DATE FILED: April 9, 2018 5:30 PM

SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	
Original Proceeding Pursuant to Colo. Rev. Stat. §1-40-107(2) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2017-2018, #113 ("Taking Property for Public Use") **Petitioners:** JANETTE S. ROSE, SUSAN MCCLAIN, and GEORGIANA INSKEEP **v.** **Respondents:** MICHELLE SMITH and CHAD VORTHMANN **and** **Title Board:** SUZANNE STAIERT, GLENN ROPER, and JASON GELENDER	**▲ COURT USE ONLY ▲**
Attorneys for Petitioners: Edward T. Ramey, #6748 Martha M. Tierney, #27521 Tierney Lawrence LLC 225 East 16th Avenue, Suite 350 Denver, CO 80203 Telephone: 720-242-7577; 720-242-7585 Email: eramey@tierneylawrence.com mtierney@tierneylawrence.com	Supreme Court Case No. 2018SA47

PETITIONERS' 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 the brief complies with C.A.R. 28(g). It contains 1,555 words.

Further, the undersigned certifies that the brief complies with C.A.R. 28(k).

For the party raising the 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 (R.__, p.__), not to an entire document, where the issue was raised and ruled on.

For the party responding to the issue:

☐It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

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.AR. 32.

By: *s/Edward T. Ramey*

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Petitioners Janette S. Rose, Susan McClain, and Georgiana Inskeep, through counsel, respectfully submit their Answer Brief in Case Nos. 18SA42, 18SA43, 18SA44, 18SA45, 18SA46, and 18SA47.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Petitioners adopt their Statement of the Issues Presented for Review in their Opening Brief, noting that Respondents' Statement is substantially in concurrence.

STATEMENT OF THE CASE

Petitioners adopt their Statement of the Case in their Opening Brief.

SUMMARY OF THE ARGUMENTS

Petitioners adopt their Summary of the Arguments in their Opening Brief.

ARGUMENTS

I. The Proposed Initiatives Contain Multiple Subjects.

A. Standard of Review.

Petitioners adopt their statement of the standard of review in Section I.A of their Opening Brief, noting that Respondents' statement of this standard is in substantial concurrence.

B. Application of the Single Subject Requirement to the Proposed Measures.

Respondents submit that each of their six measures contains a single subject – "just compensation for government takings" – and, quoting a member of the Title

Board, "simply 'broaden[s] the scope of when compensation is required and that's it.'" Resp. Op. Br. p. 11. As alternatively stated, "[t]he initiatives seek to expand the situations where private landowners are compensated under takings law." Resp. Op. Br. p. 9. Respondents are certainly correct on that point – though they neglect to note that their various proposed measures reach far beyond anything remotely recognizable as "takings law." Their measures also (1) effectively create a new constitutional right to generalized publicly funded compensation for direct or incidental adverse effects upon property values attributable to any – or in four cases at least use-related – law or regulation, (2) redefine and essentially eliminate the focus of the heretofore independently applicable "damage" clause in *Colo. Const. art. II, §15*, and (3) create a wholly new constitutional protection for specific classes of historically permitted *"uses" of* – as distinguished from *interests in* – "private property."

Petitioners are not simply grumbling, as Respondents suggest, about the breadth of potential "effects" of the proposed measures, nor are they suggesting that these effects need be enumerated in the titles. *Cf.*, *Bentley v. Mason (In re Title, Ballot Title & Submission Clause for 2015-2016 #63)*, 370 P.3d 628, 632-33 (Colo. 2016). Petitioners are pointing to the disparate, and embedded, *purposes* of the measures – (1) to "broaden the scope of when compensation is required"

(particularly lower the threshold) for a "taking" (with all the attendant *effects* of that broadening); (2) to append to every law or regulation a new general constitutional requirement for publicly funded "compensation" – virtually an inverse tax – for any negative impact of governmental action upon overall or use-specific private property values, irrespective of any balance between general public benefit and unique private burden (a proposition wholly distinct from the current understanding of a "taking"); (3) to replace (in three of the measures) the entitlement to compensation for injury caused by public activities on adjacent or abutting property; and (4) to enact a new constitutional entitlement to "compensation" for governmental restrictions upon specific categories of *"uses" of property*, as distinguished from *interests in property*.

In the context of a "coiled up in the folds" analysis, "an initiative may not group 'distinct purposes under a broad theme' to circumvent the single-subject requirement." *Milo v. Coulter (In re Title, Ballot Title & Submission Clause for 2013-2014 #129)*, 333 P.3d 101, 104 (Colo. 2014). "If an initiative advances separate and distinct purposes, the fact that they both relate to the same general concept or subject is insufficient to satisfy the single subject requirement." *Johnson v. Curry (In re Title, Ballot Title and Submission Clause for 2015-2016 #132)*, 374 P.3d 460, 465 (Colo. 2016).

