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SUPREME COURT, STATE OF COLORADO 2 E. 14 th Avenue, Suite 400 Denver, CO 80203	<div style="border: 1px solid black; padding: 5px; text-align: center;"><p>FILED IN THE SUPREME COURT</p><div style="border: 1px solid black; padding: 5px; display: inline-block;"><p>JUN 06 2008</p></div><p>OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK</p></div>
ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2007) Appeal from the Ballot Title Setting Board	
IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2007- 2008, #126 ("Education Funding")	
Petitioner: Douglas Bruce, Objector v. Respondents: NICOLE S. HANLEN and LYNDA K. NEFF, Proponents	▲ COURT USE ONLY ▲
Title Board: WILLIAM A. HOBBS and DANIEL L. CARTIN	Case Number: 08 SA 191
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RESPONDENTS' OPENING BRIEF	

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I. STATEMENT OF THE ISSUES

1. Whether the Title Board correctly found the initiative concerning the manner in which the state funds public education from preschool through the twelfth grade comprises a single subject.
2. Whether the Title Board set a fair, accurate, and complete title.

II. STATEMENT OF THE CASE

A. Nature of the case, course of proceedings, and Title Board results

Proponents Nicole S. Hanlen and Lynda K. Neff proposed an initiative concerning the manner in which the state funds public education from preschool through the twelfth grade. The proposal was designated Initiative 2007-08 #126.

The measure was considered by the Offices of Legislative Council and Legislative Legal Services and submitted to the Secretary of State for title setting. The Title Board established a title on May 21, 2008.

Douglas Bruce, a registered elector (“Bruce”), objected to the title set by the Title Board. In addition, Proponents objected to some language in the title. A rehearing was held on May 29, 2008, at which the Title Board denied the motions for rehearing, except to the extent the Board modified some of the language of the title.

Bruce filed an appeal with this court on May 30, 2008.

B. Statement of the Facts

Initiative #126 addresses the manner in which Colorado funds public education from preschool through twelfth grade. It would modify the state constitution to amend the way in which education is funded by creating a savings account in the state education fund; specifying how that savings account is funded and when moneys from the account may be spent; eliminating a future requirement that the statewide base per pupil funding for public education increase annually by at least the rate of inflation; permitting the general assembly to transfer moneys from the general funds to the state education fund so long as certain obligations for transportation are met; and requiring that revenue in excess of the limit on state fiscal year spending be transferred to the state education fund.

The Title Board set the following title:

An amendment to the Colorado constitution concerning the manner in which the state funds public education from preschool through the twelfth grade, and, in connection therewith, for the 2010-11 state fiscal year and each state fiscal year thereafter, requiring that any revenue that the state would otherwise be required to refund pursuant to the constitutional limit on state fiscal year spending be transferred instead to the state education fund; eliminating the requirement that, for the 2011-12 state fiscal year and each state fiscal year thereafter, the statewide base per pupil funding for public education from preschool through the twelfth grade and the total state funding for all categorical programs increase annually by at least the rate of inflation; creating a savings account in the state education fund; requiring that a portion of the state income tax revenue that is deposited in the state education fund be credited to the

savings account in certain circumstances; requiring either a two-thirds majority vote of each house of the general assembly or, in any state fiscal year in which Colorado personal income grows less than six percent between the two previous calendar years, a simple majority vote of the general assembly to use the moneys in the savings account; establishing the purposes for which moneys in the savings account may be spent; establishing a maximum amount that may be in the savings account in any state fiscal year; and allowing the general assembly to transfer moneys from the general fund to the state education fund, so long as certain obligations for transportation funding are met.

III. SUMMARY OF THE ARGUMENT

The Title Board correctly found that #126 contains a single subject and included in the title the central features of the proposal. The title accurately summarized the single subject and other aspects of the measures. This Court, in its limited review of the title, should affirm the Title Board's decision.

IV. ARGUMENT

A. General Standards of Review

As this Court recently said, "Our review of Title Board actions is limited. At this stage, we do not address the merits of a proposed measure, interpret it, or construe its future legal effects. *See, e.g., In re Proposed Initiative 2001-2002 #43*, 46 P.3d 438, 443 (Colo. 2002); *In re Proposed Initiatives 2001-2002 #21 & #22*, 44 P.3d 213, 215-16 (Colo. 2002); *In re Proposed Initiative 1999-2000 #200A*, 992 P.2d 27, 30 (Colo. 2000). Instead, these are matters 'for judicial determination in a

proper case should the voters approve the initiative.’ *In re Proposed Initiative 1999-2000 #200A*, 992 P.2d at 30. In reviewing an action of the Title Board, all legitimate presumptions must be resolved in favor of the Board. *In re Proposed Initiative on Educ. Tax Refund*, 823 P.2d 1353, 1355 (Colo. 1991). An initiative title will only be invalidated in a clear case. *Id.*” *In the Matter of the Title, Ballot Title, and Submission Clause for 2007-2008 #57*, No. 08SA91, Slip opinion at 5-6 (May 23, 2008) (“*In re Proposed Initiative 2007-08 #57*”).

