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<tr><td>SUPREME COURT OF COLORADO
2 East 14th Ave.
Denver, CO 80203</td><td rowspan="3">DATE FILED: May 17, 2024 5:01 PM

▲COURT USE ONLY▲</td></tr>
<tr><td>Original Proceeding
Pursuant to Colo. Rev. Stat. § 1-40-107(2)
Appeal from the Ballot Title Board</td></tr>
<tr><td>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #298 (“Valuation for Assessments”)

Petitioners: Scott Wasserman and Ann Terry,

v.

Respondents: Dave Davia and Michael Fields,

and

Title Board: Theresa Conley, Christy Chase, and Kurt Morrison</td></tr>
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<tr><td colspan="2">PETITIONERS’ ANSWER BRIEF</td></tr>
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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, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

Choose one:

X It contains 1,265 words.

☐ It does not exceed 30 pages.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

/s Nathan Bruggeman
Nathan Bruggeman
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INTRODUCTION[1]

This appeal asks the Court to consider whether, in determining if a measure presents a logrolling problem, the history and political nature of a measure's separate subjects should be considered. The Title Board's and Respondents' opening briefs seem to contend that those considerations do not matter, and the single subject can be considered in the abstract.

The Court's precedent says otherwise, however. How voters understand the issues and could coalesce into different groups around different parts of the measure is what needs to be considered when analyzing a measure for a logrolling problem. Applying the single subject test through that lens leads to the conclusion that this Initiative violates the requirement because of logrolling. Commercial and residential property owners/tenants have different (if not opposing) property tax cut concerns, and putting them together in one measure is creating a coalition that does not on its own exist to achieve the measure's passage. Accordingly, the Court should hold the Board erred in finding it had jurisdiction to set a title.

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[1] As the Title Board noted in its opening brief, (Title Bd.'s Op. Br. at 1 n.1), the single subject issues in Initiatives 296, 298, and 300 are the same. The differences between the measures regarding the specific assessment rate cuts do not affect the single subject challenge.

LEGAL ARGUMENT

I. The voters' perspective matters.

The Title Board's opening brief essentially argues that property taxes are property taxes, and cutting one rate is sufficiently connected to cutting another rate. Petitioners discussed why this is not true in their opening brief, but they address one of the Board's sub-arguments: that the argument somehow rests on inappropriate speculation. (*See* Title Bd.'s Op. Br. at 8.)

The single subject limitation is designed to protect voters, and, therefore, the determination of whether a measure has multiple subjects must necessarily consider voter perspective:

> Finally, given the anti-logrolling and anti-fraud purposes of the single-subject requirement, our application of the necessarily-and-properly-related test has often taken into account whether voters might favor only part of an initiative and the potential for voter surprise.

In re Title, Ballot Title & Submission Clause for 2021-2022 #1, 2021 CO 55, ¶ 16. Not only is considering potential voter perspective permissible, but it also is not possible to apply the purposes of the single subject requirement, *see* C.R.S. § 1-4-106.5(1)(e), without considering voters' potential perspectives on the issues. The Court has undertaken this inquiry itself numerous times, for example,

- "Indeed, notwithstanding the initiative's brevity, combining the repeal of the livestock exceptions with the criminalization of new conduct toward all animals 'run[s] the risk of surprising voters with a "surreptitious" change,' because ***voters may focus*** on one change and overlook the other." *In re Title, Ballot Title & Submission Clause for 2021-2022 #1*, 2021 CO 55, ¶ 41 (internal citations omitted) (emphasis added).

- "Importantly, Initiative #132 creates a danger of log rolling because the Initiative ***may attract a 'yes' vote from voters*** who are unhappy with the current process for state legislative redistricting and would support restructuring the Reapportionment Commission but ***who might oppose*** removing the power to draw congressional districts from the General Assembly, or vice versa." *In re Title, Ballot Title, & Submission Clause for for 2015-2016 #132*, 2016 CO 55, ¶ 34 (emphasis added).

