

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	<p>FILED IN THE SUPREME COURT.</p> <p>MAY 19 2014</p> <p>OF THE STATE OF COLORADO Christopher T. Ryan, Clerk</p> <p>▲ COURT USE ONLY ▲</p>
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2013) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2013- 2014, #94</p> <p>Petitioner:</p> <p>Stacy Carpenter</p> <p>v.</p> <p>Respondents:</p> <p>Chris Forsyth and Laurie Forsyth</p>	
<p>Respondents are proceeding pro se</p>	<p>Case Number: 2014SA102</p>
<p><i>Answer</i> REPLY BRIEF OF RESPONDENTS/PROponents</p>	

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COMES NOW the Proponents/Respondents, Chris Forsyth and Laurie Forsyth, who respectfully submit the following Reply Brief.

I. THIS COURT DOES NOT HAVE JURISDICTION OVER THE TITLE.

Petitioners have brought this case pursuant to C.R.S. § 1-40-107(2). That statute provides that:

If any person presenting an initiative petition for which a motion for a rehearing is filed, any registered elector who filed a motion for a rehearing pursuant to subsection (1) of this section, or any other registered elector who appeared before the title board in support of or in opposition to a motion for rehearing is not satisfied with the ruling of the title board upon the motion, **then the secretary of state shall furnish such person, upon request, a certified copy of the petition with the titles and submission clause of the proposed law or constitutional amendment, together with a certified copy of the motion for rehearing and of the ruling thereon. If filed with the clerk of the supreme court within seven days thereafter,** the matter shall be disposed of promptly, consistent with the rights of the parties, either affirming the action of the title board or reversing it, in which latter case the court shall remand it with instructions, pointing out where the title board is in error.

C.R.S. § 1-40-107(2). Petitioners did not file these documents with the Supreme Court within seven days and therefore the Supreme Court has no jurisdiction to review this matter. Proponents received a copy of the Petition for Review of Final Action of the title board via mail. The document was mailed on April 9, 2014. Although the petition claimed to have the above-referenced documents attached,

the documents were not attached. Therefore, the Supreme Court does not have jurisdiction over the title issued by the title board.

II. INITIATIVE 94 CONTAINS A SINGLE SUBJECT.

Petitioner spends the bulk of her brief assaulting the merits of initiative 94. The Supreme Court's limited role in this process prohibits the Court from addressing the merits of a proposed initiative, and from suggesting how an initiative might be applied if enacted. *In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-02 No. 43*, 46 P.3d 438, 443 (Colo.2002). The Supreme Court does not determine an initiative's efficacy, construction, or future application, which is properly determined if and after the voters approve the proposal. *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 # 258(A) (English Language Educ. in Pub. Schs.)*, 4 P.3d 1094, 1097-98 (Colo.2000).

Petitioner preserved one argument regarding single subject. Petitioner alleges that judicial discipline and judicial disability are two separate subjects. The Supreme Court "will only overturn the Title Board's finding that an initiative contains a single subject in a clear case." *In re Title, Ballot Title and Submission Clause, and Summary Pertaining to the Casino Gaming Initiative Adopted on April 21, 1982*, 649 P.2d 303, 306 (Colo.1982). This is not a clear case. Indeed, judicial

discipline and judicial disability are congruous. Judicial discipline and disability both regard whether a judge is fit to be on the bench. They are properly connected to each other, are not incongruous, and therefore the inclusion of them in initiative #94 does not violate the single subject requirement. *In re Amend Tabor 25*, 900 P.2d 121, 125 (Colo.1995).

