

SUPREME COURT, STATE OF COLORADO
2 East 14th Avenue
Denver, Colorado 80203
ORIGINAL PROCEEDING PURSUANT TO
C.R.S. § 1-40-107(2)
Appeal from the Title Board

DATE FILED: May 28, 2015

FILED IN THE
SUPREME COURT

MAY 28 2015

OF THE STATE OF COLORADO
Christopher T. Ryan, Clerk

IN RE TITLE AND BALLOT TITLE AND
SUBMISSION CLAUSE SET FOR
INITIATIVE 2015-2016 #24

Petitioner: Dan Chapin

v.

Title Board: SUZANNE STAIERT, JASON
GELENDER, and FRED YAGAR

Attorney or Party Without Attorney:

Name: Dan Chapin

Address: 12422 E. Amherst Circle
Aurora, CO 80014

Phone Number: 303-696-6759

▲ COURT USE ONLY ▲

Case Number: 2015SA122-1

ANSWER BRIEF FOR PETITIONER

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 contains less than 15 pages

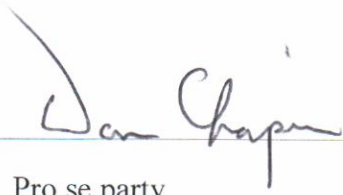

Pro se party

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I. Summary of Argument

The Respondents have introduced issues that were not raised in the rehearing. These issues are not properly in front of the Court and the Court should decline to hear them. Respondents have not met the burden of proof, preserving a right of the people is much different than denying a right of the people and the burden of proof switches as a party changes those roles. The Respondents have failed to make any reasonable legal argument supported by concrete examples from the Initiative or specific applicable precedent. Alleged separate subjects are properly connected to a central theme and are thus a single subject. The Board has acted arbitrarily and capriciously in its actions for this Initiative as opposed to other similar initiatives. A comprehensive initiative does not preclude it from being a single subject. There is no surprise in this Initiative and Respondents have presented no valid argument in support of this contention.

Petitioners specifically incorporate by reference arguments from Petitioners' Opening Brief. Arguments from Petitioners' Opening Brief not addressed herein are not conceded.

II. Argument

A. Issues Not Raised by Board in Hearings

In the Title Board's Opening Brief there is reference to multiple issues which were not raised in the hearings held by the Board. Respondents attempt to allege 14 separate subjects, *see Resp. Opening Brief at 2-5*, which they list as imposing various taxes and 13 other enumerated items. Only items (6) and (7) were raised by the Board as one of their five alleged multiple subjects in the title rehearing, *as referenced in Petitioner Opening Brief*.

It is the understanding of the Petitioner that issues in front of the Court are not suppose to be a game of hide the ball and issues not raised in a prior hearing or court action are not properly in the jurisdiction of a Court of review. To allow the State to just add multiple issues, that had not been

previously raised, places the Petitioner at a disadvantage and did not allow for them to be properly addressed. The Board did not raise any of these issues at the rehearing, they are not part of the record. This Court should decline to review these issues. *Kelly v. Tancredo*, 913 P.2d 1127, 1130, n. 3 (Colo.1996) (this Court declined to hear an issue not raised in a motion for rehearing before the Title Board). For these reasons, this Court should not even consider the plethora of issues and alleged subjects the Board attempts to place in front of the Court.

Obviously this shows a lack of legal or logical support for the five alleged multiple subjects raised by the Board in the ewhearing. Three of the alleged multiple subjects, from the rehearing, were not even presented in the Respondents Opening Brief. This appears that for lack of any legal support the Board is not even asking for a review of their alleged subjects, indicating the Boards objections to the Initiative were based on the perceived merits or the impact of the Initiative on them, rather than on any reasonable and compelling legal basis.

Now the Respondents have declared every item listed in the proposed title by the legislative council is a separate subject. Essentially, the Respondents are throwing everything against the wall and hoping something will stick. More than responsible and nonpartisan stewards of the process, they have become an adversary to the basic right of petition as reserved for the people. Simply because the Board failed to properly provide the necessary legal justification at the hearings does not grant them as many swings at the ball as they like, until they are able to somehow connect. The Proponents should not be disadvantaged merely because the Board failed to prepare a supportable legal reason for denying title to the Initiative at the rehearing.

