

COLORADO SUPREME COURT
2 East 14th Avenue
Denver, CO 80203

DATE FILED: June 2, 2016 4:10 PM

Original Proceeding
Pursuant to Colo. Rev. Stat. § 1-40-107
Appeal from the Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative
2015-2016 # 133 (“Colorado Legislative
Redistricting Commission”)

Petitioners: Donna R. Johnson

v.

Respondents: Kathleen Curry and Frank
McNulty

and

Title Board: Suzanne Staiert, Jason Gelender,
and Frederick R. Yarger.

CYNTHIA H. COFFMAN, Attorney General
MATTHEW D. GROVE, Assistant Solicitor
General*

Ralph L. Carr Colorado Judicial Center
1300 N Broadway, 6th Floor
Denver, CO 80203

Telephone: (720) 508-6157

FAX: (720) 508-6041

E-Mail: matt.grove@coag.gov

Registration Number: 34269

*Counsel of Record

▲ COURT USE ONLY ▲

Case No. 2016 SA 154

TITLE BOARD’S ANSWER 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:

1. The brief complies with the word limits set forth in C.A.R. 28(g) because it contains 924 words.
2. The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and C.A.R. 28(b) because, for the party raising the issue, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

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/ Matthew D. Grove
Attorney for the Title Board

TABLE OF CONTENTS

	PAGE
Summary of the Argument.....	1
Argument.....	1
I. Standard of review and preservation.....	1
II. The Board correctly determined that the initiative addresses the single subject of how redistricting will be handled in Colorado. ..	2
Conclusion.....	5

TABLE OF AUTHORITIES

	PAGE
CASES	
In re Proposed Initiative Amend TABOR 25, 900 P.2d 121 (Colo. 1995)	2
In re Public Rights in Waters II, 898 P.2d 1076 (Colo. 1995).....	2
In re Proposed Initiative for 2011-2012 #3, 2012 CO 25	3
In re Title, Ballot Title, and Submission Clause for 2013-14 No. 76, 2014 CO 52.....	3
In re Title, Ballot Title and Submission Clause for 2003-2004 #32 and #33, 76 P.3d 460 (Colo. 2003).....	4, 5

Title Board members Suzanne Staiert, Sharon Eubanks, and Frederick R. Yarger (the “Board”), by and through undersigned counsel, hereby submit the following Answer Brief.

SUMMARY OF THE ARGUMENT

The title set for #133 should be affirmed. Rather than encompassing multiple subjects, each facet of the initiative relates to its central purpose: depoliticizing the redistricting process. The fact that #133 would pursue this goal by restructuring the Colorado Reapportionment Commission and changing the substantive and procedural rules that it must follow and does not create the risks that underpin the single-subject rule.

ARGUMENT

I. Standard of review and preservation.

The applicable standard of review is stated in the Title Board’s Opening Brief at pp. 3. The Board agrees that Petitioners have preserved their single-subject arguments.

II. The Board correctly determined that the initiative addresses the single subject of how redistricting will be handled in Colorado.

Petitioners argue that #133 contains three separate subjects: (1) changes in the existing process for setting state legislative districts; (2) a prohibition on the appointment of lobbyists to the newly configured commission; and (3) requiring the Supreme Court Nominating Commission to appoint certain members to the newly configured commission.

The proposed initiative does not violate the single subject rule because each of the “subjects” that Petitioners identify have a “necessary or proper connection” to the initiative’s central purpose.” *In re Proposed Initiative Amend TABOR 25*, 900 P.2d 121, 124–25 (Colo. 1995) (quoting § 1-40-106.5(1)(e)(I), C.R.S.). Accordingly, because #133 does not have “at least two distinct and separate purposes which are not dependent upon or connected with each other,” *In re Title, Ballot Title & Submission Clause, & Summary Pertaining to a Proposed Initiative “Public Rights in Waters II,”* 898 P.2d 1076, 1078-79 (Colo. 1995). the title set by the Title Board should be affirmed. Each of Petitioners’ arguments is addressed in turn below.

