SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203	DATE FILED: May 20, 2019 5:19 PM
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 2019-2020 #75 ("Establishment of Expanded Learning Opportunities Program") **Petitioner: Kenneth Nova** **v.** **Respondents: Monica R. Colbert and Juliet Sebold** **and** **Title Board: BENJAMIN SCHLER; LEEANN MORRILL; and JASON GELENDER**	▲ COURT USE ONLY ▲
Attorney for Petitioner: Mark G. Grueskin, #14621 RECHT KORNFELD, P.C. 1600 Stout Street, Suite 1400 Denver, CO 80202 Phone: 303-573-1900 Facsimile: 303-446-9400 Email: mark@rklawpc.com	**Case No. 2019SA89**
PETITIONER'S OPENING 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).

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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.

☐ 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.A.R. 32.

s/ Mark G. Grueskin
Mark G. Grueskin
Attorney for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Constitutional Provisions

STATEMENT OF THE ISSUES

Whether the Title Board erred in refusing to consider a Motion for Rehearing, filed immediately after the titles and submission clause had been set for an initiative, given the objector's compliance with the express statutory precondition for a motion for rehearing that such a motion may be filed but only "after" the titles and submission clause are set.

STATEMENT OF THE CASE

A. Statement of facts.

Monica Colbert and Juliet Sebold (hereafter "Proponents") proposed Initiative 2019-2020 #75 (hereafter "Initiative" or "#75") to create a non-school activity program, funded with state income tax credits of up to one percent (1%) of the state general fund plus all state cash funds. The Board initially refused to set a title, given its decision that the measure violates the single subject requirement. Colo. Const., art. V, § 1(5.5). When it reversed that decision, the Board set titles for the Initiative. But it refused to consider the Motion for Rehearing, filed by Kenneth Nova ("Nova") in direct response to those newly set titles. This appeal followed.

B. Statement of the Case, Course of Proceedings, and Disposition Below.

A review and comment hearing was held on the Initiative before representatives of the Offices of Legislative Council and Legal Services. Thereafter,

the Proponents submitted a final version of the Proposed Initiative to the Secretary of State for the Title Board.

A Title Board hearing was held on April 17, 2019 to establish the Proposed Initiative's single subject and set a title. The Board refused to set titles, citing the measure's single subject violations.

Proponents filed a motion for rehearing on April 24, 2019. Proponents only challenged the Board's single subject decision (a TABOR matter that is not relevant to this appeal) and the fiscal "abstract" that had been prepared for the measure (which the Board had not considered at its April 17 meeting). Proponents sought no relief whatsoever as to the wording of the title even though they were given the staff draft for the same. Neither did their motion for rehearing provide any notice about specific wording to be advocated for the title, should the single subject decision be reversed.

At the April 26 Title Board meeting, the Board changed its single subject opinion of the measure. It also, for the first time, fixed a title and a ballot title and submission clause ("titles") for the Initiative. The Board's ballot title states:

> *Shall there be a change to the Colorado revised statutes creating an expanded learning opportunities program that provides out-of-school learning experiences, such as tutoring, supplemental instruction in reading, math, science, and writing, support for students with special needs, English and foreign language programs, and arts, career, or technical education training, for any child aged 3 to 18 who is eligible to attend public school in Colorado, and, in connection therewith, creating a functionally independent agency within the department of*

education to oversee the program and select a non-profit to administer the program; allowing a 100% income tax credit, subject to specified caps, to any taxpayer who makes a contribution to the administering non-profit to fund the program; requiring the administering non-profit to provide need-based financial aid to parent-directed individual learning accounts for participating students and to select and certify providers of such experiences; and authorizing the state to annually retain and spend state revenue exceeding the state spending limit in an amount equal to the appropriation to the agency for administrative and operational expenses?

On the first business day following the setting of the titles (April 29), Nova filed his Motion for Rehearing. Proponents opposed the Board accepting that Motion at the next regular meeting of the Title Board, held only two days later on May 1. The Board agreed that it would not hear the Motion based on a partial reading of the initiative statute, looking only to a single sentence in the initiative statute, "The decision of the title board on any motion for rehearing shall be final, except as provided in subsection (2) of this section, and no further motion for rehearing may be filed or considered by the title board." C.R.S. § 1-40-107(1)(c).

SUMMARY

The Title Board mechanically applied a statute that restricts its ability to hear motions for rehearing in certain circumstances not in evidence here. As a result, the Board denied Nova the ability to raise key issues about the ballot title so as to improve it for petition signers, voters at the 2020 election, and the courts should the measure pass and require post-election interpretation.

