

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Setting 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>Petitioners:</p> <p style="padding-left: 40px;">Michael Fields and Dave Davia</p> <p>v.</p> <p>Respondents:</p> <p style="padding-left: 40px;">Scott Wasserman and Ann Adele Terry, Objectors</p> <p style="padding-left: 40px;">and</p> <p style="padding-left: 40px;">Title Board: Theresa Conley, Christy Chase, and Kurt Morrison</p>	<p>Case Number:</p>
<p>Attorney for Petitioners: Suzanne M. Taheri, #23411 WEST GROUP LAW & POLICY 6501 E. Belleview Ave, Suite 375 Englewood, CO 80111 Phone Number: (303) 263-0844 Email: st@westglp.com</p>	
<p style="text-align: center;">PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2023-2024 #245 (“VALUATION FOR ASSESSMENTS”)</p>	

Petitioners Michael Fields and Dave Davia through undersigned counsel, respectfully petition this Court pursuant to C.R.S. § 1-40-107(2), to review the determination of the Ballot Title Setting Board that Proposed Initiative 2023-2024 #245 does not constitute a single subject.

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2023-2024 #245

Proposed Initiative 2023-2024 #245 was filed with Legislative Council on March 8, 2024. A review and comment hearing was held March 22, 2024. The initiative was filed with the Title Board, and an initial hearing was held on April 3, 2024.

At the April 3, 2024 hearing, the Title Board found single subject and set the ballot title. Respondents Scott Wasserman and Ann Adele Terry timely filed a Motion for Rehearing. A rehearing occurred on April 18, 2024, and the Board reversed its single subject finding and denied title setting. Petitioners now appeal the Board's reversal of its single subject finding.

B. Jurisdiction

Petitioners are entitled to review before the Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioners were present at the rehearing and opposed the Motion for Rehearing that was filed to challenge the Board's single subject

determination. See C.R.S. § 1-40-107(1). Additionally, Petitioners timely filed this Petition for Review seven days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of: (1) the draft, amended, and final version of the initiative filed by the Proponents; (2) the original ballot title set for this measure; (3) the Motion for Rehearing filed; and (4) the ruling on the Motion for Rehearing.

Petitioners believe that the Title Board erred by granting the Motion for Rehearing and reversing the Board's initial finding that the measure constitutes a single subject. This matter is properly before this Court.

GROUND FOR APPEAL

The Ballot Title Setting Board found a single subject and set a ballot title at its initial hearing on Proposed Initiative 2023-2024 #245. The Board's decision to reverse its single subject decision and deny title setting violates Petitioners' right to initiate legislation. The following is an advisory list of issues to be addressed in Petitioners' brief:

1. Whether the Board improperly found multiple subjects in Proposed Initiative 2023-2024 #245.

2. Whether the Board violated established precedent regarding the single subject requirement when it reversed its single subject determination for Proposed Initiative 2023-2024 #245 and denied title setting.

PRAYER FOR RELIEF

Petitioners respectfully request that, after consideration of the parties' briefs, this Court determine that Proposed Initiative 2023-2024 #245 constitutes a single subject and remand the initiative to the Title Board for immediate title setting or order the Title Board to restore the ballot title that was set at the initial hearing.

Respectfully submitted this 25th day of April, 2024

s/Suzanne Taheri
Suzanne M. Taheri, #23411
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Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of April, 2024, a true and correct copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2023-2024 #245 (“VALUATION FOR ASSESSMENTS”)** was served via the Colorado Court’s E-Filing System to the following:

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/s/ Suzanne Taheri

Suzanne Taheri

Duly signed original on file at West Group

DATE FILED: April 25, 2024 4:38 PM



STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal summary, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2023-2024 #245 'Valuation for Assessments'".....



.....**IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at
the City of Denver this 22nd day of April, 2024.

Jena Griswold

SECRETARY OF STATE



2023-2024 #245 – Final – Technical Corrections

Be it Enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 39-1-104 **repeal and reenact with amendments** (1) as follows:

39-1-104. Valuation for assessments - definitions.

