

**COLORADO SUPREME COURT**

2 East 14<sup>th</sup> Avenue  
Denver, CO 80203

Original Proceeding  
Pursuant to Colo. Rev. Stat. § 1-40-107(2)  
Appeal from the Ballot Title Setting Board

In the Matter of the Title, Ballot Title, and  
Submission Clause for Proposed Initiative  
2023-2024 #245 (“Valuation for Assessments”)

**▲ COURT USE ONLY ▲**

**Petitioners:**

Michael Fields and Dave Davia

v.

**Respondents:**

Scott Wasserman and Ann Adele Terry,  
Objectors

and

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

**Attorney for Petitioners:**

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Case Number: 24SA121

**PETITIONERS’ OPENING BRIEF**

## CERTIFICATE OF COMPLIANCE

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

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

It contains **1,988** words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

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

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

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/ Suzanne Taheri  
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## **ISSUE ON REVIEW**

Whether the Title Board erred when it granted Respondents' Motion for Rehearing and found that Proposed Initiative 2023-2024 #245 contains multiple subjects.

## **STATEMENT OF THE CASE**

The imposition, collection, and spending of property taxes occurs through a comprehensive system found in the Colorado Constitution and state statutes to meet the needs of local districts that rely on property taxes. In light of the pressing burdens on taxpayers, Proposed Initiative 2023-2024 #245 ("Initiative #245") was crafted to provide property tax relief and to mitigate the resulting revenue effects on the jurisdictions that rely on property taxes.

Initiative #245 provides property tax relief to taxpayers by: 1) Reducing the percentage of the value of certain nonresidential properties that can be used to calculate taxes due on those properties; 2) Reducing the percentage of the value of both single family and multifamily residential properties that can be used to calculate taxes due on those properties; and 3) Providing that the revenue loss resulting from the reductions in valuation percentage for these properties may not reduce the funding allocated to school districts under the Public School Finance Act of 1994.

Petitioners appeal the Title Board’s determination that Initiative #245 contains multiple subjects because it reduces property tax revenue by adjusting the valuation percentage and also contains a provision specifically protecting school funding from the consequences of the reduction in revenue.

At the Title Board meeting on April 3, the Board met and found that the measure contained a single subject and set a ballot title. At the April 18, 2024 rehearing, the Board reversed title setting, finding that the measure contained multiple subjects. Petitioners now challenge that finding.

### **SUMMARY OF THE ARGUMENT**

Initiative #245’s provision prohibiting reductions in funding for public schools as a result of the passage of #245 is necessarily and properly connected to the reductions in revenue resulting from the initiative’s reduction in assessment rates. Initiative #245 is a single subject.

### **ARGUMENT**

#### **A. Standard of review and preservation.**

The Title Board has jurisdiction to set a title only when a measure contains a single subject. *See* Colo. Const. art. V, § 1(5.5). In doing so, the Court does “not address the merits of the proposed initiative” or “suggest how it might be applied if enacted.” *In re Title, Ballot Title, & Submission Clause for 2019-2020 #3*, 2019 CO

57, ¶ 8. Nor can the Court “determine the initiative’s efficacy, construction, or future application.” *In re 2013-2014 #76*, 2014 CO 52, ¶ 8. To satisfy the single-subject requirement, the “subject matter of an initiative must be necessarily and properly connected rather than disconnected or incongruous.” *Id.*

Proponents objected to the single subject finding and the issue is preserved. *See Rehearing Before Title Board on Proposed Initiative 2024-2024 #248* (April 18, 2024), <https://csos.granicus.com/player/clip/451> (statement begins at 12:01:57).

**B. Initiative #245 is a single subject.**

Article V, § 1 (5.5) of Colorado Constitution requires citizen-initiated legislation to contain a single subject. The single subject requirement is satisfied for proposals containing “a single, if quite general, subject,” even where the measure “is comprehensive” so long as “all of its numerous provisions relate to the single purpose” of the referred measure. *In re Title, Ballot Title & Submission Clause (Petitions)*, 907 P.2d 586, 590–91 (Colo. 1995).

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).

The single subject of Initiative #245 is property tax relief. All of its provisions relate to and implement that single subject. Initiative #245 provides property tax relief by lowering the percentage of the value for certain residential and commercial properties that can be taxed. Because the passage of Initiative #245 would reduce the amount of property tax revenue received by local districts, as part of its implementation, Section 3 of the measure also contains a provision prohibiting a reduction of state education funding as a result of the passage of the measure.

A ballot measure “is not transformed into a multisubject proposal simply because it specifies mechanisms for carrying out the [measure’s] single subject.” *In re Title, Ballot Title & Submission Clause for 1999-2000 #200A*, 992 P.2d 27, 31 (Colo. 2000). While Initiative #245 does not specify a mechanism for protecting education funding, it is not required to do so. The prohibition against reducing education funding relates directly to the execution of the measure’s provisions.

