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COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203	
Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2024) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #245 ("Valuation for Assessments") **Petitioners:** Michael Fields and Dave Davia, **v.** **Respondents**: Scott Wasserman and Ann Adele Terry, **Title Board**: Theresa Conley, Christy Chase, and Kurt Morrison.	▲ **COURT USE ONLY** ▲ Case No. 2024SA121
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THE TITLE BOARD'S ANSWER BRIEF

CERTIFICATE OF COMPLIANCE

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

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

It contains 1,159 words.

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.

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TABLE OF CONTENTS

REPLY ARGUMENT 1

I. Petitioners identify no relevant caselaw to support their argument that Proposed Initiative 2023-2024 #245 complies with the single subject requirement. 1

A. The proposed measure limits the State's flexibility to replace lost local revenue. 1

B. The proposed measure does not specify a funding source for reimbursements to local governments. 5

CONCLUSION 6

TABLE OF AUTHORITIES

PAGE(S)

CASES

In re Amend TABOR No. 32,
908 P.2d 125 (Colo. 1995) 1, 2, 4

In re Title, Ballot Title & Submission Clause, Summary for 1997-98 #84,
961 P.2d 456 (Colo. 1998) 1, 2, 3, 4, 6, 7

People v. Hunsaker,
2020 COA 48 7

STATUTES

§ 22-54-106, C.R.S. 3

OTHER AUTHORITIES

Rehearing Before Title Board on Proposed Initiative 2024-2024 #248 (April 18, 2024), https://csos.granicus.com/player/clip/451 7

REPLY ARGUMENT

I. Petitioners identify no relevant caselaw to support their argument that Proposed Initiative 2023-2024 #245 complies with the single subject requirement.

Petitioners argue the proposed initiative contains a single subject because "prohibiting reductions in funding for public schools … is necessarily and properly connected to … the initiative's reduction in [property tax] assessment rates." Petitioners' OB, p 6. In making this argument, Petitioners rely on three cases: (1) *In re Amend TABOR No. 32*, 908 P.2d 125, 129 (Colo. 1995); (2) *Initiative 2021-2022, #27*, 21SA151; and (3) *Initiative 2023-2024 #21*, 23SA109. All three cases are distinguishable.

A. The proposed measure limits the State's flexibility to replace lost local revenue.

Unlike the measure at issue in *In re Amend TABOR No. 32*, the proposed initiative here "impose[s] … limitations on the state in terms of the manner by which the state replace[s] lost local revenue." *In re Title, Ballot Title & Submission Clause, Summary for 1997-98 #84*, 961

P.2d 456, 459 (Colo. 1998). In *In re 1997-98 #84*, the Court considered a pair of measures that would "lower various state and local taxes and would require the state to replace affected local revenue loss." *Id.* at 457. The measures also clarified that "the state's revenue replacement obligation is subject to all tax and spending limits." *Id.* The Court concluded that the measure had two subjects: "provid[ing] for tax cuts" and "impos[ing] mandatory reductions in state spending on state programs." *Id.* at 460. In reaching this conclusion, the Court rejected the argument that *In re Amend TABOR No. 32* governed its analysis. *Id.* at 459.

The Court explained that the measure at issue in *In re Amend TABOR No. 32*—which "applied a $60 tax credit to six state or local taxes and required the state to replace … the local government revenues … lost as a result of the tax credits,"—"did not impose any limitations on the state in terms of the manner by which the state replaced lost local revenue." *Id.* Rather, the measure "simply required [the State] to replace the revenue that localities lost as a result of the

tax credit." *Id.* In contrast, the measure at issue in *In re 1997-98 #84* "provide[ed] that 'the state is required to replace monthly the local government revenue affected by the tax cuts established by this measure, *within all tax and spending limits*.'" *Id.* (emphasis in original). The Court explained that because "the 'within all tax and spending limits' provision … include[d] the spending and revenue limits imposed by [TABOR], the state w[ould] be able to replace local revenues lost through tax cuts only if it reduce[d] existing state spending on state programs." *Id.* at 460.

