DATE FILED: March 25, 2019 4:43 PM

SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	▲ COURT USE ONLY ▲
Petition for Review 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 2019-2020, #3 **Petitioners/Proponents:** CAROL HEDGES and STEVE BRIGGS **v.** **Ballot Title Board:** BEN SCHLER, LEEANN MORRILL, and JASON GELENDER	
Attorneys for Petitioner: Edward T. Ramey, #6748 Martha M. Tierney, #27521 Tierney Lawrence LLC 225 East 16th Avenue, Suite 350 Denver, CO 80203 Telephone: 720-242-7585; 720-242-7577 Email: eramey@tierneylawrence.com; mtierney@tierneylawrence.com	Supreme Court Case No. 2019SA25

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 965 words.

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 Carol Hedges and Steve Briggs, through counsel, respectfully submit their Answer Brief:

SUMMARY OF THE ARGUMENT

Colo. Const. art. V, §1(5.5)'s "single subject" requirement should not be interpreted to restrict the people's power to wholly repeal by a single initiative the entirety of a provision they previously adopted by a single initiative – with no accompanying amendments, reenactments, exclusions, modifications, or other supplementary material – irrespective of whether the provision being repealed may now be viewed as containing more than one subject.

ARGUMENT

While Petitioners' proposed ballot initiative is directed to Colo. Const. art. X, §20, the issue posed in this proceeding concerns Colo. Const. art. V, §1(5.5) – and the intention to be ascribed to the voters when they adopted that constitutional provision in 1994. Specifically, in approving a "single subject" limitation upon their own constitutionally reserved power "to propose laws and amendments to the constitution and to enact or reject the same at the polls" – Colo. Const. art. V, §1(1) – should the voters be deemed to have intended to restrict their power to repeal by initiative (with no accompanying amendments or reenactments) the entirety of a provision they previously adopted by a single initiative solely because

the provision to be repealed may now be viewed as containing more than one subject? Or, as submitted here by Petitioners, and in the words of the concurring opinion in *Court v. Poole*, 916 P.2d 528, 537 (Colo. 1996) (Mullarkey, J., concurring), "[i]f the electorate can adopt such a provision in one initiative, it certainly should be empowered to repeal it in another."

Petitioners and the Title Board concur that this narrow issue has not heretofore been addressed by this Court in a context essential to a decision – *i.e.*, when a proposed full (or even partial) repeal of a provision previously adopted as a single measure was not accompanied in the same measure by affirmative amendments, re-enactments, or additional restrictions directed to selected pieces of an underlying multi-subject provision. Yet a majority of the Court has commented in dicta – specifically regarding Colo. Const. art. X, §20 – that "[i]f . . . a constitutional provision contains multiple subjects and an initiative proposes to repeal the entire underlying provision, then the initiative contains multiple subjects." *Court*, 916 P.2d at 533. As stated in their Opening Brief, Petitioners do not fault the Title Board for following this guidance, though they do respectfully request this Court to consider its application – consistent with the concurring opinion in *Court* – to a proposed initiative containing nothing more nor less than a

full repeal of a single provision previously adopted by the voters as a single measure.[1]

As submitted in Petitioners' Opening Brief at pp. 7-8, and as discussed by the concurring opinion in *Court*, it is unlikely that the voters in 1994 understood that by approving Colo. Const. art. V, §1(5.5), they were altogether foreclosing their ability simply to repeal by initiative the entirety of a provision they had previously adopted by initiative as a single measure. This is particularly the case as such an application of Colo. Const. art. V, §1(5.5) would do little or nothing to address the proclaimed objectives of the single subject requirement, *i.e.*, avoiding

[1] The Title Board cites comparable dicta from two additional opinions: *Aisenberg v. Campbell (In re Proposed Initiative 1999-2000 #104)*, 987 P.2d 249, 254 (Colo. 1999); and *In re Proposed Initiative 2001-2002 #s 43 and 45*, 46 P.3d 438, 447 (Colo. 2002) (the latter for the proposition that "an initiative proposing to *prevent the repeal* of a constitutional provision containing multiple subjects also contains multiple subjects") (emphasis added). The former, unlike the proposed initiative here, sought to repeal multiple sections of Colo. Const. art. VI, accompanied by a bevy of new amendments and reenactments addressed to multiple aspects of the operation of the judicial department. *Aisenberg*, 987 P.2d at 251-52. The latter – *In re Proposed Initiative 2001-2002 #s 43 and 45* – would have affirmatively (and a bit obliquely) *foreclosed* the people's right to repeal a specific multi-subject provision (Colo. Const. art. X, §20) – *Id.* at 447 – while concurrently eliminating the single subject requirement altogether in the context of repealing or amending other multi-subject provisions – and, incidentally, "prevent[ing] referendum petitions that reduce private property rights." The proposed initiatives at issue in the latter case were multi-subject amalgamations well described by this Court as blatant logrolling and "the epitome of a surreptitious measure." *Id.* at 447. Respectfully, these are not ideal sources to be mined for generalized dicta in the context of the present narrow issue.

the "putting together in one measure subjects having no necessary or proper connection" (an already accomplished evil that would only be *undone* through a repeal of a multi-subject provision), and preventing the promulgation of confusing or "surreptitious measures" (there is nothing confusing or surreptitious about "In the constitution of the state of Colorado, repeal section 20 of article X"). Please see Petitioners' Opening Brief at pp. 8-10.

Finally, as discussed by Petitioners at pp. 10-11 of their Opening Brief, application of Colo. Const. art. V, §1(5.5) to initiatives seeking nothing more nor less than a full unadorned repeal of a single prior measure not only enshrines multi-subject initiatives adopted prior to 1994, but will continue to enshrine new multi-subject measures – or, perhaps worse, unpredictable portions of such measures divorced from other possibly critical portions later determined not to have been "clearly expressed" in their titles – that manage to escape a timely single-subject challenge before the Title Board and this Court. This is not a reasonable interpretation of the intention of the voters in adopting Colo. Const. art. V, §1(5.5) in 1994.

CONCLUSION

Petitioners respectfully renew their request to the Court to reverse the actions of the Title Board in this case and direct the Board to set a title for Proposed Initiative 2019-2020, #3.

Respectfully submitted this 25th day of March, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of March, 2019, a true and correct copy of the foregoing was filed and served via the Court's E-filing system [or hand delivery] upon the following:

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