

DATE FILED: February 4, 2015

SUPREME COURT OF COLORADO

2 East 14th Avenue
Denver Colorado 80203

ORIGINAL PROCEEDING UNDER
C.R.S. § 1-40-107(2)
Appeal from the Ballot Title Board

Petitioner: Douglas Kemper

v.

Title Board: Suzanne Staiert, David Blake, and Jason
Gelender

And

Respondents: Phillip T. Doe and Barbara Mills-Bria

Phillip T Doe
7140 South Depew
Littleton, CO 80128
303-973-7774
E-mail:

Barbara Mills-Bria
1831 S Welch Circle
Lakewood, CO 80228
303-989-7481
E-mail:

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OF THE STATE OF COLORADO
Christopher T. Ryan, Clerk

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2015SA15

RESPONDENTS' ANSWER 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, the undersigned certifies that:

- X The brief complies with C.A.R. 28(g) because it does not exceed 30 pages.
- X The brief complies with C.A.R. 28(k).

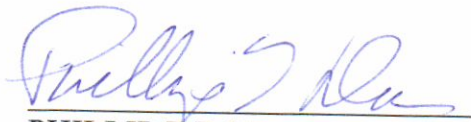
For the party raising the issue:

_____ It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R. _____, p. _____), not to an entire document, where the issue was raised and ruled on.

For the party responding to the issue:

X It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

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


PHILLIP T. DOE



BARBARA MILLS-BRIA

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Respondents Phillip T Doe and Barbara Mills-Bria hereby submit their
Answer Brief.

STATEMENT CONCERNING ISSUES PRESENTED FOR REVIEW

1. Does proposed Initiative #4, which places a responsibility upon the state of Colorado to hold the natural resources of the state in trust for the citizens of Colorado and to protect them from harm for the health and safety of the people as beneficiaries, contain a single subject?
2. Is the title set by the board confusing, vague, or misleading?

STATEMENT OF THE CASE

A. NATURE OF THE CASE.

This original proceeding was brought by Objector pursuant to C.R.S. §1-40-107(2) seeking review of the action of the Ballot Title Setting Board on January 7, 2015 at which time it denied the Objector's Motion and affirmed its decision at the hearing on December 17, 2014 to set a title for proposed Initiative #4.

B. NATURE OF THE MEASURE.

Proposed Initiative #4 would establish the public trust doctrine for natural resources in the state of Colorado by adding a new section 9 to Article XVI of the Colorado Constitution and place the responsibility upon the state of Colorado to

protect the air, water, including ground water and surface water, the environment and natural resources as public trust assets for the health and safety of the citizens of Colorado.

C. COURSE OF PROCEEDINGS AND DISPOSITION BEFORE
TITLE BOARD.

At the first hearing of the Ballot Title Setting Board ("Title Board") on December 17, 2014 the Title Board set a title for Initiative #4. The Objector filed a Motion for Rehearing on the ground that the measure contained multiple subjects and was vague and confusing. The rehearing was held on January 7, 2015. After the rehearing, the title board denied the Objector's Motion and affirmed its decision to set the title.

Objector timely filed a Petition for Review in this Court.

STATEMENT OF THE FACTS

A. Single subject issue. Objector contends that proposed Initiative #4 constitutes more than one subject. The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning common ownership by all Coloradans of public trust resources, and, in connection therewith, defining public trust resources as clean air, clean water, and the preservation of the environment and natural resources; regardless of any prior federal, state, or local approval, requiring the state, as trustee, to conserve and maintain public trust resources by using the best science available to protect them against any substantial impairment, to seek natural resource damages from

anyone who substantially impairs them and to use damages obtained to remediate the impairment; regardless of any prior federal, state, or local approval, allowing Colorado citizens to file enforcement actions in court; requiring anyone who is proposing an action or policy that might substantially impair public trust resources to prove that the action or policy is not harmful; and requiring referral for prosecution of any criminal offense involving the manipulation of data, reports, or scientific information in an attempt to use public trust resources for private profit.

