

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

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
2017-2018 #48 (“State Legislative
Redistricting”)

Petitioners: Robert DuRay and Katina Banks

v.

Respondents: Kathleen Curry and Toni
Larson

and

Title Board: Suzanne Staiert, Sharon
Eubanks, and Glenn Roper.

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. 2017 SA 259

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 1,760 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

STATEMENT OF THE ISSUES	1
STATEMENT OF THE CASE	1
ARGUMENT	4
I. Standard of review and preservation.	4
II. Clear title standards governing titles set by the Board.....	6
III. The provisions detailing the specifics of appointments to the commission are not a central feature.	7
CONCLUSION	10

CASES

<i>In re Proposed Initiative on Trespass-Streams with Flowing Water,</i> 910 P.2d 21(Colo. 1996).....	5
<i>In re Title, Ballot Title and Submission Clause for 2013-2014 #90,</i> 2014 CO 63 (Colo. 2014).....	8
<i>In re Title, Ballot Title and Submission Clause, and Summary for</i> <i>1999-2000 #246(e), 8 P.3d 1194 (Colo. 2000)</i>	8
<i>In re Title, Ballot Title and Submission Clause, and Summary for</i> <i>2007-2008 #62, 184 P.3d 52 (Colo. 2008)</i>	6
<i>In re Title, Ballot Title and Submission Clause, and Summary for</i> <i>2009-2010 #45, 234 P.3d 642 (Colo. 2010)</i>	4, 7
<i>In re Title, Ballot Title and Submission Clause, and Summary for</i> <i>2009-2010 #91, 235 P.3d 1071 (Colo. 2010).....</i>	5
<i>In re Title, Ballot Title and Submission Clause, and Summary</i> <i>Pertaining to Casino Gambling Initiative, 649 P.2d 303 (Colo.</i> <i>1982)</i>	5
<i>In re Title, Ballot Title, and Submission Clause for 2009-2010 #24,</i> 218 P.3d 350 (Colo. 2009).....	7
<i>In re Title, Ballot Title, and Submission Clause for Proposed</i> <i>Initiatives 2001-02 #21& #22, 44 P.3d 213 (Colo. 2002)</i>	6

CONSTITUTIONS

Colo. Const. art. V, § 48(6)	8
Colo. Const. art. V, § 46.....	1
Colo. Const. art. V, § 48.....	7

STATUTES

§ 1-40-106(3)(b), C.R.S. (2017)	5, 6, 8
---------------------------------------	---------

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

STATEMENT OF THE ISSUES

Whether the title for Proposed Initiative #48 reflects the central features of the measure to accurately convey its true intent and meaning.

STATEMENT OF THE CASE

Kathleen Curry and Toni Larson (the “Proponents”) seek to circulate Proposed Initiative #48 to obtain the signatures needed to place a measure on the ballot to amend Article V, § 46 of the Colorado Constitution concerning state legislative redistricting. Petition Ex. 1, Pt. 1, at 2. Initiative #48 seeks to establish a commission to periodically redraw state legislative districts. The commission would be made up of 12 members, four of whom are registered with Colorado’s largest political party, four of whom are registered with Colorado’s second-largest political party, and four of whom are not registered with either party. The measure outlines various considerations that the

commission must take into account when redrawing district boundaries, and further specifies some of the procedures that it must follow.

The Board conducted an initial public hearing on October 4, 2017. The Board unanimously concluded that #48 contains a single subject and then proceeded to set a title.

Petitioners timely sought rehearing and the Title Board reconvened to consider their motion on October 18, 2017. Petition Ex. 1 Pt. 2 at 27. The rehearing motion contended that #48 violates the single subject requirement and that the title set by the Board failed to inform voters of “certain central elements of the measure.” *Id.* at 30. The Board reaffirmed its conclusion that the single subject rule was satisfied, and then proceeded to make certain modifications to the title’s language, thereby granting the objectors’ motion for rehearing in part. The Board denied the objection to the portion of the title at issue in this appeal.

The title for #48 as set by the Board on rehearing is:

An amendment to the Colorado constitution concerning state legislative redistricting, and, in connection therewith, renaming the commission that redraws state legislative boundaries; changing the qualifications and

methods of appointment of members of the commission; providing for the appointment of 12 commissioners, 4 of whom are registered with the state's largest political party, 4 of whom are registered with the state's second largest political party, and 4 of whom are not registered with either of the state's two largest political parties; requiring the commission to consider political competitiveness, to the extent possible, after meeting the other requirements for redistricting; prohibiting drawing plans to purposefully advantage or disadvantage any political party or person; specifying procedures that the commission must follow, including requiring that the commission's work be done in public meetings and requiring the nonpartisan staff of the commission to prepare and present plans; and requiring the agreement of at least 8 of 12 commissioners to approve any action of the commission.

Petition Ex. 1, Pt. 3 at 13.

Objectors filed a timely petition for review with this Court. In this proceeding, Objectors have narrowed their complaint about #48 to a single issue, which they also raised below: whether the title is misleading because it does not specify that 8 of the 12 commissioners are to be appointed by the state's two largest political parties, rather than "public officers or any person with constitutionally accountable powers or duties."