B. Board has not Met the Burden of Proof

The Board's Opening Brief is essentially the same as any Opening Brief they have submitted in the past five years, when they are defending initiatives against claims of multiple subjects. There is a major difference between defending an initiative and opposing an initiative.

When the Board was defending initiatives as containing a single subject they were working in the interest of the people in preserving the right to petition. However, when they are opposing an initiative they are working against the right of the people to petition. “The right of initiative and referendum, like the right to vote, is a fundamental right under the Colorado Constitution.” *Clark v. City of Aurora*, 782 P.2d 771, 777. To preserve the right of initiative the Court has determine the initiative should be liberally construed, with the benefit going to the proponents of an initiative, “In light of the nature and seriousness of these rights, we have held that constitutional and statutory provisions governing the initiative process should be "liberally construed" so that "the constitutional right reserved to the people may be facilitated”,” *LOONAN v. WOODLEY* 882 P.2d 1380, 1383-1384 (1994).

The burden of proof lies with the Board, to prove beyond a reasonable doubt, that there is extensive and compelling legal justification to deny title. The Respondents Opening Brief is boiler plate legal citations that reference following the proper procedure, with generic one size fits all quotes. However, there is no specific discussing of this particular Initiative, or concrete examples of how those legal cites directly relate to the Initiative. This would possibly be sufficient in cases where the Board is defending an initiative, since it would lie with the party opposing the initiative to provide a reasonable, compelling, and legally supported argument. However, in this case the burden of proof lies with the Board, *as shown in Petitioner Opening Brief*.

C. Respondents Have Not Presented Any Legal Argument

Respondents did not provide any concrete examples of multiple subjects or more than a single purpose. The Respondents did not even provide any arguments based on the merits or the effects of the initiative if adopted. Although such arguments would not be accepted by this Court, at least there would be some sort of reasoning for review. However, Respondents merely provided a laundry list of items pulled from the proposed title and without any support expect this Court to blindly accept them

as multiple subjects.

Respondents did not provide or reference any legal arguments, prior initiatives that were similar, or legal precedent to support their position that the stated items were separate subjects. In fact Respondents did not even bother to provide a logical argument. Instead they chose to present the Court with a bad parenting approach of “because we said so”. Claiming something is true does not make it so in the absence of any type of supporting legal justification.

Respondents accepted the purpose of the Initiative as defined by the Proponents, *see Resp. Opening Brief at 2*. But then they attempt to claim the purported purpose is to impose a tax, and then take a massive leap from there to try and conflate that statement into implying that the imposition of a tax is the main subject and then completing the whole backwards circle they attempt to claim all the other issues related to elections are now separate subjects. They are incorrect in their massive assumptions and flawed logic.

The imposition of a tax, as presented in the Initiative, is an enforcement clause that is integral to encouraging compliance with the purpose of fair and equitable elections in the interest of Coloradans. The recommended inclusion of such a clause is found in the “Initiative Drafting Guide and Style Sheet” provided to Colorado citizens by the Legislative Council, to assist in writing a proper initiative. It specifically states in part on page 5:

“c. Penalty clause

If a proposed measure requires or prohibits certain conduct, it may be appropriate to specify the penalty for noncompliance with the law...”

The published guidelines for an initiative encourage and recommend the inclusion of this exact type of clause for a proposal like this Initiative. It is very apparent that the tax presented in this Initiative is not a separate subject but rather an integral and connected component of the central theme of the Initiative. The Court has determined that, “if the unstated theme is consistent with the general

purpose, the single subject requirement will be met”, *In re Title, Ballot Title and Submission Clause for 2005-2006 #55, 138 P.3d 273, 278.*

Respondents have incorrectly attempted to claim elements of elections in the interest of Coloradans are components of imposing a tax, rather than the correct purpose, which can be discerned by reading the Initiative, that imposing a tax is a component of elections in the interest of Coloradans. They have essentially turned the whole issue upside down in order to arrive at their desired result.