The Board erred because it ignored two related statutory provisions dealing with ballot measures. First, the statute limits any objection to the wording of a ballot title until "after" the titles and submission clause are set. C.R.S. § 1-40-107(1)(a)(I). After all, it is impossible to object to a non-existent ballot title. Second, this Court's jurisdiction is limited to those who addressed the Board "in support of or in opposition to a motion for rehearing." C.R.S. § 1-40-107(2).

As to the first statute, Nova's motion for rehearing was filed only "after" the titles were set. The fair title arguments were not required, and could not be filed, until that had occurred. Thus, his motion was timely.

As to the second statute, the Proponents' earlier filed motion for rehearing did not address the fairness, adequacy, or misleading nature of the ballot title. No titles had been set at that point. Thus, Nova could not raise fair or accurate title concerns at Proponents' rehearing, because their motion did not address that category of issues.

The strict reading of the phrase, "no further motion for rehearing may be filed," produces absurd results and therefore need not be the interpretation that this Court gives that provision. The Board's view of that provision would mean that, even if this Court orders the Board to reset a title and it errs in doing so, that error can never be considered by motion for rehearing or by appeal to this Court. Further, the statute does not create an independent ability on the part of objectors to orally

opine without a motion for rehearing (whether filed by Proponents or by an objector) in order to critique the titles. The importance of a rehearing has been expressly acknowledged by this Court. As such, the statute cannot be read to mean that Title Board rehearings are issue spotting exercises for those in attendance rather than the culmination of review (by Board members and the parties before hearing) and adjudication (at hearing) of written objections.

Thus, the Title Board erred, and this matter should be remanded for consideration of Nova's Motion for Rehearing.

LEGAL ARGUMENT

I. Standard of review; preservation of issue(s) presented

The Court defers to the Title Board as to the latter's "exercise of its drafting authority." *Herpin v. Head*, 4 P.3d 485, 496 (Colo. 2000).

That same deference is not required where the issue presented is a matter of statutory interpretation. Where, as here, the Court reviews the Title Board's capacity to act under governing law, the Court will "review the statutes governing the Board's authority to act *de novo*." *Hayes v. Ottke*, 2013 CO 1 at ¶12, 293 P.3d 551, 554. The Court looks first to the statutory language in question, giving effect to plain language that is unambiguous. *Id.*

However, even in a *de novo* review such as this one, the courts disapprove of applications of plain statutory language if "doing so would lead to an absurd result."

LaFond v. Sweeney, 2015 CO 3 at ¶12, 343 P.3d 939, 943. This principle applies equally where ballot initiatives are at issue. "It is presumed that the General Assembly intends a just and reasonable result, and a construction which leads to an absurd result will not be followed." *McClellan v. Meyer*, 900 P.2d 24, 30 (Colo. 1995) (construing statutes providing authority for the Secretary of State to supervise all processes leading to an initiative's placement on the ballot).

The question of the Board's authority was raised in the hearing on Nova's Motion for Rehearing and is reflected in the certified Board documents provided with the Notice of Appeal. *See* Exhibit 1 to Notice of Appeal (note summarizing April 17, 2019 hearing on ballot title set on April 26, 2019, stating "Motion for Rehearing denied on the grounds that the Board lacks jurisdiction to consider it"); Transcript of May 1, 2019 Title Setting Board Meeting on Proposed Initiatives 2019-2020 #74 and #75 at pp. 5-11 (attached hereto as Exhibit 1).

II. An accurate ballot title is critically important for the electorate and the courts.

The setting of ballot titles is not a merely technical undertaking. It goes to the core of ballot initiatives. "The purpose of the title setting process is to ensure that both persons reviewing an initiative petition and the voters are fairly and succinctly advised of the import of the proposed law." *In re Initiative on Education Tax Refund*, 823 P.2d 1353, 1355 (Colo. 1991). Petition signers and the electorate rely on the ballot title for the information needed to "determine intelligently whether to support

or oppose the proposal," and this is true "whether or not they are familiar with the subject matter of a particular proposal." *In re Title, Ballot Title & Submission Clause for 2015-2016 #73*, 2016 CO 24 at ¶ 11, 369 P.3d 565, 568.

