

<p>SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203</p>	
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiatives 2015-2016 #116, #117, & #118 (“Retention of Excess State Revenue”)</p> <p>Petitioner: Natalie Menten,</p> <p>v.</p> <p>Respondents: Dan Ritchie & Albert Yates, and</p> <p>Title Board: Suzanne Staiert, Frederick R. Yarger, & Jason Gelender.</p>	<p>▲ COURT USE ONLY ▲ Case No.: 2016SA138</p>
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<p>TITLE BOARD’S ANSWER BRIEF</p>	

CERTIFICATE OF COMPLIANCE

I 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, I certify that:

A. The brief complies with C.A.R. 28(g) because it contains 1,137 words.

B. The brief complies with C.A.R. 28(b) because it contains, under a separate heading placed before the discussion of the issue, a statement whether the Title Board agrees with the Petitioners' statements concerning the standard of review with citation to authority and preservation for appeal, and if not, why not.

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the Title Board (“Board”) correctly determined that Proposed Initiatives #116, #117, and #118 (“#116,” #117,” and “#118”) contain a single subject under Article V, § 1(5.5) of the Colorado Constitution.
2. Whether the title the Board set for #118 complies with Colorado law.

STATEMENT OF THE CASE

The Board adopts the statement of the case presented in its May 13, 2016 Opening Brief.

SUMMARY OF THE ARGUMENT

The Board’s decision to set titles for #116, #117, and #118 were proper. As a procedural matter, Menten waived any argument that #118 violates the single-subject rule when she failed to raise the issue before the Board in her motion for rehearing. In any event, the Board correctly determined that all three initiatives contain just one subject: permitting Colorado to retain and spend the state revenues it collects

that exceed the constitutional limitation on state fiscal year spending. Finally, the title the Board set for #118 correctly and fairly expresses the true intent and meaning of the measure and would not lead to public confusion. As a result, the Board's decisions should be affirmed.

ARGUMENT

I. Nos. 116, 117, and 118 contain a single subject.

A. *Standard of review.*

The Board agrees with Menten that in reviewing its decision, the Court “is to ‘employ all legitimate presumptions in favor of the Title Board’s actions.’” Pet’r Opening Br. at 2 (quotation omitted).

As the Board noted in its opening brief, this issue was properly preserved as to Nos. 116 and 117, but not to #118. Because Menten did not properly raise the single-subject issue as to #118, this Court cannot consider it. *See, e.g., Silverview at Overlook, LLC v. Overlook at Mt. Crested Butte, LLC*, 97 P.3d 252, 257 (Colo. App. 2004).

B. *Nos. 116, 117, 118 contain a single subject.*

All three initiatives comply with Colorado’s single-subject rule. Menten herself accurately captures the single subject of the three initiatives in her opening brief: “In general, the three initiatives would permanently authorize Colorado to retain and spend state revenues that exceed the limitations on fiscal spending under the TABOR amendment by amending the Colorado Revised Statutes to add a new section.” Pet’r Opening Br. at 1; *see also id.* at 6 (providing a similar summary of the three initiatives). But Menten argues that the initiatives nevertheless violate the single-subject rule because they contain “‘log rolling’ and ‘Christmas tree’ embellishments,” and that “[a]ll in all, the proposed initiatives deploy for the citizens’ persuasion one spending attraction after another.” Pet’r Opening Br. at 7, 8. The argument seems to be that these measures might be ones that, “incapable of being enacted on [its] own merits” nonetheless pass because they “join multiple subjects ... [that] will secure the support of various factions that may have different or even conflicting interests.”

In re Title, Ballot Title, & Submission Clause for Proposed Initiative 2001-2002 #43, 46 P.3d 438, 442 (Colo. 2002) (citations omitted).

This argument should be rejected. To begin with, merely raising the potential existence of such voters as a theoretical possibility isn't enough to overturn the Board's decision; otherwise, only one-provision measures could ever be approved. Menten has not offered any reason to conclude there is any real-world risk that a substantial number of voters would be coerced into voting Nos. 116, 117, or 118. Moreover, Menten's argument is not unique to these measures; it would apply to *any* tax increase. That is, a tax increase necessarily raises revenue and thereby provides additional funding for governmental programs that voters might support. Finally, the mere fact that Nos. 116 and 117 dictate that a certain amount of the new revenues be spent on transportation and education does not mean they contain more than one subject; as the Board discussed in its opening brief, these provisions are part of a "comprehensive framework" to raise and spend additional revenues for particular government programs. *See, e.g., In re Title,*

Ballot Title, & Submission Clause for 2013-14, #76, 333 P.3d 76 (Colo. 2014).

II. The title the Board set for #118 was proper.

A. *Standard of review.*

The Board agrees with Menten that this Court it “give[s] great deference to the Title Board in the exercise of its drafting authority and will reverse its decision only if the titles, are insufficient, unfair, or misleading.” *In re Title, Ballot Title, & Submission Clause for 2009-2010, #45*, 234 P.3d 642, 645, 648 (Colo. 2010) (citation omitted).

This issue was properly preserved. The Board set a title for #118 on April 6, 2016. #118 Pet. at 19. Menten filed a motion for rehearing on the title, *id.* at 16-18, and the Board ruled on that motion, *id.* at 19. Menten then timely filed her petition for review in this Court.

B. *Number 118’s title is proper.*

Menten does not separately argue that #118’s title was improper, but groups that contention in with her broader argument that Nos. 116, 117, and 118 violate the single-subject rule. She writes that “the title to Proposed Initiative #118 lacks disclosure of the unfettered use of the

people’s monies altogether.” Pet’r Opening Br. at 7. But this is precisely the opposite position Menten took before the Board and in her petition for review with this Court. In her petition for rehearing, Menten wrote that “[t]he clear meaning of [#118’s] language is that the funds are to be used for public schools and transportation projects. The ‘but not limited to’ clause opens the funds up for other possible uses, but the word ‘including’ necessitates that at least some of the funds be used for those purposes.” #118 Pet. at 18. Later in her petition for review, Menten listed as the grounds for her appeal that “#118 do not [*sic*] reflect in any way the priority given to public schools and transportation projects in the use of the funds retained” *Id.* at 3. But on appeal, Menten switches tacks and says that #118’s title is misleading because it “actually allows the monies to be used ‘for any purposes determined by the general assembly.’” Pet’r Opening Br. at 7.

However phrased, Menten’s argument fails. While she says that #118’s title “lacks disclosure of the unfettered use of the people’s monies altogether,” the title actually discloses this fact, noting that #118 would “authoriz[e] the state *to retain and spend* revenues that exceed the

constitutional limitation on state fiscal year spending” #118 Pet. at 19 (emphasis added). Any reasonable voter who reads that title will understand that the initiative does not place any additional limits on how the General Assembly allocates those additional revenues. In short, #118’s title is fair, clear, accurate, and complete.

CONCLUSION

For the reasons given above, this Court should affirm the Board’s decisions regarding #116, #117, and #118.

Respectfully submitted on this 27th day of May, 2016.

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CERTIFICATE OF SERVICE

This is to certify that I electronically served the **TITLE BOARD'S ANSWER BRIEF** and related documents upon the following parties through ICCES this 27th day of May, 2016:

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