

<p>Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED: February 6, 2014 4:55 PM</p>
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2013) Appeal from the Ballot Title Board</p>	<p><b>▲ COURT USE ONLY ▲</b></p>
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2013- 2014 #48</p> <p><b>Petitioners:</b> Marc Arnusch and Mary Lou Chapman; <b>v.</b> <b>Respondents:</b> Larry Cooper and Cheryl Gray;</p> <p><b>and</b></p> <p><b>Title Board:</b> Suzanne Staiert, Dan Domenico, and Jason Gelender.</p>	<p>Supreme Court Case No.: 2013SA335</p>
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<p><b>RESPONDENTS' OPENING BRIEF</b></p>	

## 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).

Choose one:

- It contains \_\_\_\_\_ words.  
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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, not to an entire document, where the issue was raised and ruled on.

For the party responding to the issue:

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.

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.

*s/ Thomas M. Rogers*

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## TABLE OF CONTENTS

CERTIFICATE OF COMPLIANCE.....	ii
TABLE OF AUTHORITIES.....	iv
STATEMENT OF ISSUES PRESENTED FOR REVIEW .....	1
STATEMENT OF THE CASE.....	1
STATEMENT OF FACTS.....	2
SUMMARY OF THE ARGUMENT .....	3
STANDARD OF REVIEW .....	3
ARGUMENT .....	4
The title of Initiative 48, as set by the Title Board in the exercise of its drafting authority, accurately and succinctly expresses the true intent and meaning of the measure and should be upheld .....	4
A. The title need not include every nuance and detail of the proposed initiative. ....	5
B. The title need not reflect all possible future effects of the proposed measure.....	8
CONCLUSION .....	9

**TABLE OF AUTHORITIES**

**CASES**

*In re Initiative Concerning “Taxation III”*, 832 P.2d 937 (Colo. 1992).....5

*In re Title, Ballot Title & Submission Clause, & Summary for 1999-00 # 256*,  
12 P.3d 246 (Colo. 2000).....3, 4

*Matter of Branch Banking Initiative Adopted on March 19, 1980, & Amended  
on April 8, 1980*, 612 P.2d 96 (Colo. 1980) .....8

*Matter of Title, Ballot Title & Submission Clause, & Summary Adopted  
November 1, 1995, By Title Bd. Pertaining to a Proposed Initiative on  
Trespass-Streams with Flowing Water*, 910 P.2d 21 (Colo. 1996).....4, 5

*Matter of Title, Ballot Title & Submission Clause, & Summary for 1997-98 No.  
62*, 961 P.2d 1077 (Colo. 1998) .....7

*Matter of Title, Ballot Title & Submission Clause, & Summary for a Petition on  
Campaign & Political Fin.*, 877 P.2d 311 (Colo. 1994).....8

*Matter of Title, Ballot Title & Submission Clause, & Summary Pertaining to  
Sale of Table Wine in Grocery Stores Initiative Adopted on March 24,  
1982*, 646 P.2d 916 (Colo. 1982).....8

*Matter of Title, Ballot Title & Submission Clause, & Summary With Regard to  
a Proposed Petition for an Amendment to the Constitution of State of  
Colo. Adding Section 2 to Article VII (Petitions)*, 907 P.2d 586 (Colo.  
1995) ..... 6, 7, 8

*Matter of Title, Ballot Title and Submission Clause and Summary for 1997-98  
No. 62*, 961 P.2d 1077 (Colo. 1998) .....5

*Matter of Title, Ballot Title, Submission Clause, & Summary, Adopted Aug. 26,  
1991, Pertaining to Proposed Initiative on Educ. Tax Refund*, 823 P.2d  
1353 (Colo. 1991) .....4, 5

**STATUTES**

C.R.S. § 1-40-106 ..... 1, 5

## **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

The title set by the Title Board for Proposed Ballot Initiative 48 requiring labeling of genetically modified foods clearly and concisely expresses the true intent and meaning of the Initiative in compliance with the requirements of C.R.S. § 1-40-106; therefore, it is entitled to deference and must be upheld.

## **STATEMENT OF THE CASE**

Under Colorado law, the title set by the Title Board must fairly express the true intent and meaning of the proposed law through a brief statement accurately reflecting the central features of the measure. The title need not set all the details and nuances or the future applications and impact of the proposed measure. The language set by the Title Board is entitled to great deference and may be rejected only in a clear case.

Here, the Title Board, after an extensive hearing and a thorough rehearing, set the title for the Proposed Initiative 48 which reflects its true intent and meaning—the requirement that genetically modified foods sold in Colorado be labeled as such. In addition, the title concisely sets forth that the measure excludes certain foods from the labeling requirement. Finally, the title accurately describes who is entitled to enforce the labeling requirements. The title set by the Title Board therefore ensures that the voters are fairly and succinctly advised of the

import of the proposed law; it is not so clearly misleading so as to warrant a remand. The Court should affirm the title as set by the Title Board.

