

<p><b>COLORADO SUPREME COURT</b> 2 East 14<sup>th</sup> Avenue Denver, CO 80203</p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></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 #248 (“Property Tax Revenue”)</p> <p><b>Petitioners:</b></p> <p style="padding-left: 40px;">Michael Fields and Dave Davia</p> <p><b>v.</b></p> <p><b>Respondents:</b></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><b>Attorney for Petitioners:</b> Suzanne M. Taheri, #23411 WEST GROUP LAW &amp; POLICY 6501 E. Belleview Ave, Suite 375 Englewood, CO 80111 Phone Number: (303) 263-0844 Email: st@westglp.com</p>	<p>Case Number:</p>
<p style="text-align: center;"><b>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2023-2024 #248 (“PROPERTY TAX REVENUE”)</b></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 #248 does not constitute a single subject.

### **STATEMENT OF THE CASE**

#### **A. Procedural History of Proposed Initiative 2023-2024 #248**

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 #248. 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 #248.

2. Whether the Board violated established precedent regarding the single subject requirement when it reversed its single subject determination for Proposed Initiative 2023-2024 #248 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 #248 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 25<sup>th</sup> day of April, 2024

s/Suzanne Taheri  
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](mailto:st@westglp.com)

*Attorney for Petitioners*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25<sup>th</sup> 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 #248 (“PROPERTY TAX REVENUE”)** was served via the Colorado Court’s E-Filing System.

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*Counsel for the Title Board*

*/s/ Suzanne Taheri*

\_\_\_\_\_  
Suzanne Taheri

*Duly signed original on file at West Group*

DATE FILED: April 25, 2024 4:40 PM



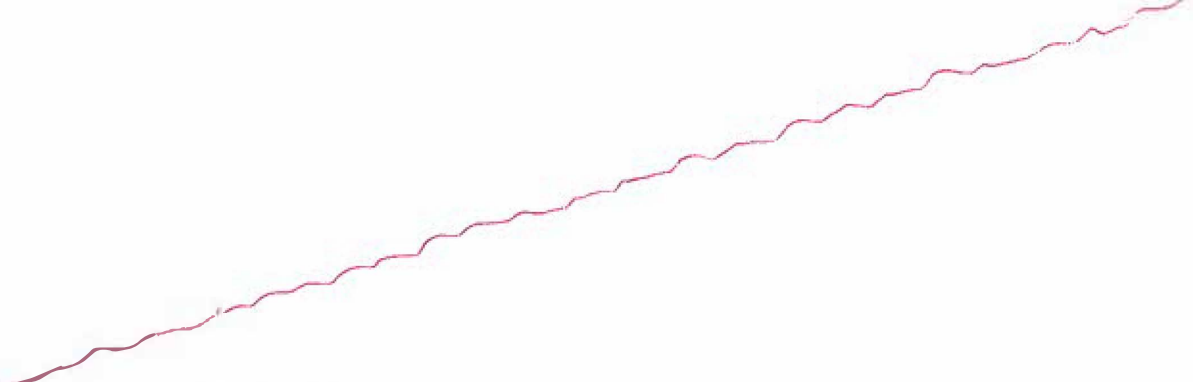
# STATE OF COLORADO

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 #248 'Property Tax Revenue'".....



.....**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 22<sup>nd</sup> day of April, 2024.

*Jena Griswold*

SECRETARY OF STATE





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

**SECTION 1.** In Colorado Revised Statutes, 39-1-102 **add** (15.7) as follows:

**39-1-102. Definitions.** As used in articles 1 to 13 of this title 39, unless the context otherwise requires:

(15.7) “SUBSTANTIAL CHANGE” MEANS A CHANGE IN CLASSIFICATION OR INCLUSION IN A LOCAL DISTRICT THAT IS FINANCED THROUGH TAX INCREMENT FINANCING.

**SECTION 2.** In Colorado Revised Statutes, **add** 39-1-103.9 as follows:

**39-1-103.9. Statewide property tax revenue limit – affirming local control over future mill levy increases – ensuring applicability of valuations of assessment to future mills.**

(1) IF THE TOTAL OF STATEWIDE PROPERTY TAX REVENUE ATTRIBUTABLE TO PROPERTY SUBJECT TO THE VALUATION FOR ASSESSMENTS SET FORTH IN SECTIONS 39-1-104(1) AND IN SECTIONS 39-1-104.2(3)(q) AND (3)(r) IS PROJECTED TO INCREASE BY MORE THAN 4% OVER THE PRECEDING YEAR, STATEWIDE VOTER APPROVAL IS NEEDED FOR LOCAL DISTRICTS TO RETAIN THE ADDITIONAL REVENUE.

