

<p>COLORADO SUPREME COURT Colorado State Judicial Building Two East 14th Avenue Denver, CO 80203</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Original Proceeding Pursuant to C.R.S. § 1-40-107(2) Appeal from the Colorado Ballot Title Setting Board</p> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiatives 2017-2018 #119, #121, #122, and #123</p>	
<p>Petitioner: Deborah Farrell</p> <p>v.</p> <p>Respondents: David Silverstein and Andrew Graham</p> <p>and</p> <p>Colorado Ballot Title Setting Board: Suzanne Staiert, Jason Gelender, and Glenn Roper</p>	<p>Case Nos.: 2018SA48, 2018SA49, and 2018SA50, and 2018SA51</p>
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<p>PETITIONER’S ANSWER BRIEF ON INITIATIVES 2017-2018 #119, #121, #122, AND #123</p>	

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 1157 words.

The brief complies with C.A.R. 28(a)(7)(A).

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, not to an entire document, where the issue was raised and ruled on.

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/ Thomas M. Rogers III

Thomas M. Rogers III

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Petitioner Deborah Farrell hereby submits this Answer Brief through her undersigned counsel:

ARGUMENT

Petitioner Farrell detailed in her opening brief the numerous reasons why Initiatives #119, #121, #122, and #123 each contain more than one subject in violation of Colo. Const. art. V, § 1(5.5), and why the title set for each of the Initiatives contains material and significant omissions in violation of C.R.S. § 1-40-106(3)(b). To the extent those arguments are responsive to the points raised in Respondents' Opening Brief they will not be repeated here. Instead, Petitioner responds below only to new issues regarding the single-subject requirement raised in Respondents' Opening Brief.

I. NONE OF THE INITIATIVES CONTAIN A SINGLE SUBJECT

Respondents raise two arguments that require a response in their Opening Brief as to why the Court should find that the Initiatives do not violate the single-subject rule. First, Respondents suggest that the Court should defer to the Title Board's finding that it had jurisdiction to set title. Second, Respondents argue that the multiple subjects can be united into one under the banner of "health care pricing information." Each of these arguments fails for the reasons stated below.

A. The Title Board’s Jurisdiction to Set Title is Reviewed De Novo

Respondents in several places argue that this Court should uphold the Title Board’s decision because, for example, “the Title Board unanimously found that each of the Initiatives contains a single subject.” *See* Resp’ts Opening Br. at 6, 14, 15, 17. This argument suggests that the Court should defer to the Title Board’s determination as to whether it had jurisdiction to set title for the Initiatives. Such a deferential standard does not apply to review of the Title Board’s jurisdiction under the single subject rule.

The Title Board’s authority to act in the first instance “is a matter of statutory interpretation, and thus ‘a question of law subject to de novo review.’” *In re Title, Ballot Title & Submission Clause for 2013-2014 #103*, 328 P.3d 127, 129 (Colo. 2014) (quoting *MDC Holdings, Inc. v. Town of Parker*, 223 P.3d 710, 717 (Colo. 2010)). Before the Title Board can consider what title it will set for an initiative, it must consider whether, under the Colorado Constitution, it has jurisdiction to set a title at all. *Matter of Title, Ballot Title & Submission Clause for 2013-2014 #129*, 333 P.3d 101, 107 (Colo. 2014) (Hobbs, J. dissenting) (“the Colorado Constitution limits the Title Board’s jurisdiction to proposed initiatives containing a single subject.”); *see* Ex. A to Resp’ts Opening Br. at 4 (“the Board will determine if it has jurisdiction to set a Title” and “the Board is prohibited from

setting a title for a measure that contains more than one subject.”). Analysis of whether a proposed initiative contains a single subject is a legal question that necessarily involves interpretation of article V, section 1(5.5) and C.R.S. § 1-40-106.5 together with an examination of the language of the proposed initiative. Therefore, whether the Title Board has jurisdiction to set title is not a matter in which the Court should defer to the Title Board’s determination, but rather is a question of law that must be reviewed de novo. *In re Title, Ballot Title & Submission Clause for 2013-2014 #103*, 328 P.3d at 129).