Respondents may feel they can play Petitioner, a pro se party, for the fool with a Brief full of boiler plate generalities, but it seems very disrespectful to this Court's time to present a Brief that is devoid of legal arguments specific to concrete examples from the Initiative. In addition it appears they expect wild assumptions to be accepted as fact because it fits their version of what they would like to be true, without feeling the need for supporting legal precedent or argument.

D. Items Alleged as Separate Subjects are Properly Connected

Respondents have only listed two items that they allege are multiple subjects that were raised by the Board in the title hearings. Those two items are (6) limitations on the General Assembly's ability to enact legislation that affects the conduct of elections; and (7) authorizing electors to petition the General Assembly to enact laws changing the conduct of elections, *see Resp. Opening Brief 3-4.*

Item (6) is a reference to requiring voter approval for any legislation that attempts to limit a citizens ability to vote, a major component in equal participation in an election. There is already a precedent for this type of action in the TABOR amendment, which requires tax increases to be approved by the electorate.

Item (7) is a protection of the peoples right to petition, a right already shown to be a basic right in regard to elections by the Court, to ensure the maximum participation in elections. The right to petition the government is a most basic right, exhibited by the fact that it is enshrined in the first of the Amendments that make up the U.S. Constitution Bill of Rights. Of course using the logic of the

Respondents, if you presented them with the First Amendment, they would declare that it contained six separate subjects and would deny setting title.

Both of these items are to protect established voting rights and to keep them from being circumvented, they are directly tied to the Initiative's central focus. The Court has already found that items to prevent the state from circumventing portions of an initiative are directly tied to an initiative's central focus, "Without the second provision, the state could attempt to circumvent the first provision", *In the Matter of Submission Clause for 2009-2010 No. 45, 234 P.3d 642, 647 (Colo. 2010)* and continues, "Therefore, both provisions seek to achieve the central purpose of the initiative."

E. Board is Inconsistent in Treatment of Initiatives

The Respondents would like this Court to believe that the Initiative contains multiple subjects because the proposed title contains numerous items. They listed 14 separate items, expecting the Court to accept that because they can list 14 items contained in the Initiative it must have multiple subjects, on the assumption that is too many items for one initiative. This veiled implication loses all weight when viewed in light of the historical actions of the Board.

On the very same day, at the very same hearing where Proponents had their Initiative denied for lack of a single subject, the Board approved for title proposed initiative 2015-2016 #20 and set title. In the title set by the Board there are at least 15 and as many as 18 (depending on interpretation) separately listed items, *see Attachment 1*. Many would possibly argue that it contained multiple subjects because it deals with both federal and state issues, it creates new processes, it creates new administration, it effects other areas of state law, it amends a different article, and it creates new taxes.

Many of these items are red flags that could possibly indicate multiple subjects, however it was rightly recognized that they were all necessary components to a central theme that work together to create a sustainable process to achieve a single purpose, which has a chance to succeed in its intent.

Petitioner's Initiative is no different, it just addresses a different purpose and has a different

central theme. When our legislatures fail to address complex issues should that leave no recourse to the people, simply because complex or comprehensive initiatives will not be accepted by the Title Board. When we start to accept limitations on how basic rights can be exercised, we are on the road to losing those rights.

Health care and fair equitable elections are two important, comprehensive, and complex issues. It would be difficult to pick one as more important or one as more involved and complex. However, neither of these issues, importance or complexity, should limit the people from exercising their basic right of petition to obtain redress and improve the functioning of their government and society.

The Board cannot act in an arbitrary and capricious manner when determining different initiatives. They cannot pick and choose based on what they like and what they do not like, they must rely on legal precedent set by this Court or the law. The burden is entirely on the Board to prove beyond a reasonable doubt why this Initiative is significantly different than proposed initiative #20, and the numerous other initiatives that have contained 12 or more items in their titles. They have not done that.

F. A Comprehensive Initiative Does Not Mean Multiple Subjects

The Court has always recognized that it evaluates single subject for initiatives as it does for legislative bills, "[m]indful of the legislative history which requires us to evaluate the single-subject ... mandate in initiatives in the same way that we evaluate single subjects... in bills," *IN RE BALLOT TITLE 2001-02 NO. 43, 46 P.3d 438, 441 (2002)*. With this in mind we must recognize that the complexity or comprehensiveness of a bill or initiative does not preclude it from being a single subject.