In its limited review, this Court will not reverse the actions of the Title Board if improvements could be made to an otherwise legally sufficient title. *In re School Pilot Program*, 874 P.2d 1066, 1070 (Colo. 1994). The Title Board is not required to describe every nuance and feature of the proposed measure. *In re Proposed Initiative Concerning “State Personnel System”*, 691 P.2d 1121, 1124 (Colo. 1984). This Court does not demand that the Title Board draft the best possible titles, and grants great deference to the Title Board in the exercise of its drafting authority. *In re Proposed Initiative 2007-08 #57*, Slip op. at 10. The titles are intended to be a “relatively brief and plain statement by the Board setting forth the central features of the initiative for the voters,” rather than “an item-by-item paraphrase of the proposed constitutional amendment or statutory provision.” *Id.*

at 11, quoting *In re Proposed Initiative 1997-1998 #62*, 961 P.2d 1077, 1083 (Colo. 1998).

Thus, the goal of the title setting process is “to ensure that persons reviewing the initiative petition and voters are fairly advised of the import of the proposed amendment.” *In re Proposed Initiative on “Trespass - Streams with Flowing Water,”* 910 P.2d 21, 23 (Colo. 1996). Only where the titles and submission clause are clearly vague, misleading, or confusing will a decision of the Title Board be overturned. *In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito*, 873 P.2d 733, 739-40 (Colo. 1994).

B. The Title Board correctly found the single-subject requirement was met.

1. Legal Standards

Article V, section 1(5.5) of the Colorado Constitution requires that a proposed initiative contain a single subject. A proposed initiative violates the single-subject rule if it relates to more than one subject *and* has at least two distinct and separate purposes that are not dependent upon or connected with each other. *See In re Proposed Initiative 2007-08 #57*, Slip op. at 7. This Court construes the single-subject requirement liberally so as not to impose undue restrictions on the

initiative process. *In the Matter of the Title, Ballot Title, and Submission Clause for 2007-2008 #61*, No. 08SA89 (May 16, 2008), Slip opinion at 8.

In applying the single-subject test, the Court will assess whether the initiative tends to effectuate “one general objective or purpose” (in which case it presents only one subject) or whether it “addresses subjects that have no necessary or proper connection to one another” (in which case it will be disallowed as containing more than one subject). *In re Initiative for 1999-2000 #25*, 974 P.2d 458, 463 (Colo. 1999). Provisions that assist in accomplishing a measure’s essential purpose are well within its single subject. As such, the Court analyzes whether implementation provisions tend “to effect or to carry out” the “one general object or purpose” of the initiative. *In re “Public Rights in Water II,”* 898 P.2d 1076, 1079 (Colo. 1995). Where details are “directly tied” to a proposal’s “central focus,” the Court will not find that a separate subject exists. *In re Initiative for 1999-2000 #200A*, 992 P.2d 27, 30 (Colo. 2000).

Further, a ballot measure encompasses a single subject, even if it includes “provisions that are not wholly integral to the basic idea of a proposed initiative.” *In re Initiative for 1997-98 #74*, 962 P.2d 927, 929 (Colo. 1998). Thus, the fact that one or more provisions might stand alone as another initiative or that the

measure itself is comprehensive or multi-faceted does not automatically make any aspect of the proposal a separate and distinct subject.

2. *Initiative #126 meets the single-subject requirement*

In his Appeal, Bruce argues the initiative contains more than one subject, but he does not identify the alleged multiple subjects. At the initial Title Board hearing, though, Bruce claimed the measure contained three separate subjects: (1) funding for education; (2) funding for categorical programs; and (3) having “TABOR refunds” transferred to the state education fund. In an e-mail to the Title Board on May 29, 2008 (the day of the rehearing), Bruce asserted an additional item he claimed was a separate subject, “linkage to transportation funding.” Each of these four items, however, are part of, related to, or connected with the single subject of funding public education for preschool through twelfth grade.