Clearly, voter understanding of the measure they are being asked to approve is central to reasoned law-making, and the title setting process is the vehicle for that voter awareness. "The titles and summary are critical to the voters' accurate understanding of a proposal. Eliminating a key feature of the initiative from the titles is a fatal defect if that omission may cause confusion and mislead voters about what the initiative actually proposes." *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #258(A)*, 4 P.3d 1094, 1099 (Colo. 2000) (emphasis added).

A Title Board rehearing is key to the assurance that voters are being provided with an appropriate summary of the measure before them, whether in the petition phase or when reviewing their ballots.

> Contrary to Respondents' suggestion, the rehearing is not simply a "procedural" hearing. Indeed, through objections raised by opponents, the Title Board's meeting on a motion for rehearing may be the only stage in the title setting process at which a detailed discussion occurs regarding whether the measure contains a single-subject, whether proponents made substantive changes after the review and comment hearing beyond those in direct response to questions or comments by the legislative council, and whether the title as initially adopted is clear and best reflects the true import of the measure. The rehearing is therefore an important part of the statutory scheme designed to implement the constitutional single-subject and clear-title requirements.

Hayes, supra, 2013 CO 1 at ¶ 25 (emphasis added). Thus, the rehearing process is not one that is to be curtailed lightly or through hyper-technical readings of the governing statute.

The ballot title is not just of use to voters; it is also significant to the courts in their post-adoption construction of a measure. It is well accepted that "a court may ascertain the intent of the voters by considering other relevant materials such as the ballot title and submission clause..." *Submission of Interrogatories on House Bill 99-1325*, 979 P.2d 549 (Colo. 1999). Thus, accuracy in the titles can have long-term impacts on the implementation of the ballot measure.

The Title Board statute is designed to achieve multiple goals. First, it provides finality and an expedited appeal process. *In the Matter of the Title, Ballot Title and Submission Clause, and Summary for Initiative 1997-1998 #62*, 961 P.2d 1077, 1080 (Colo. 1998). However, these two goals are not exclusive or even primary. "[T]he statute endeavors to balance the rights of citizens to present petitions to the voters of Colorado with the rights of the voters to be presented with clear, single-subject initiatives that are not misleading." *In re Title, Ballot Title and Submission Clause, and Summary for Initiative #1999-2000 #219*, 999 P.2d 819, 821 (Colo. 2000) (emphasis added). The Title Board lost sight of this latter set of goals and erred in so doing.

III. The Title Board disregarded a key statutory provision in considering Petitioner's motion for rehearing and thus improperly renounced jurisdiction in this matter.

A. The Board ignored the statute that specifically conditions the filing of a motion for rehearing to object to the misleading or unfair nature of a ballot title on the actual setting of a ballot title.

The Title Board received, but refused to consider, the Petitioner's Motion for Rehearing. Its ruling was based on its reading of C.R.S. § 1-40-107(1)(c) that addresses the Board's rehearing procedure, and specifically, a limitation on certain aspects of the Board's jurisdiction.

> The motion for rehearing shall be heard at the next regularly scheduled meeting of the title board; except that, if the title board is unable to complete action on all matters scheduled for that day, consideration of any motion for rehearing may be continued to the next available day, and except that, if the titles and submission clause protested were set at the last meeting in April, the motion shall be heard within forty-eight hours after the expiration of the seven-day period for the filing of such motions. The decision of the title board on any motion for rehearing shall be final, except as provided in subsection (2) of this section, and no further motion for rehearing may be filed or considered by the title board.

(Emphasis added.)

The Board erroneously ignored a provision of that same statute that sets forth an absolute precondition to the filing of a motion for rehearing. As C.R.S. § 1-40-107(1)(a)(I) clearly provides, an objection to a ballot title can only be made by means of a motion for rehearing and, if the concern is with the misleading or unfair nature of a ballot title, it can only be made *after* the Board has set titles for an initiative.

> Any person presenting an initiative petition or any registered elector who is not satisfied with a decision of the title board with respect to whether a petition contains more than a single subject pursuant to section 1-40-106.5, or who is not satisfied with the titles and submission clause provided by the title board and who claims that they are unfair or that they do not fairly express the true meaning and intent of the proposed state law or constitutional amendment may file a motion for a rehearing with the secretary of state within seven days after the decision is made or the titles and submission clause are set.

(Emphasis added.) Thus, any objection to language used in the titles is specifically conditioned upon the Board setting such titles, given that a motion for rehearing may be filed only "after" the titles and submission clause are set.

