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SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	
Petition for Review Pursuant to Colo. Rev. Stat. §1-40-107(2) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2021-2022, #27 **Petitioners:** CAROL HEDGES and SCOTT WASSERMAN **v.** **Ballot Title Board:** THERESA CONLEY, JASON GELENDER, and LEEANN MORRILL and **Respondents/Proponents:** SUZANNE TAHERI and MICHAEL FIELDS	**▲ COURT USE ONLY ▲**
Attorneys for Petitioners: Edward T. Ramey, #6748 Tierney Lawrence LLC 225 East 16th Avenue, Suite 350 Denver, CO 80203 Telephone: 720-242-7585; Email: eramey@tierneylawrence.com;	Supreme Court Case No. 2021SAS151
PETITIONERS' ANSWER BRIEF	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of Colorado Appellate Rules (C.A.R.) 28 and C.A.R. 32. Those include:

Word limits: My brief has **1,602 words**, which is not more than the 9,500 word limit.

Included Sections: In the Arguments section, before arguing each issue, I have the following separately titled sub-sections:

1. **The Standard of Review**: I let the Supreme Court know which standard to use in reviewing the issue. I cited to a law or case that supports using that Standard of Review.

2. **Preservation**: I let the Supreme Court know where in the Record I raised the issue.

I understand that my brief may be rejected if I fail to comply with these rules.

s/Edward T. Ramey

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Petitioners Carol Hedges and Scott Wasserman, through counsel, respectfully submit their Answer Brief regarding Proposed Initiative 2021-2022 #27 (the "Proposed Initiative"):

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

While the Petitioners, Proponents, and the Title Board state the issues presented at varying levels of particularity, their statements are consistent.[1]

SUMMARY OF THE ARGUMENTS

Petitioners adopt their Summary as presented in their Opening Brief.

ARGUMENT

I. The title misstates and is misleading regarding the content, purpose, and effect of Section 3 of the Proposed Initiative; Section 3 also addresses a second subject wholly disconnected from Sections 1 and 2.[2]

A. Standard of Review and Preservation of Issue.

The standard of review as presented by Petitioners, Proponents, and the Title Board, and their statements as to preservation, are consistent.

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[1] Petitioners only note one correction to Proponents' Statement: Petitioners are not arguing that Sections 1 and 2 of the Proposed Initiative – simply lowering nonresidential and residential property tax assessment rates – by themselves constitute multiple subjects or are unclear. The problems emanate from Section 3.

[2] This section of Petitioners' Answer Brief addresses the issues raised in both sections I and II of their Opening Brief.

B. Argument.

As discussed in Petitioners' Opening Brief, Section 3 of the Proposed Initiative, while reciting two purposes, authorizes one thing – the retention and spending by the State of up to $25 million in revenue "for warrants otherwise authorized under [§39-3-207, C.R.S. (2020)]." Those warrants "otherwise authorized" are exclusively to reimburse local governmental entities for "property tax revenues lost as a result of the application of the" homestead exemption established by COLO. CONST. art. X, §3.5. And those reimbursements from the State are constitutionally mandated. COLO. CONST. art. X, §3.5(3).

Assuming *arguendo* that there is some "necessary or proper connection" between (a) the homestead exemption itself and/or these reimbursements, on the one hand, and (b) the property tax assessment rate reductions in Sections 1 and 2 of the Proposed Initiative, on the other, the new "authoriz[ation]" to the State to "retain and spend up to 25 million [*sic*] per year in revenue" for these warrants is completely meaningless. The Title Board understandably interpreted this language as seeking a "voter-approved revenue change" to allow the State to tap "excess" State revenue under COLO. CONST. art X, §20(7)(d) for these reimbursements. But, as discussed at pp. 7-9 of Petitioners' Opening Brief, the State is already *pre-authorized* to use precisely this "excess" revenue (with no limit) as a taxpayer

refund for *precisely this purpose*. §39-3-209 (1)(e), (2), C.R.S. (2020). The new "authoriz[ation]" accomplishes absolutely nothing – and certainly not a "voter-approved revenue change" for the purpose recited.

The confusion and misinformation visited upon the voters – by both the language of the measure and its migration into the title – is discussed at pp. 9-11 and pp. 15-16 of Petitioners' Opening Brief. The problem is exacerbated, however, by the effort in the measure, the title, and now Proponents' Opening Brief (*see*, *e.g.*, p. 16), to create a single-subject bridge between Section 3 and the assessment rate reductions in Sections 1 and 2 of the measure. Though neither the homestead exemption itself, nor the mandatory State reimbursements to local government entities for application of that exemption, are affected by property tax assessment rates,[3] Petitioners now suggest that their proposed "voter-approved revenue change" – nevertheless – "is for the purpose of continuing a property tax exemption that may otherwise not be funded."