SUMMARY OF THE ARGUMENT

The Board's actions in setting a title for #48 should be affirmed. As set by the Board, the title accurately summarizes the substance of the initiative and is not misleading.

ARGUMENT

The Board's Title for #48 is fair, clear, accurate, and not misleading.

Objectors' petition for review asserts that the title for #48 does not fairly express the true meaning and intent of the proposed statutory change because it does not reveal that 8 of the 12 members of the state legislative redistricting commission would be appointed by the state's two largest political parties.

I. Standard of review and preservation.

The Court does not demand that the Board draft the best possible title. *In re Title, Ballot Title and Submission Clause, and Summary for 2009-2010 #45*, 234 P.3d 642, 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 Proposed Initiative on 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. *In re Title, Ballot Title and Submission Clause, and Summary for 2009-2010 #45*, 234 P.3d at 648.

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, and Summary for 2009-2010 #91*, 235 P.3d 1071, 1076 (Colo. 2010). Only in a clear case should the Court reverse a decision of the Board. *In re Title, Ballot Title and Submission Clause, and Summary Pertaining to Casino Gambling Initiative*, 649 P.2d 303, 306 (Colo. 1982).

Objectors preserved their complaint about the accuracy of the Title by raising it in the motion for rehearing.

II. Clear title standards governing titles set by the Board.

Section 1-40-106(3)(b), C.R.S. establishes the standards for setting titles, requiring they be fair, clear, accurate, and complete. *See In re Title, Ballot Title and Submission Clause, and Summary for 2007-2008 #62*, 184 P.3d 52, 58 (Colo. 2008). The statute 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/for” or “no/against” vote will be unclear. The title for the proposed law or constitutional amendment ... shall correctly and fairly express the true intent and meaning thereof.... 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/for” (to vote in favor of the proposed law or constitutional amendment) or “no/against” (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.

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 Proposed Initiatives 2001-02 #21& #22*, 44 P.3d 213, 222 (Colo. 2002). Rather,

title-setting is about distilling the proposed initiative down to a “reasonably ascertainable expression of the initiative’s purpose.” *In re Title, Ballot Title and Submission Clause, and Summary for 2009-2010 #45*, 234 P.3d 642, 648 (Colo. 2010) (citing *In re Title, Ballot Title, and Submission Clause for 2009-2010 #24*, 218 P.3d 350, 356 (Colo. 2009)). In setting titles, the Board may not ascertain the measure’s efficacy, construction, or future application. *In re Title #45*, 234 P.3d at 645.

III. The provisions detailing the specifics of appointments to the commission are not a central feature.

#48 is a lengthy measure. Its 14 pages of text, which would be inserted into article V of the Colorado Constitution, outlines how the proposed state legislative redistricting commission would be formed, its governing procedures, the parameters for the development and approval of redistricting plans, and judicial review. The title, which is 160 words long, touches on all of these topics, but objectors believe that the Title Board erred by failing to also include language about who is responsible for appointing 8 of the 12 commissioners. Section 3 of the measure, which would repeal and reenact art. V, § 48, provides that “[t]he

responsibility of dividing the state into senatorial and representative districts shall be carried out by an independent commission to be known as the independent legislative redistricting commission.” Pet. Ex. 1, Pt. 1, at 4. The measure goes on to state that four members of the commission must be registered with the state’s largest political party and that four members must be registered with the state’s second largest political party. These eight members are appointed by the chairpersons of their parties or “by the leadership of that party in such manner as the party may provide by rule.” The remaining commissioners must not be affiliated with a political party or must be registered with a political party other than the state’s two largest political parties for at least two years prior to appointment. Pet. Ex. 1, Pt. 1, at 4. They would be appointed by a separate process laid out in § 48(6).

“The Title Board’s duty in setting a title is to summarize the central features of a proposed initiative.” *In re Title, Ballot Title and Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶24 (Colo. 2014). In doing so, it must keep in mind that ballot titles are to “be brief,” § 1-40-

106(3)(b), C.R.S., and “succinct.” *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #246(e)*, 8 P.3d 1194, 1197 (Colo. 2000).

Here, Objectors’ main complaint appears to be that the measure delegates appointment authority for 8 of the 12 commissioners to the state’s largest political parties rather than to elected or appointed officials who have “constitutionally accountable powers or duties.” The minutiae of the appointment process, however, are not a “central feature” of the initiative. The key issue is instead whether someone reviewing the title might be misled into believing that the commissioners are all truly “independent.” But eight of them plainly are not—and the title makes that clear by including language about their party affiliation. Given that party affiliation is a mandatory prerequisite to qualification for these slots, it should come as no surprise to anyone that the political parties themselves are responsible for making the appointments. Nor are the details of the appointment process likely to make a difference to a reader who is attempting to understand exactly what effect the measure will have. The central

question—whether or not all of the commissioners are “independent”—is answered by the title’s disclosure that 8 of the 12 must satisfy affiliation requirements to be eligible.

Because the manner in which commissioners are appointed is not a “central feature” of the initiative, the Title Board did not err when it chose not to include this detail in the title for #48.

CONCLUSION

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

Respectfully submitted this 15th day of November, 2017.

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 Opening Brief upon all parties herein by Colorado Courts E-filing System or by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 15th day of November 2017 addressed as follows:

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

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

/s/ Matthew D. Grove