The premise underlying this statutory language seems almost too obvious to state, but it evidently bears repeating in light of the matter presented here: no person, including Nova, could object to titles that do not exist. Such a person can only do so *after* the Board has set titles. Under the statute, a motion for rehearing is filed to contest "the titles and submission clause provided by the board." *Id*. The statute's rigid timeline for filing a motion for rehearing (seven days) begins only "after the titles and summary are set." *#219*, *supra*, 999 P.2d at 821 (emphasis added); *In re Proposed Tobacco Tax*, 830 P.2d 984, 989 (Colo. 1992) (motion for rehearing must be filed "[a]fter the title, ballot title and submission clause, and summary have been fixed by the Board").[1]

[1] "After" is a clear term that, although misapplied by the Board, is not susceptible to conflicting interpretations that would have justified the Board's error. As the courts have stated:

In this regard, it is the motion for rehearing – and only such a motion – that triggers the Title Board's reconsideration of the title language adequacy and the availability of judicial review. "[B]efore a person may file a petition for review of the action of the title board, he or she must file a motion for rehearing that is overruled by the Board." *In re Ballot Title 1999-2000 # 265*, 3 P.3d 1210, 1215-16 (Colo. 2000) (emphasis added).

In its first hearing on this initiative, the Board found the Initiative to consist of multiple subjects and set no title or submission clause. *See* Exhibit 1 to Notice of Appeal (note summarizing April 17, 2019 hearing on ballot title set on April 26, 2019). Thus, given that no titles were set at the Board's April 17 meeting, there was no title language for Nova to object to within the seven-day period provided by law.

> In this context [timely filing of claim], "after" has only one meaning: "subsequent to in time or order." *Webster's Ninth New Collegiate Dictionary* 63 (1989). Other dictionaries have defined "after" almost identically: (a) "following in time or place," *Webster's Third New International Dictionary* 38 (1969); (b) "behind in place or position; following the completion of; in succession to," *Random House Webster's Collegiate Dictionary* 24 (1991); (c) "following in time, place, or order," http://dictionary.cambridge.org. We know of no definition of "after" that would ascribe to it a use meaning "preceding" an event.

*Youngs v. Indus. Claim Appeals Offic*e, 2013 COA 54 at ¶ 40, 316 P.3d 50, 56.

The Proponents' Motion for Rehearing only set forth two issues – one was a concern about the measure's single subject and the other was a concern about the fiscal abstract for the measure. Employing vague allegations, Respondents alleged in their Motion for Rehearing:

> 1. The Ballot Title Setting Board denied the setting of a title for Proposed Initiative 2019-2020 #75 on the grounds that it does not constitute a single subject. Proponents request a rehearing on that issue.
>
> 2. The Proponents are also not satisfied with the abstract prepared by the Director of Research of the Legislative Council of the General Assembly with regard to Proposed Initiative 2019-2020 #75.

Id. (Motion for Rehearing of Juliet Sebold and Monica R. Colbert) (emphasis added).

A motion for rehearing must "set forth with particularity the grounds for rehearing." C.R.S. § 1-40-107(1)(b). The Proponents' motion failed to meet this minimal standard as well as the specific tests provided in statute. A motion that alleges error based on the Board's single subject decision must "include a short and plain statement of the reasons for the claim." *Id*. And if the motion advances a fiscal abstract claim, it must "include documentation that supports a different estimate." *Id*. As is apparent from its lack of "reasons" and the lack of "documentation," Proponents' motion did neither, and the Board lacked jurisdiction to consider it.

More importantly, as is apparent from its face, Proponents' Motion for Rehearing failed to request the relief of setting a title. It did not propose that the

Board adopt, or suggest any specific changes to, the staff draft of a title that is presented to the Board as the starting point for its work. *See* Exhibit 1 to Notice of Appeal (note summarizing April 26, 2019 rehearing, when a title was set, as reflecting modifications to the "staff draft"). Thus, the Proponents' motion did not put at issue, or in any way raise, the titles' wording.

