

SUPREME COURT
STATE OF COLORADO

2 East 14th Avenue
Denver, CO 80203

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 #124

Petitioner: Patricia S. Peters,

v.

Respondents: Jon Caldera and Mike Kraus,

and

Title Board: Suzanne Staiert, David Blake,
and Jason Gelender.

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DATE FILED: May 15, 2014 11:08 AM

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Case No. 2014SA140

OPENING BRIEF OF TITLE BOARD

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:

A. The brief complies with C.A.R. 28(g) because it contains 1,788 words.

B. The brief complies with C.A.R. 28(k) because 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 (R. __, p. __), and not to an entire document, where the issue was raised and ruled on.

s/ LeeAnn Morrill
LeeAnn Morrill
Attorney for the Title Board

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Title Board members Suzanne Staiert, David Blake, and Jason Gelender (hereinafter “the Board”), by and through undersigned counsel, hereby submit the Opening Brief of Title Board.

STATEMENT OF THE ISSUES

- I. **Whether the title set by the Board is unfair, misleading, does not fairly and correctly express the true meaning of the proposed initiative, and will lead to voter confusion because it fails to state that the purpose of the proposed initiative is to redefine “local public body,” as used in Colorado’s open meetings law.**
- II. **Whether the title set by the Board is unfair, misleading, does not fairly and correctly express the true meaning of the proposed initiative, and will lead to voter confusion because it incorrectly states that “any meeting” of the newly defined “local public body” must be open to the public even though the proposed initiative does not seek to prevent a local public body from meeting in executive session under a variety of statutorily authorized circumstances.**

STATEMENT OF THE CASE

The Board adopts the Statement of the Case as set forth in the Petition for Review.

SUMMARY OF THE ARGUMENT

Proponents, Jon Caldera and Mike Kraus, seek to circulate Proposed Initiative 2013-2014 #124 (“#124”), to obtain the requisite number of signatures to place a measure on the ballot to amend C.R.S. §§ 24-6-402 and 22-32-109.4. The amendments require that when members of a board of education, school administration personnel, or a combination of the two are involved in a meeting with a representative of employees at which a collective bargaining agreement is discussed, such meetings must be open to the public. (*See Exhibit A*).

At a rehearing conducted on April 24, 2014, the Board set the following title for #124: “A change to the Colorado Revised Statutes requiring any meeting of a board of education, or any meeting between a representative of a school district and any representative of employees, at which a collective bargaining agreement is discussed to be open to the public.” (*See Exhibit B*).

The title set by the Board is fair, clear, and accurate. By amending the definition of “local public body” contained in the Colorado

Open Meetings Law, C.R.S. 24-6-401, *et seq.* (2013) (“COML”), to include any meeting of members of a board of education, school administration personnel, or a combination of the two with a representative of employees at which a collective bargaining agreement is discussed, the measure requires such meetings to be open to the public. (*See Exhibit A*). The title accurately states the intent of the measure and succinctly reflects the content of the measure. (*Compare Exhibits A and B*). Petitioner’s objections to the Board’s title are without merit because they confuse the measure’s means with its ends.

ARGUMENT

I. The title is fair, clear, and accurate.

A. Standard of review.

The Court does not demand that the Board draft the best possible title. *In re Title, Ballot Title and Submission Clause for 2009-2010 #45*, 234 P.3d 642, 645, 648 (Colo. 2010). The Court grants great deference to the Board in the exercise of its drafting authority. *Id.* The Court will read the title as a whole to determine whether the title properly reflects

the intent of the initiative. *Id.*, at 649, n.3; *In re Trespass-Streams with Flowing Water*, 910 P.2d 21, 26 (Colo. 1996). The Court will reverse the Board's decision only if the titles are insufficient, unfair, or misleading. *Id.*

The Court will “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). Only in a clear case should the Court reverse a decision of the Title Board. *In re Title, Ballot Title and Submission Clause and Summary Pertaining to Casino Gambling Initiative*, 649 P.2d 303, 306 (Colo. 1982).

B. Standards governing titles set by the Board.

Section 1-40-106(3)(b), C.R.S. (2013), establishes the standards for setting titles. It provides:

In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a “yes” or “no” vote will be unclear. The title for the proposed law or constitutional

amendment, which shall correctly and fairly express the true intent and meaning thereof, together with the ballot title and submission clause, shall be completed...within two weeks after the first meeting of the title board. ...Ballot titles shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and shall be in the form of a question which may be answered “yes” (to vote in favor of the proposed law or constitutional amendment) or “no” (to vote against the proposed law or constitutional amendment) and which shall unambiguously state the principle of the provision sought to be added, amended, or repealed.