First, this concern – derived apparently from the constitutional authorization to the General Assembly to "raise or lower by law the maximum amount of *actual*

[3] As discussed at pp. 13-14 of Petitioners' Opening Brief, the amount of the homestead exemption and, therefore, the amount of the State reimbursements are pegged to "actual value" – rather than "assessed value" – of the property, and are therefore unaffected by adjustments to assessment rates ("valuation for assessment").

value of residential real property" (emphasis added) to which the exemption is applied – still has no connection one way or another to assessment rates (and thus to Sections 1 and 2). Further, as discussed above, the proffered remedy of a "voter-approved revenue change" directed to freeing up a small amount of problematic "excess" revenue – already fully authorized and available (in any amount) for precisely this purpose – provides absolutely nothing to address the issue. This is quite different, for example, from creation of a new source of funding dedicated to protecting the homestead exemption (which nevertheless would remain a disconnected subject from Sections 1 and 2[4]).

What comes out of all this is complete confusion – experienced by the Title Board, reflected in the title, and now proposed to be visited upon the voters. The entirety of the Proposed Initiative accomplishes nothing except lowering property tax assessment rates (the subject of Sections 1 and 2). Section 3 of the measure – however its language is interpreted, analyzed, twisted, and turned – serves no

[4] To be broad enough to encompass the across-the-board assessment rate reductions in Sections 1 and 2 *and* the funding of the reimbursement authorization for application of the homestead exemption in Section 3, the "subject" of the Proposed Initiative would have to swell to the level of "property taxes" – reminiscent of the oft-cited seminal case in which "water" was held to be "too broad to constitute a single subject." *In re Title, Ballot Title, Submission Clause, and Summary re "Public Rights 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").

purpose whatsoever (and certainly nothing remotely connected to Sections 1 and 2). Rather, it – and the title it has spawned – can serve only to confuse and mislead the voters into thinking that, by voting for the measure, they would be (1) "offsetting" reductions in local property tax revenue, by (2) accessing "excess" State revenues not otherwise available for that purpose, and (3) thereby protecting homestead exemption reimbursements (and the emotionally appealing homestead exemption "for qualifying seniors and disabled veterans" itself). None of that is true. And it is manifestly unfair and misleading to suggest to the voters that it is.

II. The title obscures, and is unclear and misleading, regarding the effects the measure would necessarily have upon both State programs and local district programs – and thus a direct and substantial effect of a "yes/for" or "no/against" vote on the measure.[5]

A. Standard of Review and Preservation of Issue.

The standard of review as presented by Petitioners, Proponents, and the Title Board, and their statements as to preservation, are consistent.

B. Argument.

As discussed in sections III and IV of Petitioners' Opening Brief, the Proposed Initiative would have a very material and immediate impact upon funding for programs at both the State and local levels. While the initial dollar

[5] This section of Petitioners' Answer Brief addresses the issues raised in both sections III and IV of their Opening Brief.

magnitude of the impact on local property tax revenue ($1.03 billion in the first year) is at least disclosed in the title, the title omits reference to any impact at the State level on State programs – notwithstanding the estimate in the Legislative Council Staff's Fiscal Summary of a $257.7 million first-year impact on the "state share" of public school financing alone.[6]

Both the Proponents and the Title Board argue that even a passing reference to these impacts in the title is unnecessary as neither the Title Board nor this Court is required to "predict" the "application" of the measure if adopted. It is the responsibility of the Title Board, however, to assure (1) that the measure does not contain multiple subjects and (2) that the title is not unclear and misleading. *See, e.g.*, *In re Title, Ballot Title and Submission Clause for 2007-2008 #62*, 184 P.3d 52, 58 (Colo. 2008). In the present case, the impacts discussed in sections III and IV of Petitioners' Opening Brief are not "predictions" – they are a necessary and inevitable *effect* and *consequence* of the Proposed Initiative. And these effects and consequences – "coiled in the folds" of the measure if ever that term were applicable – are affirmatively obscured and misrepresented by a title (tracking the

[6] Proponents – who objected to inclusion in the title of even the direct impact upon local district revenues (see their Motion for Rehearing in the Secretary of State's Certificate, 11th page) – suggest that including even this very limited, though highly pertinent, fiscal information would result in "an absurdly long title." Prop. Op. Br. at p. 20. That is clearly not the case.

language of Section 3 of the measure) that tells the voters that the postured "voter-approved revenue change" will "offset lost revenue resulting from the property tax rate reductions." In fact, (1) there is no real "voter-approved revenue change," (2) there is no "offset," and, most importantly, (3) whatever Section 3 of the measure is intended to accomplish it is not addressed to and will have absolutely no effect upon "lost revenue resulting from the property tax rate reductions" (or the effects of that revenue loss). [Please see the discussion in section I above and sections I and II of Petitioners' Opening Brief.]

The Title Board's confusion is eminently understandable. Little else could flow from the text of the measure itself (which perplexed these Petitioners as well in early reads). But it needs to stop here. The title, reflecting the language and structure of the Proposed Initiative itself, can only confuse, misinform, and affirmatively and materially mislead the voters.

CONCLUSION

Petitioners respectfully renew their request to the Court to reverse the actions of the Title Board and to enter such further Orders as it may deem appropriate in these proceedings.

Respectfully submitted this 17th day of May, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of May, 2021, a true and correct copy of the foregoing was filed and served by electronic mail upon the following:

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