


Colorado Supreme Court 2 East 14 <sup>th</sup> Avenue, Denver, CO 80203	DATE FILED: April 4, 2024  RECEIVED IN THE SUPREME COURT  APR 04 2024  OF THE STATE OF COLORADO Cheryl L. Stevens, Clerk  ▲ FOR COURT USE ▲
In the Matter of the Title for Proposed Initiative #148   Petitioner: Peter Simmons, &  Respondent: Title Board :Theresa Conley, Kurt Morrison and Ed DeCecco	Supreme Court Case Number Number: <u>24SA86</u>
Petitioner: <u>Peter Simmons</u> Address: <u>21395 E Greenwood Pl Aurora CO 80013</u> Phone: <u>720-446-8853</u> E-Mail: <u>peter.simmons@selfawareapps.com</u>	
<b>Opening Brief</b>	

**1. Certificate of Compliance**

I certify that this brief complies with the requirements of Colorado Appellate Rules (C.A.R.) 28 and 32. Including:

My brief has 1770 **words**, which is not more than the 9,500 word limit.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of Colorado Appellate Rules 28 and 32.

  
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Peter Simmons Petitioner

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## **3. Table of Authorities**

### **Cases**

Holding that in determining whether a proposed measure contains more than one subject, the court may not interpret the language of the measure or predict its

application if it is adopted. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000)

Holding that in order to violate the single subject requirement, the text of the measure must relate to more than one subject and have at least two distinct and separate purposes which are not dependent upon or connected with each other. The single subject requirement is not violated if the matters included are necessarily or properly connected to each other. In re Proposed Ballot Initiative on Parental Rights, 913 P.2d 1127 (Colo. 1996).

Holding that in order to pass constitutional muster, a proposed initiative must concern only one subject. In other words, it must effectuate or carry out only one general object or purpose. In re Ballot Title 2005-2006 No. 73, 135 P.3d 736 (Colo. 2006); In re Ballot Title 2005-2006 No. 74, 136 P.3d 237 (Colo. 2006).

Holding that the intent of the requirement that an initiative be limited to a single subject is to ensure that each proposal depends on its own merits for passage.

Matter of Proposed Initiative 1996-17, 920 P.2d 798 (Colo. 1996); Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Holding that subsection (1)(a)(I) prohibits the joinder of incongruous subjects in the same petition. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo.1998).

Holding that the intent of the single-subject requirement is to prevent voters from being confused or misled and to ensure that each proposal is considered on its own merits. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998).

Holding that the single-subject requirement must be liberally construed so as not to impose undue restrictions on the initiative process. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998). Submission Clause, 917 P.2d 1277 (Colo. 1996)

Holding that the single-subject requirement is not violated simply because an initiative with a single, distinct purpose spells out details relating to its implementation. As long as the procedures specified have a necessary and proper relationship to the substance of the initiative, they are not a separate subject. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998); In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

Holding that the proposed measure that tends to effect or to carry out one general purpose presents only one subject. Consequently, minor provisions necessary to effectuate the purpose of the measure are properly included within its text. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

Holding that just because a proposal may have different effects or that it makes policy choices that are not invariably interconnected does not mean that it necessarily violates the single-subject requirement. It is enough that the provisions

of a proposal are connected. Here, the initiative addresses numerous issues in a detailed manner. However, all of these issues relate to the management of development. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

Holding that to evaluate whether or not an initiative effectuates or carries out only one general object or purpose, supreme court looks to the text of the proposed initiative. The single-subject requirement is not violated if the “matters encompassed are necessarily or properly connected to each other rather than disconnected or incongruous”.

Stated another way, the single-subject requirement is not violated unless the text of the measure “relates to more than one subject and has at least two distinct and separate purposes that are not dependent upon or connected with each other”. Mere implementation or enforcement details directly tied to the initiative’s single subject will not, in and of themselves, constitute a separate subject. Finally, in order to pass the single-subject test, subject of the initiative should also be capable of being expressed in the initiative’s title. In re Ballot Title 2005-2006 No. 73, 135 P.3d 736 (Colo. 2006); In re Ballot Title 2005-2006 No. 74, 136 P.3d 237 (Colo. 2006).

