

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 #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.

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Case No. 2024SA142

THE TITLE BOARD’S OPENING 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 1751 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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ISSUE ON REVIEW

- I. Whether Initiative #300 advances a single subject.

STATEMENT OF THE CASE

Proposed initiative 2023-2024 #300¹ (“#300”) would reduce the tax assessment rate for property in Colorado. Record at 3. It provides for different percentage point reductions in the assessment rates for residential and nonresidential property. *Id.*

The Title Board set title on the measure at its April 18, 2024, hearing. *Id.* at 5. Petitioners Scott Wasserman and Ann Terry

¹ Petitioners raise identical single subject arguments in their challenges to Proposed Initiatives 2023-2024 #296, #298, and #300. The differences between the three measures primarily concern the overall proposed reduction in property tax revenue (\$670 million for #296; \$3 billion for #298 and #300), the ultimate reduction in assessment rates (24% nonresidential/5.3% residential for #296; 25.5% nonresidential/5.7% residential for #298; 25.5% nonresidential/5.3% residential for #300), and whether the reduction occurs immediately (#298) or over a period of five years (#296 and #300). Petitioners filed substantively identical Motions for Rehearing concerning all three measures, and the three Petitions for Review raise literally identical issues on appeal. *See* #296 Petition for Appeal at 4; #298 Petition for Appeal at 4; #300 Petition for Appeal at 4. For those reasons, the Title Board is filing substantially identical opening briefs in regard to #296, #298, and #300 (Case Nos. 2024SA140, 2024SA141, and 2024SA142).

(“Petitioners”) filed a timely Motion for Rehearing under § 1-40-107, C.R.S., on April 24, 2024, arguing that the Board lacked jurisdiction to set title because residential and nonresidential property tax assessment rates are separate subjects. Record at 9–13.

The Board held a rehearing on April 26, 2024. *Id.* at 7. The Board granted Petitioners’ Motion for Rehearing only to the extent that the Board amended the title of #300. *Id.* The title is set as follows:

Shall funding available for counties, school districts, water districts, fire districts, and other districts funded, at least in part, by property taxes be impacted by a reduction of \$3 billion in property tax revenue by a change to the Colorado Revised Statutes concerning reductions in property taxes, and, in connection therewith, reducing the assessment rate for certain nonresidential property from 29% to 25.5% of the property value; and reducing the assessment rate for residential property from 7.15% to 5.3% of the property value?

Id. Petitioners filed a timely petition for review.

SUMMARY OF THE ARGUMENT

The Title Board had jurisdiction to set title because #300 advances a single subject. The provisions of the measure that Petitioners challenge—a reduction in the tax assessment rates for residential and

nonresidential property—are necessarily and properly connected to the initiative’s general objective and single subject: cutting property tax rates in Colorado. Therefore, the decision of the Title Board should be affirmed.

ARGUMENT

I. The proposed initiative advances a single subject.

A. Standard of Review and Preservation

The Title Board has jurisdiction to set a title only when a measure contains a single subject. *See* Colo. Const. art. V, § 1(5.5). The Court will “overturn the Board’s finding that an initiative contains a single subject only in a clear case.” *In re Title, Ballot Title, & Submission Clause for 2021-2022 #16*, 2021 CO 55, ¶ 9 (quotations omitted). “In reviewing a challenge to the Title Board’s single subject determination, [the Supreme Court] employ[s] all legitimate presumptions in favor of the Title Board’s actions.” *In re Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 2014 CO 52, ¶ 8. The Court does “not address the merits of the proposed initiative” or “suggest how it might be applied if enacted.” *In re Title, Ballot Title, & Submission Clause for 2019-2020 #3*, 2019 CO 57, ¶ 8.

Instead, the Court “must examine the initiative’s wording to determine whether it comports with the constitutional single-subject requirement.”

Id.

To satisfy the single-subject requirement, the “subject matter of an initiative must be necessarily and properly connected rather than disconnected or incongruous.” *In re 2013-2014 #76*, 2014 CO 52, ¶ 8. Where an initiative “tends to . . . carry out one general objective” or central purpose, “provisions necessary to effectuate [that] purpose . . . are properly included within its text,” and the “effects th[e] measure could have on Colorado . . . law if adopted by voters are irrelevant” to the single subject inquiry. *In re Title, Ballot Title & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶¶ 11, 17 (quotations omitted).