(1) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION (1), FOR PROPERTY TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2025, THE VALUATION FOR ASSESSMENT OF TAXABLE NONRESIDENTIAL PROPERTY IN THE STATE SHALL BE DECREASED FROM TWENTY-NINE PERCENT TO TWENTY-FIVE AND ONE-HALF PERCENT OF THE ACTUAL VALUE THEREOF AS DETERMINED BY THE ASSESSOR AND THE ADMINISTRATOR IN THE MANNER PRESCRIBED BY LAW, AND THAT PERCENTAGE SHALL BE UNIFORMLY APPLIED, WITHOUT EXCEPTION, TO THE ACTUAL VALUE, SO DETERMINED, OF THE REAL AND PERSONAL PROPERTY LOCATED WITHIN THE TERRITORIAL LIMITS OF THE AUTHORITY LEVYING A PROPERTY TAX, AND ALL PROPERTY TAXES SHALL BE LEVIED AGAINST THE AGGREGATE VALUATION FOR ASSESSMENT RESULTING FROM THE APPLICATION OF SUCH PERCENTAGE. THIS SUBSECTION (1) SHALL NOT APPLY TO RESIDENTIAL REAL PROPERTY, PRODUCING MINES, LANDS OR LEASEHOLDS PRODUCING OIL OR GAS, AGRICULTURAL PROPERTY, OR RENEWABLE ENERGY PRODUCTION PROPERTY.

SECTION 2. In Colorado Revised Statutes, 39-1-104.2 **repeal and reenact with amendments** (3)(q) and (3)(r) as follows:

39-1-104.2. Residential real property – valuation for assessment – legislative declaration – definitions.

(3)(q) FOR PROPERTY TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2025, THE VALUATION FOR ASSESSMENT FOR MULTI-FAMILY RESIDENTIAL REAL PROPERTY IS REDUCED FROM 7.15 PERCENT OF THE ACTUAL VALUE OF THE PROPERTY TO 5.7 PERCENT OF THE AMOUNT EQUAL TO THE ACTUAL VALUE OF THE PROPERTY MINUS THE LESSER OF FIFTY-FIVE THOUSAND DOLLARS OR THE AMOUNT THAT CAUSES THE VALUATION FOR ASSESSMENT OF THE PROPERTY TO BE ONE THOUSAND DOLLARS.

(3)(r) FOR PROPERTY TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2025, THE VALUATION FOR ASSESSMENT FOR RESIDENTIAL REAL PROPERTY IS REDUCED FROM 7.15 PERCENT OF THE ACTUAL VALUE OF THE PROPERTY TO 5.7 PERCENT OF THE AMOUNT EQUAL TO THE ACTUAL VALUE OF THE PROPERTY MINUS THE LESSER OF FIFTY-FIVE THOUSAND DOLLARS OR THE AMOUNT THAT CAUSES THE VALUATION FOR ASSESSMENT OF THE PROPERTY TO BE ONE THOUSAND DOLLARS.

SECTION 3. In Colorado Revised Statutes, 39-3-210 **repeal and reenact with amendments** as follows:

39-3-210. Protection of school district revenue.

IN ORDER TO INSULATE SCHOOL DISTRICTS FROM ANY REVENUE LOSS DUE TO THE REDUCED VALUATIONS FOR ASSESSMENT SET FORTH IN SECTION 39-1-104 (1) AND IN SECTIONS 39-1-104.2 (3) (q) AND (3) (r), ANY REVENUE LOSS ATTRIBUTED TO SUCH REDUCTIONS SHALL NOT REDUCE FUNDING SCHOOL DISTRICTS RECEIVE UNDER ARTICLE 54 OF TITLE 22, OTHERWISE KNOWN AS THE PUBLIC SCHOOL FINANCE ACT OF 1994.

SECTION 4. Effective date. (1) Sections 1 and 2 of this act take effect on January 1, 2025.

(2) Section 3 of this act takes effect on June 30, 2025.

Ballot Title Setting Board

Proposed Initiative 2023-2024 #245¹

The title as designated and fixed by the Board is as follows:

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.

