initiative and referendum procedure could constitute a single subject. *Id.* at 444. But, it also held that adding any other provisions—such as substantive changes to the permissible content of initiatives like prohibiting referendum petitions related to “zoning issues”—made the initiative multi-subject. *Id.* at 444–445. Proposed Initiative #245 does just that: it proposes myriad procedural changes to the initiative and referendum process, but it also adds a substantive change by prohibiting initiatives about “zoning.” This alone is sufficient to affirm the Title Board.

And yet, the new civil enforcement mechanism and the repeal of an election transparency and anti-fraud scheme are each additional subjects joined to the proposed initiative. Consider *In re Proposed Initiative on “Public Rights in Waters II”*, 898 P.2d 1076 (Colo. 1995), in

¹ Though this Court in *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 57, ¶¶ 20–31, disapproved of a specific interpretation of the holding in *In re 2001-2002 #43*, it did not overrule, and in fact approvingly cited, the portions of *In re 2001-2002 #43* cited in this brief.

which this Court established the “two distinct and separate purposes” test and reversed the setting of a proposed initiative for having multiple subjects. *Id.* at 1078–80. That initiative would have established election and boundary rules for water conservancy and conservation districts while also requiring effective enforcement and development of a “strong public trust doctrine.” *Id.* at 1080. The Court found that these two objectives evinced “[n]o necessary connection” but were “separate and discrete” and thus “must be accomplished through separate initiatives.” *Id.* The Court additionally reasoned that the fact that the provisions all related to “water” was “too general and too broad to constitute a single subject.” *Id.* So, too, here. The re-writing of initiative procedures is one matter while reversing public enforcement away from transparency and towards the protection of circulators’ rights is “separate and discrete,” even if they all generally relate to initiatives and referenda.

The proposed initiative additionally fails the single-subject mandate by placing surreptitious provisions “coiled up in the folds” of a complex initiative. *In re 2025-2026 #158*, ¶ 17. Returning to *In re 2001-*

2002 #43, the proposed initiative there created new initiative and referenda procedures but exempted “voter-approved petitions already ruled by the supreme court to be multiple subjects.” 46 P.3d at 443–445. Although the initiative did not expressly say so, this provision would have precluded any initiative seeking the wholesale repeal of TABOR. *Id.* at 445, 447. This Court rejected this vague description as “the epitome of a surreptitious measure” and “an obscure line in the initiative” that would have surprised voters who supported the initiative. *Id.* at 447.

Here, similarly, the proposed law excises zoning laws from citizen initiatives in a single clause in the definitions section of the proposed statute. *See Record* at p 6, § (3)(2) (“Petitions: initiatives and referenda on legislative policy, *except zoning*, started by two or more adults any time.” (emphasis added)). In another example, the proposed initiative repeals the statutes regulating the qualifications, conduct, and remuneration of petition circulators, and the reporting of related expenditures, without saying so explicitly. *See id.*, § (4) (“[T]his law . . . repeals all conflicting laws and . . . 1-40-111 [affidavit requirements] . . .

1-40-112 [circulator training and requirements] . . . 1-40-121

[expenditure reporting requirements][.]). Those voting for the new procedures may be surprised to know they are also voting for changes to their substantive rights and to initiative anti-fraud and transparency laws. *See also In re Title, Ballot Title, Submission Clause, Summary for 1997–1998 #84*, 961 P.2d 456, 460 (Colo. 1998) (holding that the “dual constitutional changes” of reducing a tax while vaguely requiring a reduction in programs were “precisely the types of mischief which the single subject requirement was intended to prevent.”); *accord In re Title, Ballot Title, & Submission Clause, Summary for 1997–1998 #30*, 959 P.2d 822, 827 (Colo. 1998) (holding that voter surprise or fraud would result if the initiative passed because voters could be enticed to vote for the measure to enact a tax cut while not realizing that passage of the measure would simultaneously achieve a purpose not necessarily related to a tax cut).

This Court’s more recent case, *In re 2019-2020 #3*, 2019 CO 57, stands for the proposition that an initiative seeking to, in one sentence, fully repeal a statute or constitutional provision is a single-subject

initiative (even if the underlying statute or constitutional provision is multi-subject). That principle does not save #245. Rather than cause a wholesale repeal of the initiative process, #245 seeks to piecemeal repeal 17 provisions (but not all relevant provisions), replace them with meaningfully different provisions, *and* address new and different subjects, like civil fines for infringing on petition rights.

For all these reasons, #245 contains multiple subjects.

CONCLUSION

This Court should affirm the Title Board's decision that Proposed Initiative 2025-2026 #245 violates the single subject requirement.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **THE TITLE BOARD'S OPENING BRIEF** upon all counsel of record by Colorado Courts E-filing (CCE), this 21st day of April, 2026.

/s/ Carmen Van Pelt