This silence is pertinent because appeal of a ballot title to this Court is expressly limited to either persons advocating the merits of a motion for rehearing or registered electors who "appeared before the title board" *and* did so "in support of or in opposition to a motion for rehearing." C.R.S. § 1-40-107(2) (emphasis added).[2] Here, Nova's complaints about the adequacy of the ballot title could not

[2] C.R.S. § 1-40-107(2) provides:

> If any person presenting or the designated representatives of the proponents of an initiative petition for which a motion for a rehearing is filed, any registered elector who filed a motion for a rehearing pursuant to subsection (1) of this section, or any other registered elector who appeared before the title board in support of or in opposition to a motion for rehearing is not satisfied with the ruling of the title board upon the motion, then the secretary of state shall furnish such person, upon request, a certified copy of the petition with the titles and submission clause of the proposed law or constitutional amendment, the abstract, or the determination whether the petition repeals in whole or in part a constitutional provision, together with a certified copy of the motion for rehearing and of the ruling thereon. If filed with the clerk of the supreme court within seven days thereafter, the matter shall be disposed of promptly, consistent with the rights of the parties, either affirming the action of the title board or reversing it, in which latter case the court shall remand it with instructions, pointing out where the title board is in error.

be heard because, on April 26, he lacked any basis to appear "in support of or in opposition to a motion for rehearing" about the title's adequacy. There was no such title for him to object to, and therefore, he filed no such motion for rehearing.

The only motion for rehearing that addressed the wording of the title was the one that Nova filed on the first business day following the Title Board rehearing. Before that time, there were no such arguments to support or oppose as to the titles' fairness or adequacy. For that reason, Nova's dissatisfaction with the titles could not be appealed to this Court until the Board did what the statute requires it to do – rule on a motion for rehearing that specifically addressed the adequacy of the ballot title's language. *Id.*

Because it was impossible for Nova to meet the statutory precondition and object to title language until the Board set a title and a motion for rehearing was filed that raised his issue(s) of concern, he fully complied with the requirements set forth in C.R.S. § 1-40-107. Thus, when it was filed, his motion for rehearing was timely, and the Board erred by rejecting that motion.

B. The statutory amendment to limit serial motions for rehearing reflects concerns expressed in at least two previous decisions of this Court.

In 2012, the General Assembly added the provision at issue here. It reflects this Court's decisions in two cases prior to that amendment to restrict the filing of a second motion for rehearing when the wording of a ballot title is successfully

challenged to the Supreme Court and the matter is returned to the Board for correction.

This Court held in *#219, supra*, that the same objector could only object once to a ballot title. But this holding was based on and was limited to the situation where an objector files a motion for rehearing at the Board, appeals to this Court, and the Court remands the matter to the Board to correct its errors in setting the title. "[W]e construe section 1-40-107 to permit an objector to bring only one motion for rehearing to challenge titles set by the Board." The Court did "not address the situation in which an objector files a motion for rehearing that raises objections that relate to the reset titles." 999 P.2d at 822. It also did not address the facts here, where the Board reversed itself on whether to set a title and then refused to accept a motion for rehearing addressing the titles' fairness and accuracy. As such, the Court limited its holding to an objector who, after Supreme Court review, raised in a second motion one or more "issues that were present in the first titles set by the Board" and thus could have been raised initially. *Id.*

The Court was more specific about this point in a later decision: "an objector may not raise in a second motion for rehearing a challenge that the objector could have raised in his first motion for rehearing." *In the Matter of the Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #215*, 3 P.3d 447, 448 (Colo. 2000). Again, it did not prohibit the filing of a motion for rehearing where, as here,

the Board refused to set the titles when first given the opportunity but changed course subsequently.

The fact that the General Assembly amended the Title Board statute to clearly prohibit the filing of serial motions for rehearing reflects its awareness of these Court decisions. "[T]he legislature is presumed to adopt a previous judicial construction when re-enacting or amending a statute does not warrant a different interpretation." *Weinstein v. Colborne Foodbotics, LLC*, 2013 CO 33, 302 P.3d 263, 267 at ¶17. The Court's focus was on the serial use of motions for rehearing by the same objector on topics that were unchanged between the filing of motions. The legislature is deemed to have adopted this same concern. "[T]he language of an amendment must be construed in the light of previous decisions by courts of last resort construing the original act, it being presumed that the legislature when adopting an amendment had in mind such judicial construction." *Industrial Comm'n v. Milka,* 410 P.2d 181, 184 (Colo. 1966).

Therefore, the statute in question must be interpreted in light of prevailing case law. The statutory provision in question took prevailing case law and gave notice of it to citizens who are authorized to initiate statutory and constitutional amendments. Thus, Nova's motion was timely and should have been heard by the Board.

C. To limit motions for rehearing on Initiative #75, as insisted by Proponents, would produce multiple absurd results.

Proponents argue for a reading of the statutory language without reference to the absurd results that could arise from that interpretation.