First, Petitioners contend that #133’s specific alterations to the legislative line-drawing process create a second subject. But these changes—which make clear the processes that the reconfigured commission must follow and the criteria it will apply—all have a necessary or proper connection to the central purpose of the initiative. They do not “combin[e] subjects with no necessary or proper connection for the purpose of garnering support for the initiative from various factions – that may have different or even conflicting interests – [in order to] lead to the enactment of measures that would fail on their own merits.” *In re Proposed Initiative for 2011-2012 #3*, 2012 CO 25, ¶ 11. To the contrary, #133 does not appear to be written in a way designed to “bring[] together disparate factions in order to achieve their otherwise disparate agendas[.]” *In re Title, Ballot Title, and Submission Clause for 2013-14 No. 76*, 2014 CO 52, ¶ 39 (Eid, J., dissenting). It should come as a surprise to no one that an initiative whose central purpose is to prevent gerrymandering includes provisions that are designed to ensure that goal is met.

Second, relying on this Court’s holding in *In re Title, Ballot Title and Submission Clause for 2003-2004 #32 and #33*, 76 P.3d 460, 462

(Colo. 2003), Petitioners argue that the exclusion of “lobbyists” from those eligible to serve on the reconfigured commission constitutes a separate subject. In #32 and #33, this Court concluded that two proposed initiatives not only worked a procedural modification to the initiative and referendum process, but “limit[ed] the substantive rights of all attorneys” by prohibiting this identifiable population from participating in the title setting process. *Id.* at 462. Because the changes to attorneys’ substantive rights had “no necessary or proper connection to the purpose of the proposed measure, *i.e.*, to liberalize the *procedure* for initiative and referendum petitions,” it was a second subject. *Id.* at 463.

In #32 and #33, this Court was careful to note that it was making “no prediction as to whether excluding lawyers from the title board is constitutional,” and instead emphasized that its ruling was based on the fact that the “exclusion [was] a substantive change in the law that should be separately addressed by voters.” *Id.* at 463. The Court should limit its review in the same way here, but because there *is* a “necessary or proper” connection between #133’s central purpose and the limits it would propose on the appointment of lobbyists, it should

reach the opposite conclusion. Unlike the initiatives in #32 and #33, the central purpose of #133 is not procedural. Rather, its goal of eliminating gerrymandering is substantive and policy-driven. It is reasonable to conclude that barring lobbyists—who by definition are paid to influence the political process—has a necessary or proper connection to this goal.

Third, the initiative does not comprise multiple subjects by delegating certain appointment authority for the reconfigured commission to the Supreme Court Nominating Commission. Defining the manner in which appointments to the commission must be made is part and parcel of the measure's substantive changes to the entire line-drawing process. Petitioners' concerns about politicizing the Supreme Court Nominating Commission speak to the merits of the measure, not to whether changing the nominating process adds a second subject.

CONCLUSION

The changes in #133 all relate to the manner in which the boundary lines for state legislative districts are drawn in Colorado. #133 does not create new rights, and imposes no changes unrelated to the redistricting process. This Court should thus affirm the Board's

conclusion that #133 contains only a single subject. Accordingly, this Court should affirm the title set by the Title Board.

Respectfully submitted this 2nd day of June, 2016.

CYNTHIA H. COFFMAN
Attorney General

/s/ Matthew D. Grove

MATTHEW D. GROVE, *
Assistant Solicitor General
Public Officials Unit
State Services Section
Attorneys for Title Board
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within Title Board's Answer Brief upon all parties herein by Integrated Colorado Courts E-filing System (ICCES) or by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 2nd day of June 2016 addressed as follows:

Mark G. Grueskin
Recht Kornfeld, PC
1600 Stout St., Ste. 1000
Denver, CO 80202

Kelley B. Duke
Benjamin J. Larson
Ireland Stapleton Pryor &
Pascoe, PC
717 Seventeenth St., Ste. 2800
Denver, CO 80202

/s/ Matthew D. Grove _____