(2) FOR THE PURPOSE OF CALCULATING ANY STATEWIDE PROPERTY TAX LIMIT, AN INCREASE IN PROPERTY TAX REVENUE ON PROPERTY WITH A SUBSTANTIAL CHANGE SHALL BE EXEMPTED FROM THE CALCULATION OF THE STATEWIDE PROPERTY TAX LIMIT IN THE FIRST YEAR AFTER THE SUBSTANTIAL CHANGE. THEREAFTER, ANY INCREASE FROM THE DIFFERENTIAL BEFORE AND AFTER THE SUBSTANTIAL CHANGE SHALL BE INCLUDED IN THE CALCULATION OF THE STATEWIDE PROPERTY TAX LIMIT.

(3) NOTHING IN THIS SECTION 39-1-103.9 SHALL BE CONSTRUED AS ALTERING OR LIMITING IN ANY WAY THE RIGHT OF LOCAL DISTRICTS TO ASK VOTERS FOR MILL LEVY OVERRIDES TO FUND THE PROJECTS OR PRIORITIES OF LOCAL DISTRICTS. LOCALLY-APPROVED MILL LEVY INCREASES APPROVED AFTER JANUARY 1, 2025, SHALL NOT COUNT TOWARD ANY STATEWIDE PROPERTY TAX LIMIT.

**SECTION 3.** 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 4.** 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 5.** In Colorado Revised Statutes, 39-3-210 **repeal and reenact with amendments** as follows:

**39-3-210. Protection of school district revenue - reimbursement of local governmental entities.**

(1) 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) OR THE STATEWIDE PROPERTY TAX REVENUE LIMIT SET FORTH IN SECTION 39-1-103.9, 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.

(2) NO LATER THAN APRIL 15 OF EACH YEAR, THE STATE TREASURER SHALL ISSUE A WARRANT TO BE PAID YEARLY TO REIMBURSE LOCAL DISTRICTS FOR LOST REVENUE AS A RESULT OF 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) OR THE STATEWIDE PROPERTY TAX REVENUE LIMIT SET FORTH IN

SECTION 39-1-103.9. REIMBURSEMENTS SHALL BE MADE BY THE GENERAL ASSEMBLY TO THE MAXIMUM EXTENT PRACTICABLE.

**SECTION 6.** Effective date. (1) Sections 1 through 4 of this act take effect on January 1, 2025.

(2) Section 5 of this act takes effect on June 30, 2025.



## **Ballot Title Setting Board**

### **Proposed Initiative 2023-2024 #248<sup>1</sup>**

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 property taxes, and, in connection therewith, limiting growth in statewide property tax revenues from residential and certain nonresidential property to 4% over the prior year; requiring local districts to obtain statewide voter approval to retain property tax revenue above the 4% growth limit; exempting from the growth limit property that has a change in classification or is included in a local district financed through tax increment financing, and mill levy increases approved after January 1, 2025; 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, requiring the state to reimburse local districts for revenue lost, to the extent practicable, and 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 property taxes, and, in connection therewith, limiting growth in statewide property tax revenues from residential and certain nonresidential property to 4% over the prior year; requiring local districts to obtain statewide voter approval to retain property tax revenue above the 4% growth limit; exempting from the growth limit property that has a change in classification or is included in a local district financed through tax increment financing, and mill levy increases approved after January 1, 2025; reducing the assessment rate for certain nonresidential real and personal property

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<sup>1</sup> Unofficially captioned "**Property Tax Revenue**" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

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, requiring the state to reimburse local districts for revenue lost, to the extent practicable, and 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.*

*Board members: Theresa Conley, Christy Chase, Kurt Morrison*

*Hearing adjourned 10:45 A.M.*

**Ballot Title Setting Board**

**Proposed Initiative 2023-2024 #248<sup>1</sup>**

*Hearing April 3, 2024:*

*Single subject approved; staff draft amended; titles set.*

*Board members: Theresa Conley, Christy Chase, Kurt Morrison*

*Hearing adjourned 10:45 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: 7:35 P.M.*

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<sup>1</sup> Unofficially captioned “**Property Tax Revenue**” 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**

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Scott Wasserman and Ann Adele Terry,  
Objectors,

v.

Dave Davia and Michael Fields,  
Designated Representatives of Initiative 2023-2024 #248.