The measure here contains a similar provision preserving the status quo. Specifically, the measure proposes "prohibiting the reduction in funding that school districts receive … due to the reduction in assessment rates". Record, p 5, filed Apr. 25, 2024. Under current law, the State would be required to reimburse school districts for funding shortfalls resulting from the proposed property tax cut. § 22-54-106(1)(b), C.R.S. Because the measure prohibits the State from reducing education spending, the State would have no flexibility to reduce the

more than $800 million annual payment it would owe to school districts,[1] necessitating cuts to other states services. Record, p 13. This provision therefore "impose[s] … limitations on the state in terms of the manner by which the state replace[s] lost local revenue," *In re 1997-98 #84*, 961 P.2d at 459, distinguishing the measure here from the measure at issue in *In re Amend TABOR No. 32*.

In sum, like the measure at issue in *In re 1997-98 #84*, and unlike the measure at issue in *In re Amend TABOR No. 32*, Proposed Initiative 2023-2024 #245 explicitly requires cuts to state programs. Those state spending cuts constitute a second subject coiled up in the folds of a measure purporting to be a local tax cut.

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[1] As Respondents Scott Wasserman and Ann Adele Terry explain, if not for the language prohibiting the State from reducing education funding, the State could reduce its obligation to school districts by "lowering the amount of per pupil funding used to calculate the amount of funding districts receive … or reinstituting a 'budget stabilization' factor (or 'negative factor') to reduce state K-12 spending due to an inability to meet financing obligations." Respondents' OB, p 8 (citations omitted).

B. The proposed measure does not specify a funding source for reimbursements to local governments.

Unlike the measures at issue in *Initiative 2021-2022, #27* and *Initiative 2023-2024 #21*, the measure at issue here does not specify the funding source for reimbursements to school districts. The measure at issue in *Initiative 2021-2022, #27* "allow[ed] the state to annually retain and spend up to $25 million of excess state revenue … as a voter-approved revenue change to offset lost revenue resulting from the property tax rate reductions and to reimburse local governments …" Certified Record, No. 21SA151, p 12. The measure at issue in *Initiative 2023-2024 #21* contained almost identical language, "allowing the state to annually retain and spend up to $100 million of excess state revenue, if any, as a voter-approved revenue change to offset reduced property tax revenue and to reimburse local governments …" Certified Record, No. 23SA109, p 4. As shown by this language, both measures allowed the State to retain and spend excess state revenue to reimburse local governments for lost property tax revenue. The ability to spend excess

state revenue eliminates the need to reduce spending on other state programs.

In contrast, the measure here contains no similar provision allowing the State to retain and spend excess revenue. Nor does the measure specify any other funding source to reimburse local governments. Thus, unlike the measures at issue in *Initiative 2021-2022, #27* and *Initiative 2023-2024 #21*, the measure here would necessitate cuts to state spending, which constitutes a separate subject. *See In re 1997-98 #84*, 961 P.2d at 459. For that reason, those cases are inapplicable here.

CONCLUSION

Petitioners have provided no legal authority showing that the Title Board erred in concluding that Proposed Initiative 2023-2024 #245 contained multiple subjects. Nor have Petitioners explained why the Court's binding precedent in *In re 1997-98 #84* should not apply here.[2]

[2] Petitioners argued before the Title Board that *In re 1997-98 #84* was distinguishable and the Board based its ruling on the holding of that

Therefore, as the Title Board argued in its opening brief, the Court should conclude that the proposed measure contained multiple subjects and affirm the Title Board's conclusion that it lacked jurisdiction to set a title.

Respectfully submitted on this 10th day of May, 2024.

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case. *See Rehearing Before Title Board on Proposed Initiative 2024-2024 #248* (April 18, 2024), https://csos.granicus.com/player/clip/451 at 12:01:53-12:16:10. By not addressing the case in their opening brief, Petitioner's have abandoned their argument that *In re 1997-98 #84* is not controlling here. *See People v. Hunsaker*, 2020 COA 48, ¶ 10 (holding that argument not reasserted on appeal is abandoned).

CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S ANSWER BRIEF** upon the following parties electronically via CCEF, at Denver, Colorado, this 10th day of May, 2024, addressed as follows:

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