

<p><b>SUPREME COURT, STATE OF COLORADO</b></p> <p>2 East 14<sup>th</sup> Avenue Denver, CO 80203</p>	
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p>	
<p><b>In the Matter of the Title, Ballot Title and Submission Clause for Proposed Initiative 2019-2020 #3 "STATE FISCAL POLICY"</b></p> <p><b>Petitioners:</b> Douglas Bruce, Steve Briggs, Carol Hedges, and William Banta</p> <p>v.</p> <p><b>Respondents:</b> Carol Hedges and Steve Briggs</p> <p>and</p> <p><b>Title Board:</b> Melissa Polk, David Powell, and Jason Gelender</p>	<p>▲ COURT USE ONLY ▲</p> <p>Supreme Court Case No: 2019SA183</p>
<p>Petitioner Name: William M. Banta Address: 10631 E. Crestline Ave. Englewood, CO 80111 Phone Number: (303) 741-6700 E-mail: billbanta@msn.com</p>	
<p><b>ANSWER BRIEF OF PETITIONER WILLIAM M. BANTA</b></p>	

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

**This brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).**

It contains 1,017 words (principal brief does not exceed 9,500 words).

**This brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and 28(b).**

**For each issue raised by the appellant,** 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.

**In response to each issue raised,** the appellee must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant'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 or 28.1, and C.A.R. 32.**

/s/ William M. Banta

**TABLE OF CONTENTS**

	<b>PAGE</b>
TABLE OF AUTHORITIES.....	<b>3</b>
STATEMENT OF ISSUE.....	<b>4</b>
SUMMARY OF ARGUMENT.....	<b>4</b>
ARGUMENT.....	<b>5</b>
CONCLUSION.....	<b>10</b>
CERTIFICATE OF SERVICE.....	<b>13</b>

**TABLE OF AUTHORITIES**

<b>Cases</b>	<b>Page</b>
<i>Cook v. Baker,</i> 214 P. 2d 787 (Colo. 1950).....	<b>5,8,10</b>
<i>In re Proposed Initiative Concerning "State Personnel System,"</i> 691 P. 2d 1121 (Colo. 1984).....	<b>8</b>
<i>In the Matter of the Title, Ballot Title, and Submission Clause, Proposed Constitutional Amendment under the Designation "Pregnancy,"</i> 757 P. 2d 132 (Colo. 1988) ("Woodley v. Colorado Taxpayers for Choice").....	<b>8,9,10</b>
<b>Statute</b>	
§ 1-40-107(2) C.R.S. (2019).....	<b>10</b>

## **STATEMENT OF ISSUE**

Whether the Title Board's designation of a title, ballot title and submission clause for the above-captioned Proposed Initiative #3 was a proper fair title.

## **SUMMARY OF ARGUMENT**

The Court should remand the title, ballot title and submission clause for the above-captioned Proposed Initiative #3 to the Title Board and instruct it to set a title that is statutorily proper and fair in that the title discloses what TABOR contains and notifies voters that Proposed Initiative #3 intends to repeal all of the Taxpayer's Bill of Rights.

## ARGUMENT

Because voters need to be concerned with the merits of a proposed constitutional amendment, the Title Board is obliged to provide a title from which an ordinary voter obtains a fair understanding of the proposal. That way, the voter can intelligently cast a ballot. *Cook v. Baker*, 214 P. 2d 787, 791-92 (Colo. 1950) (Holland, J., dissenting).

Applicable to the proposed TABOR repeal initiative before today's Court, Justice Holland observed that a complicated ballot measure (such as the Taxpayer's Bill of Rights and its repeal) deserves to be announced with a comprehensive title, not an abbreviated one. The issue is one of quality of content, not quantity of words. *Id.*

The Title Board's entry in the immediate case reads as follows:

An amendment to the Colorado constitution concerning the repeal of the Taxpayer's Bill of Rights (TABOR), Article X, Section 20 of the Colorado constitution.

This title is concise albeit "concerning repeal" is not clear, nor is the title comprehensive.

Even the Title Board allows that a proper title requires a fair summary of a proposal's main features. See the Title Board's Opening Brief ("Title Board Brief"), pp. 8 and 14. In that respect, the Title Board's position accords with Justice Holland's view in *Cook*.

