

<p>SUPREME COURT, STATE OF COLORADO</p> <p>2 East 14th Avenue Denver, Colorado 80203</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #296 (“Valuation for Assessments”)</p> <p>Petitioner: Scott Wasserman and Ann Terry,</p> <p>v.</p> <p>Respondents: Dave Davia and Michael Fields,</p> <p>and</p> <p>Colorado Ballot Title Setting Board: Theresa Conley, Christy Chase, and Kurt Morrison.</p>	<p>▲ COURT USE ONLY ▲</p>
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<p>RESPONDENTS’ OPENING BRIEF</p>	

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 1476 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.

In response to each issue raised, the appellee must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

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/ Sarah M. Mercer

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Respondents Dave Davia and Michael Fields (collectively, “Respondent Proponents”), through undersigned counsel, submit their Opening Brief in this original proceeding brought by Petitioners Scott Wasserman and Ann Terry challenging the actions of the Ballot Title Setting Board (“Title Board”) on Proposed Initiative 2023-2024 #296 (“Initiative #296” or the “Initiative”) (“Valuation for Assessments”).

ISSUE PRESENTED FOR REVIEW

- A. Whether the Title Board erred in finding that Initiative #296 satisfies the single-subject requirement for citizen-initiated ballot measures.

STATEMENT OF THE CASE

Initiative #296 is one of several measures that Respondent Proponents have proposed through the citizen initiative process with one central goal: keeping property taxes low for all Coloradans. Specifically, Initiative #296 would lower the valuation for assessment of certain taxable nonresidential real property on or after January 1, 2025, by one percentage point per year for five years, from 29 percent to 24 percent of actual value. The valuation for assessment for the nonresidential real property would then remain at 24 percent. The

Initiative would also lower the valuation for assessment of all taxable residential real property on or after January 1, 2025, by 0.37 percent per year for five years, from 7.15 percent to 5.3 percent of actual value. The valuation for assessment for residential real property will then remain at 5.3 percent.

The Title Board first heard Initiative #296 at the April 18, 2024 Title Board hearing. The Board determined by a 3-0 vote that Initiative #296 contains a single subject and set a title. Petitioners then filed a motion for rehearing arguing that Initiative #296 violates the single-subject and clear title requirements. The Title Board heard this motion at the April 26, 2024 rehearing and granted it only to the extent the Board made changes to Initiative #296's title. Petitioners subsequently appealed.

Respondent Proponents now ask this Court to affirm the Title Board for the reasons set forth below.

SUMMARY OF THE ARGUMENT

The Title Board correctly identified a single subject for Initiative #296, determined it therefore had jurisdiction over the Initiative, and

set a brief and comprehensive title for the Initiative. Petitioners assert one argument: that Initiative #296 contains multiple subjects because the taxation of residential real property is separate and distinct from the taxation of nonresidential real property, including commercial property, and that the Initiative's multiple subjects attempt to create a political coalition to secure passage of the measure (commonly referred to as "logrolling").

Based on their grounds for appeal, Petitioners present an overly narrow interpretation of the state constitutional mandates governing citizen-initiated ballot measures and property tax regulation in general. Initiative #296's inclusion of residential and nonresidential real property does not frustrate single subject or cause logrolling. Each element of Initiative #296 falls under and contributes to its single subject: keeping property taxes low.

Therefore, Respondent Proponents respectfully request that this Court affirm the Title Board's single-subject determination and the clear title it set.

STANDARD OF REVIEW

This Court is vested with the authority to review the rulings of the Title Board. *See* § 1-40-107(2). As part of this review, this Court “employ[s] all legitimate presumptions in favor of the propriety of the [Title] Board’s action.” *Matter of Title, Ballot Title, & Submission Clause for 2013-2014 #89*, 328 P.3d 172, 176 (Colo. 2014) (quoting *In re Title, Ballot Title, & Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 645 (Colo. 2010)) (alteration in original). The statutory single-subject requirement, per its own plain language, must be “liberally construed.” C.R.S. § 1-40-106.5(2). Maintaining this liberal approach to the requirement is critical “so as not to impose undue restrictions on the initiative process.” *Matter of Title, Ballot Title and Submission Clause, Summary Clause for 1997-1998 No. 74*, 962 P.2d 927, 929 (Colo. 1998). Therefore, this Court has “held repeatedly that where a proposed initiative ‘tends to effect or to carry out one general objective or purpose,’ it presents only one subject.” *Matter of Title, Ballot Title, & Submission Clause for 2021-2022 #16*, 489 P.3d 1217, 1221 (Colo. 2021)

(quoting *In re Title, Ballot Title & Submission Clause for 2017–2018 #4*, 395 P.3d 318, 321 (Colo. 2017)).