1. This Court will not give effect to a statutory interpretation relating to ballot initiatives that produces an absurd result.

On multiple occasions, the Court has rejected interpretations of initiative statutes that seemed to be required by the express wording of a statute but would have produced absurd results. In *Buckley v. Chilcutt*, 968 P.2d 112 (Colo. 1998), the Secretary of State received a petition, found it to be insufficient based on the random sample of signatures, and conducted the line-by-line petition review required by statute. However, the Secretary could not complete her line-by-line review within the strict thirty-day timeline provided by statute. The proponents of that measure, citing a state statute that required any petition not finally reviewed within thirty days be deemed sufficient, sued in order that their measure be place on the upcoming ballot. The district court granted that relief. *Id.* at 114-15.

This Court reversed. Finding an inconsistency between the statute that required an initiative be deemed sufficient if the Secretary had not ruled in thirty days and the statute that authorized the Secretary to place only petitions with a sufficient number of signatures on the ballot, the Court dispensed with the statute that limited time for the Secretary to act to thirty days. "Given the statutory timeframe, any time the Secretary's random sample was shown to be flawed, the

initiative would be certified to the ballot. This would create an absurd result which the legislators could not have intended." *Id.* at 118. Thus, the Court did not give effect to the literal reading of the statute, even though such a reading might have been consistent with the liberal construction typically given to foster the right of initiative. *See also McClellan*, *supra*, 900 P.2d at 30 (courts will not interpret statutes to produce absurd results; statute read to authorize Secretary to hire temporary employees as "emergency or seasonal" workers to review petition signatures in timely manner).

Thus, the Court may look to the results that will flow from Proponents' position that are inconsistent with the priorities associated with the title setting process, such as assuring voter understanding of proposed laws.

2. Proponents' approach would prohibit a registered elector from petitioning the Board to fix the very mistakes that were identified by the Supreme Court.

If the Court were to accept Proponents' approach to motions for rehearing, the Board could not correct its own error(s), based on a successful appeal of the titles.

As noted above, the Court treats as a separate scenario a second motion for rehearing when, due to an appeal of its decision, the Title Board is ordered to cure one or more titling errors but its attempted fix is misleading in its own way. The Board lacks jurisdiction "where the motion raises arguments that could have been made in the objector's first motion for rehearing" which is distinct from "the

situation in which an objector files a second motion for rehearing that raises objections relating to changes made by the Title Board when it re-set the titles." *#215, supra,* 3 P.3d at 448.

If the "no further motion for rehearing" provision is applied literally (as Proponents argue should be the case), an additional motion for rehearing would be prohibited as to this new title language, even though the Board misstates one or more key provision(s) of the measure. There is no justification for prohibiting an initiative proponent or any other registered elector from protesting, pursuant to statute, an error resulting from new title wording that raises new legal problems as to the title.

This can easily arise in those situations where the Court finds a title to be deficient because "it is so general that it does not contain sufficient information to enable voters to determine intelligently whether to support or oppose the initiative." *#73, supra*, 2016 CO 24 at ¶ 34. There, the Court was concerned with the ballot title because it did not "in any way describ[e]" the public official recall and successor procedures being altered by the initiative. *Id.*, ¶ 32. Instead, the title merely said, "specifying recall and successor election procedures for state and local elective officials." *Id.*, ¶ 6.[3]

[3] The title set in this matter for Initiative #75 makes exactly the same error. The Initiative sets specific amounts that may be diverted from state coffers annually ($50 million annually until a total of 1% of the state general fund plus all state cash funds is allocated) for this program. Proposed Section 39-22-121.5(2). The Initiative's title provides none of this detail and says only that the measure allows a 100%

Given the Board's role in drafting titles, however, the Court did not rewrite the title for the Board. *Id.*, ¶ 38 ("we return Initiative #73 to the Board for the purpose of fixing a new title that satisfies the clear title requirement"). Even where the Court finds that "the title's muddled language causes confusion," it simply will "reverse the Title Board's setting of title… and return the initiative to the Board." *In re Title, Ballot Title and Submission Clause, for Proposed Initiative 2015-2015 #156*, 2016 CO 56 at ¶¶ 15, 17, 413 P.3d 151, 153 (Colo. 2016).

In such matters, the Title Board is charged with changing the ballot titles involved. But if "no further motion for rehearing may be filed or considered by the title board," C.R.S. § 1-40-107(1)(c), the Board could not be held accountable – to itself or to this Court – for the accuracy of whatever new language it included in those titles.