The first item, funding for education, clearly falls within the subject of public education funding. The second item, funding for categorical programs, also falls within the single subject of education funding. Bruce attempted to argue that categorical programs are unrelated to education, but he overlooked the definition of “categorical programs” in article IX, section 17(2)(a) of the constitution. That provision defines “categorical programs,” for purposes of section 17, to include “transportation programs, English language proficiency programs, expelled and at-

risk student programs, special education programs (including gifted and talented programs), suspended student programs, vocational education programs, small attendance centers, comprehensive health education programs, and other current and future accountable programs specifically identified in statute as a categorical program.” From the existing definition of categorical programs, it is clear that funding for categorical programs is part of the single subject of education funding.

Third, Bruce claims the measure contains a separate subject in its section that provides, “any revenue the state would otherwise be required to refund pursuant to [article X, section 20 of the Colorado constitution] shall be transferred instead to the state education fund” *See* Section 2 of the proposed initiative (adding a new subsection (10) to article X, section 20). But since this provision addresses the manner of funding public education by authorizing the transfer of excess revenue to the state education fund, it ties directly to the measure’s central focus—public education funding. *See In re Initiative for 1999-2000 #200A*, 992 P.2d at 30 (an initiative that tends to effect or carry out one general object or purpose satisfies the single-subject requirement).

The final item Bruce alleges to be a separate subject is “the linkage to transportation funding.” One can only assume that Bruce means section 17(7)(b)

of the measure creates a separate subject. It does not. Section 17(7) of the proposal provides:

(7) Transfers from the general fund. (a) SUBJECT TO THE LIMITATIONS SPECIFIED IN PARAGRAPH (b) OF THIS SUBSECTION (7), FOR THE 2009-10 STATE FISCAL YEAR AND EACH STATE FISCAL YEAR THEREAFTER, THE GENERAL ASSEMBLY MAY TRANSFER MONEYS FROM THE GENERAL FUND TO THE STATE EDUCATION FUND. TRANSFERS OF MONEYS FROM THE GENERAL FUND TO THE STATE EDUCATION FUND PURSUANT TO THIS SUBSECTION (7) SHALL NOT BE SUBJECT TO ANY STATUTORY LIMITATION ON GENERAL FUND APPROPRIATIONS GROWTH OR OTHERWISE AFFECT SUCH LIMITATION.

(b) THE GENERAL ASSEMBLY MAY MAKE A TRANSFER PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (7) ONLY IF, FOR THE APPLICABLE STATE FISCAL YEAR, THE MAXIMUM PERCENTAGE OF STATE SALES AND USE TAXES CONSTITUTING SALES AND USE TAXES ATTRIBUTABLE TO SALES OR USE OF VEHICLES AND RELATED ITEMS THAT IS REQUIRED, PURSUANT TO LAW, TO BE TRANSFERRED ANNUALLY TO THE HIGHWAY USERS TAX FUND, CREDITED TO THE STATE HIGHWAY FUND, AND EXPENDED BY THE DEPARTMENT OF TRANSPORTATION FOR THE IMPLEMENTATION OF THE STRATEGIC TRANSPORTATION PROJECT INVESTMENT PROGRAM IS SO TRANSFERRED, CREDITED, AND EXPENDED.

Subsection 7(a) authorizes the general assembly to transfer moneys from the general fund to the state education fund, and thus is connected to the single subject of public education funding. Subsection 7(b) simply provides that a transfer from the general fund to the state education fund may be made under subsection 7(a) only if certain sales and use taxes required by law to be transferred or credited to certain highway funds or expended by the department of transportation for the strategic transportation project investment program, are in fact transferred,

credited, and expended. Subsection 7 has no effect at all on transportation funding and neither guarantees nor provides funds for transportation. Instead, subsection 7(b) simply limits the circumstances under which general funds can be transferred to the state *education* fund. Thus, subsection 7(b) affects *education* funding, not transportation funding. It thus is connected with and relates directly to the single subject of state education funding. Under settled case law, since the details of the measure are “directly tied” to the proposal’s central focus of education funding, the measure satisfies the single-subject requirement. *See In re Initiative for 1999-2000 #200A, supra.*

In sum, the Title Board properly found that the measure satisfies the single-subject requirement. That decision was correct and should be affirmed.

C. The Title is fair, accurate, and complete.

1. Legal Standards

The Title Board’s stated task is to “unambiguously state the principle of the provision sought to be added, amended, or repealed.” C.R.S. § 1-40-106(3)(b).

The title is intended to be a “relatively brief and plain statement by the Board setting forth the central features of the initiative for the voters” rather than “an item-by item paraphrase of the proposed constitutional amendment or statutory provision.” *In re Proposed Initiative 1997-98 #62, 961 P.2d at 1083.* A title need

only provide voters with an overview of the “central features” of an initiative, *In re Amendment to Article XVI, Section 6, Colorado Constitution, Entitled “W.A.T.E.R.”*, 875 P.2d 861, 864-65 (Colo. 1994), and it need not set forth each and every nuance and subtlety of a measure. *In re Proposed Initiative Designated Governmental Business*, 875 P.2d 871, 878 (Colo. 1994). This Court does not demand that the Title Board draft the best possible titles, and grants great deference to the Title Board in the exercise of its drafting authority. *In re Proposed Initiative 2007-08 #57*, Slip op. at 10. Given these standards, the Court should affirm the title set.