Holding that the fact that provisions of measure may affect more than one statutory provision does not itself mean that measure contains multiple subjects. Where initiative requiring background checks at gun shows also authorizes licensed gun

dealers who conduct such background checks to charge a fee, the initiative contains a single subject. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

Holding that single-subject requirement eliminates the practice of combining several unrelated subjects in a single measure for the purpose of enlisting support from advocates of each subject and thus securing the enactment of measures that might not otherwise be approved by voters on the basis of the merits of those discrete

measures. In re Petitions, 907 P.2d 586 (Colo. 1995); In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

Holding that a proposed measure impermissibly includes more than one subject if its text relates to more than one subject and if the measure has at least two distinct and separate purposes that are not dependent upon or connected with each other. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996); In re Ballot Title 1999-2000 No.235(a), 3 P.3d 1219 (Colo. 2000)

Holding that the state constitutional single subject requirement for proposed ballot initiatives is intended to ensure that each proposal depends upon its own merits for passage, and to prevent surprise and fraud from being practiced upon voters. In Matter of Title, Ballot Title, 2016, 374 P.3d 460.

Holding that an election provision in a measure does not constitute a separate subject if there is a sufficient connection between the provision and the subject of the initiative. In re Ballot Title 1999-2000 No. 235(a), 3 P.3d 1219 (Colo. 2000).

Holding that the title board is vested with considerable discretion in setting the title, ballot title and submission clause, and summary. In reviewing actions of the title board, court must liberally construe the single-subject and title requirements for initiatives. Matter of Title, Ballot Title, 917 P.2d 292 (Colo. 1996); Matter of Title, Ballot Title, Submission Clause, 917 P.2d 1277 (Colo. 1996).

Holding that a proposed initiative contains only one subject. Although initiative is comprehensive, all of its numerous provisions relate to the single subject of reforming petition rights and procedures. Matter of Petition for Amend. to Const., 907 P.2d 586 (Colo. 1995).

Holding that the texts of the initiatives encompass the single subject of gaming activities conducted by nonprofit organizations. The initiatives detail what games of chance may be conducted, who may conduct such games, and how such games may be conducted. In re Proposed Init. Bingo-Raffle Lic. (I), 915 P.2d 1320 (Colo. 1996).

Holding that the proposed initiative did not violate the single-subject requirement where “the public’s interest in state waters” was sufficiently narrow and connected

with both a “public trust doctrine” and the assignment of water use rights to the public or a watercourse. Matter of Title, Ballot Title, Submission Clause, 917 P.2d 1277 (Colo. 1996).

Holding that the proposed initiative did not contain more than one subject merely because it provided for alternative ways to accomplish the same result. The alternate ways were related to and connected with each other and plainly did not violate the single-subject requirement. Matter of Proposed Initiative 1996-17, 920 P.2d 798 (Colo. 1996).

Initiative that assessed fees for water pumped from beneath trust lands and then allocated the pumping fees for school finance was not considered two subjects by the court because the theme of the purpose of state trust lands and the educational recipient provide a unifying thread. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Holding that the proposed initiative concerning uniform application of laws to livestock operations was upheld without opinion against challenges on basis of single-subject requirement and on other grounds. Matter of Proposed Initiative 1997-98 No. 112, 962 P.2d 255 (Colo. 1998).



Holding that the measure to recognize marriage between a man and a woman as valid does not contravene the single subject requirement of this section. In re Ballot Title 1999-2000 Nos. 227 and 228, 3 P.3d 1 (Colo. 2000)

Holding that a proposed initiative that employs a growth formula limiting the rate of future development, delineates a system of measurement to determine the “base developed” area of each jurisdiction, allows for alternative treatment of commenced but not completed projects, excludes low-income housing, public parks and open space, and historic landmarks, and establishes a procedure for exemptions does not violate the constitutional prohibition against single subjects. In re Ballot Title 1999-2000 No. 235(a), 3 P.3d 1219 (Colo. 2000)

Holding that a proposed initiative that prohibits school districts from requiring schools to provide bilingual education programs while allowing parents to transfer children from an English immersion program to a bilingual program does not contain more than one subject. In re Ballot Title 1999-2000 No. 258(A), 4 P.3d 1094 (Colo. 2000).

