

COLORADO SUPREME COURT
2 East 14th Avenue
Denver, CO 80203

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Original Proceeding Pursuant to § 1-40-107(2)
C.R.S. (2013)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative 2013-
2014 #68

Petitioner:
HOLLY TARRY

v.

Respondents:
GEORGE BROWN and JULIET PICCONE

and

Title Board:
**SUZANNE STAIERT, DAN DOMENICO, and
JASON GELENDER.**

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Supreme Court Case
No. 2014SA117

ANSWER BRIEF OF RESPONDENTS

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:

Choose one:

- It contains _____ words.
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The brief complies with C.A.R. 28(k).

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 the entire document. Where the issue was raised and ruled on.

For the party responding to the issue:

It contains, under 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/ George Brown,
s/ Juliet Piccone

George Brown
Juliet Piccone

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**RESPONSE TO PETITIONER’S STATEMENT OF APPLICABLE
STANDARD OF REVIEW AND PRESERVATION FOR APPEAL**

The Petitioner’s stated “ Standard of Review” , that the Title Board must set titles that “correctly and fairly express the true intent and meaning” of the proposed initiative and “unambiguously state the principle of the provision sought to be added, amended, or repealed.” §1-40-106(3)(b) C.R.S., is applicable, however, it is not complete. This statute goes on to state that Ballot Titles shall be brief and consider the public confusion that might be caused by misleading titles.

The Petitioner further presents that a legally adequate title clearly and concisely summarizes the measure’s “central features.” *Matter of Proposed Election Reform Amendment*, 852 P.2d 28, 32 (Colo. 1993). The Petitioner fails to set forth that in the above referenced case, the Court further states, “In reviewing the Board’s title setting process, this court does not address the merits of the proposed initiative and should not interpret the meaning of the proposed language or suggest how it will be applied if adopted by the electorate; we should resolve all legitimate presumptions in favor of the Board; and we will not interfere with the Board’s choice of language if the language is not clearly misleading. (32)” The duty of the court is to ensure that the Title as presented by the Title Board fairly

reflects the proposed initiative so that the voters will not be misled by reason of the words employed by the Board. *In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the Town of Burlington*, 830 P.2d 1023, 1026 (Colo. 1992).

SUMMARY OF THE ARGUMENT

The Title for Proposed Ballot Initiative 2013-2014 #68, correctly and fairly expresses the true intent and meaning of the proposed initiative, and accurately and succinctly, communicates the central features of this Initiative. § 1-40-106(3)(b), C.R.S. (2013).

The Title Board did not err with the omission of the word “all” when referring to “pet animals”, as “all” is not an indispensable modifier to further identify or illuminate the term “pet animals” as it is superfluous and, therefore, unnecessary and need not be included in the title. The applicable definition of the term “pet animals” is stated in § 35-80-102(10), C.R.S., and these stated pets are all of the pets subject to imposition of the fifteen percent sales tax. The Petitioner alleges that the Court has held previously that “all” is an essential aspect of a ballot title, however, no citations to such a position have been offered.

The Title Board has accurately and adequately described the enforcement aspects of Proposed Initiative 2013-2014 #68 by stating and including in the Title that, “allowing persons to bring court actions to enforce compliance with and penalize violations of the euthanasia prohibition, and using certain fees and penalties collected to make grants for programs and services to address pet overpopulation.”

ARGUMENT

I. The Title set by the Title Board on Proposed Initiative 2013-2014 #68 accurately communicates the central features of the Initiative.

The Petitioner’s argument that the central features of the proposal are not communicated accurately in the title are contrary to the General Assembly’s purpose as stated in § 1-40-106(3)(b), C.R.S. (2013) for the setting of titles. In setting of a title, the Title Board is directed to consider the public confusion that might be caused by misleading titles, and therefore, the title shall correctly and fairly express the true intent and meaning thereof. Also, titles set by the Board must be brief and shall unambiguously state the principle of the provision sought to be added, amended, or repealed.

In Proposed Initiative #68, the central features as set forth by the Title Board are: (a) state taxes be increased \$6,275.000 annually in the first fiscal year and by

such amounts that are raised thereafter by imposition of a 15 percent tax on the sale of pet animals; (b) to fund programs and services to address pet overpopulation; (c) amend the Colorado revised statutes to prohibit pet animal care facilities from euthanizing pets except in limited circumstances; (d) imposing a monetary penalty for each violation of the euthanizing prohibition; (e) allowing persons to bring court actions to enforce compliance with and penalize violations of the euthanasia prohibition; and (f) using certain fees and penalties collected to make grants for programs and services to address pet overpopulation . These are the six central features of the Initiative, and the process and means of carrying out these central features are set forth in the body of the Initiative.

In the discharge of its statutory duty, the Title Board does not need to describe every feature and nuance of a proposed initiative within the body of the title. *In re Initiated Constitutional Amendment Concerning Limited Gaming in Burlington*, 830 P.2d 1023, 1026 (Colo. 1992). In the title set forth by the Board in Initiative #68, the persons and voters reviewing the initiative are fairly and succinctly advised of the central features of the proposed law. *In re Initiative on Education Tax Refund*, 823 P.2d 1353, 1355 (Colo. 1991); *Dye v. Baker*, 143 Colo. 458, 460, 354 P.2d 498, 500 (1960).