- "In the case before us, ***some voters might favor*** changes to the manner in which recall elections for elected officers are triggered and conducted, ***but not favor*** establishing a new constitutional right to recall non-elected officers, ***or visa-versa***. Initiative #76 unconstitutionally combines the two subjects in an attempt to attract ***voters who might oppose*** one of these two subjects if it were standing alone." *In re Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 2014 CO 52, ¶ 35 (emphasis added).

Petitioners are not, in short, "pars[ing] the measure" or "improperly complicat[ing]" it, nor are they impermissibly "speculat[ing] about coalitions of voters." (Title Bd.'s Op. Br. at 7-8; Resps.' Op. Br. at 7-8.) As Petitioners' opening brief explained, the political and policy choices attendant to these property tax cut issues are not "speculative," as the problem is grounded in the history of property taxes in Colorado and ***current*** "unsettled" political and policy issues that have

been recognized repeatedly by the political branches of state government. (Pets.' Op. Br. at 9-15.)

As Petitioners explained, the Court's decision in *2021-2022 #67, #115, & #128* sets out the proper analysis for this measure. (*See id*. at 8-9.) The Title Board's attempt to distinguish that case is unpersuasive. The Court did not find a single subject violation on an abstract distinction between the "sale" and "delivery" of alcohol, (*see* Title Bd.'s Op. Br. at 7), but because of the real-world history and politics behind the subjects. *In re Titles, Ballot Titles, & Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, & #128*, 2022 CO 37, ¶¶ 21-22 (reviewing history of issues and political policy debates as part of single subject analysis). The Court grounded its holding in those considerations, which created the real possibility that voters would view the subjects differently. *Id.* ¶ 23. The same considerations are present with this measure if not more so than in *2021-2022 #67, #115, & #128*.

There is a straightforward logrolling problem with this Initiative: the measure combines two different classes of property owners with distinct interests in an attempt to trade support of one property tax cut for another. That's logrolling.

II. Respondents highlight their measure's logrolling problem.

Respondents principally argue there is no difference between the different classes of property principally at issue here (commercial and residential)—in paraphrase, "property is property." (*See* Resps.' Op. Br. at 6-7.) Setting aside the ahistorical nature of the argument given the Gallagher Amendment and the political tussling over the issue the last few years, Respondents build on this position to argue, "if the property tax statutes treated assessment rates for all property types the same, Petitioners would not even be able to make their argument." (*Id.* at 6.) Far from disproving Petitioners' position, that argument in fact reflects the problem ***with*** Respondents' measure—Colorado law has not and does not "treat[] assessment rates… the same." There is a substantial ***difference*** in the assessment rates for residential and commercial property that creates distinct policy and political issues and groups from which the logrolling problem arises.

Respondents also note that, if Petitioners are right, then they would have to "file two separate measures" instead of one. (*Id*. at 7-8.) That's true—and the entire point of this appeal because there shouldn't be one measure containing separate subjects.

III. The Court has not considered the single subject issue here.

Respondents also argue that residential and commercial property tax categories are "frequently grouped together." (*Id*. at 7.) In particular, they point to SB24-233, passed during the recent legislative session. (*Id.*) What they do not point to, however, is any judicial consideration of whether the type of property tax assessment rate cuts included in their measure complies with the single subject.[2]

CONCLUSION

For the reasons given above and in the opening brief, Petitioners respectfully request that the Court reverse the Board and hold that the measure violates the single subject requirement.[3]

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[2] Mill levies present a different set of considerations than the assessment rates, (*see* Resps.' Op. Br. at 7), which assessed rates have a vastly different effect on commercial verses residential property.

[3] Petitioners' opening brief contained a typographical error in the conclusion. The brief should have said "reverse" the Board's single subject determination, not "affirm" it. As the Petition for Review and the remainder of the opening brief make clear, the Board should be reversed.

Respectfully submitted this 17th day of May, 2024.

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CERTIFICATE OF SERVICE

I, Erin Mohr, hereby affirm that a true and accurate copy of the **PETITIONERS' ANSWER BRIEF** was sent electronically via Colorado Courts E-Filing this day, May 17, 2024, to the following:

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