The case cited by petitioner on page 7 of petitioner's opening brief does not stand for the proposition petitioner alleges. The case regarding number 104 ruled that the discipline commission was a separate subject from judges and therefore term limits for county court judges was a separate subject from the discipline commission. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104*, 987 P.2d 249, 256-257 (Colo. 1999). The case did not rule that judicial qualifications and disciplinary considerations are not part of the same subject. Nevertheless, initiative 94 regards a single subject because it simply transfers the powers of the judicial discipline commission to the independent ethics commission. Initiative 94 does not contain the multiple subjects that initiative number 104 did. *Id.*

Petitioner cites to *1996-4* to support her argument regarding single subject. It must be noted, however, that *1996-4* was a case where the title board refused to set title and the Supreme Court affirmed the decision. *In re Proposed Initiative*

1996-4, 916 P.2d 528 (Colo. 1996). This is not such a case. The title board has provided initiative 94 a title because the title board correctly ruled that initiative 94 contains a single subject: the regulation of judicial conduct.

Petitioner alleges on page 11 of her opening brief that what separates discipline from disability is the level of intent. Such argument fails to rise to meet the separation and disconnection that petitioner must prove to show a violation of the single subject requirement. Judicial discipline and judicial disability both manifest themselves in judicial conduct. The subject is completely congruous.

The purpose of the single subject requirement is to avoid the inclusion of incongruous subjects in the same initiative and thereby prevent voter fraud and surprise. See *In re* 1996-4, 916 P.2d at 531. A proposed initiative violates this constitutional requirement when it relates to more than one subject and possesses two distinct and separate purposes that are neither dependent upon nor connected to each other. See *In re Proposed Initiative* 1996-6, 917 P.2d 1277, 1279-80 (Colo.1996). The Supreme Court is bound to construe the single subject requirement liberally to preserve and protect the right of initiative and referendum. See *In re Proposed Initiative on Parental Choice in Education*, 917 P.2d 292, 294 (Colo.1996).

Initiative 94 does not include incongruous subjects. Petitioner's arguments fail to prove that initiative 94 possesses two distinct and separate purposes that are neither dependent upon nor connected to each other. The liberal construction of the single subject requirement supports that the title board's determination that initiative 94 contains a single subject should be affirmed.

III. THE TITLE CLEARLY STATES TRUE INTENT AND MEANING OF INITIATIVE 94.

In reviewing the actions of the Board, the Supreme Court generally defers to the Title Board's broad discretion in the exercise of its drafting authority. *See In re Proposed Ballot Initiative on Parental Rights*, 913 P.2d 1127, 1131 (Colo.1996). The Supreme Court employs "all legitimate presumptions in favor of the propriety of the Board's actions." *In re Title, Ballot Title Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 645 (Colo.2010). "[T]he Title Board has considerable discretion in setting the titles for a ballot measure." *In re Proposed Initiative on Parental Choice in Educ.*, 917 P.2d 292, 294 (Colo.1996). "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).

Petitioner attempts to make a single subject argument that was not preserved in guise of a challenge to the title for initiative 94. Petitioner cites to two cases regarding single subject to support her argument that the title set by the board is insufficient. On pages 17 and 18 of her brief, petitioner cites *In the Matter of Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002 #43, 46 P.3d 438, 445 (Colo. 2002)* and *In the Matter of the Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002 #21 and #22 ("English Language Education")*, 44 P.3d 213 (Colo. 2002). Both of these citations by petitioner regard a single subject analysis. Indeed, on page 16 petitioner writes, "These new restrictions on the appellate courts may well be a second subject in the initiative." Petitioner did not make this argument to the title board and this argument is not preserved for review by this court. The only single subject argument preserved for review by petitioner was whether including judicial discipline and judicial disability in the same initiative violates single subject as related above.

Proponents of initiative 94 have accepted the current title of the title board and have waived any challenges to the title. Petitioner attempts to use proponents' arguments to the title board regarding the previous title provided by the board. On page 18 of petitioner's opening brief, in the first full paragraph, petitioner uses a

quote from proponents' response to the motion for rehearing which regarded the previous title set in this matter. Proponents have accepted the current title of the title board as a fair and accurate title for initiative 94. Petitioner did not make the arguments that proponent did below and therefore did not preserve those arguments for appellate review. Indeed, petitioner is simply throwing any argument up in the air hoping that the Supreme Court will act on its glaring conflict of interest in this case and reverse the title provided by the board.