This result is plainly at odds with the high priority given to having ballot titles be accurate and fair, particularly where titles already have been determined to be flawed as a matter of law. *See #258(A), supra*, 4 P.3d at 1099 (ballot titles "are critical to the voters' accurate understanding of a proposal"). It would be more than

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income tax credit, "subject to specified caps." In his motion for rehearing, Nova objected that the Board failed to describe this very clear change to the state's budget even though it was delineated in the measure and known to the Board. Even the "subject to specified caps" phrase is confusing, as it is not clear from that phrase that "caps" refers to the state's commitment rather than a cap on a single taxpayer's tax credit.

a little ironic for the Board to be prohibited from considering reasoned argument to assure it complies with this Court's order to correct a ballot title. Because under the Title Board's analysis such a motion for rehearing would be prohibited, this Court would be prohibited (wrongly) from stepping in to address the Board's new error due to the new language that it approved.

The statute was crafted to provide checks and balances on the Board's decision making. There simply is no justification for being able to correct a language error if the Board makes it early in the titling process but not to be able to make such correction if it occurs later in that same process. To say the least, the contrary argument is strained, given that the Court would have specifically ordered that corrections be made to the wording of the titles to comply with the statute's requirements.

Yet, under the analysis advanced by Proponents and the Board, those corrections could not be made because the Board's "corrected" language was not cited in the original motion for rehearing. This absurd result necessarily flows from Proponents' legal argument that there are no exceptions to the "no further motion for rehearing" language of C.R.S. § 1-40-107(1)(c). This Court is not bound by the Board's misinterpretation of the statute, one that could never have been intended by the General Assembly, and it should therefore reject that misinterpretation.

3. Proponents' approach would undermine the titling process by blocking objectors from presenting thorough motions for rehearing based on the title the Board actually fixed.

Before the Title Board, Proponents maintained that Nova was obligated to attend Proponents' rehearing and object to whatever amended title was before the Board at that time. In other words, rather than respond to a Board-approved title with a written, researched motion for rehearing, Proponents would convert Title Board rehearings into legal improv exercises.

The rehearing process was never intended to be limited to a set of off-the-cuff responses to Proponents' or the Board's changes to the ballot title which, as a matter of practice, may be proposed and discussed for the first time when the Board reverses its single subject decision, as it did here. As the Court observed in *Hayes*, *supra*, a rehearing is "the only stage" in the setting of a ballot title that allows for "a detailed discussion" of single subject compliance, the initiative's adherence to the Review and Comment process, and whether the title "is clear and best reflects the true import" of the initiative. *Id.*

For that reason, the statute requires a motion for rehearing to be in writing and to state specific objections. "A motion for rehearing must be typewritten and set forth with particularity the grounds for rehearing." C.R.S. § 1-40-107(1)(b). A typewritten document is not an oral set of questions or comments about the proponents' recast ballot title. More practically, this form of objection cannot

provide the type of legal reasoning and research that would allow the Board to review such claims prior to hearing and then do what it is required to do – correct its own mistakes wherever possible. *See In re Proposed Ballot Initiative on Parental Rights*, 913 P.2d 1127, 1130 n.3 (Colo. 1996) (Court would not consider alleged title deficiency where "petitioners failed to raise this contention in their motion for rehearing"); *In the Matter of the Proposed Initiative on Limited Gaming in Burlington*, 830 P.2d 1023, 1027 (Colo. 1992) (appeal to this Court can only be based on objections "properly raised in the motion for rehearing").

When the clarity and fairness of a ballot title are being questioned, there are a series of substantive, often complex questions that require resolution. Besides the issue of single subject compliance, the Title Board must evaluate whether:

- there will be "public confusion that might be caused by misleading titles," C.R.S. § 1-40-106(3)(b);
- the title set will "conflict" with other titles set for the same election, *id.*;
- titles provide for "the general understanding of the effect of a 'yes'/'for' or 'no'/'against' vote," *id.*;
- titles are both "brief" and "correctly and fairly express the true intent and meaning" of the initiative, *id.*;

- "a proposed constitutional amendment only repeals in whole or in part a provision of the state constitution for purposes of section 1 (4)(b) of article V of the state constitution," C.R.S. § 1-40-106(3.5); and
- the fiscal abstract is flawed because: (a) an estimate included therein is incorrect, (b) the abstract is misleading or prejudicial, or (c) the abstract does not comply with the requirements in C.R.S. § 1-40-105.5 (3). C.R.S. § 1-40-107(1)(A)(II).