Standard of Review. In reviewing a challenge to the Title Board's decision, the Court is to "employ all legitimate presumptions in favor of the propriety of the Title Board's actions." *In re Title, Ballot Title, Submission Clause for 2011-2012 # 3*, 274 P.3d 562, 565 (Colo. 2012) (citations omitted). The Court may only overturn the Title Board's finding that an initiative contains a single subject in a clear case. *Id.* The Title Board has considerable discretion in setting the titles for a ballot initiative, and the Court's review is limited to whether the titles set by the Board are "insufficient, unfair, or misleading." *Id.*

SUMMARY OF ARGUMENT

The proposed initiative #4 complies with the single subject rule, as each provision is necessary and connected to the fundamental purpose of the initiative to provide that the state has an obligation as trustee to protect the environment and natural resources of the state in order to safeguard the health and safety of all of the citizens of Colorado, who are its beneficiaries.

The ballot title is clear, fair, and accurately expresses the intent of the Respondents.

ARGUMENT

A. The Initiative contains a single subject. Pursuant to Article V, Section 1(5.5) of the Colorado Constitution and C.R.S. § 1-40-106.5, the Board had jurisdiction to set title, as the proposed Initiative is limited to a single subject—the recognition of the Public Trust Doctrine and the duties required of government pursuant to the doctrine to protect vital natural resources for the public beneficiary.

Objector contends that the initiative contains the following multiple and distinct objectives:

1. Impose obligations for regulation to protect the environment;
2. Create a common property interest in natural resources, including water and minerals, to mandate preservation of these resources; and
3. Require referral for prosecution of any criminal offenses involved in manipulating data to profit from specified resources.

In regard to the first and second paragraphs above, Respondents do not agree with the Objector's characterization of those provisions as somehow being separate and disconnected from the single subject described above. The objective of the Initiative is to establish the Public Trust Doctrine, clarifying the trust assets that are subject to the doctrine, and procedures for implementation. That constitutes a

single subject under this Court's precedent. *See e.g., In re Title, Ballot Title, Submission Clause for 2011-12 #3*, 274 P.3d 562, 565 (Colo. 2012).

In regard to item three above, which refers to referral for prosecution of any criminal offenses involved in manipulating data to profit from specified resources, the Initiative states:

Any person, corporation, or other entity found to be manipulating data, reports, or scientific information in an attempt to utilize public trust resources for private profit shall be referred for prosecution for any criminal offenses that may apply in addition to other penalties the state may impose, including loss of charter to operate in the state. (emphasis added) (Initiative #4, subsection 4).

Subsection 4 of the Initiative doesn't make any behavior that is not already criminal a crime, but instead places a responsibility on the state to enforce existing laws in order to carry out its responsibilities to protect our environment and resources under the Public Trust Doctrine. This is a description of procedures for enforcement of the Public Trust Doctrine, which is clearly related to the single subject of the Initiative. *In re Title, Ballot Title, Submission Clause for 2011-12 #3*, 274 P.3d at 565.

Objector has tried to artificially separate the provisions of the initiative into more than one subject.

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. *In re Ballot Title 1997-1998 No. 74*, 962 P.2d 927, 929 (Colo. 1998)(en banc).

The single-subject requirement must be "liberally construed so as not to impose undue restrictions on the initiative process." *In re Ballot Title for 1997-1998 No. 74*, 962 P.2d at 929. To that end, "the single-subject requirement does not preclude the use of provisions that are not wholly integral to the basic idea of a proposed initiative." *Id.*

An initiative violates the single subject requirement when it (1) relates to more than one subject and (2) has at least two distinct and separate purposes. *In re Title for 2007-2008 No. 61*, 184 P.3d 747, 750 (Colo.2008). In contrast, if the initiative tends to achieve or to carry out one general object or purpose, it constitutes a single subject. *In re 2007-2008 No. 61*, 184 P.3d at 750; *In re Public Rights in Waters II*, 898 P.2d 1076, 1078-79 (Colo. 1995). Initiative #4 tends to achieve one object or purpose---to protect Colorado's environment and resources under the Public Trust Doctrine and all of its provisions are designed to carry out that purpose. The subject matter is "necessarily, and properly connected." *In re Title, Ballot Title, Submission Clause for 2011-12 #3*, 274 P.3d at 565. It does not "combine an array of disconnected subjects into the measure for the purpose of garnering support from various factions." *Id.* at 566. Therefore, Initiative #4

complies with the single subject rule, and the Title Board had jurisdiction to set the ballot title.

