DATE FILED: June 3, 2019 12:56 PM

COLORADO SUPREME COURT 2 East 14th Ave. Denver, Colorado 80203	
Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2017) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2019-2020 #68 ("Establishment of Expanded Learning Opportunities Program") PETITIONERS: Juliet Sebold and Monica R. Colbert, v. RESPONDENTS: Title Board Members Ben Schler, LeeAnn Morrill, and Jason Gelender.	▲ **COURT USE ONLY** ▲
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THE TITLE BOARD'S 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 the word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 1,029 words.

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

> Under a separate heading placed before the discussion of each issue, the brief contains statements of the applicable standard of review with citation to authority, statements whether the issue was preserved, and if preserved, the precise location in the record where the issue was raised.

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/ *Grant T. Sullivan*

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The Colorado Title Board ("Board"), by and through undersigned counsel, hereby submits the following answer brief.[1]

ARGUMENT

I. The Title Board is entitled to deference in all cases, not just those where it exercises jurisdiction to set title.

At the outset, Proponents contend the Board is entitled to no deference in this case. Pet. Op. Br. 6. Proponents argue that because the single-subject requirement must be liberally construed to avoid undue restrictions on the initiative process, the Board is entitled to no deference when it finds a second subject, as here. *Id.*

Proponents' argument should be rejected because it contravenes this Court's longstanding precedent. *See, e.g.*, *In re Proposed Initiative 1996-4*, 916 P.2d 528, 532 (Colo. 1996). This Court has consistently held that it will entertain "all legitimate presumptions" in favor of the

[1] As with its opening briefs on Proposed Initiatives 2019-2020 #68, #69, #72, and #73, the Board's answer briefs in these cases are substantively identical.

Board's actions. *Id.* This deference is not cabined solely to cases where the Board finds a single subject and proceeds to set title; it extends to *all* cases, including cases like the instant one where the Board declines to set a title due to a single-subject violation. *Id.*

In *In re Proposed Initiative 1996-4*, for example, the Board found that it lacked jurisdiction to set a title because the proposed initiative violated the single-subject requirement. 916 P.2d at 530. On review, this Court affirmed. In doing so, the Court applied the same level of deferential review that it applies in all cases arising from the Board: it indulged "all legitimate presumptions in favor of the Board's actions." *Id.* at 532. Accordingly, Proponent's suggestion that the Board is not entitled to any level of deference when it finds a single-subject violation should be rejected.

II. Proponents' single-subject argument violates this Court's published and binding precedent.

Next, Proponents argue that Proposed Initiative 2019-2020 #68's ("#68's") credit-prioritization scheme is not an improper second subject but rather a mere "[i]mplementing provision." Pet. Op. Br. 7.

Proponents assert that they "must necessarily provide a means of funding" for their new expanded learning opportunities program, either "through a new tax, a direct appropriation, or, as here, a tax credit incentive." *Id.* In Proponents' view, their policy choice to make their new program revenue-neutral requires that they reduce different, unrelated tax credits. *Id.* at 9.

As discussed in the Board's opening brief, Proponents' single-subject argument should be rejected because it disregards this Court's binding precedent in a case that is almost factually indistinguishable from here. *See In re Title, Ballot Title, Submission Clause, Summary for 1997-98 #84*, 961 P.2d 456 (Colo. 1998). In *In re #84*, as here, the proponents attempted to pay for their new program (a tax cut) by mandating that the State cut spending on existing government programs. *Id.* at 460. And as in this case, the proponents' ultimate goal in *In re #84* was to implement their new program within the confines of the Taxpayer's Bill of Rights ("TABOR"). *See id.* (noting that #84's

language, "within all tax and spending limits," includes the "spending and revenue limits imposed by [TABOR]").

This Court nonetheless held that the proposed initiative violated the single-subject requirement, explaining the surprise that such an initiative may visit upon voters: "[v]oters would be surprised to learn that by voting for local tax cuts, they also had required the reduction, and possible eventual elimination, of state programs." *Id.* at 460–61; *accord In re Title, Ballot Title, and Submission Clause, Summary for 1997-98 #30*, 959 P.2d 822, 827 (Colo. 1998) (finding a single-subject violation because "voters could be enticed to vote for the measure in order to enact the tax cut while not realizing that passage of the measure would simultaneously achieve a purpose not necessarily related to a tax cut.").

If anything, #68 suffers from an even *greater* single-subject problem than *In re #84* because it contains three potential subjects, not two. Like *In re #84*, #68 includes a new state program and mandatory spending cuts to existing government programs to pay for the new

program. These two subjects are problematic enough on their own and deprive the Board of jurisdiction to set title. But #68 also adds a third impermissible subject: a credit-prioritization scheme. As the Board found, the credit-prioritization scheme is not necessarily or properly connected to the creation of a new expanded learning opportunities program. Resp. Op. Br. 9. Thus, the Board correctly applied this Court's precedents to determine that this kind of framework violates the single-subject requirement. *See In re #84*, 961 P.2d at 460–61.

Tellingly, Proponents' opening brief cites no published decision from this Court suggesting that *In re #84* is no longer good law.[2] Instead, Proponents rely solely on unpublished summary affirmance orders from this Court. Pet. Op. Br. 10 (citing Exhibits B, C, & D). But these types of summary orders, "being unpublished, do not constitute

[2] This Court has reaffirmed *In re #84*'s reasoning in multiple cases. *See, e.g.*, *In re Title and Ballot Title and Submission Clause for 2005-2006 #55*, 138 P.3d 273, 277 (Colo. 2006); *In re Title, Ballot Title and Submission Clause for 2005-2006 #74*, 136 P.3d 237, 240–41 (Colo. 2006); *In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-02 #43*, 46 P.3d 438, 443 (Colo. 2002).

the binding precedent that a published opinion" from this Court would. *People v. Meier*, 954 P.2d 1068, 1071 (Colo. 1998) (referring to private attorney censure). To the contrary, because such orders are "necessarily brief" and "do not fully reflect the facts of the particular case," they are not instructive here in determining whether the Board properly applied this Court's published precedents. *Id.*; *see also People v. Small*, 962 P.2d 258, 260 n.1 (Colo. 1998) (stating that citation of unpublished dispositions is "discouraged by this [C]ourt"); *cf.* C.A.R. 35(e) (stating that only opinions "designated for official publication" by the court of appeals must be followed as precedent).

Accordingly, because the Board correctly adhered to this Court's published single-subject case law, this Court should affirm.

CONCLUSION

For the foregoing reasons, the Court should affirm the Board's decision that #68 contains multiple subjects.

Respectfully submitted this 3rd day of June, 2019.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S ANSWER BRIEF** upon the following parties or their counsel electronically via CCEF, at Denver, Colorado, this 3rd day of June, 2019 addressed as follows:

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