### **STATEMENT OF FACTS**

On October 1, 2013, Proponents Larry Cooper and Cheryl Gray (the “Proponents”) submitted Initiative 2013-2014 #48 (“Initiative 48”) to the Offices of Legislative Council and Legislative Legal Services for review and comment. Initiative 48 proposed a change to the Colorado Revised Statutes to require labeling of genetically modified foods sold in Colorado. A review and comment hearing was held on October 15, 2013. Based on the Legislative Council’s comments, the Proponents revised the text of Initiative 48 and submitted the final version to the Secretary of State’s office on November 22, 2013. On December 4, 2013, the Title Board unanimously found that Initiative 48 did not violate the single subject requirement of art. V, § 1(5.5) of the Colorado Constitution, and it proceeded to set title. Petitioners did not participate in the Title Board’s hearing.

On December 11, 2013, Petitioners filed a Motion for Rehearing, listing 19 objections to the title. The Title Board conducted an extensive rehearing on the Petitioners’ Motion on December 18, 2013.

In response to Petitioners’ arguments, the title was revised to delineate that certain food is exempt from the labeling requirements, and that Initiative 48 does

not create a private right of action for failure to conform to the same. The Title Board rejected Petitioners' remaining arguments that essentially every nuance and detail of the initiative should be reflected in the title. The Title Board also rejected Petitioners' arguments that the possibility of criminal penalties imposed by the overall statutory scheme in Colorado for failure to comply with food labeling requirements should be reflected in the title.

### **SUMMARY OF THE ARGUMENT**

The title for Initiative 48 as set by the Title Board accurately and succinctly reflects the central features of the Initiative. The Title Board properly exercised its discretion in drafting the language of the title and omitted certain details of the proposed measure in compliance with Colorado law that the titles be set forth in a brief and plain statement expressing the true intent and meaning of the proposed measures, leaving the details of those measures to public debate. The Title Board's action is entitled to great deference and should be upheld.

### **STANDARD OF REVIEW**

In reviewing the actions of the Title Board, the Court grants "great deference to the board's broad discretion in the exercise of its drafting authority." *In re Title, Ballot Title & Submission Clause, & Summary for 1999-00 # 256*, 12 P.3d 246, 255 (Colo. 2000) (internal quotations omitted). The scope of the Court's review is

therefore limited to ensuring that the title and the submission clause fairly reflect the proposed initiative, and “that petition signers will not be misled into support for or against a proposition by reason of the words employed by the Board.” *Matter of Title, Ballot Title & Submission Clause, & Summary Adopted November 1, 1995, By Title Bd. Pertaining to a Proposed Initiative on Trespass-Streams with Flowing Water*, 910 P.2d 21, 23 (Colo. 1996).

To that end, the Court construes constitutional and statutory provisions governing the initiative process in a manner that facilitates the right of initiative instead of hampering it with technical statutory provisions or constructions. *In re Ballot Title for 1999-00# 256*, 12 P.3d at 255. All legitimate presumptions must be resolved in favor of the Title Board, and “a board-prepared title should only be invalidated in a clear case.” *Matter of Title, Ballot Title, Submission Clause, & Summary, Adopted Aug. 26, 1991, Pertaining to Proposed Initiative on Educ. Tax Refund*, 823 P.2d 1353, 1355 (Colo. 1991). Accordingly, unless clearly misleading, the Court should not interfere with the board’s choice of language. *Id.*; *In re Ballot Title for 1999-00# 256*, 12 P.3d at 255.

### **ARGUMENT**

**The title of Initiative 48, as set by the Title Board in the exercise of its drafting authority, accurately and succinctly expresses the true intent and meaning of the measure and should be upheld**

A. The title need not include every nuance and detail of the proposed initiative.

The title and submission clause of a proposed measure must fairly express the true intent and meaning of the initiative. *Matter of Proposed Initiative on Trespass-Streams with Flowing Water*, 910 P.2d at 24. The crux of the Petitioners' argument is that the title set by the Title Board fails to mention certain details of Initiative 48, as well as the possible future impact of violating Initiative 48's requirements. But Colorado law is clear: the title does not need to reflect all of the details or "every nuance and feature of proposed measure." *Matter of Educ. Tax Refund*, 823 P.2d at 1355. C.R.S. § 1-40-106 requires that ballot titles be brief, even when the initiative concerns several complicated issues. *Id.* If each detail, inclusion or exclusion of the proposed measure were listed in the title, the goal of brevity in titles would be defeated:

The Board need not and often cannot describe every feature of a proposed initiative in a title . . . and simultaneously heed the mandate that such document[] be concise. To require such would be to transform what the General Assembly intended—a relatively brief and plain statement by the Board setting forth the central features of the Initiative for the voters—into an item-by-item paraphrase of the proposed constitutional amendment or statutory provision.

