

Colorado Supreme Court
2 East 14th Avenue
Denver, CO 80203

Original Proceeding
Pursuant to §1-40-107 (2), C.R.S.(2012)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and Submission
Clause for Proposed Initiative 2013-2014 #38 ("Right to
Purchase and Possess Ammunition Storage and Feeding
Devices")

Petitioners:

George Kennedy and Donald Macaldy,

v.

Respondents:

Tim LeVier and JT Davis,

and

Title Board:

Suzanne Staiert; Daniel Domenico and Jason Gelender

Pro Se Respondents Tim LeVier and JT Davis
(Proponents)

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SUPREME COURT**

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**OF THE STATE OF COLORADO
Christopher T. Ryan, Clerk**

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2013SA111

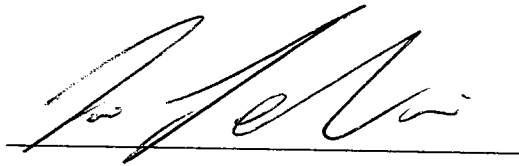
OPENING BRIEF OF RESPONDENTS

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all applicable requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in those rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g). The brief contains 1,032 words.

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.

A handwritten signature in black ink, appearing to read "Tim LeVier", is written over a horizontal line.

Tim LeVier

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Respondents Tim LeVier and JT Davis, Proponents, respectfully submit the following Opening Brief pursuant to Order of Court dated May 1, 2013.

I. STATEMENT OF ISSUE PRESENTED FOR REVIEW

The following issues were identified in the Petition for Review:

1. Whether the Title Board erred by not adopting the terms “guns” and “gun magazines”.
2. Whether the Title Board erred by not adopting language that informs voters that Proposed Initiative 2013-2014 #38 purports to create a “right”.

II. STATEMENT OF THE CASE

A. Nature of the Case, Course of Proceedings, and Disposition Below.

Pursuant to §1-40-106, C.R.S. (2012), the Title Board conducted a public meeting and set a title, ballot title, and submission clause for Proposed Initiative 2013-2014 #38 on April 18, 2013.¹ Petitioner timely filed a Motion for Rehearing pursuant to §1-40-107(1), C.R.S. (2012), on April 24, 2013. The rehearing was conducted on April 26, 2013. At the rehearing, the board denied Petitioner’s

¹ The date of the initial meeting of the Title Board was a continuation of the regularly scheduled Title Board Meeting on April 17, 2013 due to high volume.

motion except to the extent that it revised the language of the title. Petitioner timely filed a Petition for Review with this Court pursuant to §1-40-107(2), C.R.S. (2012), on May 1, 2013.

B. Statement of the Facts.

Proposed Initiative 2013-2014 #38 would amend Article II of the Colorado Constitution to add the following section:

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.

The Title Board set the title to read “An amendment to the Colorado Constitution prohibiting any capacity-based restriction on the purchase or possession of ammunition storage and feeding devices other than a restriction imposed by a voter-approved law.”

One motion for rehearing was filed by Opponents of the proposed initiative, raising a variety of objections, and a rehearing was conducted by the Title Board on April 26, 2013. Mr. Kennedy and Mr. Macaldy (the Petitioners here) were not in attendance but argued through their counsel, Mark G. Grueskin, that the board was precluded from setting a title due to a technical error made by the proponents that contravened §1-40-105(4), C.R.S. and that the title set for the Initiative was

“unfair, inaccurate, ambiguous, and misleading”, contrary to §1-40-106, and -107 for the reasons that were included in the Motion for Rehearing.

Ultimately, the Board denied the Petitioner’s motion except to the extent that it revised the title to incorporate some of the Petitioner’s recommendations to read:

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.

Mr. Kennedy and Mr. Macaldy brought the present Petition for Review to determine whether the title is defective for failing to adopt the term “gun magazines” – and whether the title is defective for failing to state that the Proposed Initiative purports to create a “right”. In the Petition for Review, Petitioners claim to have alleged violations of the single subject requirement. No such allegations have been raised prior to the Petition for Review filed on May 1, 2013.

III. SUMMARY OF THE ARGUMENT

The title, ballot title, and submission clause set by the Title Board for Proposed Initiative 2013-2014 #38 accurately reflect the intent and language of the measure and are not misleading.

IV. ARGUMENT

A. Standard of Review.

“When reviewing a challenge to the Title Board’s setting of an initiative’s title and ballot title and submission clause, we 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). “We do not determine the initiative’s efficacy, construction, or future application, which is properly determined if and after the voters approve the proposal.” Id. “[W]e ‘will not rewrite the titles or submission clause for the Board, and we will reverse the Board’s action in preparing them only if they contain a material and significant omission, misstatement, or misrepresentation.’” Id. at 58, quoting In re Title, Ballot Title and Submission Clause for 1997-1998 #62, 961 P.2d 1077, 1082 (Colo. 1998).

“[T]he Title Board has considerable discretion in setting the titles for a ballot measure.” In re Title, Ballot Title and Submission Clause for 2011-2012 #3, 2012 Colo. LEXIS 284, at **3 (Colo. April 16, 2012). “In reviewing actions of the board we will give great deference to the board’s broad discretion in the exercise of its drafting authority.” In re Proposed Initiative Concerning “State Personnel System”, 691 P.2d 1121, 1125 (Colo. 1984).

B. The title, ballot title, and submission clause set for this measure by the Title Board are accurate, true to the text, and fairly express the true meaning and intent of the measure.

The Petitioners offer that the term “gun magazines” is a necessity in the title, though the intent of the measure clearly applies to “clips” and “feeding strips” as well. The term “ammunition storage and feeding devices” is all-encompassing and reasonably relates to firearms.

The Petitioners further offer that “the Proposed Initiative purports to create a “right” of unlimited access to ammunition storage and feeding devices”. The measure itself states “No law, except a law enacted by the people, shall limit or restrict...” It is the intent of the Proponents to allow restrictions to ammunition storage and feeding devices so long as the voters of the state approve those restrictions. Further, the measure concludes: “...the right of the people to purchase or possess ammunition storage and feeding devices of any capacity.” It is the intent of the Proponents that the measure simply refers to and memorializes an existing right guaranteed under the 2nd Amendment of the United States Constitution.

V. CONCLUSION

For the reasons set forth above, the Respondent Proponents respectfully request the Court to affirm the actions of the Title Board.

Respectfully submitted this 6th day of May, 2013.



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