

FILED IN THE
SUPREME COURT

MAY 15 2013

OF THE STATE OF COLORADO
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Case No.: 2013SA111

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.

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General
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OPENING BRIEF OF TITLE BOARD

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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 Opening Brief of Title Board.

STATEMENT OF THE ISSUES

The Board adopts the Statement of the Issues as set forth in the Petition for Review.

STATEMENT OF THE CASE

The Board adopts the Statement of the Case as set forth in the Petition for Review.

SUMMARY OF THE ARGUMENT

Proponents, Tim LeVier and JT Davis, seek to circulate Proposed Initiative 2013-2014 #38 (“#38”), to obtain the requisite number of signatures to place a measure on the ballot to amend Article II of the Colorado Constitution by adding a section, that will read as follows:
“Section 32. Gun Magazines – No Limitation or Restriction. No law, except a law enacted by a vote of the people, shall restrict or limit the

right of the people to purchase or possess ammunition storage and feeding devices of any capacity.” (*See Exhibit A*).

At a rehearing conducted on April 2, 2013, the Board set the following title for #38: “An amendment to the Colorado constitution prohibiting any restriction on the purchase or possession of ammunition storage and feeding devices other than a restriction enacted by a voter-approved law.” (*See Exhibit B*).

The title set by the Board 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. (*See Exhibit A*). The title accurately states the intent of the measure and succinctly reflects the content of the measure. (*Compare Exhibits A and B*).

ARGUMENT

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

A. Standard of review.

The Court does not demand that the Board draft the best possible title. *In re Title, Ballot Title and Submission Clause for 2009-2010 #45*, 234 P.3d 642, 645, 648 (Colo. 2010). The Court grants great deference to the Board in the exercise of its drafting authority. *Id.* The Court will read the title as a whole to determine whether the title properly reflects the intent of the initiative. *Id.*, at 649, n.3; *In re Trespass-Streams with Flowing Water*, 910 P.2d 21, 26 (Colo. 1996). The Court will reverse the Board's decision only if the titles are insufficient, unfair, or misleading. *Id.*

The Court will "employ all legitimate presumptions in favor of the propriety of the Board's actions." *In re Title, Ballot Title and Submission Clause for 2009-2010 #91*, 235 P.3d 1071, 1076 (Colo. 2010). Only in a clear case should the Court reverse a decision of the Title Board. *In re Title, Ballot Title and Submission Clause and Summary*

Pertaining to Casino Gambling Initiative, 649 P.2d 303, 306 (Colo. 1982).

B. Standards governing titles set by the Board.

Section 1-40-106(3)(b), C.R.S. (2012), establishes the standards for setting titles. It provides:

In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a “yes” or “no” vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly express the true intent and meaning thereof, together with the ballot title and submission clause, shall be completed...within two weeks after the first meeting of the title board. ...Ballot titles shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and shall be in the form of a question which may be answered “yes” (to vote in favor of the proposed law or constitutional amendment) or “no” (to vote against the proposed law or constitutional amendment) and which shall unambiguously state the principle of the provision sought to be added, amended, or repealed.

§ 1-40-106(3)(b), C.R.S. (2012).

In short, a title must be fair, clear, accurate, and complete. *In re Title, Ballot Title and Submission Clause for 2007-2008 #62*, 184 P.3d 52, 58 (Colo. 2008). However, 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). In setting titles, the Board may not ascertain the measure's efficacy, construction, or future application. *In re Title, Ballot Title and Submission Clause for 2009-2010 #45*, 234 P.3d 642, 645, 649 (Colo. 2010).

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

Petitioners, George Kennedy and Donald Macalady, complain that the title set by the Board is ambiguous, misleading, and does not fairly and correctly express the true meaning of the measure. They further complain that the title will lead to voter confusion.

Article V, section 1(5.5) of the Colorado Constitution requires that an initiative's subject be clearly expressed in its title:

The matter covered by [the initiative] is to be clearly, not dubiously or obscurely, indicated by the title. Its relation to

the subject must not rest upon a merely possible or doubtful inference. The connection must be so obvious as that ingenious reasoning, aided by superior rhetoric, will not be necessary to reveal it. Such connection should be within the comprehension of the ordinary intellect, as well as the trained legal mind.

In re Title, Ballot Title and Submission Clause for 2009-2010 # 45, 234 P.3d 642, 647-48 (Colo. 2010), quoting *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 # 25*, 974 P.2d 458, 462 (Colo. 1999) (internal quotation and citation omitted). A ballot title “should ‘enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal.’” *Id.*, at 648, quoting *In re Title, Ballot Title, & Submission Clause for 2009-2010, # 24*, 218 P.3d 350, 356 (Colo. 2009) (internal quotation and citation omitted). Indeed, “[t]he purpose of reviewing an initiative title for clarity parallels that of the single-subject requirement: voter protection through reasonably ascertainable expression of the initiative's purpose.” *Id.*, citing *In re #24*, 218 P.3d at 356.