B. The Omnibus Initiatives’ Separate and Unconnected Purposes Cannot be Made Into a Single Subject Through an Overarching Theme

Respondents argue that the two omnibus Initiatives (#121 and #123)¹ each have the single subject of “the disclosure of health care pricing information.” Resp’ts Opening Br. at 11. But Initiatives #121 and #123 each contain all the provisions of both Initiative #119 and Initiative #122, which Respondent also argues each have different single subjects, as well as Initiative #120, addressing pharmacies, which is not at issue here. Resp’ts Opening Br. at 9-10. Respondents’ purported single subject for Initiative #119 is “requiring health care insurers to

¹ These are the two initiatives that would each regulate insurance carriers, health care providers, and pharmacies. By contrast Initiative #119 would focus on insurance carriers and Initiative # 122 would focus on health care providers.

publish health insurance plan information.” Resp’ts Opening Br. at 9. And Respondents argue that the single subject for # 122 is “the disclosure of healthcare pricing information.” Resp’ts Opening Br. at 10.

Respondents’ arguments with respect to #121 and #123 therefore amount to an attempt to organize the contents of a number of other, discrete initiatives under a broad overarching theme of “health care pricing information,” which is not permitted under the single-subject rule. *In re Title, Ballot Title & Submission Clause for 2011-2012 #3*, 274 P.3d 562, 565–66 (Colo. 2012).

Even the broad theme suggested by Respondents is too narrow to fully contain the numerous regulatory requirements that would be imposed by Initiatives #121 and #123. Respondents list as one example of “health care pricing information” “a list of health care professionals providing services.” Resp’ts Opening Br. at 11. But as was noted in Petitioner’s Opening Brief, a list of personnel is not the same as a list of prices, and therefore this item falls outside even the broad overarching theme under which Respondents’ attempt to group their disparate policy goals. *See* Pet’rs Opening Br. at 13-15.

Likewise, with respect to Initiative #121, Respondents attempt to group under the banner of “pricing information” a provision requiring insurance companies to disclose their “actual cost . . . of providing the coverage.” Resp’ts

Opening Br. at 13. As any business owner would surely know, it is one thing to disclose the *price* of an item, but an entirely different thing to disclose the *cost* incurred by the business in obtaining the item that is for sale. For example, retail prices in a supermarket are transparent to a consumer through prices on the shelf, but the supermarket's *costs* for those items are not, and the supermarket would likely be loath to disclose that information publicly for fear of losing its competitive advantage.

Grouping these distinct disclosure requirements under the purported single subject of "health care pricing information" therefore not only amounts to an "overarching theme" as prohibited by this Court's decisions, but strains the limits even of the Respondents' articulation of the theme by including regulation of matters wholly distinct from health care pricing. *In re Title, Ballot Title & Submission Clause for 2011-2012 #3*, 274 P.3d at 565–66).

CONCLUSION

For the reasons set forth above and in her Opening Brief, Petitioner respectfully requests that the Court hold that the Title Board lacked jurisdiction to set title for Proposed Initiatives 2017-2018 #119, #121, #122 and #123 because they violate the Colorado Constitution's single-subject requirement. In the alternative, Petitioner respectfully requests that the Court strike the title and

submission clause set for Proposed Initiatives 2017-2018 #119, #121, #122 and #123 because they are inaccurate, incomplete and misleading and fail to reflect the true intent and meaning of the proposed measure.

Respectfully submitted this 9th day of April, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2018, I electronically filed a true and correct copy of the foregoing PETITIONER'S ANSWER BRIEF ON INITIATIVES 2017-2018 #119, #121, #122, AND #123 with the clerk of Court via the Colorado Courts E-Filing system and served the same via email on the following:

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