Holding that a proposed initiative that modifies only the existing rights and interests in water between private individuals and the public is a cohesive proposal to create a new water regime and contains a single subject of public control of waters. Its provisions are necessarily and properly connected to each other because

they define the purpose of the initiative, describe the broadened scope of the public's control over the state's water resources, and outline how to implement and enforce a new dominant public water estate. In re Ballot Title 2011-2012 No. 45, 2012 CO 26, 274 P.3d 576.

Holding that a proposed initiative that requires a statewide setback for new oil and gas development in this state and establishes that the statewide setback requirement is not a taking of private property under the state constitution contains a single subject. The "not a taking" provision applies only to the statewide setback requirement that would be established and is, therefore, properly connected to the requirement. In re Ballot Title 2013-2014 Nos. 85, 86, 87, 2014 CO 62, 328 P.3d 136.

### **Statutes**

**C.R.S. 1-40-106.5, 1-40-106(1)(a)**

**C.R.S 1-40-106(3)(f)**

**C.R.S. 1-40-106(4)(a),(d)**

**C.R.S. 1-40-106(4)**

**C.R.S. 1-40-107(1)**

**Colo. Const. Art. V Sec. 1**

### **Other Authorities Cited**

Am. Jur. 2d Initiative and Referendum §44, Review for Compliance With Single-Subject Requirement.

Law reviews. For article, “The Single-Subject Requirement For Initiatives”, see 29 Colo. Law. 65 (May 2000).

Florin V. Ivan, Revising Judicial Application of the Single Subject Rule to Initiative Petitions, 66 N.Y.U. Ann. Surv. Am. L. 825 (2011)

**Peter Simmons (hereafter “Petitioner”) submits his opening brief.**

**Statement of Issues Presented for Review**

1. Whether proposed initiative #148 “reducing residential real property taxes” violates the single subject requirement of Colo. Const. Art. V, Sec 1 and C.R.S. 1-40-106.5

2. Whether the title of proposed initiative #148 should be set according to CRS 1-40-106(3)(f) to “Shall funding available for counties, school districts, water districts, fire districts and other districts funded, at least in part, by property taxes be impacted by a reduction of \$3.7 billion dollars to all districts in the first full fiscal year of 2024 in property tax revenue by permanently setting the actual value of residential real property to the price paid for the property, reducing the appraisal rate of residential real property to 6.7%, setting the mill rate for residential real property to the mill rate that existed as of January 1 2021 and requiring that an increase in either the appraisal rate or the mill rate for residential real property be approved by a yes vote of 51% of the registered voters?”

## **Statement of the Case**

Peter Simmons and Laura Palmer (hereafter “Proponents”) after several reviews and comment hearings before the Offices of Legislative Council and Legislative Legal Services submitted original, amended and final version of Proposed Initiative #148 to the Secretary of State, seeking to have title set pursuant to C.R.S. 1-40-105(4)

The Secretary of State Title Board’s (hereafter “Board”) hearing, pursuant to C.R.S 1-0-106, originally scheduled for March 6, 2024, was continued to March 7, 2024, where the Board found that setting the mill rate for residential real property to that which existed as of January 1, 2021 violated the single subject requirement but that the requirement for a “yes” vote of 51% of the registered voters to increase either the appraisal rate or mill rate did not violate the single subject requirement.

On March 7, 2024, Proponents moved for a rehearing, pursuant to C.R.S. 1-4-107(1). The Board set the rehearing for March 20, 2024, at which the Board maintained that Proponents misunderstood the Board’s position on the setting of the mill rate. The Board then found that the requirement for a “yes” vote of 51% of the registered voters to increase the appraisal rate or the mill rate violated the

single subject requirement – directly contradicting the position the Board took on March 7, 2024. The Board also reaffirmed that setting the mill rate for residential real property in the proposed initiative violated the single subject requirement. The Board refused to set title.