A prime example of a comprehensive bill would be CCIOA (Colorado Common Interest Ownership Act) it was a complex, comprehensive bill which was very involved and contained numerous issues covering a wide range of topics. However, this was presented, voted on, and passed as a single bill. Although a very involved and comprehensive bill, it was seen as a single subject because

all the separate components were related to a central theme.

The legislature was not required to break CCIOA into separate components and cobble it together piecemeal. It is a great legislative economy to be able to address somewhat disparate items as a whole, when they share the same general purpose and central theme, instead of multiple efforts to hopefully arrive at the same results. This benefit should not be denied the people.

The Court should be sensitive to the difficulty of the initiative process, that although allowing the people access to the legislative process, is much more difficult to introduce multiple initiatives than it is for the legislature to introduce multiple bills. The legislature does not need to get 100,000 co-sponsors every time they wish to introduce a bill. The cost of a piecemeal approach to initiatives in order to obtain a comprehensive change through the initiative process is a barrier essentially impossible to overcome for any citizen or even for a group of citizens. This is one of the very reasons why citizen initiatives should be construed in a liberal manner.

The right for the people to be able to make not just simple changes but also comprehensive changes should not be abridged. The initiative process is the final protection for the people when they feel their legislatures fail to act. If the citizens are incorrect in their contention that the legislature has not acted, then the people, all the people, will let them know at the polls. It is right that all the people should decide and not that three people should decide. The people, given the proper and truthful information, will usually make the proper choice, just as they did last year when they saw through the initiative that claimed to provide funds for education but was in reality a bill to create a new gambling monopoly for a certain special interest. So apparently the people are able to discern the true purpose of an initiative better than three people on a Board and should be given that chance.

G. This Initiative Does Not Provide Any Surprise

The Respondents make an unsubstantiated claim that this Initiative would cause surprise to the voters, *Resp. Opening Brief 10*. Respondents give no concrete examples of where this surprise would

occur or what portions of the Initiative could cause surprise. It is apparently a secret as to what portions of this Initiative would surprise the voters, or perhaps it is a “surprise” that they will unwrap for us later.

Again, stating something without any legal or even logical argument to support it is not a valid legal argument. The Court has often determined what comprises surprise and more often than not it involves an initiative that creates a new article or statute and at the same time nullifies or substantially alters another article or statute. This Initiative does not do that. It is a self contained article that does not attempt to effect or substantially change any other articles or statutes. Even the previously discussed proposed initiative 2015-2016 #20 contains within it a change to the Taxpayer's Bill of Rights, yet their title was not denied due to surprise. Again, this Initiative is being treated differently and it appears just more “stuff” is being thrown against the wall in a last ditch attempt to get anything to stick in the eyes of the Court.

III. Conclusion

Respondents attempted to raise the issue of numerous items alleged to be multiple subjects that were not raised in the rehearing. These items should not be addressed by this Court as they were not properly raised in the rehearing.

Further, Respondents fail to realize that as they move from approving title for an initiative to denying title to an initiative that they have shifted the burden of proof. The assumption is that the Proponent's Initiative is constitutional and it is up to Respondents to prove beyond a reasonable doubt that it is unconstitutional. Not only have they not succeeded in that proof, they have not even attempted to present any valid legal argument or precedent to achieve that result.

Respondents have not presented anything that qualifies as a valid legal argument but have instead depended on stating general legal citations that speak to the process, but nothing that speaks

specifically to this Initiative or the issues present here.

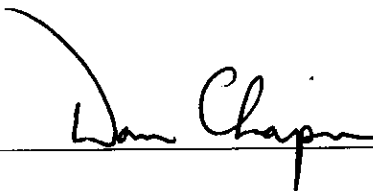
Petitioner has shown that the alleged multiple subjects are properly connected and directly relate to the central theme of the Initiative. In addition, Proponent has shown how the Board has arbitrarily treated this Initiative differently than similar initiative.

Furthermore, Petitioner has shown that merely because an initiative is comprehensive does not and should not preclude it from being a single subject. Petitioner has also proven, in the absence of any valid evidence or argument to the contrary, that there is no surprise hidden in this Initiative.