B. The Ballot Title is not confusing or misleading, and fairly reflects the Proponents' intent. Finally, Objector contends that the Title and submission clause are misleading and likely to create confusion among the voters, and are unfair and do not fairly express the true intent of the initiative:

1. The Title improperly omits any mention of the creation and declaration of "common property" rights in specified resources, which is a material feature of the Initiative that must be disclosed in the Title;
2. The Title improperly omits mention that the Initiative's retroactive effect deals with commercial dealings as well as public actions.
3. The "concerning" phrase is misleading in that it uses the Initiative's specially-defined phrase, "public trust resources," to conceal the multiple subjects contained therein.

The Title, as set by the Board, specifically states: "common ownership by all Coloradans of public trust resources, and, in connection therewith, defining public trust resources as clean air, clean water, and the preservation of the environment and natural resources." The Title clearly expresses Initiative #4's single subject and mentions the issue raised in Objector's point number 1 above.

Concerning the Objector's claim that "the Title improperly omits mention that the Initiative's retroactive effect deals with commercial dealings as well as

public actions,” the Title states “regardless of any prior federal, state, or local approval, requiring the state, as trustee, to conserve and maintain public trust resources by using the best science available to protect them against any substantial impairment, to seek natural resource damages from anyone who substantially impairs them and to use damages obtained to remediate the impairment.” (emphasis added). Moreover, the Court’s limited role in this process prohibits it from addressing “how an initiative might be applied if enacted.” *In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-02 No. 43*, 46 P.3d 488, 443 (Colo. 2002).

Finally, the Respondents maintain that the objection by the Objector that the phrase “public trust resources” “conceals the multiple subjects contained therein” is not valid because there is, indeed, only one subject contained in the Initiative, as described *supra*.

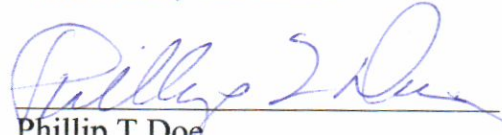
For these above reasons the title set by the board clearly and fairly expresses the intent of proposed Initiative #4 and is not misleading.

CONCLUSION

Respondents respectfully request that, pursuant to C.R.S. § 1-40-107(2) the court affirm the Title Board’s denial of the Motion for Rehearing and find that the Title Board was correct in setting the title for the Initiative.

Dated: February 4, 2015

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Phillip T Doe", written over a horizontal line.

Phillip T Doe

Phone: 303-973-7774

Email:

A handwritten signature in blue ink, appearing to read "Barbara Mills-Bria", written over a horizontal line.

Barbara Mills-Bria

1831 S Welch Circle

Lakewood, CO 80228

303-989-7481

E-mail:

Certificate of Service

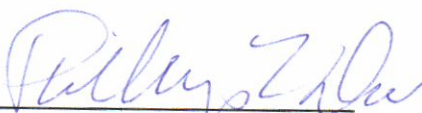
We hereby certify that on February 4, 2015, a true and correct copy of the foregoing RESPONDENTS' ANSWER BRIEF was served via hand delivery and via email at the addresses shown below to the following:

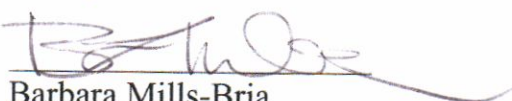
Stephen H. Leonhardt
Alix L. Joseph
Steven M. Nagy
Burns, Figa & Will, P.C.
6400 S. Fiddlers Green Circle, Suite 1000
Greenwood Village, CO 80111

ajoseph@bfwlaw.com
snagy@bfwlaw.com
Attorneys for Douglas Kemper

LeeAnn Morrill, Esq.
Sueanna Johnson
Office of the Colorado Attorney General
1300 Broadway, 10th Floor
Denver CO 80203

Attorney for the Title Board


Phillip T Doe


Barbara Mills-Bria