

<p>Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203</p>	
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2013) Appeal from the Ballot Title Board</p>	<p>▲ COURT USE ONLY ▲</p>
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2013- 2014 #68</p> <p>Petitioner: HOLLY TARRY;</p> <p>v.</p> <p>Respondents: GEORGE BROWN and JULIET PICCONE;</p> <p>and</p> <p>Title Board: SUZANNE STAIERT, DAN DOMENICO, and JASON GELENDER.</p>	<p>Supreme Court Case No.: 2014SA117</p>
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RESPONDENTS' OPENING BRIEF

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).

It does not exceed 30 pages.

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 an entire document, where the issue was raised and ruled on.

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

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STATEMENT OF THE ISSUES FOR REVIEW

The title and ballot title and submission clause set by the Title Board for Proposed Ballot Initiative, 2013-2014 #68 clearly, correctly and concisely expresses the true intent and meaning of the proposed Initiative in compliance with the requirements of § 1-40-106, C.R.S. (2013)

STATEMENT OF THE CASE

This case is an appeal of a ballot title setting by the Title Board on Proposed Initiative #68 pursuant to § 1-40-107(2), C.R.S. (2013) George Brown and Juliet Piccone proposed Initiative 2013-2014 #68, unofficially captioned, “*Restrictions on Pet Animal Euthanasia*”. A review and comment hearing was conducted by representatives of the Offices of Legislative Council and Legislative Legal Services on February 11, 2014. After full compliance with the recommendation of the Legislative Staff, a final version was submitted to the Secretary of State for purposes of submission to the Title Board.

The Title Board hearing was held on April 2, 2014, and single subject was approved, and the ballot title and submission clause was designated and fixed by the Title Board. The Petitioner filed a Motion for Rehearing on April 9, 2014 stating that the title was misleading and confusing as the designated representatives did not provide a correctly amended copy of the initiative, therefore the Title Board lacked jurisdiction in the matter. A rehearing occurred on April 16, 2014, and the

Title Board granted the Motion, made minor changes to the title, and denied the Motion on all other of the issues raised. On April 23, 2014, the Petitioner filed her Petition for Review of Final Action of Ballot Title Setting Board Concerning Proposed Initiative 2013-2014 #68 (“Restriction on Pet Animal Euthanasia”).

The Title Board conducted an all-inclusive and thorough hearing and rehearing on Proposed Initiative #68, and set a title that conveyed the true intent and meaning of #68 so that voters are properly, clearly and succinctly informed. Titles are to be brief and not required to set forth all of the details of the proposed measure. Here, the Title Board set a title that correctly and fairly expresses the true intent and meaning of Proposed Initiative 2013-2014 #68.

STATEMENT OF THE FACTS

Proposed Initiative 2013-2014 #68 amends aspects of the Pet Animal Care and Facilities Act §§ 35-80-101, et seq., C.R.S (2013) in order to prohibit pet animal care facilities from euthanizing pets except in limited circumstances. In connection therein, and to fund new and existing necessary programs and services through grants to address the pet overpopulation problem that currently exists, and that may occur because of the Initiative #68, state taxes, a TABOR-mandated reference, shall be increased \$6,275,000 annually.

This increase shall be by the imposition of a 15 percent tax on the sale price of pet animals. The definition of “Pet Animal” is as stated in the existing law § 35-

80-102(10), C.R.S (2013), and therefore, is applicable to the proposed initiative. Initiative #68 also imposes a monetary penalty for each violation of the euthanasia prohibition, and allows persons to bring court actions to enforce compliance with and penalize violations. The Title Board correctly rejected the Petitioner's arguments that essentially every aspect, definition and detail of the proposed initiative should be stated in the title, and fully complied with Colorado law in that titles should be brief and clearly state the intent and meaning of the proposal.

SUMMARY OF THE ARGUMENT

The title and submission clause as set by the Title Board for Ballot Initiative #68 meets the standards that have been established by this Court as they correctly and fairly express the intent of the proposal, and accurately present the major aspects of the Initiative. The Title Board's action should be upheld as there is no basis for setting aside the Title.

STANDARD OF REVIEW

The basis and scope of the Court's review of the Title Board's action is limited to making sure that the title and the submission clause fairly and clearly reflect the purpose and intent of the initiative. This means that the signers of the petition will not be misled by reason of the words used in the Title. *Matter of Title, Ballot Title & Submission Clause, & Summary Adopted November 1, 1995, By Title Board Pertaining to a Proposed Initiative on Trespass-Streams with Flowing*

Water, 910 P.2d 21, 23 (Colo. 1996). The Title Board has to “consider the confusion that might be caused by misleading titles” and also “avoid titles for which the general understanding of the effect of a ‘yes or no’ vote will be unclear.” § 1-40-106(3)(a), C.R.S. (2013)