In particular, the Board argues that "The title[], standing alone, should be capable of being read and understood, and capable of informing the voter of the

major import of the proposal, but need *not* include every detail." Title Board Brief at 13 (citation omitted). Furthermore, as is apparent from a reading of the parties' several briefs, no petitioner argues for a title inventorying every "facet of TABOR." Title Board Brief at 12.

With respect to the Opening Brief of Petitioners/Proponents Carol Hedges and Steve Briggs ("Proponents' Brief"), the Proponents also argue for an understandable title. The Proponents go so far as to say that the present rendition misstates the very purpose of Proposed Initiative #3: "*Repeal of Colo. Const. art. X, §20 is not the purpose of the Proposed Initiative.*" Proponents' Brief at 14 (underlining supplied).

Returning to the Title Board Brief, the Board offers several cases deciding initiative title issues.



Three noteworthy cases cited are *Cook v. Baker*, 214 P. 2d 787 (Colo. 1950); *In re Proposed Initiative Concerning "State Personnel System,"* 691 P. 2d 1121 (Colo. 1984); and *In the Matter of the Title, Ballot Title, and Submission Clause and Summary of Proposed Constitutional Amendment Under the Designation "Pregnancy,"* 757 P. 2d 132 (Colo. 1988) (hereinafter "*Woodley v. Colorado Taxpayers for Choice*"). Title Board Brief at 14. All three cases deal with the simultaneous repeal and replacement of constitutional provisions.

Although none of the three decisions required titles to include both an express statement of repeal and a disclosure of the constitutional provision to be repealed, all three approved titles that clearly disclosed the subject matter of the replacement provisions.

One of the decisions, *Woodley v. Colorado Taxpayers for Choice*, came close to designating a model title. The approved title expressly stated that it was an amendment to repeal a certain constitutional section; and the approved title contained the substance of the proposed new section. Moreover, the approved summary in *Woodley v. Colorado Taxpayer's for Choice* referenced, in abridged form, the subject matter of the constitutional section sought to be replaced. Had that reference been included in the title, the result would have been a paradigm. In any event, with all three approved titles, there was substance, subject matter, clarity, and comprehensibility.

In today's case, Proponents' protestations to the contrary (Proponents' Brief, *supra* at 14-16), there is no replacement proposed for the Taxpayer's Bill of Rights; there is only repeal. And so, a title is in order that directly communicates the intended repeal of

TABOR and that summarizes TABOR's central points such that ordinary voters can exercise informed judgment on Proposed Initiative #3 without overmuch research. Cook at 791-92.

As Justice Holland stated, "No authority discounts this primary right. It is not the fortune of every voter to have been privileged with a study of all election proposals." *Id.* Colorado voters deserve a ballot title that spells out their choice at the polls.

### **CONCLUSION**

Pursuant to *Section 1-40-107(2) C.R.S. (2019)*, Petitioner respectfully asks the Court: (1) to reverse the Title Board's designation of the title, ballot title and submission clause for Proposed Initiative #3 and (2) to remand the matter to the Title Board with instructions to fix the title, ballot title and

submission clause along the lines of the language tendered for the Court's consideration by the undersigned Petitioner, to wit:

An amendment to the Colorado Constitution repealing the entire Taxpayer's Bill of Rights (Colorado Constitution, Article X, Section 20), which repeal will, among other things, have the effect of: ending the people's right to vote on new state and local taxes; ending the people's right to vote on tax rate increases; ending the people's right to vote on increasing residential property tax assessment rates; ending the people's right to vote on state and local spending increases and residential property tax revenue increases; ending the people's right to refunds of excess government revenues; ending the constitutional requirement that state and local governments maintain emergency reserves; ending the constitutional requirement of a flat rate state income tax; ending the constitutional ban on new or increased real property transfer taxes; ending the constitutional ban on local income taxes and state real property taxes; and ending the constitutional ban on unfunded state mandates on local governments.

RESPECTFULLY SUBMITTED this 8th day of October,  
2019.

/s/ William M. Banta  
William M. Banta, Petitioner

**CERTIFICATE OF SERVICE**

I certify that on October 8, 2019, I served true and correct copies of the foregoing **ANSWER BRIEF OF PETITIONER WILLIAM M. BANTA** upon the parties as follows:

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