ARGUMENT

Petitioners appeal should be denied because the Title Board correctly determined that Initiative #296 encompasses a single subject. In order to constitute a single subject, “an initiative’s subject matter must be necessarily and properly connected,” which occurs “[w]hen an initiative tends to effectuate one general objective or purpose.” *In re Title, Ballot Title & Submission Clause for 2015–2016 #73*, 369 P.3d 565, 568 (Colo. 2016). In reviewing whether a measure encompasses more than a single subject, courts assess whether the initiative presents either of the two “evils” the single subject requirement aims to prevent: logrolling and voter surprise. *See In re 2021-2022 #16*, 489 P.3d at 1224.

Here, the Respondent Proponents’ choice to cut the assessment rates for both residential and nonresidential property are necessarily and properly connected and central to their common objective to keep property taxes low, and neither of the two “evils” are present.

I. The inclusion of residential and nonresidential property taxes in Initiative #296 does not frustrate single subject.

Initiative #296 lowers property taxes for both residential and nonresidential real property by reducing their corresponding assessment rates. Broadly, there are two categories of property taxes: residential and nonresidential. Residential property taxes concern residential properties, or homes, while nonresidential concern other property, such as commercial real property. Additionally, there are several other categories of nonresidential property that have more complex and specific treatment under Colorado's tax laws, such as mines, oil and gas, renewal energy, and agricultural property. Respondent Proponents do not seek to disturb these types of property.

Including both residential and nonresidential property taxes in one Initiative does not raise single subject concerns. These two connected categories clearly make up one single subject that voters, who may or may not be property owners, can understand. *See In re Title, Ballot Title and Submission Clause, and Summary for 1999-00 #256*, 12 P.3d 246, 254 (Colo. 2000) ("It is enough that the provisions of a proposal are connected."). Addressing both residential and

nonresidential property ensures that all Coloradans can reap the benefits of lower property taxes, which is the central concern and objective of this measure. The only distinction between the two is the class of property; if the property tax statutes treated assessment rates for all property types the same, Petitioners would not even be able to make their argument. This is not enough to raise single-subject concerns.

Moreover, these two property tax categories are frequently grouped together. For example, legislation proposed in the Colorado Legislature has historically addressed both residential and nonresidential property tax. In fact, SB24-233, which the General Assembly just recently passed in the 2024 Legislative Session, includes provisions addressing both residential and nonresidential assessment rates. Bills proposed by the Colorado Legislature are held to the same single-subject requirement as proposed citizen-initiated ballot measures. Colo. Const. art. V, § 21. Additionally, mill levies enacted by local districts apply to both residential and nonresidential property.

Petitioners simply seek to improperly complicate a simple measure. This Court has recognized that “[m]ultiple ideas might well be parsed from even the simplest proposal by applying ever more exacting levels of analytic abstraction,” but that is not the appropriate exercise under single subject review. *In re 2021-2022 #16*, 489 P.3d at 1223 (quoting *In re 1997–1998 No. 74*, 962 P.2d at 929). Indeed, Petitioners’ approach would likely require that Respondent Proponents file two separate measures to implement their single subject: one to address the assessment rate for residential property and a second to address the assessment rate for nonresidential property tax. But that approach is not necessary because each of Initiative #296’s elements is a component of the measure and carries out its general objective and purpose: keeping property taxes low for all Coloradans. *See In re #16*, 489 P.3d at 1221.

II. Initiative #296’s components do not pose a logrolling concern.

Initiative #296 does not risk logrolling, as Petitioners suggest. As shown above, each of the Initiative’s elements “relates to the same subject” of keeping property taxes low. *In re 2013–2014 #89*, 328 P.3d at

178. Additionally, its “plain language’ unambiguously proposes” lowering property taxes for both residential and nonresidential real property, and “the proposal is not particularly lengthy or complex.” *In re 2021–2022 #16*, 489 P.3d at 1224 (quoting *id.*). The measure “does not seek to garner support from various factions by combining unrelated subjects in a single proposal.” *See In re 2013-2014 #89*, 328 P.3d at 178. Property tax rates for residential and nonresidential property are clearly related. Ultimately, Initiative #296 is one, single proposal—a voter will either like the idea of keeping property taxes low for these classes of property, or will not.

CONCLUSION

Respondent Proponents respectfully ask this Court to affirm the Title Board’s determination that it had jurisdiction to set title.

Respectfully submitted on May 10, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2024, I electronically filed a true and correct copy of the foregoing **RESPONDENTS' OPENING BRIEF** with the clerk of Court via the Colorado Courts E-Filing system which will send notification of such filing and service upon the following:

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