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**MOTION FOR REHEARING ON  
INITIATIVE 2023-2024 #248**

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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 #248 (the “Initiative” or “Initiative 248”), and state:

On April 3, 2024, the Title Setting Board set the following ballot title and submission clause for Initiative 2023-2024 #248:

*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 property taxes, and, in connection therewith, limiting growth in statewide property tax revenues from residential and certain nonresidential property to 4% over the prior year; requiring local districts to obtain statewide voter approval to retain property tax revenue above the 4% growth limit; exempting from the growth limit property that has a change in classification or is included in a local district financed through tax increment financing, and mill levy increases approved after January 1, 2025; 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, requiring the state to reimburse local districts for revenue lost, to the extent practicable, and 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 248 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 Initiative's second and third subjects: the new statewide revenue limit.

The Initiative would cut local property taxes by reducing the assessed value of two classes of property. The assessed value of vacant land, commercial property and industrial property would be cut from 29% to 25.5% and the assessed value of residential property would be cut from 7.15% to 5.7%. See proposed C.R.S. 39-1-104 and -104.2.

In addition to reducing assessed values for certain properties, Initiative 248 includes a new *revenue* limit that applies to local jurisdictions: "If the total of statewide property tax revenue attributable to property subject to the valuation for assessments set forth in sections 39-1-104(1) and 39-1-104.2(3)(q) and (3)(r) is projected to increase by more than 4% over the preceding year, statewide voter approval is needed for local districts to retain the additional revenue." (Proposed C.R.S. § 39-1-103.9(1).) This provision presents two single subject problems.

1. *Reducing assessed values is different from limiting government spending.*

Initiative #248's purpose is to "keep property taxes low" by modifying one component of the calculation (assessed value) used to determine property tax. The measure then takes aim at a different component of local governance: imposing a new limit on the revenue local jurisdictions can keep. Whether a local jurisdiction can retain and spend tax receipts is a different question than what tax can be collected in the first place. A limit in the property tax calculation to cut taxes is not necessarily and properly connected to whether there is an independent spending limitation on a jurisdiction, and it functions as an inducement to voters: accept a reduction in commercial and industrial property taxes and receive in return residential property tax cuts and the possibility of some property tax refund when the 4% limit is reached.

2. *Displacing local voter control over local jurisdiction revenue.*

Currently, whether a local jurisdiction can retain revenue above TABOR limits is a matter of *local* decision—it is up to the voters of the jurisdiction to decide. Initiative #248 creates an entirely new substantive standard and procedure. No longer is a local jurisdiction's ability to retain and spend excess revenue subject to local control (i.e. even if local jurisdiction voters have authorized the retention of excess revenue under TABOR, the measure creates a new, independent revenue restriction). Under Initiative 248, once the 4% threshold has been triggered, what was once a local election decision becomes a matter of a *statewide* election. Voters in Jefferson County are being asked to decide on a local matter in Douglas, Boulder, and Weld Counties, with Denver-area voters considering a question that determines local jurisdiction spending for Western Slope and Eastern Plains communities. This type of new procedure is a separate subject from a tax cut. Cf. *In re Title, Ballot Title and Submission Clause, and Summary for 1997-98 # 30*, 959 P.2d 822, 826 (Colo. 1998) (single subject violation by commingling a local tax cut with procedural changes that affected prior voter-approved revenue and spending increases).

In addition to logrolling, this new procedure also is a "coiled in the folds" problem. Voters are now educated about and used to the TABOR process and ballot questions for retaining local revenue. There is a substantial risk they will not understand that Initiative #248 is layering a new,

statewide process on top of TABOR to retain excess local jurisdiction revenue. This is the type of “surreptitious measure” the single subject prohibits “to prevent surprise and fraud from being practiced upon voters.” C.R.S. § 1-40-106.5(1)(e)(II).

B. 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.

C. 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 248 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).

D. The local backfill provision violates the single subject requirement.

1. *The local backfill provision is so internally contradictory that a clear title cannot be set.*

Proponents’ drafting of the local backfill provision creates an internal inconsistency. On the one hand, the backfill requirement is mandatory. The state treasurer “shall issue” warrants, and “reimbursements shall be made” by the General Assembly. “Shall” does not leave any discretion; rather, as the Court has often explained, “the generally accepted and familiar meaning[.]” of shall is “mandatory”. *People v. District Court, Second Judicial Dist.*, 713 P.2d 918, 921 (Colo. 1986). Thus, Colorado courts have “consistently held that the use of the word ‘shall’ in a statute is usually deemed to involve a mandatory connotation.” *Id.*

On the other hand, the measure then seems to suggest that, at the least, perhaps the General Assembly has some discretion to make reimbursements, because they are made “to the maximum extent practicable.” So which is it: are the local backfill reimbursements mandatory or does the state have discretion? And even if the General Assembly has discretion, the state treasurer does not—the treasurer is obligated to issue the warrants.