In this case, Petitioners specifically contend that the title is misleading and confusing because it fails to inform voters that #38, by its express terms, applies to “gun magazines” and does not even mention the word “guns.” This contention is without merit. The ballot title refers to “ammunition,” which is commonly defined in the English language as “the material fired, scattered, dropped, or detonated from any weapon, as bombs or rockets, *and especially shot, shrapnel, bullets, or shells fired by guns.*” See *Dictionary.com Unabridged*. Random House, Inc. <http://dictionary.reference.com/browse/ammunition> (accessed: May 15, 2013) (emphasis added). Thus, the word “ammunition” connotes the word “guns.” In fact, the connection between ammunition and guns is “so obvious” that it is “within the comprehension of the ordinary intellect” and, therefore, the title is not likely to mislead or confuse voters. *In re # 45*, 234 P.3d at 647-48 (quotations and citations omitted).

Petitioners also specifically contend that the title is misleading and confusing because it fails to state 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 likewise without merit.

The title set by the Board is not likely to mislead voters as to #38's purpose or effect, and does not conceal any hidden intent. It is immaterial whether the title conveys that the legislature is prevented from enacting laws to restrict or limit access to ammunition storage and feeding devices, or conveys that the citizens of Colorado are vested with a "right" to unlimited access to ammunition storage and feeding devices, because the effect is the same and is clearly expressed in the title – namely, no Colorado law that restricts the purchase or possession of ammunition storage and feeding devices, other than a voter-approved restriction, will be permissible under the Colorado Constitution. *See In re # 45*, 234 P.3d at 648-49. Furthermore, whether #38 creates a "right" is not subject to review in the proceeding before this Court: "We are not permitted in our review to determine the legal meaning or application of the initiative when reviewing its title for defects." *Id.*, at 648, *citing In re # 24*, 218 P.3d at 355. Finally, there is no requirement that the title set by the Board identify the exact article or section of the Colorado

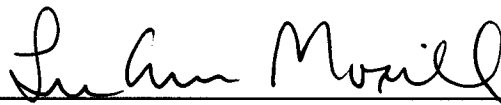
Constitution that may be amended. *In re Title, Ballot Title, Submission Clause, & Summary, etc.*, 797 P.2d 1275, 1281 (Colo. 1990) (citation omitted).

CONCLUSION

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

DATED: May 15, 2013.

JOHN W. SUTHERS
Attorney General



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Public Officials Unit
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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

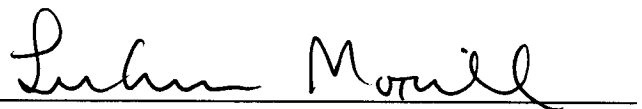
This is to certify that I duly served the foregoing **OPENING BRIEF OF TITLE BOARD** upon all parties herein by depositing copies of same in the United States mail, Express Mail, postage prepaid, at Denver, Colorado, this 15th day of May, 2013, addressed as follows:

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Ballot Title Board
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Alfred A. Arraj United State
Courthouse
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Final text

(#38)

Proposed Constitutional Amendment for the State of Colorado
To Establish a Right of the People to Purchase and Possess
High Capacity Ammunition Storage and Feeding Devices
To be Numbered as Article II, Section 32

RECEIVED

APR 04 2013

ELECTIONS/LICENSING
SECRETARY OF STATE

S. WARD

Be it Enacted by the People of the State of Colorado:

In the constitution of the state of Colorado, article II, add section 32 as follows:

SECTION 32. GUN MAGAZINES -- NO LIMITATION OR RESTRICTION.

NO LAW, EXCEPT A LAW ENACTED BY A VOTE OF THE PEOPLE, SHALL RESTRICT OR LIMIT THE RIGHT OF THE PEOPLE TO PURCHASE OR POSSESS AMMUNITION STORAGE AND FEEDING DEVICES OF ANY CAPACITY.



Ballot Title Setting Board

Proposed Initiative 2013-2014 #38¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution prohibiting any restriction on the purchase or possession of ammunition storage and feeding devices other than a restriction enacted by a voter-approved law.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution prohibiting any restriction on the purchase or possession of ammunition storage and feeding devices other than a restriction enacted by a voter-approved law?

*Hearing April 18, 2013:
Single subject approved; staff draft amended, titles set.
Hearing adjourned 10:31 a.m.*

*Rehearing April 26, 2013:
Motion for Rehearing denied except to the extent that the Board made changes to the title.
Hearing adjourned 11:39 a.m.*

¹ Unofficially captioned "Right to Purchase and Possess Ammunition Storage and Feeding Devices" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