Petitioner filed an appeal with the Supreme Court on March 22, 2024 after the Board provided a certified copy of their determination late in the afternoon of March 21, 2024.

### **Statement of the Facts**

#148, if enacted, would modify the Colorado Constitution and relevant statutes to permanently set the actual value of residential real property to the price paid for the property, fix the appraisal of residential real property rate at 6.7%, set the mill rate of residential real property to the mill rate that existed as of January 1, 2021, require a “yes” vote of 51% of the registered voters in Colorado to increase the appraisal rate of residential real property and require a “yes” vote of 51% of the registered voters in the taxing district to increase the mill rate for residential real property.

## **Argument Summary**

The proposed initiative contains one single subject “reducing residential real property taxes”. To achieve this subject, the initiative sets the actual value of residential real property permanently to the price paid for the property in an arms length sale, sets the appraisal rate to 6.7%, the mill rate to that which existed as of January 1, 2021 and requires a “yes” vote of 51% of the registered voters to increase either the appraisal rate or the mill rate. All the initiative’s actions are necessary and connected to the subject of “reducing residential real property taxes”, which has the one distinct purpose and effect of reducing residential real property taxes.

## **Argument**

**Proposed Initiative Does Not Violate Single Subject Requirements Because It Contains One Distinct Purpose And One Clear Effect.**

### **A. Standard of Review:**

In reviewing the Board’s actions, Court must liberally construe the single subject and title requirements for initiatives. *In re Matter of Title, Ballot Title, 917 P.2d*

292 (Colo. 1996). Further, the Court’s review shall not include an analysis of the merits of the proposed initiative, an interpretation as to the meaning of the language contained within the Proposed Initiative, or speculation as to how the initiative could or should be applied once enacted. *In re Proposed Initiative Concerning “Auto Ins. Coverage”*, 877 P.2d. 853, 856 (Colo 1994). The purpose of the single subject requirement is to “prevent joining in the same act disconnected and incongruous measures”. *In re Ballot Title 1999-2000 #200A*, 992 P. 2d 27, 30 (Colo 2000). The Court’s review is limited as to whether the initiative contains a single subject and whether the single subject can be clearly expressed in the title.

**B. Proposed Initiative complies with the single subject requirement of Colo. Const. Art. V Sec 1 and 1-40-106.5 (C.R.S)**

Under Colorado law, any changes to state law proposed through a ballot initiative must be limited to a single subject and that subject must be clearly expressed in the initiative title. *Colo. Const. Art. V, Sec. 1; C.R.S. 1-40-106(1)(a)*. To determine whether an initiative has violated the single subject requirement, the Court shall first look to the language of the proposed initiative. *In re Ballot Title 2005-2006 #75*, 138P.3d 267, 271 (Colo. 2006). Applying customary rules of statutory construction in its review of the proposed initiative as a whole, Court shall



*Id.* *In re Ballot Title 2009-2010 #45*, 234 P.3d 642, 646 (Colo. 2010). The Court shall determine the purpose and effect of Proposed Initiatives from their respective plain language. Even if the Court finds that the Proposed Initiatives “tend to carry out one general broad objective or purpose” this conclusion shall not be enough to establish a violation of the single subject requirement so long as the individual statements, when taken together, have the effect of one purpose or objective. *In re Ballot Title 2009-2010 #45* 234 P.3d at 646. Neither does an election provision in a measure constitute a separate subject if there is a sufficient connection between the provision and the subject of the initiative. *In re Ballot Title 1999-2000 No. 235(a)*, 3 P.3d 1219 (Colo. 2000). Proposed initiative #148 has one distinct purpose and one effect – to reduce residential real property taxes.

**C. The subject matters included in the Proposed Initiative are connected.**

As long as an initiative carries out a general purpose, its provisions are necessarily or adequately connected to each other, or alternatively, that its implementing provisions are directly tied to the initiative’s central focus, the Court shall not find that a single subject requirement has occurred. *In re Proposed Ballot Initiative on Parental Rights* 913 P.2d 1127, 1131 (Colo 1996). *In re 1999-2000 #258(A)* 4 P.3d at 1097.