The ballot title and submission clause as designated and fixed by the Board is as follows:

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?

Hearing April 3, 2024:

Single subject approved; staff draft amended; titles set.

The Board made a technical correction to the text of the initiative.

Board members: Theresa Conley, Christy Chase, Kurt Morrison

Hearing adjourned 10:07 A.M.

¹ Unofficially captioned "Valuation for Assessments" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Ballot Title Setting Board

Proposed Initiative 2023-2024 #245¹

Hearing April 3, 2024:

Single subject approved; staff draft amended; titles set.

The Board made a technical correction to the text of the initiative.

Board members: Theresa Conley, Christy Chase, Kurt Morrison

Hearing adjourned 10:07 A.M.

Rehearing April 18, 2024:

Motion for rehearing (Movant) granted in its entirety. The Board lacks jurisdiction to set title because the measure has multiple subjects (3-0).

Board members: Theresa Conley, Christy Chase, Kurt Morrison

Hearing adjourned: 9:20 P.M.

¹ Unofficially captioned “**Valuation for Assessments**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Scott Wasserman and Ann Adele Terry,
Objectors,

v.

Dave Davia and Michael Fields,
Designated Representatives of Initiative 2023-2024 #245.

**MOTION FOR REHEARING ON
INITIATIVE 2023-2024 #245**

Through their undersigned counsel, Scott Wasserman, a registered elector of Denver County, and Ann Terry, a registered elector of the City and County of Denver, hereby submit this motion for rehearing on Initiative 2023-2024 #245 (the “Initiative” or “Initiative 245”), and state:

On April 3, 2024, the Title Setting Board set the following ballot title and submission clause for Initiative 2023-2024 #245:

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?

The Board erred in setting this title because Initiative 245 violates the constitutional single subject requirement in several ways. The initiative’s purported single subject is “keeping property taxes low,” but wrapped into the measure are several distinct and unrelated subjects.

A. The measure’s requirement to hold K-12 education harmless from cuts constitutes another subject.

Under Proposed C.R.S. § 39-3-210(1), “any revenue loss attributed to such reductions or revenue limit shall not reduce funding school districts receive under article 54 of title 22, otherwise known as the Public School Finance Act of 1994.” This language is not intended to require the state to

increase its contribution to K-12 funding to make up for the reduction in local property tax revenue available for that purpose. As reflected in the fiscal summary, existing law would trigger that result, requiring an additional \$870 million state K-12 obligation in the first fiscal year alone.

Instead, the the language is intended to prohibit the state from cutting education funding to avoid some or all of the new \$870 million obligation. For instance, it is intended to stop the state from lowering the amount of per pupil funding or reinstating a “budget stabilization” factor to reduce state K-12 spending to reduce or eliminate the new \$870 million state K-12 obligation.

By prohibiting the state from cutting K-12 funding, that is, by leaving the state no alternative but to increase state spending on K-12 by \$870 million, the Initiative would necessitate reductions in other state spending. Voters would be surprised to learn that, in approving cuts to local property taxes, they are cutting state spending on other programs. This necessary reduction in other state spending constitutes a second subject. Although the Supreme Court has recognized that “requiring the state to replace affected local revenue [that results from a measure’s local tax cut] in itself sufficiently relates to a tax cut,” a measure cannot at the same time mandate a cut in state programs. *In re Title, Ballot Title And Submission Clause, And Summary For 1997-98 # 84*, 961 P.2d 456, 460 (Colo. 1998). The measure in #84 had that result, and thus violated the single subject requirement because it required the state backfill to local jurisdictions occur “within all tax and spending limits.” Given TABOR’s limits, the state would have to “lower the amount it spends on state programs.” *Id.* at 460.

The K-12 backfill sits in a similar position to the “within all tax and spending limits” provision in #84. The measure is requiring a backfill for a local loss of revenue and, at the same time, prohibiting the state from making choices in how to accomplish the backfill. By protecting state funding for K-12 education, which goes to support local education, the measure is necessarily going to force a cut in other *state* programs to cover the cost. As the Supreme Court held in #84, a local tax measure that forces such a change in state spending violates the single subject requirement.

