

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

DATE FILED: May 19, 2016 4:30 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 Redistricting
Commission”)

Petitioners: Donna R. Johnson

v.

Respondents: Kathleen Curry and Frank
McNulty

and

Title Board: Suzanne Staiert, Sharon
Eubank, and Frederick R. Yarger.

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Case No. 2016 SA 154

TITLE BOARD’S OPENING 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 1,211 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

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

STATEMENT OF THE ISSUES

Whether Proposed Initiative #133 violates the single subject requirement.

STATEMENT OF THE CASE

Kathleen Curry and Frank McNulty (the “Proponents”) seek to circulate Proposed Initiative #133 to obtain the signatures needed to place a measure on the ballot to amend the Colorado Constitution. Initiative #133 seeks to restructure the state commission that sets boundaries for state senatorial and representative districts. Proponents amended the original draft of #133 after a review and comment period before the Office of Legislative Council and Legislative Legal Services, and submitted their final draft of #133 to the Board on April 20, 2016.

The Board set a title for #133 at a hearing held on April 20, 2016. Petitioner filed a motion for rehearing arguing that #133 contains multiple subjects. The Title Board denied the motion for rehearing

following a hearing held on April 28, 2016. Petitioner filed her petition for review in this Court on May 5, 2016.

STATEMENT OF THE FACTS

The Colorado Reapportionment Commission has the task of establishing the senatorial and representative districts for the Colorado General Assembly after each federal census. Colo. Const., art. V, § 48. Proposed Initiative #133 would restructure this commission and rename it as the Independent Colorado Legislative Redistricting Commission. *See Attachments to Petition for Review.*

SUMMARY OF THE ARGUMENT

The Board's decision should be affirmed. Proposed Initiative #133 does not violate the single subject rule simply because it affects multiple aspects of the redistricting process. The initiative solely concerns how districts in Colorado will be drawn if it is adopted. As set by the Board, the title accurately summarizes the substance of the initiative and is not misleading.

ARGUMENT

I. #133 has a single subject.

A. Standard of review and preservation.

“In reviewing a challenge to the Title Board’s single subject determination, [the Supreme Court] employ[s] all legitimate presumptions in favor of the Title Board’s actions.” *Hayes v. Spalding*, 333 P.3d 76, 79 (Colo. 2014). The Court “will only overturn the Title Board’s finding that an initiative contains a single subject in a clear case.” *Id.* Petitioner raised the single-subject issue in her motion for rehearing.

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

The purpose of the single subject rule is to “prohibit the practice of putting together in one measure subjects having ‘no necessary or proper connection,’ for the purpose of garnering support for measures from parties who might otherwise stand in opposition.” *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.) [hereinafter *Amend TABOR 25*]. In addition, the requirement seeks to prevent surreptitious measures,

surprise and fraud upon the voters.” *Id.* (quoting § 1-40-106.5(1)(e)(II). “The subject matter of an initiative must be necessarily and properly connected rather than disconnected or incongruous.” *Hayes*, 333 P.3d at 79. A “second subject with a distinct and separate purpose not dependent on or connected to the first subject” will not pass muster. *Id.* Accordingly, “umbrella proposals” that attempt to unite separate subjects under a single description are unconstitutional. *Id.* (holding that an initiative that would allow recall of both elected and non-elected governmental officers was two subjects), *see also Amend TABOR 25*, 900 P.2d at 125–26 (holding “revenue changes” was an umbrella proposal); *In re Public Rights in Waters II*, 898 P.2d 1076, 1080 (Colo. 1995) (holding that initiative relating to “water” was an umbrella proposal).

In proceedings before the Board, Petitioner argued that #133 contains multiple subjects. In this Court, Petitioner maintains that #133 covers multiple subjects by: revising the membership of, and appointment process to, the existing Colorado Reapportionment Commission, by requiring certain appointments to be made by the Colorado Supreme Court Nominating Commission, and by barring

registered lobbyists from appointment to the reconfigured Independent Colorado Legislative Redistricting Commission.

In *Hayes*, this Court considered a comparable ballot initiative that was intended to alter and expand recall procedures for state officials.

Hayes ultimately found that the initiative had two subjects: (1) the alteration of the right to recall elected officials and (2) the creation of a new constitutional right to recall non-elected officials. 333 P.3d at 82.

The Court's analysis of the first of these topics is relevant here.

The proponents in *Hayes* sought to repeal in its entirety article XXI of the Colorado Constitution and to “substitute substantial changes to the manner in which state and local recall elections are triggered under current constitutional and statutory law.” *Id.* at 81. The changes that the proponents would have made to the recall process included:

- Creating a new signature threshold requirement for the number of valid petition signatures needed to subject an officer to a recall election; *Id.* at 82.
- Eliminating the opportunity for an elected official to submit a statement of justification for his or her time in office; *Id.*

- Changing the way in which vacancies caused by recall elections are filled; *Id.*
- Eliminating the application of existing campaign finance laws to recall petitions and elections; *Id.* at 83.
- Changing the requirements applicable to petition circulation. *Id.* at 82–83.

The Court found that “[c]ollectively, these changes to the manner in which recall elections are triggered and conducted constitute a single subject.” *Id.* While the proposed initiative in *Hayes* was ultimately found to have multiple subjects, it was because an entirely new constitutional right to recall non-elected officials was introduced along with all of the changes described above. *Id.* at 85.

Proposed Initiative #133 does not have such a broad scope. The initiative is concerned with one task: how state Senate and House districts will be drawn in Colorado. There are necessarily a number of details involved in how to draw districts, but #133 does not create any new rights or responsibilities. Nor are there multiple subjects in the initiative.

To the contrary, all of #133 is focused on the process by which state Senate and House districts will be drawn in Colorado. It provides for the makeup of the reconfigured Independent Colorado Legislative Redistricting Commission, and outlines the qualifications of, and appointment procedure for, commission members. It requires the commission to work in open meetings and provides for nonpartisan staff to submit plans to the commission. It also renames the commission to accurately reflect its function.

In *Hayes* the proponents sought to fundamentally alter the way in which recall elections were conducted and imposed an entirely new framework with numerous changes. 399 P.3d at 81. As the Court found there, all of those changes constituted a single subject because they all related to the way in which recall elections were triggered and conducted. *Id.* at 83.

Here, the changes in the proposed initiative all relate to the manner in which state Senate and House 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.

CONCLUSION

Based on the foregoing reasoning and authorities, this Court should affirm the title set by the Title Board.

Respectfully submitted this 19th day of May, 2016.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within Title Board's Opening 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 19th day of May 2016 addressed as follows:

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