§ 1-40-106(3)(b), C.R.S. (2012).

In short, a title must be fair, clear, accurate, and complete. *In re Title, Ballot Title and Submission Clause for 2007-2008 #62*, 184 P.3d 52, 58 (Colo. 2008). However, the Board is not required to set out every detail of the measure in the title. *In re Title, Ballot Title and Submission Clause for 2001-2002 #21 and #22*, 44 P.3d 213, 222 (2002). In setting titles, the Board may not ascertain the measure’s efficacy, construction, or future application. *In re Title, Ballot Title and*

Submission Clause for 2009-2010 #45, 234 P.3d 642, 645, 649 (Colo. 2010).

C. The title set by the Board is not misleading or confusing.

Petitioner, Patricia Peters, complains that the title set by the Board is unfair, misleading, and does not fairly and correctly express the true meaning of the measure. She further complains that the title will lead to voter confusion.

Article V, section 1(5.5) of the Colorado Constitution requires that an initiative's subject be clearly expressed in its title:

The matter covered by [the initiative] is to be clearly, not dubiously or obscurely, indicated by the title. Its relation to the subject must not rest upon a merely possible or doubtful inference. The connection must be so obvious as that ingenious reasoning, aided by superior rhetoric, will not be necessary to reveal it. Such connection should be within the comprehension of the ordinary intellect, as well as the trained legal mind.

In re Title, Ballot Title and Submission Clause for 2009-2010 #45, 234 P.3d 642, 647-48 (Colo. 2010), quoting *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 #25*, 974 P.2d 458, 462

(Colo. 1999) (internal quotation and citation omitted). A ballot title “should ‘enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal.’” *Id.*, at 648, quoting *In re Title, Ballot Title, & Submission Clause for 2009-2010, #24*, 218 P.3d 350, 356 (Colo. 2009) (internal quotation and citation omitted). Indeed, “[t]he purpose of reviewing an initiative title for clarity parallels that of the single-subject requirement: voter protection through reasonably ascertainable expression of the initiative’s purpose.” *Id.*, citing *In re #24*, 218 P.3d at 356.

In this case, Petitioner specifically contends that the title is misleading and confusing because it fails to inform voters that #124, by its express terms, redefines the COML’s definition of “local public body.” (*Petition for Review*, at p. 4). This contention should be rejected because for the Board to have done so would have been superfluous: “All proposed constitutional amendments or laws have the effect of changing the status quo in some respect if accepted by the voters.” *In re Title, Ballot Title and Submission Clause for 1999-2000*, 4 P.3d 1194, 1197

(Colo. 2000). The Board is not required to discuss how a proposed measure would change existing laws. *In the Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000 246(e)*, 8 P.3d 1194, 1197 (Colo. 2000).

By stating that the measure is “[a] change to the Colorado Revised Statutes,” the title informs the voter that the measure will change existing laws and standards. (See Exhibit A). The issue of whether the change creates an entirely new legal definition or modifies an existing one is not relevant to title-setting. Rather, title-setting is about distilling the proposed initiative down to a “reasonably ascertainable expression of the initiative’s purpose.” *In re #45*, 234 P.3d at 648, citing *In re #24*, 218 P.3d at 356. In this case, the Board’s title plainly expresses the measure’s core purpose – namely, to require any meeting of members of a board of education, school administration personnel, or a combination of the two with a representative of employees at which a collective bargaining agreement is discussed to be open to the public. (Compare Exhibits A and B).

Furthermore, whether #124 creates a new legal definition or modifies an existing one is not subject to review in the appeal before this Court: “We are not permitted in our review to determine the legal meaning or application of the initiative when reviewing its title for defects.” *In re #45*, 234 P.3d at 648, *citing In re #24*, 218 P.3d at 355.

The Petitioner also contends that the Board’s title incorrectly states that “any meeting” of the newly defined “local public body” must be open to the public because #124 does not seek to prevent this local public body from meeting in executive session under a variety of statutorily authorized circumstances. (*Petition for Review*, at p. 4). This contention should also be rejected. Whether the new legal provisions created by the measure will, in turn, be subject to existing legal provisions is not relevant to title-setting. Indeed, this Court has repeatedly concluded that the Board is not required to discuss the interplay of a measure with existing laws. *In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 #255*, 4 P.3d 485, 498 (Colo. 2000).

