

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, Colorado 80203</p>	
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2023) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #148</p> <p><b>Petitioner:</b> Peter Simmons</p> <p>v.</p> <p><b>Title Board:</b> Theresa Conley, Jeremiah Barry, and Kurt Morrison</p>	<p><b>▲ COURT USE ONLY ▲</b></p>
<p>PHILIP J. WEISER, Attorney General HARLAN NORBY, Assistant Attorney General* Ralph L. Carr Colorado Judicial Center 1300 Broadway, 8th Floor Denver, CO 80203 Telephone: 720.508.6771 E-Mail: harlan.norby@coag.gov Registration Number: 54136 <i>*Counsel of Record for the Title Board</i></p>	<p>Case No. 2024SA86</p>
<p><b>THE TITLE BOARD'S ANSWER BRIEF</b></p>	

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28(g) and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the word limits set forth in C.A.R. 28(g).

It contains 627 words.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28(g) and C.A.R. 32.

*s/ Harlan Norby*

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## TABLE OF CONTENTS

REPLY ARGUMENT .....	1
I. Petitioner does not explain how the Title Board erred by determining that Proposed Initiative 2023-2024 #148 violates the single-subject requirement.....	1
II. The Court does not set titles for proposed initiatives. ....	3
CONCLUSION.....	4

## TABLE OF AUTHORITIES

<b>CASES</b>	<b>PAGES</b>
<i>In re Title, Ballot Title, &amp; Submission Clause for 2013-2014 #76,</i> 2014 CO 52 .....	1
<i>In re Title, Ballot Title, &amp; Submission Clause for 2019-2020 #3,</i> 2019 CO 57 .....	4
<i>In re Title, Ballot Title, &amp; Submission Clause for 2021-2022 #16,</i> 2021 CO 55 .....	4
<b>CONSTITUTIONS</b>	
COLO. CONST. art. V, § 1(5.5) .....	3

## REPLY ARGUMENT

### **I. Petitioner does not explain how the Title Board erred by determining that Proposed Initiative 2023-2024 #148 violates the single-subject requirement.**

Petitioner Peter Simmons argues in his opening brief that Proposed Initiative 2023-2024 #148 contains only one subject: reducing residential real property taxes. Petr’s Opening Br., p 17. The Title Board agrees that #148 includes that subject. *See* Title Board’s Opening Br., pp 5-6.

However, Simmons does not address the Title Board’s determination that #148 would, under its plain language, also reset the mill rate for all classes of real property. *See generally* Petr’s Opening Br. The Title Board stands on its arguments from the opening brief that resetting the mill rate for other classes of real property is a distinct subject that is not “necessarily and properly connected” to #148’s proffered purpose of reducing residential real property taxes. *In re Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 2014 CO 52, ¶ 8; *see* Title Board’s Opening Br., pp 6-8.

Simmons additionally argues in his opening brief that #148's third subject — changing the percentage of votes needed to increase the assessment and mill rates for residential real property — is a necessary and proper component of reducing residential real property taxes because it “ensure[s] that ‘fraud and surprise’ is not perpetuated upon the voters of Colorado by implementing a temporary and transient reduction in real residential property taxes.” Petr’s Opening Br., p 19. But the provisions affecting the percentage of votes needed to subsequently change the assessment and mill rates for real property do not reduce residential real property taxes in any way. Rather, they are a policy choice that would make it more difficult to increase the mill rate for all classes of real property in the future. *See* Title Board’s Opening Br., pp 8-11. And contrary to Simmons’s argument, changing the threshold that is necessary for increasing mill rates for all classes of real property presents a serious risk that voters would be surprised by #148’s outcome, particularly because the measure’s proffered purpose is to reduce residential real property taxes only. *See id.* at 13-14.

## **II. The Court does not set titles for proposed initiatives.**

Simmons incorrectly argues in his opening brief that the Court should set a title for #148. Petr’s Opening Br., p 20.

The Title Board did not set a title for #148 because it unanimously determined that it lacked jurisdiction to do so given the measure’s multiple subjects. *See* Record, p 5; *Hearing Before Title Board on Proposed Initiative 2023-2024 #148* (March 7, 2024) at 3:43:30-3:47:33; *Rehearing Before Title Board on Proposed Initiative 2023-2024 #148* (March 20, 2024) at 7:35-12:50. In light of its single-subject determination, the Board could not set a title for #148. *See* COLO. CONST. art. V, § 1(5.5) (“If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls.”).

If the Court disagrees with the Title Board’s determination that #148 violates the single-subject requirement, the Court should not set a title for the measure. Rather, the proper procedure would be to return #148 to the Title Board “for the purpose of setting a title, ballot title,

and submission clause.” *In re Title, Ballot Title, & Submission Clause for 2019-2020 #3*, 2019 CO 57, ¶ 40.

## CONCLUSION

The Court should affirm the Board’s determination that Proposed Initiative #148 violates the single-subject requirement, particularly under the deferential standard of review that applies. *See In re Title, Ballot Title, & Submission Clause for 2021-2022 #16*, 2021 CO 55, ¶ 9. The Court should additionally decline Simmon’s request to set a title for the measure.



Respectfully submitted this 26th day of April, 2024.

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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing **THE TITLE BOARD'S ANSWER BRIEF** has been served upon the following parties electronically via CCEF, at Denver, Colorado, this 26th day of April, 2024, and sent via Federal Express addressed as follows:

SENT VIA FEDEX OVERNIGHT

TO:

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