B. The measure creates an additional subject by significantly increasing state funding for local education.

The measure will create a windfall to local school districts in the amount of hundreds of millions of dollars per year. This will occur because Proposed C.R.S. § 39-3-210(1) requires that funding for schools remain constant *and* Proposed C.R.S. § 39-3-210(2) requires the state to provide local districts—including school districts—with a reimbursement warrant. In this case, local education is effectively receiving a double reimbursement—once through preserving funding under the Public Schools Act and a second time through a state reimbursement.

This double dip is the result of the requirement that, in addition to holding funding for schools constant, “the State Treasurer shall issue a warrant to be paid yearly to reimburse local districts for lost revenue...” The measure does not define what a “local district” is, and neither does Article 1 of Title 39, C.R.S. In fact, “local district” does not appear to be a concept that currently exists in Title 39. Undoubtedly, “local district” includes “school district.” A school district is a district—it’s in the name. School districts are local—there are more than 180 of them in the state, each

serving a particular geographic area (or district). Because school districts are local districts, the local district backfill provision found in Proposed C.R.S. § 39-3-210(2) would require the state to reimburse each local school district for local property tax revenue lost as a result of the Initiative’s assessed value reductions.

Reimbursing local school districts for lost tax revenue is one thing, but giving those districts a double recovery of lost revenue is something entirely different. That type of *increase*, not backfill, of local education funding is not “necessarily and properly connected” to cutting local property taxes. Moreover, it implicates both single subject concerns. For those who can determine that is occurring, they may vote for Initiative 245 to achieve an increase in school funding; it is generating a political constituency to support the measure that otherwise may not. For those who do not understand this is what the measure requires, they would be surprised to learn that in voting for property tax cuts they are approving a significant school funding increase that is coming at the cost of other state programs. C.R.S. § 1-40-106.5(1)(e)(I) & (II).

WHEREFORE, Objectors move the Title Board to strike the titles set and return Initiative #245 to Proponents for failure to comply with the single subject requirement of Article V, sec. 1(5.5) of the Colorado Constitution.

Respectfully submitted this 10th day of April 2024.

RECHT KORNFELD, P.C.

Tierney Lawrence Stiles LLC

s/ Thomas M. Rogers III

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CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2023-2024 #245** was sent this day, April 10, 2024, via first-class mail, postage paid and via email to:

Suzanne Taheri (co-counsel for proponents)
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s/ Erin Mohr



Initiative 245

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Summary

Date: April 1, 2024 **Fiscal Analyst:** David Hansen (303-866-2633)

LCS TITLE: VALUATION FOR ASSESSMENTS

Fiscal Summary of Initiative 245

This fiscal summary, prepared by the nonpartisan Director of Research of the Legislative Council, contains a preliminary assessment of the measure's fiscal impact. A full fiscal impact statement for this initiative is or will be available at leg.colorado.gov/bluebook. This fiscal summary identifies the following impact.

Local government impact. By reducing residential and nonresidential assessment rates, the measure reduces property tax revenue to local governments by an estimated \$3.0 billion for property tax 2025, \$3.1 billion for property tax year 2026, and by larger amounts in later years. An estimated \$870 million in FY 2025-26 and \$890 million in FY 2026-27 will be made up through state aid for total program funding for school finance as required under current law. Overall, the measure is expected to reduce revenue for local governments and school districts by \$2.2 billion in FY 2025-26 and FY 2026-27, and larger amounts in later years.

State expenditures. The measure will increase state expenditures by an estimated \$870 million in FY 2025-26 and \$890 million in FY 2026-27, and by larger amounts in later years, reflecting the increased state-aid obligation for school finance paid to school districts under current law due to reduced property tax revenue under the measure.

Economic impacts. Reducing assessment rates will increase the amount of after-tax income available for homeowners and business property owners to spend, save, or invest elsewhere in the economy. The 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. It also decreases local government revenue relative to the amount that would otherwise be collected. Any overall change in economic activity will depend on the net economic impacts of higher after-tax household and business income and reduced investment in public services.