*Matter of Title, Ballot Title and Submission Clause and Summary for 1997-98 No. 62*, 961 P.2d 1077, 1083 (Colo. 1998) (internal citations omitted); *see also In re Initiative Concerning "Taxation III"*, 832 P.2d 937, 942 (Colo. 1992), *superseded*

*on other grounds by statute* (holding that the measure was complicated and contained numerous inclusions and exclusions, and full explanation of each in the ballot title and submission clause was not required and would only confuse voters).

In *In re Petitions*, the Court rejected similar arguments Petitioners advance in this case. There the objectors argued that the ballot title did not include several provisions and details of the proposed initiative that sought to enact certain changes to the initiative and referendum process in Colorado. *Matter of Title, Ballot Title & Submission Clause, & Summary With Regard to a Proposed Petition for an Amendment to the Constitution of State of Colo. Adding Section 2 to Article VII (Petitions)*, 907 P.2d 586, 592 (Colo. 1995). Specifically, the objectors argued that the title did not identify the rights changed or added by the initiative; the fact that the language in the title submission clause describing the extension of petition powers differed from the language in the initiative; the fact that the title submission clause did not disclose that a three-fourths vote would be necessary to except a law from possible referendum petitions and did not state that a measure rejected by voters after a referendum petition could be partly or fully enacted within eight years only with voter approval; and the fact that the title submission clause did not adequately reflect the fact that the initiative eliminated the requirement that a person signing a petition designate a residence address that includes the county of

residence. *Id.* at n. 6. Nevertheless, the Court affirmed, finding that failure to include all these details did not render the title misleading, as the title indicated that the initiative addressed issues relevant to both the initiative process and the referendum process and highlighted the important features of the initiative. *Id.* (holding “[i]f each of the numerous changes were listed in the title and ballot title and submission clause, the goal of brevity in titles would be defeated”).

Here, the central feature of Initiative 48 is clear: it requires that genetically modified foods sold in Colorado be labeled as such. In fact, the Title Board unanimously found—and Petitioners have not challenged—that the labeling requirement is the single subject of the Initiative. There are certain exemptions to the labeling requirement, and the title set by the Title Board accurately reflects those key exemptions. At the same time, the title alerts the voters that there may be additional ones not reflected in the title. *See Matter of Title, Ballot Title & Submission Clause, & Summary for 1997-98 No. 62, 961 P.2d 1077, 1083 (Colo. 1998)* (holding that the title sufficiently alerted the voters that not all parents would be eligible for a tax credit such that concerned voters could read the complete language of the initiative to find out the details). The title also provides that the Colorado Department of Public Health and Environment will regulate the labeling requirement, and no private right of action is created by the measure. These are the

central features of the Initiative, and they are succinctly and accurately described in the title in accordance with Colorado law.

B. The title need not reflect all possible future effects of the proposed measure.

The title need not state all possible future effects of the measure, or how the proposed law affects other statutory and constitutional provisions. *See Matter of Title, Ballot Title & Submission Clause, & Summary for a Petition on Campaign & Political Fin.*, 877 P.2d 311, 313 (Colo. 1994); *Matter of Title, Ballot Title & Submission Clause, & Summary Pertaining to Sale of Table Wine in Grocery Stores Initiative Adopted on March 24, 1982*, 646 P.2d 916, 921 (Colo. 1982) (not all possible effects of a proposed measure must be included in the title). Neither does the title need to provide specific explanations of how the proposed measure would apply. *In re Petition on Campaign & Political Fin.*, 877 P.2d at 313.

Rather, details and effects of proposed measures can and should be brought to the attention of the voters through public debate. *In re Sale of Table Wine in Grocery Stores Initiative*, 646 P.2d at 921; *Matter of Branch Banking Initiative Adopted on March 19, 1980, & Amended on April 8, 1980*, 612 P.2d 96, 99 (Colo. 1980).

Here, contrary to Petitioners' arguments, the fact that failure to comply with food labeling requirements in Colorado is considered misbranding or what penalties and immunities are available for failure to label are not the central

features of the Initiative, but are technical and enforcement details which the Title Board, in the exercise of its discretion, chose to omit from the title. Because the absence of these details does not make the title clearly confusing or misleading, the Title Board's action should be affirmed.

### **CONCLUSION**

For the reasons stated, Respondents respectfully request that the Court affirm the Title Board's action and approve the title set for Initiative 48.

DATED: February 6, 2014.

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 6th, 2014, I filed a true and correct copy of the foregoing **RESPONDENTS' OPENING BRIEF** using the ICCES electronic filing system and served electronic copies to the following:

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