COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203	DATE FILED: May 17, 2024 4:41 PM
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 #300 ("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.	▲**COURT USE ONLY**▲ Case No. 2024SA142
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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 1505 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.

/s/ Kyle M. Holter

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The Title Board had jurisdiction to set title on Proposed Initiative 2023-2024 #300 ("#300") because it advances a single subject: cutting tax assessment rates for property in Colorado. Petitioners argue the measure engages in "logrolling" by proposing reductions to residential and nonresidential rates, thus drawing support from hypothetical groups of homeowners and owners of commercial property. This argument turns the single-subject inquiry on its head and would require the Board, and this Court, to guess at voters' motivations in supporting a proposed measure. No precedent supports that speculative approach.

I. #300 has a single subject because its provisions "point in the same direction."

Under the requisitely liberal construction of "single subject", a measure whose provisions are related and "point in the same direction" satisfies the constitutional requirement. #300's provisions plainly "point in the same direction": lowering property tax assessment rates in Colorado. *In re Title, Ballot Title & Submission Clause for 2017-2018 #4*, 2017 CO 57, ¶ 14 ("All aspects of Initiative #4 are interrelated and point

in the same direction—limiting housing growth in Colorado."). That is "enough" to satisfy single subject. *In re Title, Ballot Title & Submission Clause, & Summary for 1999-00 #256*, 12 P.3d 246, 254 (Colo. 2000).

Petitioners do not contest that an obvious connection exists in lowering tax assessment rates for two different types of property in Colorado, suggesting instead that any such connection is an improper "unifying label" or "high-level theme." Pet'r's Op. Brief at 17. But "enacting a reduction in the tax assessment rates applicable to real property in Colorado" is not analogous to such "umbrella" themes rejected by this Court as "water" and "environmental conservation." *In re Proposed Initiative Pub. Rts. in Waters II*, 898 P.2d 1076, 1080 (Colo. 1995) ("The common characteristic that the paragraphs all involve 'water' is too general and too broad to constitute a single subject."); *In re Title, Ballot Title & Submission Clause, for 2007-2008, #17*, 172 P.3d 871, 875–76 (Colo. 2007) (holding "environmental conservation" and "conservation stewardship" are too broad to "unite multiple subjects into a single subject").

Unlike the initiatives in *Waters II* and *In re 2007-2008, #17*, which paired the reformation of water district rules or the creation of a new environmental department with the separate creation of a public trust standard, #300 identifies a single topic—taxes on real property in Colorado—and proposes a single solution: lowering them. *See In re 2007-2008, # 17*, 172 P.2d at 875. The mere fact that the assessment rates applicable to residential and nonresidential property appear in different sections of the same article, *see* § 39-1-104, C.R.S. (nonresidential property); § 39-1-104.2, C.R.S. (residential property), is "irrelevant" to the single-subject inquiry. *See In re Title, Ballot Title & Submission Clause, for 2013-2014 #90*, 2014 CO 63, ¶ 17, 22 (holding initiatives embraced a single subject despite effect on "constitutional home rule provisions, the preemption doctrine, [and] the taking provisions" because "they affect these constitutional provisions and doctrines only inasmuch as they directly relate" to their single subject). Nor do single-digit differences in the percentage rate reductions to residential and nonresidential property render #300's provisions "disconnected and incongruous" when they carry out a single, general objective: lowering property tax rates. *Id.* ¶ 8.

#300's provisions directly relate to a narrowly-defined single subject: lowering the tax assessment rates applicable to real property in Colorado. That direct relation satisfies the single-subject requirement.

II. Petitioners' speculation about possible voter coalitions does not create a single subject problem.

Petitioners contend this Court must scrutinize the "political appeal" of #300's provisions and probe hypothetical voters' motivations in supporting or opposing the proposed measure to determine whether the coalition that might support it is a permissible one. Pet'r's Op. Br. at 11–12, 18. Nothing in this Court's precedents authorize such a speculative approach.

Although the "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 #16*, 2021 CO 55, ¶ 13, this Court has never held that "just because a proposal may have different effects or that it makes policy choices that are not inevitably interconnected that it necessarily violates the single-subject requirement," *In re 1999-00 #256*,

12 P.3d at 254. Thus, this Court has framed the concern with logrolling as pertaining to the combination of *unrelated* provisions in a single measure. *See In re Title, Ballot Title, & Submission Clause for 2013-2014 #89*, 2014 CO 66, ¶ 13 ("By combining *unconnected* subjects, proponents may be able to shore up support from groups with different, or even conflicting, interests." (emphasis added)); *In re Petition for an Amend. to the Const. of State of Colo. Adding Section 2 to Article VII (Petitions)*, 907 P.2d 586, 591 (Colo. 1995) ("[T]he Initiative does not combine *unrelated*, incongruous subjects in an effort to defraud the public and cause voters to inadvertently adopt measures they do not support in the process of voting for measures they do support." (emphasis added)). In short, *if* a measure advances unrelated provisions, *then* the single-subject requirement forbids their combination to prevent logrolling.

