

SUPREME COURT, STATE OF COLORADO 2 E. 14 th Avenue, Suite 400 Denver, CO 80203	<p>FILED IN THE SUPREME COURT</p> <p>JUN 16 2008</p> <p>OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK</p>
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, #103 ("Colorado Housing Investment Fund") Petitioner: ROBERT GOLDEN, Objector v. Respondents: NEDRA SAN FILIPPO and KENNETH HOAGLAND, Proponents Title Board: WILLIAM HOBBS, SHARON EUBANKS, and DANIEL DOMENICO	
Attorney for Respondents: Blain D. Myhre Isaacson Rosenbaum P.C. 633 17 th Street, Suite 2200 Denver, Colorado 80202 Phone Number: (303) 292-5656 FAX Number: (303) 292-3152 E-mail: bmyhre@ir-law.com Atty. Reg. #: 23329	Case Number: 08 SA 193
RESPONDENTS' ANSWER BRIEF	

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I. Introduction

In his Answer Brief, Petitioner Robert Golden reiterates the arguments made before the Title Board. The Title Board properly rejected those arguments. This Court, in its limited review, should do the same.

II. Initiative #103 contains a single subject.

In reviewing the Title Board's actions, this Court must liberally construe the single-subject requirement 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 so doing, it is evident that #103 satisfies the single-subject requirement.

As the Title Board notes in its Opening Brief, "all parts of the measure are related to its purpose," and thus the measure satisfies the single-subject requirement. Opening Brief of Title Board at 7. Petitioner's argument that the measure contains multiple subjects was correctly rejected by the Title Board.

Petitioner Golden argues that the section that "allows for the funding of 'foreclosure and homelessness prevention' programs" creates "two subjects unrelated to the measure's central purpose of increasing the quantity of affordable housing in Colorado." Petitioner's Opening Brief at 5. His argument lacks merit.

First, as noted in Respondents' Opening Brief, Golden states the subject of the initiative too narrowly. *See* Respondents' Opening Brief at 7. The purpose is not simply increasing the quantity of affordable housing *units*, but instead to help create and preserve affordable housing *opportunities*. *See* Initiative section 1. The Title Board recognized this and thus properly stated the single subject as "the creation of a real estate transfer tax to fund affordable housing programs."

Second, foreclosure and homelessness prevention are directly tied to affordable housing programs. *See* Respondents' Opening Brief at 9-10. Under the initiative, moneys from the Colorado Housing Investment Fund ("the Fund") can be used to support "the creation and preservation of affordable housing stock" through, among other things, "foreclosure and homelessness prevention." *See* Initiative section 3(2)(i). Thus, "foreclosure and homelessness prevention" services can only be funded to support "the creation and preservation of affordable housing stock." They thereby tie directly to the central focus of the initiative, and are not separate subjects.

Golden erroneously asserts that Fund moneys could be used for services to those facing foreclosure "regardless of their personal wealth or how expensive their home might be." Petitioner's Opening Brief at 5. That's simply not true. The purpose of the initiative is "to establish a housing investment fund to provide a

dedicated, statewide source of revenue to support the creation and preservation of affordable housing opportunities for residents of the state *from very low-income households, low-income households, and workforce households, including, but not limited to, persons with special needs and the homeless.*” Initiative section 1 (emphasis added). The measure defines “very low-income household” to mean “a household whose income is at or below fifty percent of the area median income or such other definition as may be promulgated by the United States Department of Housing and Urban Development or any successor agency.” *See* Section 2(7). “Low-income household” means “a household whose income is at or below eighty percent of the area median income or such other definition as may be promulgated by the United States Department of Housing and Urban Development or any successor agency.” *See* Section 2(6). And “workforce household” is “a household with at least one primary wage earner in a community or region with a documented shortage of housing that is affordable to its workers and whose household income is at or below one hundred twenty percent of the area median income.” *See* Section 2(8).

Section 3(1) expressly creates the Fund “to provide affordable housing opportunities for residents of the state residents *from very low-income households, low-income households, and workforce households.*” (Emphasis added.) The

Fund thus is created to provide affordable housing opportunities only to these defined income groups. The measure does not authorize or contemplate providing services to wealthy individuals. Only those who are income-eligible would be served by the measure. Providing them affordable housing opportunities is within the single subject.

