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<tr><td>SUPREME COURT OF COLORADO
2 East 14th Ave.
Denver, CO 80203</td><td rowspan="2">DATE FILED: May 10, 2024 1:51 PM

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<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 #245 (“Valuation for Assessments”)

Petitioners: Dave Davia and Michael Fields,

v.

Respondents: Scott Wasserman and Ann Adele Terry,

and

Title Board: Theresa Conley, Christy Chase, and Kurt Morrison</td><td></td></tr>
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<tr><td colspan="2">RESPONDENTS’ 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 1,931 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

Petitioners' opening brief betrays the single subject problems they face. First, they try to recast the school funding provision in their measure as a "backfill," when, by its terms, it is not a backfill. In fact, the backfill already exists in state law. Next, they ignore the published decision from this Court that says what they are trying to do violates the single subject requirement. Finding no respite in the Court's caselaw, Petitioners try another tactic by reframing their single subject away from "property tax relief" to "state tax policy." That is certainly not the single subject of their measure, and it demonstrates how Petitioners must rely on an overly broad theme or generalization to knit their measure's subjects together.

There is a serious single subject problem in this measure. It combines subjects that have no necessary or proper connection and creates a logrolling problem (one which Petitioners fail to explain away). The Board's decision that it lacked jurisdiction was correct, and the Court should affirm.

LEGAL ARGUMENT

I. Initiative #245 does in fact "specify a mechanism for protecting education funding."

Petitioners realize that, under this Court's precedent, they have a single subject violation because their measure applies a limitation on, or directs the General Assembly in, how to carry out its legislative functions. *See infra*, Sec. II. To avoid that problem, Petitioners state that their measure "does not directly provide a mechanism for protecting education funding," (Pets.' Op. Br. at 8), which appears to be an opening for them to call what they have done a funding "backfill" requirement, (*id.* at 8-10).

The problem with their argument is that Initiative #245 directly contradicts it. In the measure's words:

> In order to insulate school districts from any revenue loss due to the reduced valuations for assessment set forth in section 39-1-104 (1) and in sections 39-1-104.2(3) (q) and (3) (r), any revenue loss attributed to such reductions shall not reduce funding school districts receive under article 54 of title 22, otherwise known as the Public School Finance Act of 1994.

(CF p. 4 (Proposed C.R.S. § 39-3-210).) This provision is specifically designed to be a "mechanism for protecting education funding." It says that the General Assembly, in response to the measure's property tax cuts, cannot cut school funding. That's not a backfill requirement telling the General Assembly to provide

local districts with more money; it is a prohibition on changing how funding is decided, and as discussed next, a single subject violation.

II. Petitioners cannot mandate how the General Assembly provides a local backfill.

Petitioners' primary argument in defense of their Initiative is that the Court has held that a measure cutting local taxes that includes a state backfill requirement does not violate the single subject requirement. (Pets.' Op. Br. at 8-10.) While Petitioners are right that the Court has addressed this subject, they overstate the scope of the cases they discuss and do not address a published decision from the Court that addresses the type of measure being considered here.

The only published decision discussed by Petitioners is *Amend TABOR No. 32*. *See In re Title, Ballot Title and Submission Clause, and Summary with Regard to a Proposed Petition for an Amend. to the Const. of the State of Colo. Adding Paragraph (D) Subsection (8) of Section 20 of Article X (Amend Tabor #32)*, 908 P.2d 125 (Colo. 1995). The measure there "establish[ed] a $60 tax credit that applies to six state or local taxes and requires the state to replace on a monthly basis local revenues that are lost because of the tax credit provision." *Id.* at 129. In considering the single subject challenge, the Court addressed the state backfill requirement in a single sentence: "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.*

As an initial matter, the analysis in *Amend TABOR #32* does not apply in this circumstance because Initiative #245 does ***not*** include an education backfill. The measure does not tell the state to provide any particular amount of money to local jurisdictions. Nor does it tell the state to "replace education revenue lost as a result of this measure." This is because state law ***already*** will require a local backfill.

Under the Public School Finance Act, a loss of local revenue for public schools will require the state share of the funding formula to go up. As the fiscal analysis explains, "The measure will increase state expenditures by an estimated $870 million in FY 2025-26 and $890 million in FY 2026-27, and by larger amounts in later years, reflecting the increased state-aid obligation for school finance paid to school districts ***under current law*** due to reduced property tax revenue under the measure." (CF p. 13 (emphasis added).) *See also, e.g.*, *In re Interrog. on House Bill 21-1164*, 2021 CO 34, ¶ 7 ("The PSFA funds the so-called 'total program' (i.e., the total amount of money a district receives for operating expenses), first through local funding and then, if a district's local share generates insufficient funds to meet the total program, through state funding."). Rather, as

discussed above, this is indeed a "mechanism for protecting education funding." The cases cited by Petitioners, therefore, are inapposite, because their measure does not, by its terms, include a state backfill.[1]

The issue here is, therefore, not whether a state "backfill" is permissible but instead whether a local tax measure can dictate the General Assembly's legislative decision-making. *Amend TABOR #32* does not address that question, but as discussed in Respondents' Opening Brief, the Court's decision in *1997-98 # 84* does and in detail. *See In re Title, Ballot Title and Submission Clause, and Summary for 1997-98 #84*, 961 P.2d 456 (Colo. 1998). In distinguishing *Amend TABOR #32*, the Court explained the key differentiation thus:

> The initiative at issue in *In re Amend TABOR No. 32* is significantly different from the two initiatives now before us. **Amend TABOR No. 32 *did not impose any limitations on the state in terms of the manner by which the state replaced lost local revenue***. The state was simply required to replace the revenue that localities lost as a result of the tax credit.