Petitioners flip that framework on its head, suggesting that, if they can first identify hypothetical groups of voters who might have different motivations to support a proposed measure, then the measure's provisions should be deemed unrelated. *See* Pet'r's Op. Br at 9 (suggesting the connection between subjects could be deemed to "br[eak]

down because of . . . how voters could see the subjects differently"); *id.* at 18 (suggesting homeowners may "have a substantial interest in a property tax that applies to their [residence]" while commercial property owners may "believe that residential property rates are too low but accept a further reduction in those rates because of their desire to reduce commercial property rates").

This Court rejected a similar argument in *Amend TABOR No. 32*, 908 P.2d 125 (Colo. 1995). There, an initiative sought "to establish a $60 tax credit that applies to six state or local taxes." *Id.* at 129. Opponents of the initiative argued that "the combination of a tax credit applied to a variety of taxes, with varying effects, is precisely the type of multiplicity the single-subject requirement seeks to avoid" and "[i]t is doubtful" whether several of the measure's provisions, "if submitted to the voters separately, would be adopted." *See* Pet'r's Br., *Amend TABOR No.* 32, 1995 WL 17069092, at *11, 12. This Court disagreed, holding that "Although the Initiative applies the tax credit to more than one tax, the single purpose of the Initiative is the implementation of a tax credit." *Amend TABOR No.* 32, 908 P.2d at 129. Just so here. Although #300's

reduction in assessment rates applies to more than one type of property, its single purpose is to reduce the tax assessment rates for property in Colorado.

Furthermore, Petitioners' focus on hypothetical coalitions of voters who support rate cuts to their own property but oppose those to others' illustrates the risk inherent in an approach tied to speculation about voters' motivations.

For example, Petitioners cite a "November 2023 poll [finding] that a majority of voters are unhappy with their property taxes." *See* Petr's Op. Br. at 10 ("61% [of voters] think they're too high." (quoting *Statewide – November 2023 Insights & Analysis*, COLORADO POLLING INSTITUTE, available at https://www.copollinginstitute.org/research/colorado-issues-november-2023). In fact, the cited survey question did not ask voters about property taxes specifically, but rather about "taxes in Colorado" generally. *See Survey of Likely 2024 General Election Voters*, COLORADO POLLING INSTITUTE, at 5, available at https://www.copollinginstitute.org/s/21136-CPI-CO-Toplines-CO-Issues.pdf ("Considering the range and quality of services that are provided by state and local governments in Colorado, do

you think taxes in Colorado are too high, too low, or about right?"). 60.7% of survey respondents answered that taxes in Colorado are either "way too high" or "a little too high." *Id.* When asked specifically about their opinion of the "special session of the Colorado legislature . . . [called] to address property taxes"—which Petitioners rely on as an indication of the political "dynamics" distinguishing residential from commercial property for voters, Pet'r's Op. Br. at 15–16—a majority of voters reported they "have not heard enough to form an opinion." *Id.*

The poll does not distinguish between owners of residential or commercial property, or between voters who own both or neither. Nor does it support Petitioners' assumption that coalitions of voters will support rate cuts for their own property but oppose them for others. *See* Pet'r's Op. Br at 18 (suggesting a cut to residential rates is a "sweetener" for homeowners who would otherwise oppose cuts to nonresidential rates). Voters may have any number of diverse opinions about property taxes, regardless of the property they own. They may support residential tax hikes despite owning homes or oppose nonresidential cuts despite owning businesses. They may not own any real property but favor

reductions in tax generally, or they may own a home and a business but favor higher taxes. The single-subject inquiry does not require this Court to speculate about such various cross-sections of the electorate to determine whether a proposed initiative's provisions are related or incongruous.

This Court has cautioned against "parsing" multiple ideas "from even the simplest proposal by applying ever more exacting levels of analytic abstraction." *In re 1999-00 #256*, 12 P.3d at 254. Petitioners' approach would take this parsing a step farther, requiring the Court to imagine and scrutinize the possible political constituencies that could conceivably support or oppose any part of a given measure, no matter how tightly related its provisions. Nothing in this Court's precedents or the constitutional text authorizes such an approach.

CONCLUSION

The Court should affirm the title set by the Title Board.

Respectfully submitted on this 17th day of May, 2024.

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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 17th day of May, 2024, addressed as follows:

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