Petitioner argues the merit of initiative 94 by arguing how the Supreme Court would review judicial discipline and disability cases if such cases were transferred to the independent ethics commission as provided in initiative #94. The Supreme Court's limited role in this process prohibits the Court from addressing the merits of a proposed initiative, and from suggesting how an initiative might be applied if enacted. *In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-02 No. 43*, 46 P.3d 438, 443 (Colo.2002).

Nowhere does initiative 94 state that it prohibits the independent ethics commission from being able to consider any precedent emanating from Colorado's appellate courts as petitioner argues on page 16 of her brief. Petitioner is improperly arguing the merits and is guessing how the initiative will be applied if enacted.

Petitioner argues how the substantial evidence standard will be applied if enacted. Petitioner's arguments are inappropriate. *Id.* It should be noted, however, that the substantial evidence standard is used in workers' compensation cases and there is a plethora of case law on the standard. See C.R.S. 8-43-301 (8); *Panera Bread, LLC v. ICAO*, 141 P.3d 970, 972 (Colo.App.2006).

Petitioner uses quotations from proponents' response to the motion for rehearing somewhat out of context in her opening brief. On page five of proponents' response to the motion for rehearing, it is clearly stated:

The initiative is to return the right to an honest, fair and competent judge to people in Colorado as was envisioned by the drafters of the current constitution. To do so, the initiative accomplishes one, simple task: It transfers jurisdiction over judicial discipline and disability, including rule-making authority, to the Independent Ethics Commission and by doing so removes the conflict of interest that is currently present in judicial discipline and disability proceedings.

Proponents' response to the motion for rehearing, p. 5.

The title board is not required to include every aspect of a proposal in the title and submission clause, to discuss every possible effect, or provide specific explanations of the measure. In *re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), and 245(e)*, 1 P.3d 720, 724 (Colo. 2000). "When reviewing a challenge to the Title Board's setting of an initiative's title and ballot title and submission

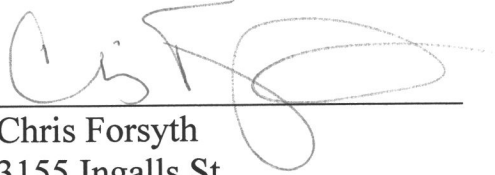
clause, we employ all legitimate presumptions in favor of the propriety of the Board's actions." *In re Title, Ballot Title and Submission Clause for 2009-2010 #91*, 235 P.3d 1071, 1076 (Colo. 2010). Petitioner has failed to show that the title provided by the board is inappropriate. Petitioner has simply improperly argued the merits and alleges that its fanciful arguments regarding the merits be included in the title. The title board has properly navigated this issue and provided an appropriate title.

Initiative 94 transfers jurisdiction over judicial discipline and disability to the independent ethics commission. The title provided by the board properly reflects this fact. The ballot title and submission clause must "correctly and fairly express the true intent and meaning" of the proposal and must "unambiguously state the principle of the provision sought to be added, amended, or repealed." C.R.S. § 1-40-106(3)(b); *see In re Title, Ballot Title, and Submission Clause regarding Limited Gaming in Manitou Springs, Fairplay, and in Airports*, 826 P.2d 1241, 1245 (Colo.1992). The title set by the Title Board for Initiative #94 correctly and fairly expresses the true intent and meaning of the measure.

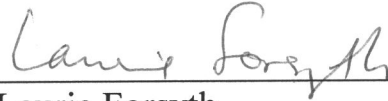
V. CONCLUSION

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

Respectfully submitted this 19th day of May, 2014, by:



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing, was delivered to the following on the 19th day of May, 2014:

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