While initiatives can and sometimes do result in multiple changes to state law or public agencies or entities, so long as such effects contribute to the initiative's central focus, such as "instruction of all public schools using the English language" in Proposed Initiative 1999-200 #258(A) a single subject violation has not occurred. "The mere fact that a constitutional amendment may affect" separate pre-existing governmental powers, this fact, when taken alone, does not indicate a breach of the single subject requirement.

The subject of proposed initiative #148 is "reducing residential real property tax". The property tax levy is computed using three components: the actual value (commonly known as appraised value), multiplied by the appraisal rate multiplied by the mill rate. These are the necessary and connected components of the tax levy on a property. Accordingly, proposed initiative #148 permanently sets the actual value of residential real property purchased in an arms length transaction to the sale price. The average length of ownership of residential real property in Colorado ranges from 7 years in Greeley to 11 years in Boulder. *NAR* <https://www.nar.realtor/blogs/economists-outlook/how-long-do-homeowners-stay-in-their-homes> The appraised value of a residential real property in 2027 (seven years ago) is less than 60% of the appraised value in 2024 – meaning a potential reduction of 40% in the property taxes on residential real property. #148 fixes the

appraisal rate at 6.7% and the mill rate to that which existed on January 1, 2021.

#148 acts upon all the necessary and connected components of the residential real property tax levy in order to reduce residential real property taxes. The fiscal summary for #148 shows that the initiative achieves its subject.

To ensure that “fraud and surprise” is not perpetuated upon the voters of Colorado by implementing a temporary and transient reduction in real residential property taxes, #148 raises the threshold for increasing the appraisal rate or the mill rate to a yes vote of 51% of the registered voters. This is a necessary and connected component of reducing residential real property taxes.

To ensure that no discriminatory classes are created when residential real property taxes are reduced, #148 enables those who acquired their residential real property in a non-arms length transaction to permanently set their actual value to the initial appraisal value of the property. This ensures that a child who acquired their residential real property from a parent (a non-arms length transaction) enjoys the same reduction in residential real property taxes as someone who acquired their property in an arms length transaction. This is a necessary and connected component of reducing residential real property taxes in a fair and equitable manner consistent with the Constitution and statutes of Colorado.

**A D. Title for #148 should be set.**

The single subject of proposed initiative #148 is “reducing residential real property taxes”. Title should be set according to CRS 1-40-106(3)(f) to “Shall funding available for counties, school districts, water districts, fire districts and other districts funded, at least in part, by property taxes be impacted by a reduction of \$3.7 billion dollars to all districts in the first full fiscal year of 2024 in property tax revenue by permanently setting the actual value of residential real property to the price paid for the property, reducing the appraisal rate of residential real property to 6.7%, setting the mill rate for residential real property to the mill rate that existed as of January 1 2021 and requiring that an increase in either the appraisal rate or the mill rate for residential real property be approved by a yes vote of 51% of the registered voters?”

**Conclusion**

For the above reasons, I respectfully request the Court to rule that #148 contains a single subject and to set the initiative’s title accordingly.

Peter Simmons Petitioner



## 9. Copies Delivered

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a copy of this document to:

1 Party Name: Ms. Theresa Conley

Attorney Name: (*if any*) \_\_\_\_\_

Full Address: Secretary of State 1700 Broadway Suite <sup>550</sup>~~200~~ Denver CO  
80290

2 Party Name: Mr. Kurt Morrison *mailed*

Attorney Name: (*if any*) \_\_\_\_\_

Full Address: Ralph L. Carr Judicial Building 1300 Broadway, 10th  
Floor Denver, CO 80203

3 Party Name: Mr. Ed DeCecco

Attorney Name: (*if any*) \_\_\_\_\_

Full Address: 200 E Colfax Ave Rm 091 Denver, CO 80203-1716

## 10. Signature & Date

Signature: \_\_\_\_\_ Dated: April 4<sup>th</sup> 2024