Respondents do not dispute these multiple purposes (though they characterize them as mere "effects"). Rather, they seek to excuse the embedding of these purposes by observing that "voters, who in general do not know the specifics of takings law, would not succumb to surprise." Resp. Op. Br. pp. 13-14. On the one hand, this is a remarkable invitation to precisely the subtle form of deception uniformly condemned by the members this Court. *Cf.*, *Howes v. Brown (In re Title, Ballot Title & Submission Clause for 2009-2010 #91)*, 235 P.3d 1071, 1088 (Colo. 2010) (Coats, J., dissenting). On the other hand, Petitioners respectfully submit that this observation certainly underestimates the sophistication of the voting public, a substantial portion of whom quite probably understand that "takings law" – whatever its details may be – at a minimum involves (1) unique (as opposed to generalized) impacts upon (2) interests in property (as distinguished from unfettered rights to engage in particular "uses" or activities).

II. The Titles to the Proposed Initiatives Do Not Correctly and Fairly Express the True Intent and Meaning of the Measures.

A. Standard of Review.

Petitioners adopt their statement of the standard of review in Section II.A of their Opening Brief, noting that Respondents' statement of this standard is in substantial concurrence.

B. Application of the Clear Title Requirement to the Proposed Initiatives at Issue.

Separate from the single subject requirement, *§1-40-106, C.R.S. (2017),* requires the Title Board to "fix a proper fair title" for each proposed ballot measure, 'which shall correctly and fairly express the true intent and meaning" of the measure and "avoid titles for which the general understanding of the effect of a 'yes/for' or 'no/against' vote will be unclear." "The title and submission clause should allow voters, whether or not they are familiar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose the proposal." *Hayes v. Spalding (In re Title, Ballot Title and Submission Clause for 2015-2016 #73)*, 369 P.3d 565, 568 (Colo. 2016). Importantly, this Court has recognized its role to be "to ensure that the title fairly reflects the proposed initiative such that voters will not be misled into supporting or opposing the initiative because of the words employed by the Title Board." *Id*. at 569. This is particularly critical when – as would be very much the case here – "proposed changes materially alter current law." *Id*. at 570.

While the parties dispute whether the proposed measures at issue here contain more than a single subject, there does not appear to be a dispute that each

of the proposed measures would materially alter current law in multiple ways.[1] Rather than disclose these proposed alterations in the titles, Respondents argue that these "effects on takings case law" are mere "details" involving "obscure parts of the law" – especially elimination of the "unique or special injury" core proposition that has defined "takings" law from its inception. Resp. Op. Br. pp. 16-17. Per the Respondents, "Most voters, and especially those who are not lawyers, would not understand those statements. Adding them to the title therefore would increase rather than decrease voter confusion." Resp. Op. Br. p. 17.

Respectfully, nothing could be further from the guidance and precedents of this Court than the rationale offered by the Respondents in defense of their ballot titles. *See, e.g., Hayes*, 369 P.3d at 568-71, and the cases cited therein. "[M]irroring the language in the measures' texts" – Resp. Op. Br. p. 15 – does not excuse the requirement for sufficient clarity to "allow voters, whether or not they are familiar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose the proposal." *Hayes*, 369 P.3d at 570. Nor does it excuse the requirement to "alert voters to the fact that some of the proposed changes would significantly alter" current law. *Id*. at 569. Even in the

[1] The Court may take notice of the consensus of the parties on this point as relevant. *In re Title, Ballot Title, Submission Clause & Summary Pertaining to a Proposed Initiative on "Obscenity,"* 877 P.2d 848, 850, n. 2 (Colo. 1994).

context of a single subject – *cf., Hayes, supra* – clarity and sufficiency of information in the titles as to the effect of a "yes" or "no" vote is essential.

Whether or not the Court concludes that the six proposed ballot measures at issue in these cases are embedded with multiple subjects, as Petitioners submit, there is a complete absence from all six of the titles of any alert to or indication of the material and significant – indeed seminal – changes these measures would make to current law. This void in the titles wholly deprives the voters of information sufficient to enable them to determine intelligently whether to support or oppose the proposals. This is completely contrary to the "clear title" requirement.

CONCLUSION

For the reasons set forth above, Petitioners respectfully renew their request to Court to reverse the actions of the Title Board and to return these six proposed initiatives to their Proponents.

Respectfully submitted this 9th day of April, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of April, 2018, a true and correct copy of the foregoing was filed and served via the Court's E-filing system upon the following:

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