B. #300’s single subject is the reduction of property tax assessment rates.

Petitioners contend the measure’s effects on residential and nonresidential property amount to separate subjects. But the “necessary and proper connection” between #300’s residential and nonresidential

provisions is obvious: they carry out the initiative’s general objective, and single subject, of reducing property tax assessment rates in Colorado.

Combining rate cuts to residential property with rate cuts to nonresidential property, Petitioners argue, amounts to “logrolling.” *See* Record at 11 (“In other words, [voters may] support commercial property tax relief in exchange for residential property tax relief”). This argument misconstrues the “anti-logrolling” purpose of the single-subject requirement, which operates to prevent the combination of only “*unrelated* subjects in a single proposal.” *See In re #90*, 2014 CO 63, ¶ 18 (emphasis added); *In re Title, Ballot Title, Submission Clause for 2011-2012 No. 3*, 2012 CO 25, ¶ 11 (explaining the single-subject requirement guards against the “combin[ation of] subjects with *no necessary or proper connection* for the purpose of garnering support for the initiative from various factions.”). But #300’s residential and nonresidential rate cuts are not unrelated; they “point in the same direction”—reducing 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.”); see *In re 2022 #16*, 2021 CO 55, ¶ 33 (“The risk of logrolling is low because [the measure’s provisions] ‘point in the same direction’ of increasing the welfare of livestock.” (citation omitted)).

Comparing #300 with the initiatives considered in *In re Titles, Ballot Titles, & Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, & #128*, 2022 CO 37, on which Petitioners rely, illustrates this point. See Record at 12–13. Those initiatives proposed to both (1) allow grocery stores to sell wine, and also (2) allow third-party delivery services to deliver beer, wine, and liquor to consumers in their homes. *Id.* ¶¶ 17–18. The respondents contended that the two provisions were “sufficiently relate[d]” because “each will increase the retail sale of alcohol.” *Id.* ¶ 22. The Court rejected that argument, noting that the “indirect relationship between alcohol delivery and retail sales fails to satisfy the single-subject requirement” and “the mere fact that both topics involve the regulation of alcohol is not enough.” *Id.* ¶¶ 22–23.

#300, unlike those initiatives, does not combine two distinct topics like “sale” and “delivery,” nor is its single subject defined at such a high level of generality. Its provisions have one specific objective: reducing property tax assessment rates in Colorado. Neither its application to different types of property, nor the relatively small differences in the percentage point reductions for the assessment rates applicable to those types of property (3.5% versus 1.85%), render its provisions so disconnected as to produce separate subjects. *In re Title, Ballot Title & Submission Clause, & Summary for 1999-00 #256*, 12 P.3d 246, 254 (Colo. 2000) (“We have never held that just because a proposal may have different effects or . . . makes policy choices that are not inevitably interconnected that it necessarily violates the single-subject requirement.”).

It may be possible, as Petitioners attempt, to parse the measure and speculate about coalitions of voters who would prefer to enact a different initiative than #300. *See Record at 11* (hypothesizing that “the distress of residential property taxpayers creates the conditions in which

commercial property taxpayers can entice support to bring down [their] rate by offering residential taxpayers some modest relief”). For example, owners of only residential property might prefer larger cuts for themselves. Or, owners of both residential and nonresidential property (or neither) might prefer that the rate cuts were equal, or different, or that certain property types were excluded from the measure entirely. But the single subject inquiry does not require such parsing or admit such speculation when the provisions of a measure “point in the same direction.” *See 2017-2018 #4*, 2017 CO 57, ¶ 14; *In re Matter of Title, Ballot Title & Submission Clause, Summary Clause for 1997-1998 No. 74*, 962 P.2d 927, 929 (Colo. 1998) (“Multiple ideas might well be parsed from even the simplest proposal by applying ever more exacting levels of analytic abstraction until an initiative measure has been broken into pieces. Such analysis, however, is neither required by the single-subject requirement nor compatible with the right to propose initiatives guaranteed by Colorado's constitution.”). Rather, it is “enough that the provisions of the proposal are connected.” *In re #256*, 12 P.3d at 254.

#300's residential and nonresidential rate cuts are connected, not incongruous. They would achieve the same general objective: lowering property tax assessment rates in Colorado. No more is required of the measure to satisfy the single-subject requirement.

CONCLUSION

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

Respectfully submitted on this 10th 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 OPENING BRIEF** upon the following parties electronically via CCEF, at Denver, Colorado, this 10th day of May, 2024, addressed as follows:

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