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<tr><td>SUPREME COURT OF COLORADO
2 East 14th Ave.
Denver, CO 80203</td><td rowspan="2">DATE FILED: June 2, 2014 2:27 PM

▲ COURT USE ONLY ▲</td></tr>
<tr><td>Original Proceeding
Pursuant to Colo. Rev. Stat. § 1-40-107(2)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2013-2014 #68 ("Restrictions on Pet Animal Euthanasia")

Petitioner: HOLLY TARRY
v.
Respondents: GEORGE BROWN and JULIET PICCONE

and

Title Board: SUZANNE STAIERT; DANIEL DOMENICO; and JASON GELENDER</td></tr>
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<tr><td colspan="2">PETITIONER'S ANSWER BRIEF</td></tr>
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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:

X It contains 1,323 words.
☐ It does not exceed 30 pages.

The brief complies with C.A.R. 28(k).

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/ Mark G. Grueskin
Mark G. Grueskin
Attorney for Petitioners

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A. To be accurate, the title should reflect the all-encompassing scope of #68 by stating that it applies to "all" pet animals.

Initiative #68 casts a broad net applying a new tax on sales and transfers of everything from gerbils to every type of wild species of animal if kept as a pet. The resulting tax revenues are placed in a special fund to restrict euthanasia used to prevent overpopulation at pet shelters and rescue facilities.

The current ballot title states that the measure imposes "a 15 percent tax on the sale price of pet animals." The Title Board states that the "title informs voters that the sales tax will be imposed on the price of **any pet animal** that is for sale by a facility that is licensed to sell pets." Title Board Opening Brief at 8 (emphasis added). The title does not use "any" as suggested by the Board or "all" as provided by the ballot measure itself. In fact, the title merely refers to "pet animals."

The omission of "all" is oftentimes the difference between an accurate and a misleading ballot title. For instance, where a measure prevented the use of cyanide in certain mining activities, the Court found the title to be accurate because it made clear to voters that the measure only applied to specific types of mines. "We find that the titles do not refer to **all** mines that use cyanide to leach gold and silver from ore, but only to open mines that

use cyanide to leach gold and silver from ore." *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 215,* 3 P.3d 11, 15 (Colo. 2000) (emphasis in original). Thus, the title was not misleading because the title made it clear that the measure was narrow by omitting "all" or any equivalent adjective.

The Board and the Petitioner both cite *Mesa County Bd. of Comm'rs v. State*, 203 P.3d 519 (Colo. 2009), but they do so for different purposes. The Petitioner referred to the Court's holding that the use of "all" or "full" as a modifier of "revenues" in school district de-Brucing measures established that school district voters understood the scope of the ballot measure they were adopting. On the other hand, the Board insists that *Mesa County*, in applying the ballot language using "all" or "full," observed that "it is common knowledge that the great majority of local funding for schools comes from property tax revenues." Title Board Opening Brief at 9, citing *Mesa County, supra*, 203 P.3d at 534.

The Court, in assessing dozens of ballot measures that also went to voters under TABOR, stated:

> **Reliance on the ballot language is especially important for these ballot issues because article X, section 20 relies on voters to make important financial decisions.** The issues are often complex, as they are in this case, and article X, section 20 provides minimal guidance to taxing authorities seeking voter approval. **To make this form of 'direct democracy' work,**

> **districts must be able to rely on the language of the ballot issues. It strains credulity to argue that references to "all revenues" or "full revenues" did not include property tax revenues when the ballot measures only applied to school districts and it is common knowledge that the great majority of local funding for schools comes from property tax revenues.** It seems logical to assume that voters who waived the limits on all revenues understood it to apply to the greatest portion of those revenues, property taxes, and not simply peripheral funding sources.