Golden also argues that “homelessness prevention” programs such as “drug and alcohol treatment, mental health counseling, meals, and even clothing, do nothing to increase the quantity of affordable housing.” Petitioner’s Opening Brief at 6. Not only is Golden’s argument based on his overly-narrow view of the initiative’s subject, but it also rests on conjecture. In essence, Golden asks this court to take a broad view of what “permanent supportive housing” is, and then asserts that his broad view does not square with the narrow subject he defines. *See id.* at 6-7. As explained in Respondents’ Opening Brief, at 8-9, the measure does not fund the wide array of social programs Golden claims. Moneys from the Fund may be used only for the nine types of services listed in section 3(2), and then only if those services “support the creation and preservation of affordable housing stock.” *See* Section 3(2).

Golden asserts that it is “noteworthy” that the Colorado Department of Human Services, not the Division of Housing, administers the permanent-

supportive housing program (the Shelter Plus Care Program) in Colorado. *See* Petitioner's Opening Brief at 6 and Attachment C thereto. But Golden fails to mention that the Fund here would be administered by the Division of Housing, not Human Services. The initiative specifies that the "Fund administrator" is "the Division of Housing in the Department of Local Affairs or any successor agency." *See* Section 2(4). The focus of the Division of Housing is on housing needs, not on the wide variety of services listed by Golden. *See* C.R.S. § 24-32-702(1) (legislative declaration for creation of the Division of Housing) and § 24-32-705 (setting forth the functions of the division).

In sum, as explained in Respondents' Opening Brief, the measure's provisions relate to the single subject defined by the Board—the creation of a real estate transfer tax to fund affordable housing programs. *See* Respondents' Opening Brief at 6-11; *see also* Opening Brief of Title Board at 5-7; *In re Proposed Initiative for 1999-2000 #200A*, 992 P.2d 27, 30 (Colo. 2000) (where a measure's details are directly tied to a proposal's central focus, the single-subject requirement is met). Thus, the Title Board properly found that the measure satisfies the single-subject requirement.

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

A. *The title is neither inaccurate nor misleading.*

Golden argues the term “affordable housing programs” is misleading. Petitioner’s Opening Brief at 11. This argument is a reiteration of his single-subject argument, and similarly rests on the faulty premise that the measure funds a wide array of social programs. As explained above and in Respondents’ Opening Brief, the measure simply does not do what Golden claims. *See* Respondents’ Opening Brief at 8-9. The measure requires funding to be used to support the creation and preservation of affordable housing stock through the nine means specified in section 3(2) of the initiative. Therefore, the term “affordable housing programs” is not misleading or inaccurate.

Golden’s reliance on *In re Proposed Initiative Designated “Governmental Business”*, 875 P.2d 871 (Colo. 1994) is misplaced. The sweep of the initiative in that case went way beyond the terms “consumer protection” and “open government” that were used in that title, and thus the title there was misleading. *See id.* at 875-76. That is not the case here.

Golden also claims the title is misleading because the term “affordable housing” creates the appearance that only those individual and families in the lower-income brackets will be eligible to participate. *See* Petitioner’s Opening

Brief at 12. He concludes that the measure applies to 60 or 70% of the general public because it reaches “workforce households.” But Golden misstates what “workforce household” means. A “workforce household” is “a household with at least one primary wage earner *in a community or region with a documented shortage of housing that is affordable to its workers* and whose household income is at or below one hundred twenty percent of the area median income.” See Section 2(8) (emphasis added). The measure only reaches those with up to 120% of the median income if the household is in a community with a *documented shortage of housing that is affordable to its workers*. It thus targets affordable housing opportunities only to those who have a need for affordable housing. Thus, the term “affordable housing” is neither misleading nor inaccurate.

B. The title does not contain an impermissible catch phrase.

Golden next argues that “affordable housing” and “affordable housing programs” are impermissible catch phrases. Petitioner’s Opening Brief at 13. For the reasons set forth in Respondents’ Opening Brief, as well as the Title Board’s, that is not the case. See Respondents’ Opening Brief at 12-13; Opening Brief of Title Board’s at 10-12.

C. The title accurately lists the services the measure will Fund

Golden last argues that the title is misleading because “voters will be misled into believing that the list [of permissible uses] is exhaustive” Petitioner’s Opening Brief at 14. This argument is simply another version of the argument that the measure funds a wide variety of social programs beyond the nine services listed in section 3(2). But as previously noted, Golden misinterprets what the measure does. The Fund only provides moneys for the services listed in section 3(2) and then only if those services support the creation or preservation of affordable housing stock. The Title Board properly listed these nine services in the title, and thus the title set is fair, accurate, and complete.

IV. Conclusion

The decision of the Title Board was correct. This Court should affirm.

Respectfully submitted this 16th day of June, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of June 2008, a true and correct copy of the foregoing **Respondents' Answer Brief** was sent via hand-delivery to the following:

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