II. The Title Board did not err in excluding the word “all” in referring to the sale of pet animals sold in the state, as inserting “all” might have created a broader meaning that could have mislead voters.

The term, “pet animals”, is defined in § 35-80-102(10), C.R.S. The Title Board deferred to this statutory definition in setting the title, as inserting the modifier “all” might have referred to pets not included in the statute. The Court must consider the public confusion that might be caused by misleading titles, § 1-40-106(3)(b), C.R.S. (2013). Also, the Court must take into account whether the title fairly and accurately reflects the intent and purpose so that voters will not be misled. *In re Title, Ballot Title and Submission Clause for 2009-2010 #45*, 234 P.3d 642, 656 (Colo. 2012).

The Petitioner contends that voters might not typically process the depth and expanse of the term “pet animals” as to what is included unless the term “all” is used in the title. It may be noted that most elementary school children and their voter parents are familiar with, and most likely can name, well over ninety- percent of the “pet animals” listed in the statutory definition.

The Petitioner relies upon the findings of *Mesa County Bd. of County Com’rs v. State*, 203 P.3d 519, 533 (Colo. 2009), to uphold its position on the insertion of the modifier “all” in the Ballot Title. This case is an appeal from a

declaratory judgment order of the Denver District Court holding unconstitutional the amendments made by SB 07-199 to the local share of the funding formula of the School Finance Act. In this case the terms, “all revenues” or “full revenues” are used in a definition. The Court found that “all revenues”, as used in the initiative, applied to and included property tax revenues. In Initiative #68, the term “pet animals” is statutorily defined, thereby making the insertion of “all” unnecessary to properly define “pet animals”. Petitioner’s reliance on The Mesa County case, as a case in point, is improper. Unless the language is ambiguous, the Court gives effect to the plain language of the ballot question. *In re Title, Ballot Title, Submission Clause, and Summary for 2005-2006 No. 76*, 138 P.3d 267 (Colo. 2006). The Title Board’s purposeful omission of the word, ”all”, from the definition of “pet animals” should be upheld.

III. The Title accurately and adequately describes the enforcement aspects of Initiative #68.

The Petitioner contends that the Title fails to accurately describe the enforcement aspects of Initiative #68 as it does not inform voters that there is a mandatory penalty provision. In fact, the Petitioner states that Section 2 of the measure (Proposed C.R.S. § 35-80-113)(1) addresses civil penalties which now are determined by the commissioner who shall assess a civil penalty of one thousand

dollars per individual pet animal euthanized in violation of § 35-80-106.3(6).

Because the Initiative imposes “mandatory, nonsuspendable fines”, as defined by the Petitioner, the Petitioner believes this fact must appear in the title and cites, *Election Reform Amendment, supra*, 852 P.2d at 33-34. In this decision, according to the Petitioner, the inclusion of comparable penalty language was required to ensure that the titles “unambiguously state the principle of the provision sought to be added, amended, or repealed.” *Id.*, citing C.R.S. § 1-40-101(2), recodified as C.R.S. § 1-40-106(3)(b). The Petitioner believes that, given these mandatory penalties imposed by #68, the same treatment of this provision is warranted in the titles. The Petitioner’s argument lacks merit.

The case, *Matter of Proposed Election Reform Amendment, supra*, 852 P.2d 28 (Colo. 1993) at 33, states that the Petitioner argues that the titles of the proposed constitutional amendment fail to identify crucial elements of the proposed amendment. Specifically...(2) that the proposal establishes **mandatory, nonsuspendable** fines for **willful** violations of the campaign contribution and election protection provisions. The Court agrees, “that the titles should include the proposal’s establishment of **mandatory, nonsuspendable** fines for **willful** campaign contributions and election protection provision violations.”

Section 2 of the measure #68 (Proposed § 35-80-113)(1) provides for a civil penalty, imposed by the Commissioner, of one thousand dollars per individual pet animal euthanized in violation of Section 35-80-106.3(6). This provision clearly appears in the Title Board's title as, "imposing a monetary penalty for each violation of the euthanizing probation." No mention of this penalty is declared to be **mandatory, nonsuspendable** or for **willful** violations. The Title Board's choice of language is clearly proper and should be upheld.

The Petitioner further states that the measure #68 also authorizes private rights of action. (Proposed C.R.S. § 35-80-113(4)). The amount of this penalty is to be not less than one thousand dollars per pet animal euthanized in violation of the statute. The Title, as set by the Title Board, also includes this provision as 'allowing persons to bring court actions to enforce compliance with and penalize violations of the euthanasia prohibition.' There is no mention of these penalties being **mandatory, nonsuspendable** or for **willful** violations. Once again, the Title Board acted properly in its decision and actions, and should be upheld as the Petitioner's arguments are without merit.

CONCLUSION

For the reason stated above, the Respondents request that the Court affirm the decisions of the Title Board, and find that the titles set for Proposed Initiative 2013-2014 #68 correctly and fairly express the true intent and meaning of the Initiative #68.

DATED: May 30, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2014, I filed a true and correct copy of the ANSWER BRIEF OF RESPONDENTS by the ICCES filing system and served copies to the following:

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