Petitioner has clearly shown that this Initiative is a single subject with a single purpose where everything is directly connected to a central theme. This Court should preserve the people's right to petition and rule that this Initiative is a single subject.

For these reasons this Court should overturn the ruling of the Title Board and declare this Initiative is a single subject initiative and title should be set.

Respectfully submitted this 28th day of May 2015

A handwritten signature in black ink that reads "Dan Chapin". The signature is written in a cursive style with a large, sweeping initial "D". Below the signature is a solid horizontal line.

Dan Chapin
Petitioner

ATTACHMENT 1

Proposed Initiative 2015-2016 #20

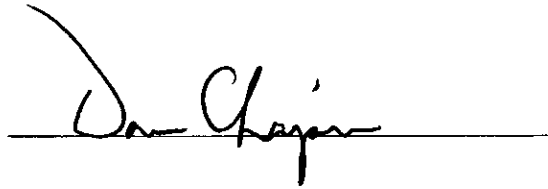
The title as designated and fixed by the Board is as follows:

STATE TAXES SHALL BE INCREASED \$25 BILLION ANNUALLY IN THE FIRST FULL FISCAL YEAR, AND BY SUCH AMOUNTS THAT ARE RAISED THEREAFTER, BY AN AMENDMENT TO THE COLORADO CONSTITUTION ESTABLISHING A HEALTH CARE PAYMENT SYSTEM TO FUND HEALTH CARE FOR ALL INDIVIDUALS WHOSE PRIMARY RESIDENCE IS IN COLORADO, AND, IN CONNECTION THEREWITH, CREATING A GOVERNMENTAL ENTITY CALLED COLORADOCARE TO ADMINISTER THE HEALTH CARE PAYMENT SYSTEM; PROVIDING FOR THE GOVERNANCE OF COLORADOCARE BY AN INTERIM APPOINTED BOARD OF TRUSTEES UNTIL AN ELECTED BOARD OF TRUSTEES TAKES RESPONSIBILITY; EXEMPTING COLORADOCARE FROM THE TAXPAYER'S BILL OF RIGHTS; ASSESSING AN INITIAL TAX ON THE TOTAL PAYROLL FROM EMPLOYERS, PAYROLL INCOME FROM EMPLOYEES, AND NONPAYROLL INCOME AT VARYING RATES; INCREASING THESE TAX RATES WHEN COLORADOCARE BEGINS MAKING HEALTH CARE PAYMENTS FOR BENEFICIARIES; CAPPING THE TOTAL AMOUNT OF INCOME SUBJECT TO TAXATION; AUTHORIZING THE BOARD TO INCREASE THE TAXES IN SPECIFIED CIRCUMSTANCES UPON APPROVAL OF THE MEMBERS OF COLORADOCARE; REQUIRING COLORADOCARE TO CONTRACT WITH HEALTH CARE PROVIDERS TO PAY FOR SPECIFIC HEALTH CARE BENEFITS; TRANSFERRING ADMINISTRATION OF THE MEDICAID AND CHILDREN'S BASIC HEALTH PROGRAMS AND ALL OTHER STATE AND FEDERAL HEALTH CARE FUNDS FOR COLORADO TO COLORADOCARE; TRANSFERRING RESPONSIBILITY TO COLORADOCARE FOR MEDICAL CARE THAT WOULD OTHERWISE BE PAID FOR BY WORKERS' COMPENSATION INSURANCE; REQUIRING COLORADOCARE TO APPLY FOR A WAIVER FROM THE AFFORDABLE CARE ACT TO ESTABLISH A COLORADO HEALTH CARE PAYMENT SYSTEM; AND SUSPENDING THE OPERATIONS OF THE COLORADO HEALTH BENEFIT EXCHANGE AND TRANSFERRING ITS RESOURCES TO COLORADOCARE.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the forgoing ANSWER BRIEF was on this 28th day of May 2015 delivered by hand to:

Colorado Secretary of State
Ballot Initiative Title Board
1700 Broadway St. #200
Denver, CO 80290



A handwritten signature in black ink, appearing to read "Dan Chapin", is written over a horizontal line.