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[1] Petitioners' citations to Initiatives 2021-2022 #27 (2021SA151) and 2023-2024 #21 (2023SA109) do not further their argument because the Court in those cases issued only one-sentence affirmances of the Title Board. It is impossible to understand how the Court viewed those measures, and, therefore, they are not persuasive. And on the merits, those measures included authorizations for the state to retain and spend funds, not the type of budget and decision-making mandate at issue here. *See* 2021SA151, Certified R. at 10; 2023SA109, Certified R. at 2.

Id. at 459 (internal citations omitted) (emphasis added). *1997-98 #84* did, in contrast, "impose [a] limitation" on the state, which, as a result, deprived the General Assembly of the legislative discretion to determine how to cover the measure's backfill and resulting cuts to state programs. *Id.* at 460.

That same intrusion on the General Assembly's power is present in Initiative #245, albeit in a different form. Petitioners have carved out from the General Assembly's discretion and legislative authority the power to adjust the school funding formula under the Public School Finance Act—that is not leaving the General Assembly with a choice, as they say. (Pets.' Op. Br. at 11, 13.) Petitioners have instead taken an entire component of the state budgeting scheme off the table—that is, in the words of *1997-98 #84*, a "limitation." There is no necessary and proper connection between depriving the General Assembly of legislative authority and cutting local property taxes. Preventing the General Assembly from making changes to the Public School Finance Act's funding formula to address education funding will force the General Assembly to find additional funding to cover increased local education spending elsewhere. That's the same dynamic this Court disapproved of in *1997-98 #84*.

III. Petitioners misdescribe the logrolling dynamics at work.

Petitioners say that, because their Initiative does not "join advocates for property tax relief with advocates for increased education," there is no danger of logrolling. (Pets.' Op. Br. at 11.) This argument misunderstands the dynamics around education funding. As explained in Respondents' opening brief, for nearly fifteen years, the General Assembly addressed the intersection of the education spending mandate of Amendment 23, *see* Colo. Const. art. IX, sec. 17, and a budgeting gap through the "budget stabilization factor" or "negative factor." (Resps.' Op. Br. at 8, 14.) *See generally In re Dwyer*, 2015 CO 58. It was only this year that funding for local education reached a sufficient level that the "negative factor" or "budget stabilization factor" could be eliminated. *See* Office of the Governor, "A Strong Budget for Colorado's Future: Governor Polis Signs Bipartisan Budget to Fully Fund Colorado's Schools, Create More Housing Coloradans Can Afford, and Make Colorado Safer," Apr. 29, 2024 (noting budget has funding "specifically to eliminate the Budget Stabilization Factor").[2] While education advocates may well wish to see increased education spending, that is not

[2] The press release is available at https://www.colorado.gov/governor/news/strong-budget-colorados-future-governor-polis-signs-bipartisan-budget-fully-fund-colorados.

the only policy interest they have that can trigger logrolling. Among others, preventing the state from reinstituting the negative factor after years of political and legal fights is a near-term policy priority that could lead them to support property tax cuts they otherwise oppose. *See, e.g.*, S. Klamann and N. Coltrain, "Four key takeaways from Colorado's 'breakthrough' legislative session," *The Denver Post*, May 10, 2024[3] (explaining that, reaching funding levels under Amendment 23, "marked a milestone achievement for lawmakers, many of whom said they dedicated their legislative careers to erasing the so-called budget stabilization factor").

IV. Petitioners cannot reframe their single subject.

Petitioners seem to suggest that Initiative #245's provision regarding education funding is an implementation detail. (Pets.' Op. Br. at 12.) It is not a "mere implementation or enforcement detail," but instead a significant fiscal and budgetary provision addressing a core governmental responsibility. That it is a primary feature of the measure (and, indeed, a second subject) is reflected by the

[3] The story is available at https://www.denverpost.com/2024/05/10/colorado-jared-polis-democrats-republicans-housing-taxes/.

fact that Petitioners cannot describe the measure without including both property tax cuts ***and*** protecting education funding. (*Id.* at 5, 12.)

Recognizing this problem, Petitioners try to reframe their single subject, contending that "[b]oth provisions are directly related to state tax policy." (*Id.* at 12.) "State tax policy" is not the single subject of this measure, however; it is "property tax relief." (*Id.* at 8.) Shifting the single subject into this high-level, amorphous concept of "state tax policy" places into sharp relief that Petitioners are trying to save this measure by reliance on an overly broad or general theme, which the single subject requirement does not allow. *See, e.g.*, *In re Titles, Ballot Titles, & Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, & #128*, 2022 CO 37, ¶ 20 ("retail sale of alcohol"); *In re Title, Ballot Title and Submission Clause for 2021-2022 #16*, 2021 CO 55, ¶ 22 ("animal cruelty"); *In re Title, Ballot Title & Submission Clause for 2015-2016 #132*, 2016 CO 55, ¶ 34 ("redistricting in Colorado"); *In re Title, Ballot Title, and Submission Clause for 2013-2014 #76*, 2014 CO 52, ¶ 10 ("recall of government officers"); *In re Title, Ballot Title and Submission Clause for 2007-2008, #17 (New State Dep't and Elected Bd. for Env't Conservation)*, 172 P.3d 871, 875 (Colo. 2007) ("environmental conservation" and "conservation stewardship").

CONCLUSION

For the reasons given above and in Respondents' opening brief, the Court should affirm the Title Board's determination that it lacked jurisdiction.

Respectfully submitted this 10th day of May, 2024.

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CERTIFICATE OF SERVICE

I, Erin Mohr, hereby affirm that a true and accurate copy of the **RESPONDENTS' ANSWER BRIEF** was sent electronically via Colorado Courts E-Filing this day, May 10, 2024, to the following:

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