As it is unclear from the measure how these questions are to be answered, the Board cannot understand the local backfill requirement sufficiently to set a clear title. *In re 1999-2000 #25*, 974 P.2d 458 at 468-69.

2. *The local backfill requirement violates Supreme Court precedent regarding tax cuts and backfills.*

Aside from the interplay with the K-12 backfill, the local backfill provision violates the single subject requirement and the Court's holding in #84. The prohibited second subject in #84 was forced cuts in state spending to accomplish reimbursements to local jurisdictions due to local tax cuts. The Court explained it thus:

First, the initiatives provide for tax cuts. Second, the initiatives impose mandatory reductions in state spending on state programs. These two subjects are distinct and have separate purposes. While 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.

961 P.2d at 460. Although Initiative #248 does not include the "within all tax and spending limits" provision #84 had, the absence of that language does not alter TABOR's reach.

Moreover, this measure does the same thing as #84. As the fiscal analysis explains, "The measure increases General Fund expenditures for local reimbursements up to \$2.2 billion in FY 2025-26 and FY 2026-27, and larger amounts in later years." A reimbursement obligation of \$2.2 *billion* is not spare change. With funding for K-12 education protected under the measure (if not increased or separately reimbursed to the tune of nearly \$900 million), the General Assembly will have to look to other monies that support state programs to meet the reimbursement requirement. Forcing these types of changes to the state budget because of local tax cuts presents "precisely the types of mischief which the single subject requirement was intended to prevent." *Id.*

WHEREFORE, Objectors move the Title Board to strike the titles set and return Initiative #248 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 #248** 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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6501 E. Belleview Ave., Suite 375  
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s/ Erin Mohr



## Legislative Council Staff

*Nonpartisan Services for Colorado's Legislature*

### Fiscal Summary

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**Date:** April 2, 2024      **Fiscal Analyst:** David Hansen (303-866-2633)

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#### LCS TITLE: PROPERTY TAX REVENUE

#### Fiscal Summary of Initiative 248

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](https://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 government by an estimated \$3.0 billion for property tax year 2025, \$3.1 billion for property tax year 2026, and by larger amounts in later years.

In years when statewide property tax revenue for certain property classes is projected to grow more than 4 percent over the prior year, the measure conditionally decreases property tax revenue further, unless voters approve a ballot measure allowing for the additional revenue to be retained. Based on the December 2023 Legislative Council Staff forecast for assessed values, statewide assessed value is not expected to grow by more than 4 percent in property tax year 2026. Therefore, property tax revenue growth for 2026 will be less than the limit in the measure if revenue growth is proportional to growth in assessed values. A forecast of assessed value is not available beyond property tax year 2026.

The measure requires the state to reimburse local districts for lost revenue as a result of the measure to the maximum extent the state deems practicable. Additionally, 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 for revenue for local governments and school districts up to \$2.2 billion each year, and larger amounts in later years depending on the amount of reimbursements as determined in future budgets.

**State expenditures.** The measure is estimated to increase state expenditures up to \$3.0 billion in FY 2025-26 and \$3.1 billion in FY 2026-27, and by larger amounts in later years.

*Local reimbursements.* The measure increases General Fund expenditures for local reimbursements up to \$2.2 billion in FY 2025-26 and FY 2026-27, and larger amounts in later years. This estimate reflects the amount required to fully reimburse local governments, other than school districts, for the reduction in revenue described in the Local Government Impact section above. The analysis assumes the expenditures will be paid from the General Fund as the measure does not specify the source of the reimbursements. The amount of reimbursements to local governments will be determined by the General Assembly based on available funding.

*School finance.* The measure increases expenditures for the state aid obligation for school finance by an estimated \$870 million in FY 2025-26 and \$890 million in FY 2026-27.

*Department of Local Affairs.* The measure increases General Fund expenditures in the Department of Local Affairs, Division of Property Taxation by about \$24,700 each year for personnel costs to process information for local reimbursements.

*Office of Information Technology.* Ongoing annual reimbursements required by the measure will require programming costs for the Governor's Office of Information Technology to upgrade the Division of Property Taxation's online portal estimated at about \$155,000.

**Economic impacts.** Reducing assessment rates and conditionally limiting property tax revenue growth 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 local governments, which will reduce available funding for other state services. It may also decrease local government revenue relative to the amount that would otherwise be collected and retained, reducing available funding for local services. 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.