

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p> <hr/> <p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p> <hr/> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2013-2014 #124 (“School Board Open Meetings”)</p> <p>Petitioner: Patricia S. Peters</p> <p>v.</p> <p>Respondents: Jon Caldera and Mike Kraus</p> <p>and</p> <p>Title Board: SUZANNE STAIERT; DAVID BLAKE; and JASON GELENDER</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Petitioner: Mark G. Grueskin, #14621 RECHT KORNFELD, P.C. 1600 Stout Street, Suite 1000 Denver, CO 80202 Phone: 303-573-1900 Facsimile: 303-446-9400 Email: mark@rechtkornfeld.com</p>	<p>Case No. 2014SA140</p>
<p>PETITIONER’S ANSWER BRIEF</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 798 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

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LEGAL ARGUMENT

A. The title should state the initiative's principal legal change is to create a new "local public body" in the Open Meetings Law.

The Board felt the title needed to relate only the "core purpose" of the measure – namely, that gatherings of certain school district officials and employees, addressing collective bargaining, would be open meetings. Title Board Opening Brief at 8. According to the Board, a title "should distill the proposed initiative down to a 'reasonably ascertainable expression of the initiative's purpose.'" *Id.*, citing *In re Title, Ballot Title, Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 648 (Colo. 2010).¹

The Court has never adopted a "core purpose" test for the entire title and should not do so here. The title is intended to capture the initiative's "major elements" rather than merely an assessment of a single core purpose. A statement of a measure's core purpose is used as the single subject summary, but it does not comprise the entire title.

The initiative process in Colorado has proliferated, and accordingly, this court and the title board now deal with an increasing number of measures.... However, the title board

¹ This Court's precise goal for encapsulating an initiative is much broader than stated by the Board. The title is to provide "**voter protection** through reasonably ascertainable expression of the initiative's purpose." *No. 45, supra*, 234 P.3d at 648 (emphasis added). Voter protection is possible if there is an accurate synopsis of the measure's text so that voters can make informed choices about the proposal.

must nonetheless proceed. We direct the board to **begin the titles with a clear, general summary** of the initiative, **followed by a brief description of the major elements** of the initiative.

In re Title, Ballot Title and Submission Clause for Proposed Initiatives
2001-2002 No. 21 and No. 22, 44 P.3d 213, 222 (Colo. 2002) (emphasis added). The Colorado Constitution imposes the same requirement. Colo. Const., art. V, sec. 1(5.5) (the "one subject" of an initiative "shall be clearly expressed" in the ballot title).

A title that describes just one application of a measure – here, to open collective bargaining-related meetings among certain school district administrators and employees – is legally flawed. First, ballot titles are not intended to describe applications of the proposed law, and this Court will not even review a ballot title to determine whether it has aptly set forth one or more applications of a proposed initiative. *No. 45, supra*, 234 P.3d at 649. Second, a title is supposed to "fairly reflect the proposed initiative," *id.* at 648 (citations omitted), which necessarily is a function of the measure's language – all of it.

Thus, the Board misdirected its efforts, focusing on an application of the amended statute rather than on the amendment itself. This error should be corrected before the measure is presented to voters.

B. The title incorrectly stated that "any meeting" of this newest local public body will be open to the public.

In her Opening Brief, Peters addressed the various ways in which this new local public body will be authorized to hold non-public meetings. Petitioner's Opening Brief at 4-5. The Title Board believes it is unclear if this new local public body will be subject to the very statute that is being amended. "Whether the new legal provisions created by the measure will, in turn, be subject to existing legal provisions is not relevant to title setting." Title Board Opening Brief at 9. Further, the Board argues that an executive session may be called only after a public session, technically making the reference to "any meeting" correct. *Id.* at 10.

As to the first issue, the Board cites *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 255*, 4 P.3d 485 (Colo. 2000). There, the question raised by objectors to the ballot title was whether the title was to be read "in *pari materia* with state and federal laws covering the same subject matter." *Id.* at 498. This is not a matter of evaluating whether statutes that are not expressly amended by an initiative are affected; this is a question of how the measure changes the statute of which it would be a portion. Certainly, that is not a task that is beyond the Board or requires speculation of any sort.

As to the second issue, the Board "perceive[s] a distinction without a difference." *No. 45, supra*, 234 P.3d at 648. The word "any" is not this nuanced. "Any" is "broad and all-inclusive." *Colorado Educ. Ass'n v. Rutt*, 184 P.3d 65, 75 (Colo. 2008). Even if the Board could be correct as to this application of the initiative – and determining how a measure is to be applied is, as noted above, beyond this Court's ambit in this appeal – voters would not read the measure or the title to achieve this end. Thus, the title remains legally insufficient.

CONCLUSION

The Board errs in asking this Court to adopt a "core purpose" test for ballot titles and also errs in seeking approval of a title that uses "all" but means some or many, thus confusing voters about its actual scope. The title should be returned to the Board for further action. Respectfully submitted this 29th day of May, 2014.

/s/ Mark G. Grueskin
Mark G. Grueskin, #14621
RECHT KORNFELD, P.C.
1600 Stout Street, Suite 1000
Denver, CO 80202
Phone: 303-573-1900
Facsimile: 303-446-9400
Email: mark@rechkornfeld.com

ATTORNEYS FOR PETITIONER

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, May 29, 2014, to the proponents via hand delivery or overnight delivery and, via ICCES, to counsel for the Title Board at:

Jon Caldera
727 E. 16th Avenue
Denver, CO 80203

Mike Kraus
727 E. 16th Avenue
Denver, CO 80203

LeeAnn Morrill
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203

/s Mark G. Grueskin _____