Furthermore, this contention misapprehends the requirements of the COML because *before* a motion may be brought to move into executive session for an appropriate purpose and approved by a vote of at least two-thirds of local public body's quorum, there must *first* be a regular or special meeting underway that has been properly noticed and is open to the public until such time as a proper motion is brought and approved. *See* C.R.S. § 24-6-402(4). Accordingly, the Board's title correctly states that "any meeting" that satisfies the measure's criteria must be open to the public.

CONCLUSION

For the above-stated reasons, the Court should approve the title as set by the Board.

DATED: May 15, 2014.

JOHN W. SUTHERS
Attorney General

s/ LeeAnn Morrill

LEEANN MORRILL, 38742*

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Attorneys for the Title Board

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CERTIFICATE OF SERVICE

This is to certify that I duly served the foregoing **OPENING BRIEF OF TITLE BOARD** upon all counsel of record via ICCES and upon all proponents by depositing copies of same in the United States mail, Express Mail, postage prepaid, at Denver, Colorado, on May 15, 2014, addressed as follows:

Jon Caldera (via Express Mail)
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s/ Cindy Klyn

INITIATIVE 2013-2014 #124 FINAL TEXT

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Colorado Secretary of State

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Be it Enacted by the People of the State of Colorado:

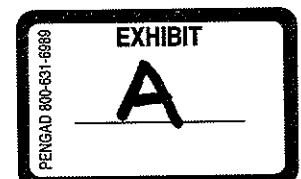
SECTION 1. 24-6-402 (1) (a) and (4) (e), Colorado Revised Statutes, are amended to read:

24-6-402. Meetings - open to public. (1) For the purposes of this section:

(a) (I) "Local public body" means any board, committee, commission, authority, or other advisory, policy-making, rule-making, or formally constituted body of any political subdivision of the state and any public or private entity to which a political subdivision, or an official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff of the local public body.

(II) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (A), IN ORDER TO ASSURE SCHOOL BOARD TRANSPARENCY "LOCAL PUBLIC BODY" SHALL INCLUDE MEMBERS OF A BOARD OF EDUCATION, SCHOOL ADMINISTRATION PERSONNEL, OR A COMBINATION THEREOF WHO ARE INVOLVED IN A MEETING WITH A REPRESENTATIVE OF EMPLOYEES AT WHICH A COLLECTIVE BARGAINING AGREEMENT IS DISCUSSED.

(4) The members of a local public body subject to this part 4, upon the announcement by the local public body to the public of the topic for discussion in the executive session, including specific citation to the provision of this subsection (4) authorizing the body to meet in an executive session and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized, and the affirmative vote of two-thirds of



the quorum present, after such announcement, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the following matters; except that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action, except the review, approval, and amendment of the minutes of an executive session recorded pursuant to subparagraph (II) of paragraph (d.5) of subsection (2) of this section, shall occur at any executive session that is not open to the public:

(e) (I) Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators.

(II) THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (E) SHALL NOT APPLY TO A MEETING OF THE MEMBERS OF A BOARD OF EDUCATION OF A SCHOOL DISTRICT:

(A) DURING WHICH NEGOTIATIONS RELATING TO COLLECTIVE BARGAINING, AS DEFINED IN SECTION 8-3-104 (3), C.R.S., ARE DISCUSSED; OR

(B) DURING WHICH NEGOTIATIONS FOR EMPLOYMENT CONTRACTS, OTHER THAN NEGOTIATIONS FOR AN INDIVIDUAL EMPLOYEE'S CONTRACT, ARE DISCUSSED.

SECTION 2. 22-32-109.4, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

22-32-109.4. "Colorado School Collective Bargaining Agreement Sunshine Act" - board of education - specific duties. (4) ANY MEETING OF A BOARD OF EDUCATION AT WHICH A COLLECTIVE BARGAINING AGREEMENT IS DISCUSSED SHALL BE

OPEN TO THE PUBLIC AND ANY NOTICE REQUIRED BY SECTION 24-6-402(2) (C), C.R.S.,
SHALL BE GIVEN PRIOR TO THE MEETING.

Ballot Title Setting Board

Proposed Initiative 2013-2014 #124¹

DATE FILED: May 15, 2014 11:08 AM

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes requiring any meeting of a board of education, or any meeting between any representative of a school district and any representative of employees, at which a collective bargaining agreement is discussed to be open to the public.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes requiring any meeting of a board of education, or any meeting between any representative of a school district and any representative of employees, at which a collective bargaining agreement is discussed to be open to the public?

Hearing April 16, 2014:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 4:34 p.m.

Hearing April 24, 2014:

Motion for Rehearing granted only to the extent that the Board made changes to the titles; denied in all other respects.

Hearing adjourned 4:35 p.m.

¹ Unofficially captioned "School Board Open Meetings" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

