

COLORADO SUPREME COURT
1300 Broadway
Denver, Colorado 80203

Original Proceeding
Pursuant to Colo. Rev. Stat. § 1-40-107(2)
Appeal from the Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative
2013-2014 #38

Petitioners: GEORGE KENNEDY and
DONALD MACALADY

v.

Respondents: TIM LeVIER and JT DAVIS

and

Title Board: SUZANNE STAIERT; DANIEL
DOMENICO; and JASON GELENDER.

JOHN W. SUTHERS, Colorado Attorney
General
LEEANN MORRILL, First Assistant Attorney
General*
1300 Broadway, 6th Floor
Denver, Colorado 80203
Phone: (720) 508-6000
Fax: (720) 508-6041
Email: leeann.morrill@state.co.us
Registration Number: 38742
*Counsel of Record

FILED IN THE
SUPREME COURT

MAY 29 2013

OF THE STATE OF COLORADO
Christopher T. Ryan, Clerk

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Case No.: 2013SA111

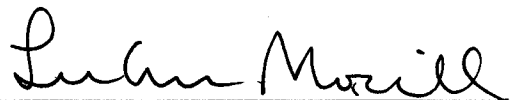
ANSWER BRIEF OF TITLE BOARD

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 the brief complies with C.A.R. 28(g) because it contains 933 words.

Further, the undersigned certifies that, for the party responding to the issue, the brief contains, under a separate heading, a statement of whether such party agrees with the opponents' statements concerning the standard of review and preservation for appeal, and if not, why not.

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



LeeAnn Morrill

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Title Board members Suzanne Staiert, Daniel Domenico, and Jason Gelender (hereinafter “the Board”), by and through undersigned counsel, hereby submit the Answer Brief of Title Board.

SUMMARY OF THE ARGUMENT

The title set by the Board for Proposed Initiative 2013-2014 #38 (“#38”) is fair, clear, and accurate. The measure prohibits any law, except a law enacted by a vote of the people, from restricting or limiting the right of the people to purchase or possess ammunition storage and feeding devices of any capacity. The title accurately states the intent of the measure and is not misleading or confusing.

ARGUMENT

I. THE TITLE IS FAIR, CLEAR, AND ACCURATE.

A. Standard of review.

The Board agrees with the standard of review as set forth in Petitioners’ Opening-Answer Brief, and the issues presented in same properly were preserved for appeal.

B. The title accurately states the intent of the measure.

A title must “correctly and fairly express the true intent and meaning” of the proposed measure. C.R.S. § 1-40-106(3)(b). Petitioners, contend that the title set by the Board in this case fails to do so because it does not contain the word “gun.” This contention is flawed because the Board is not required to set out every detail of the measure in the title. *In re Title, Ballot Title and Submission Clause for 2001-2002 #21 and #22*, 44 P.3d 213, 222 (2002). Thus, the Board’s omission of the word “gun” is not fatal to the title. Instead, the Board relied on the commonly understood meaning of the word “ammunition,” which it used in the title, to connote the word “gun.”

And, indeed, the connection between “ammunition” and “guns” is “so obvious” that it is “within the comprehension of the ordinary intellect.” *In re Title, Ballot Title and Submission Clause for 2009-2010 #45*, 234 P.3d 642, 647-48 (quotations and citations omitted). For this reason, Petitioners’ fear that the title set by the Board will lead to mass confusion on the part of voters because they will immediately think of

repeating Chinese crossbows when they read the word “ammunition” is misplaced. The average voter of ordinary intellect will employ the commonly understood meanings of words and immediately think of “guns” when they read the word “ammunition” in the title.

Petitioners further argue that the heading of #38 – which states, “Gun Magazines – No Limitation or Restriction” – “is a strong indicator of the proponents’ intent, and using it to establish the adequacy of the ballot title is consistent ‘with [this Court’s] analogous precedent regarding the use of statute headings in statutory construction.’”

Petitioners’ Opening-Answer Brief, at p. 8, quoting *In re Title, Ballot Title, & Submission Clause for Initiative 2009-2010 #24*, 218 P.3d 350, 353-54 (citations omitted). However, neither *In re #24* nor any of the other cases cited in *Petitioners’ Opening-Answer Brief* stand for the rigid proposition that the Board must set a title that incorporates all or even any of the words in the measure’s heading.

Rather, as this case perfectly demonstrates, the title set by the Board would have been contrary to the true intent of the proponents, as

well as misleading and confusing, if it had relied solely or even partially on the exact words contained in #38's heading. For example, if the Board had set the title as "An amendment to the Colorado constitution prohibiting any restriction on the purchase or possession **gun magazines** other than a restriction enacted by a voter-approved law," the title would have inaccurately expressed the proponents' intent as prohibiting non-voter approved laws limiting the right of people to purchase or possess periodicals devoted to the subject of guns. Similarly, had the Board set the title as "An amendment to the Colorado constitution prohibiting any restriction on the purchase or possession **magazine** storage and feeding devices other than a restriction enacted by a voter-approved law," the title likely would not accurately convey the proponents' true intent because of the lack of an obvious connection between the word "magazine" and the word "gun." As such, the title set by the Board expresses the true intent of the measure precisely because it includes the word "ammunition."

C. The title set by the Board is not misleading or confusing.

Petitioners also specifically contend that the title is misleading and confusing because it fails to expressly include the word “right,” which is necessary to convey to voters that #38 purports to create a “right” of unlimited access to ammunition storage and feeding devices that is being placed in the Bill of Rights to the Colorado Constitution. This contention is unsupported by this Court’s precedent because whether or not the title expressly uses rights-creating language, the title accurately informs voters of the central elements of the measure, which is to prevent the legislature from enacting laws to restrict or limit access to ammunition storage and feeding devices. Additionally, whether #38 creates a “right” is not properly subject to review in the proceeding before this Court. *In re # 45*, 234 P.3d at 648, *citing In re # 24*, 218 P.3d at 355.

Finally, contrary to Petitioners’ assertion otherwise, there is no requirement that the title set by the Board identify the exact article or section of the Colorado Constitution that may be amended. *In re Title*,

Ballot Title, Submission Clause, & Summary, etc., 797 P.2d 1275, 1281 (Colo. 1990) (citation omitted). Accordingly, the lack of a reference to the Bill of Rights to the Colorado Constitution is not fatal to the title set by the Board.

CONCLUSION

For the above-stated reasons, the Court must approve the title as set by the Board.

DATED: May 29, 2013.

JOHN W. SUTHERS
Attorney General



LEEANN MORRILL, 38742*
First Assistant Attorney General
Public Officials Unit
State Services Section
Attorney for Plaintiff
*Counsel of Record

In accordance with C.A.R. 30(f), the original of this document with original signatures is maintained in the offices of the Colorado Attorney General, 1300 Broadway, Denver, CO 80203, and will be made available for inspection by other parties or the Court upon request.

CERTIFICATE OF SERVICE

This is to certify that I duly served the foregoing **ANSWER BRIEF OF TITLE BOARD** upon all parties herein FedEx Express Mail Service, postage prepaid, at Denver, Colorado, this 29th day of May, 2013, addressed as follows:

JT Davis
1288 W. Hinsdale Drive
Littleton, Colorado 80120

Mark G. Grueskin
HEIZER, PAUL, GRUESKIN
LLP
2401 15th Street, Suite 300
Denver, Colorado 80202

Tim LeVier
191 West Dry Creek Road
Littleton, Colorado 80120