It is not required that the title present and discuss every aspect of a measure, or provide specific explanations. *In re Title, Ballot Title and Submission Clause and Summary for a Petition on Campaign and Political Finance*, 877 P.2d 311, 314,315 (Colo. 1994) (*Political Finance*). The Court allows the Title Board “considerable discretion in setting titles for a ballot initiative” *Kemper v. Hamilton (In re Title, Ballot Title & Submission Clause for 2011-2012 #3)* 274 P.3d 562, 565 (Colo. 2012). The Court does not require or demand that the Title Board set the best possible titles, and will only reverse the Board’s action only if the title is insufficient, unfair or misleading. *In re Ballot Title 2011-2012 #45*, 2012 CO 26, 247 P.3d 576, 582 (2012)

The Court has required the Title Board to include a definition in the title only when the definition alters a legal standard in a manner that is both new and controversial. *In re Title, Ballot Title and Submission Clause Adopted April 4, 1990, Pertaining to the Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 242 (Colo. 1990)

ARGUMENT

The Petitioner presents two (1 and 2) Advisory Statements of Grounds for Appeal.

1. Whether the Title Board erred in describing the proponents' true intent and meaning by failing to describe the scope of the new tax as expressly applying to "all" pet animals that is much broader than voters would anticipate and, as a matter of law, includes no fewer than fourteen animal species as well as "any other species of wild or domestic or hybrid animal...kept as a household pet."

The title set by the Title Board of Ballot Initiative 2013-2014 #68 fairly, accurately and succinctly expresses the true intent and meaning of the initiative and should be upheld.

The Title Board is not required to explain the relationship of the proposed measure to existing laws that are not in the text of the measure. Titles are not misleading because they do not refer to the Initiative's possible interplay with existing state and federal laws. *In re Title, Ballot Title and Submission Clause and Summery for 1999-2000 #255*, 4 P.3d 484, 498 (Colo. 2000).

The Petitioner states that the Title Board erred by failing to describe the scope of the new tax as expressly applying to "all" pet animals. The definition of "Pet Animal" is as stated in the existing law § 35-80-102(10), C.R.S. (2013) as:

(10) "Pet animal" means dogs, cats, rabbits, guinea pigs, hamsters, mice, rats, gerbils, ferrets, birds, fish, reptiles, amphibians, and invertebrates, or any other species of wild or domestic or hybrid animal sold, transferred, or

retained for the purpose of being kept as a household pet, except livestock, as defined in subsection (9) of this section. “Pet animal” does not include an animal that is used for working purposes on a farm or ranch.

This definition may be broader than some voters would anticipate, however, it is not beyond an ordinary person’s capacity to anticipate or understand the inclusiveness of the definition. The Title Board did not fail in not including this definition in the Title, rather it relied upon the fact that existing law has previously defined “Pet Animal”.

2. Whether the Title Board erred by failing to accurately describe the scope of private rights of action that may be commenced and in particular, the multiple forms of damages to be awarded to plaintiffs and the government as well as the one-sided attorney fees provision.

It is not required that the title present and discuss every aspect of a measure, or provide specific explanations of how the proposed measure would apply, therefore, the action of the Title Board should be upheld.

The Title Board did not err by failing to accurately describe certain detailed aspects of the proposed initiative as they included the statement, “allowing persons to bring court actions to enforce compliance”. The details of private rights of action, multiple forms of damages and one-sided attorney fees are specifically set forth in the body of the Initiative.

The task of the Board is to provide a concise summary of the proposed initiative, focusing on the most critical aspects of the proposal, not simply to restate

all of the provisions of the initiative. *In re Ballot Title 1999-2000 No. 235(a)*, 3P.3d 1219 (Colo. 2000). In fixing titles, the board's duty is to capture, in short form, the proposal in plain, understandable, accurate language enabling informed voter choice, *In re Ballot Title 1999-2000 No. 29*, 972 P.2d 257 (Colo. 1999).

Also the titles must be fair, clear, accurate and complete, but they need not set out every detail of the initiative. *In re Ballot Title 2005-2006 No. 73*, 135 P.2d 736 (Colo. 2006) The Board need not and cannot describe every feature of a proposal measure in the title and submission clause. *In re Proposed Initiative Concerning State Pers. Sys.*, 691 P.2d 1121 (Colo. 1984). Ballot title and submission clause of proposed initiative measure must be brief. 200 Colo. 141, 613 P.2d 867 (1980). The absence in the Title of the details of private rights of actions, multiple forms of damages and one-sided attorney fees are not the central features of the Initiative, but are technical and enforcement information which the Title Board in its discretion, wisely chose to omit from the title, as these exemptions were not crucial to the voter's understanding of the measure, therefore, the Title Board's action should be affirmed.

CONCLUSION

The respondents respectfully request that the Court affirm the Title Board's action and approve the title set for Ballot Initiative 2013-2014 #68

DATED: May 11, 2014

George Brown and Juliet Piccone

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CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2014, I filed a true and correct copy of the RESPONDENT'S OPENING BRIEF by the ICCES filing system and served copies to the following:

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