Id. (emphasis added). Thus, it is clear that the title's inclusion of "all" did encompass unspecified tax revenues – here, from property taxes – and was the factor that allowed the Court to conclude that voters understood the universal applicability of the various district measures that were adopted. Because they understood the overarching nature of the measures they were considering, voters knowingly sought to address every revenue segment that could flow to their school districts. The language used in these measures represented "**broad based waiver** elections to eliminate **all revenue limits** that were currently and could possibly affect them in the future." *Id.* (emphasis added).

Thus, it was the use of "all" in the ballot titles that communicated to voters the nature of the TABOR approval they were granting. That is parallel relief to that which is sought here. Petitioner simply sought that the Board use "all" to modify "pet animals," in the same manner that the initiative text uses "all" to modify "pet animals," so that there is no

confusion about the reach of this new tax. In terms of the Board's objective of crafting brief titles, the use of "all" is preferable to including the full definition of "pet animal" or otherwise sifting through that definition to highlight the animal sales that go far beyond an average voter's presumption.

B. To be accurate, the title should state #68 imposes mandatory penalties when enforced by the State and requires a mandatory revenue split with the State when enforced by private parties.

The penalty provisions of this measure deserved greater attention in the titles. The mandatory nature of the State-imposed penalty ("the commissioner shall assess a civil penalty of one thousand dollars per individual pet animal euthanized in violation of section 35-80-106.3(6)") should be described as such for reasons addressed in Petitioner's Opening Brief. *See* Proposed C.R.S. 35-80-113(1). Likewise, the State's mandatory 75% share in any private enforcement action ("75% of the civil penalty shall be paid into the saving shelter pets account of the pet overpopulation fund") should also be disclosed. *See* Proposed C.R.S. 35-80-113(4)(b). No reasonable argument may be made that these provisions are not mandatory. *Northstar Project Management, Inc. v. DLR Group, Inc.*, 295 P.3d 956, 959 (Colo. 2013) ("the legislature employed the mandatory word 'shall'").

The Board has provided such clarity in the past. In *Blake v. King,* 185 P.3d 142, 149 (Colo. 2008), for instance, the title stated that the measure both "require[ed] that awards in civil actions be paid to the general fund of the state of Colorado" and "permit[ed] an award of attorney fees and costs to a citizen who brings a successful civil action." Although the underlying provisions were challenged on single subject grounds, these descriptions in the titles were not even challenged as being unclear or misleaing in *Blake.* The Title Board should have followed its own, better practice of clearly communicating notable penalty provisions in the title. To fail to do so constitutes a material omission that prevents the titles from being fair and accurate. "[I]f a choice must be made between brevity and a fair description of the essential features of a proposal, the decision must be made in favor of full disclosure to the registered electors." *Matter of Proposed Election Reform Amendment*, 852 P.2d 28, 32 (Colo. 1993).

In *Proposed Election Reform Amendment*, the measure was 1,696 words, which in addition to the initiative's complexity, underscoring the need for "references to the measure's salient features." *Id.* One of those necessary references was to mandatory penalties. *Id.* at 33.

Here, Initiative #68 is six, single-spaced, typewritten pages. It is of a comparable length to the 1993 Election Reform Amendment, such that the

Title Board should have erred on the side of inclusion. Had the Board done so, the goal of brevity would not have been sacrificed. In *Election Reform Amendment*, the Court required the Board to add the following phrase to the title: "To require a mandatory fine for violation of the campaign contribution and public expenditure provisions." *Id.* at 34 fn.4. The same phrase, adjusted for this subject matter, should have been used here.

Likewise, a phrase that indicated the 75%-25% split in fines stemming from private actions would have also been possible without burdening the title's length or comprehension. Therefore, the titles should be corrected by the Board.

CONCLUSION

Initiative #68's titles are flawed and should be corrected before being presented to voters.

Respectfully submitted this 2nd day of June, 2014.

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CERTIFICATE OF SERVICE

I, Mark G. Grueskin, hereby affirm that a true and accurate copy of the **PETITIONER'S ANSWER BRIEF** was sent this day, June 2, 2014, via ICCES or overnight delivery to the proponents and to counsel for the Title Board at:

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