2. *The Title Board did not err in setting this title.*

In his Appeal, Bruce asserts that the title is “unfair, misleading, inaccurate, and incomplete,” but does not specify how. In his May 29, 2008 e-mail to the Title Board, however, he asserted that the following changes should be made to the title:

1. On line three of the title, after “to refund,” add “to Colorado taxpayers.”
2. Before “transferred,” insert “permanently.”
3. Conform the 2/3 vote requirement wording in both petitions to the actual language of the text, and to each other.
- ...
5. On #126, the word “undefined” should appear in front of “Colorado personal income.”

But Bruce's objections do not explain how or why the language chosen by the Title Board is "unfair, misleading, inaccurate, and incomplete." And his suggested revisions are not necessary to a fair and accurate title.

First, the phrase "to Colorado taxpayers" need not be included in the title. The relevant title language is the phrase, "for the 2010-11 state fiscal year and each state fiscal year thereafter, requiring that any revenue that the state would otherwise be required to refund pursuant to the constitutional limit on state fiscal year spending be transferred instead to the state education fund." This language chosen by the Board accurately and fairly conveys to voters that the measure provides that "any revenue that the state would otherwise be required to refund pursuant to the provisions of this section [article X, section 20 of the constitution] shall be transferred instead to the state education fund" See Section 2 of the proposed initiative (creating a new subsection (10) in article X, section 20). The title language fairly advises the voters that funds the state would otherwise be required to refund to the voters because of the constitutional limit on state fiscal year spending will instead be transferred to the education fund. See *In re Proposed Initiative on "Trespass - Streams with Flowing Water,"* 910 P.2d at 23 (goal of title-setting process is to ensure that voters are fairly advised of the import of the proposed amendment). Therefore, the language is fair and accurate.

Second, objecting to the same title language, Bruce asserts that “permanently” should be added before “transferred.” That objection lacks merit. As noted, the measure provides that the revenue that the state would otherwise be required to refund under article X, section 20, will be transferred instead to the state education fund. The title language chosen accurately informs the voter of that fact. Because the title language is both fair and accurate, this Court should defer to the Title Board’s choice of language. Where the Board’s chosen language is not vague, misleading, or confusing, it should not be overturned. *See In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito*, 873 P.2d at 739-40.

Next, Bruce asked the Board to “Conform the 2/3 vote requirement wording in both petitions to the actual language of the text, and to each other.” The title language at issue is, “requiring a two-thirds majority vote of the general assembly to use the moneys in the savings account.” This language relates to section 17(6)(c) of article IX of the constitution that the initiative would create. That provision specifies, “The General Assembly shall only appropriate moneys from the state education fund savings account by the enactment of a bill approved by a two-thirds majority vote of all the members elected to each house of the General Assembly” The title language accurately reflects the measure’s requirement

of a two-thirds majority vote (i.e., a “super majority”) before the legislature may appropriate funds from the state education fund savings account. The title language is not misleading, vague, or confusing, and thus should be upheld. *See In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito*, 873 P.2d at 739-40.

Finally, Bruce argues that the term “undefined” should be added before the term “Colorado personal income.” The title is fair and accurate without the term “undefined,” and therefore Bruce’s argument fails. The title language at issue is “requiring . . . in any state fiscal year in which Colorado personal income grows less than six percent between the two previous calendar years, a simple majority vote of the general assembly to use the moneys in the savings account.” The title language accurately describes the provision of subsection 17(6)(c), of the measure which permits funds in the state education fund savings account to be accessed by the general assembly by a simple majority vote (rather than a two-thirds “super-majority” vote) *if* Colorado personal income grows less than six percent between the two previous calendar years. Since the title language chosen by the Board fairly and accurately describes this aspect of the measure, the title language should stand. The term “undefined” is not necessary to a fair and accurate title.

Therefore, the Board did not need to add it to the title. Moreover, the term

“undefined” would likely confuse the voter, and thus would not have been a proper modification to the title.

In sum, the title set by the Board is fair, accurate, and complete, and should be upheld.

V. CONCLUSION

The decision of the Title Board should be affirmed.

Respectfully submitted this 6th day of June, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of June 2008, a true and correct copy of the foregoing **Respondents' Opening Brief** was sent via email and overnight mail to the following:

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