

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED: May 17, 2018 5:30 PM ▲</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 Initiative 2017- 2018 #169 (“Compliance with Federal Immigration Law”)</p> <p>Petitioner: Kyle Huelsman, v. Respondents: Floyd Trujillo and Thomas Tancredo,</p> <p>and Title Board: Suzanne Staiert, Jason Gelender, and Glenn Roper</p>	<p>▲ COURT USE ONLY ▲</p> <p>Case Nos.: 2018SA119</p>
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<p>TITLE BOARD’S OPENING 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 1,573 words.

B. The brief complies with C.A.R. 28(a)(7)(A) because each issue it contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority and (2) a citation to the precise location in the record, and not to an entire document, where the issue was raised and ruled on.

/s/ Matthew D. Grove

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether Proposed Initiative 2017-2018 #169 contains a single subject under Article V, § 1(5.5) of the Colorado Constitution.
2. Whether the title for #169 satisfies clear title requirements.

STATEMENT OF THE CASE

Respondents Floyd Trujillo and Thomas Tancredo seek to circulate Initiative #169 to obtain the required number of signatures to place the measure on the general election ballot in November 2018. If passed, #169 would add a section to the Colorado Revised Statutes titled the “Public Safety Protection against Sanctuary Policies Act.”

The Title Board granted single-subject approval for #169 and set the title on April 18, 2018. *See Attachment to Petition for Review at 11.* Petitioner filed a timely motion for rehearing. *Id.* at 12-15. The Board considered the motion for rehearing on April 26, 2018, and denied the motion except to the extent that the Board made changes to the titles. *Id.* at 16. The final version of the ballot title reads:

A change to the Colorado Revised Statutes concerning state and local government cooperation in the enforcement of federal immigration laws, and, in connection therewith, prohibiting state and local government from barring or restricting communication with federal immigration agencies regarding the citizenship or immigration status, whether lawful or unlawful, of any individual or the intergovernmental sharing or maintenance of records of such citizenship or immigration status; prohibiting state and local government from encouraging or facilitating the physical harboring of an individual not lawfully present in the United States; requiring each jurisdiction to annually notify its elected officials and employees of their duty to comply with federal immigration laws; and requiring annual compliance reporting.

Id. After the title and submission clause were set, Petitioner filed her petition for review in this Court.

SUMMARY OF THE ARGUMENT

The Title Board correctly found that #169 contains only a single subject: ensuring that Colorado's state and local governments comply with federal immigration law. Because the titles set by the board also accurately reflect the content of the proposed measure, the Court should issue an order affirming the Title Board's decision.

ARGUMENT

I. The Board correctly found that #169 contains a single subject.

A. Standard of review.

When this Court reviews “the Title Board’s single subject decision, [it] employ[s] all legitimate presumptions in favor of the propriety of the Title Board’s actions. [It] will only overturn the Title Board’s finding that an initiative contains a single subject in a clear case.” *In re Title, Ballot Title, & Submission Clause for 2011-2012, #45*, 274 P.3d 576, 579 (Colo. 2012) (quotation omitted).

The Title Board agrees that Petitioner preserved the single-subject issue by raising it in the motion for rehearing.

B. #169 contains only one subject.

The Colorado Constitution provides that an initiative may relate to only one subject: “No measure shall be proposed by petition containing more than one subject” COLO. CONST., art. V, § 1(5.5). A proposed measure that “tends to effect or to carry out one general objective or purpose presents only one subject.” *In re Ballot Title 1999-2000 #25*, 974 P.2d 458, 463 (Colo. 1999). In contrast, “to constitute

more than one subject, the text of the measure must relate to more than one subject and it must 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 for Proposed Initiative 2001-2002 No. 43*, 46 P.3d 438, 441 (Colo. 2002) (quotations omitted).

In his motion for rehearing, Petitioner argued that #169 covers two different subjects: (1) prohibiting state and local governments from withholding information concerning the immigration status of any individual with federal agencies; and (2) prohibiting state and local governments from encouraging or facilitating the physical harboring of an individual not lawfully present in the United States. Among other things, he asserted that these two provisions constituted separate subjects because they rely on underlying federal statutes that appear in disparate parts of the United States Code.