While Initiative #245 does not directly provide a mechanism for protecting education funding, it still maintains a backfill provision that the Court has routinely upheld. In the initial hearing on Initiative #245, the Title Board set the following



ballot title which clearly described the key components of the measure and properly noted the prohibition on reduction in education funding:

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 Colorado Supreme Court has held that replacing lost revenue does not create a second subject. In *In re Amend TABOR No. 32*, the court considered a measure that would have established a tax credit “that applies to six state or local taxes” and would “require[] the state to replace on a monthly basis local revenues that are lost because of the tax credit provision.” 908 P.2d 125, 129 (Colo. 1995). That measure contained a single subject because the “provision of the Initiative requiring mandatory replacement of lost local government revenues is dependent upon and closely connected to the \$60 tax credit.” *Id.*

The Court has routinely upheld these backfill provisions as properly connected to property tax reductions. In 2021, the Court upheld single subject in for a property

tax reduction and a backfill to reimburse local governments for the homestead exemption. *Initiative 2021-2022, #27, 2021SA151*. Just last year, the Court again found a measure that created an annual limit on property tax increases with a provision offsetting revenue loss for fire districts did not create an additional subject. *Initiative 2023-2024 #21, 23SA109*.

The same is true here: because Initiative #245's reductions to property tax assessment formulas will decrease local revenue, requiring the State not reduce education funding is "dependent upon and closely connected" to such assessment rate reductions. See *In re Amend TABOR No. 32*.

The finding of the Title Board that the measure contains two subjects is inconsistent with prior findings in measures similarly structured to lower taxes and backfill lost revenue.

**C. Reducing property taxes and insulating school districts from associated revenue loss is not "logrolling."**

The single-subject requirement serves two functions: It ensures that each proposed measure depends upon its own merits for passage by preventing inclusion in one measure subjects having no necessary or proper connection for the purpose of enlisting support for the measure from separate advocates for each of the subjects, and it prevents fraud and surprise from being practiced upon voters through the inadvertent passage of a surreptitious provision coiled up in the folds of a complex

measure. *Title, Ballot Title & Sub. Clause for 2015-2016 No. 132*, 2016 CO 55, 374 P.3d 460.

Contrary to the Title Board's finding, Initiative #245 does not join advocates for property tax relief with advocates for increased education funding because Initiative #245 does not increase education funding. It merely provides that when the voters authorize a reduction in their property taxes statewide and across all taxing districts with a change in the valuation percentage, the state funding for education cannot *decrease as a result*.

The provisions of Section 3 of Initiative #248 are necessarily and properly connected to the provisions of Sections 1 and 2 of the measure because Section 3 of the measure mitigates the consequences of the property tax reduction on school districts by requiring the General Assembly to maintain current funding under the Public School Finance Act of 1994 through another source. Although the mandate is clear, Initiative #245 leaves the General Assembly to choose the source of that funding.

**D. Protection of education funding is properly connected to property tax relief.**

To evaluate whether or not an initiative effectuates or carries out only one general object or purpose, the 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, the 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).

At the initial hearing on Initiative #245, the Title Board agreed that the measure constituted a single subject and set an appropriate ballot title. The ballot title that was set at the initial hearing and subsequently reversed on rehearing clearly articulated the purpose and effects of the measure. A reduction of property taxes in general and a requirement to maintain state education funding despite that reduction are directly connected. Both provisions are directly related to state tax policy, and the proponents of Initiative #245 are entitled to craft an initiative that reduces one mechanism of government funding for a specific state program while simultaneously

requiring the General Assembly to keep revenue for that program at current levels through supplemental funding of their choice.

### **CONCLUSION**

Proposed Initiative 2023-2024 #245 is a single subject. The measure aims to provide property tax relief to residential and commercial landowners. Proponents are aware that a reduction in property taxes would reduce the state funding available for school districts, which was not a desired consequence of property tax reduction. In order to prevent a reduction in state education funding as a result of the passage of Initiative #245, Proponents included a provision that effectively requires the state to backfill any loss in state education funding from the property tax reduction. Initiative #245 leaves it to the General Assembly to determine the source of any required backfill funding.

The intent and requirements of Initiative #245 are clear. There is nothing coiled in the folds of the initiative, and because the measure maintains, but does not increase education funding in the face of a reduction in property tax revenue, the backfill mandate does not create a second subject.

The decision to reduce property taxes is properly and necessarily connected to the policy decision to keep state education funding at current levels. State education funding is one of many state programs that derive revenue from property taxes.

Initiative #245 is a single subject because it reduces the source of revenue and makes a related mandate regarding programs that cannot face funding reduction because of the reduction property tax revenue.

Respectfully submitted May 4, 2024,

s/Suzanne Taheri  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 4<sup>th</sup> day of May, 2024, a true and correct copy of the **PETITIONERS' OPENING BRIEF** was served via the Colorado Court's E-Filing System to the following:

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