A proposed initiative violates the single-subject rule if its text “relate[s] to more than one subject, and [has] at least two distinct and separate purposes not dependent upon or connected with each other.” *People ex rel. Elder v. Sours*, 74 P. 167, 177 (Colo. 1903); *see In*

re Proposed Initiative 2001–02 No. 43, 46 P.3d 438, 441 (Colo. 2002) (describing use of *Sours* test to analyze ballot initiatives). Thus, “the subject matter of an initiative must be ‘necessarily and properly connected’ rather than ‘disconnected or incongruous.’” *In re Title, Ballot Title, Submission Clause for 2011-2012 No. 3, 2012 CO 25, ¶¶ 9* (quoting *In re Title, Ballot Title, Submission Clause, and Summary Adopted April 5, 1995, by Title Bd. Pertaining to a Proposed Initiative “Pub. Rights in Waters II,” 898 P.2d 1076, 1079 (Colo.1995)*). The existence of “some overarching theme” will not save a measure if it contains separate and unconnected purposes. *In re Proposed Initiative 2001–02 No. 43, 46 P.3d at 442*. “Water” and “revenue changes” are two examples of “overarching themes” that do not form an adequate link between a proposed measure’s disconnected or incongruous provisions. *See Pub. Rights in Waters II, 898 P.2d at 1080* (holding that “water” is too general and too broad to constitute a single subject); *see also In re Title, Ballot Title and Submission Clause, and Summary with Regard to a Proposed Petition for an Amendment to the Constitution of the State of Colo. Adding Subsection (10) to Section 20 of Article X*

(*Amend TABOR 25*), 900 P.2d 121, 125–26 (Colo. 1995) (concluding that umbrella subject of “revenue changes” did not alter the fact that the measure contained two unrelated subjects—a tax credit and changes to the procedural requirements for ballot titles).

Here, “compliance with federal immigration law” is not the type of “umbrella” theme that this Court has previously disapproved. It does not follow from measure’s reliance on two aspects of federal immigration law that #169 includes distinct and separate purposes which are not dependent upon or connected with each other. To the contrary, the information exchange requirement and the prohibition on encouraging or facilitating the physical harboring of an individual not lawfully present in the United States revolve around the same goal—compliance with federal immigration law. Thus, because it “tends to effect or carry out one general objective or purpose,” *In re Matter of Title, Ballot Title, and Submission Clause for 2015-16 # 132*, 374 P.3d 460, 465 (Colo. 2016), #169 relates to only a single subject and the Title Board’s decision should be affirmed.

II. The title for #169 satisfies clear title requirements.

A. Standard of review.

The Court does not demand that the Board draft the best possible title. *In re Title, Ballot Title and Submission Clause and Summary for 1999-00 #256*, 12 P.3d 246, 256 (Colo. 2000). The Court grants great deference to the Board in the exercise of its drafting authority. *Id.* The Court will reverse the Board's decision only if the titles are insufficient, unfair or misleading. *In re Proposed Initiative Concerning "Automobile Insurance Coverage"*, 877 P.2d 853, 857 (Colo. 1994). All legitimate presumptions will be resolved in favor of the Board. *Armstrong v. Davidson*, 10 P.3d 1278, 1282 (Colo. 2000).

Petitioner preserved his clear title arguments by raising them in the motion for rehearing before the Title Board.

B. The Titles Are Fair, Clear and Accurate.

Titles set by the Title Board must be fair, clear, accurate and complete. *In re Title, Ballot Title and Submission Clause and Summary for 1999-00 #256*, 12 P.3d at 256. However, the Board is not required to set out every detail. *In re Title, Ballot Title and Submission Clause for*

Proposed Initiatives 2001-2002 #21 and #22, 44 P.3d 213, 222 (Colo. 2002) (#21). In setting titles, the Board may not ascertain the measure's efficacy, or its practical or legal effects. *In re Title, Ballot Title and Submission Clause for 2007-2008 #62*, 184 P.3d 52, 60 (Colo. 2008). "The interplay of a ballot initiative with various provisions of existing law is an issue for post-election, not the basis for a ballot title challenge." *Id.* The titles are adequate if they properly repeat the operative language of the measure and express its true intent and meaning. *In the Matter of the Title, Ballot Title and Summary for Proposed Constitutional Amendment Concerning Suits Against Nongovernmental Employers Who Knowingly and Recklessly Maintain an Unsafe Workplace*, 898 P. 2d 1071, 1074 (Colo. 1995).

The motion for rehearing argued that the title set by the board does not provide a clear and fair summary of #169 because, among other things, it does not specify that its references to "local government" includes "school districts, special districts, and 'any other district.'" Mot. for Rehearing at 2. Including this level of detail, however, would work at cross-purposes with the requirement that titles include a

concise summary of the underlying measure. It should be obvious to any voter that “local government” is shorthand for any political subdivision of the State—whether a county, municipality, school district, special district, or other similar entity—that is accountable to voters through periodic elections. And while the details of local governmental compliance with the measure upon passage may turn out to be complicated, that is not a “clear title” question. Because the language in the title accurately and fairly summarizes #169, the title set by the Board should be affirmed.

CONCLUSION

The title for #169 should be affirmed.

Respectfully submitted on this 17th day of May, 2018.

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CERTIFICATE OF SERVICE

This is to certify that I served the **TITLE BOARD'S OPENING BRIEF** and related documents upon the following counsel of record and parties through either Colorado Courts E-Filing or FedEx overnight delivery this 17th day of May, 2018, addressed as follows:

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