Conjuring up arguments only at hearing (and then being limited to such contentions before this Court) can be inconsistent with a reasoned testing of this thorough set of ballot title requirements. This is particularly important given that such concerns are not always debates between lawyers. "Any registered elector" can file a motion for rehearing to object to the Title Board's handiwork. *See* C.R.S. § 1-40-107(2).

Because the General Assembly did not include the "no further motion for rehearing" language to pave the way for only an impromptu testing of a ballot title, Proponents' jurisdictional argument must fail.

CONCLUSION

The Board ignored key statutory provisions that condition the challenge of ballot title language on the actual existence of a ballot title.

This matter should be remanded to the Title Board for consideration of Nova's Motion for rehearing.

Respectfully submitted this 20th day of May, 2019.

/s Mark Grueskin
Mark G. Grueskin, #14621
RECHT KORNFELD, P.C.
1600 Stout Street, Suite 1400
Denver, CO 80202
Phone: 303-573-1900
Facsimile: 303-446-9400
Email: mark@rklawpc.com
ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the **PETITIONER'S OPENING BRIEF** was sent this day, May 20, 2019, via Colorado Courts Electronic Filing to Counsel for the Title Board and to Counsel for the Proponents at:

Emily Buckley
Michael Thomas Kotlarczyk
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203

Benjamin Larson
Ireland Stapleton Pryor & Pascoe, PC
717 17th Street, Suite 2800
Denver, CO 80202

/s Erin Holweger

TITLE SETTING BOARD

May 1, 2019

DATE FILED: May 20, 2019 5:19 PM

Proposed Initiatives 2019-2020 #74 and #75
"Establishment of Expanded Learning Opportunities Program"

TITLE BOARD:
Benjamin Schler, appointee of Secretary of State; Leeann Morrill, designee of Attorney General; Jason Gelender, Office of Legislative Legal Services

P R O C E E D I N G S

CHAIRMAN SCHLER: Good morning. This is a meeting of the Title Setting Board pursuant to Article 40 of Title 1 C.R.S. The time is 10:04 a.m. The date is May 1, 2019. And we're meeting in the Secretary of State's Aspen Room at 1700 Broadway, Suite 200, Denver, Colorado.

The Title Setting Board today consists of myself, Ben Schler, appointee of the Secretary of State; Leeann Morrill, to my right, a designee of the Attorney General; and Jason Gelender, to my left, a designee of the Offices of Legislative Legal Services.

Today we're meeting to consider titles -- title setting for two proposed measures, and we'll also at the top start with a couple motions for rehearing.

There are two titles for each measure. One is a statement, and the other is a statement in the form of a question. Changes adopted by the Title Board to the first in the staff draft will be considered adopted for the other.

This hearing is broadcast over the internet from the Secretary of State's website and there are public restrooms available on this floor.

When the Title Board considers a proposed initiative for the first time, the Board will follow

three steps.

First, the Board members may wish to ask questions of the proponents. This is to ensure that the Board understands the proposal.

Second, the Board will first determine if it has jurisdiction to set a title. In particular the Board must determine if the measure complies with the single-subject rule proscribed in Article 5, Section 1, sub 5.5 of the Colorado Constitution and Section 141 of 6.5 of the Colorado Revised Statutes. This is because the Board is prohibited from setting a title for a measure that contains more than one subject.

Third, if the Board determines that it has jurisdiction to set the title, the Board will use a staff draft prepared copy for discussion purposes. A copy of the discussion staff draft is on the table in the back.

Generally we will take all testimony first, and the Board will discuss and vote after all testimony has been completed. A decision is reached by two of the three members of the Title Board voting in the affirmative.

Please note that we are not concerned with the merits of any proposal here. We are only concerned with the setting of titles. Furthermore, we are not

concerned with the legal or constitutional objections to the measures, except to the extent that such objections relate to the jurisdiction of the Board to set titles or to the correctness of the titles and summaries themselves.

Okay. At this point you'll notice if you're holding an agenda that we are showing the measures for title setting at the top. We're going to go ahead and flip that around and start with the motions for rehearing.

Mr. Grueskin.

We'll start with the motion for rehearing 2019-2020 #74.

MR. GRUESKIN: Good morning, members. Mark Grueskin on behalf of Mr. Kenneth Nova, the objector, to the titles on 74 and 75.

CHAIRMAN SCHLER: And just real quick, Mr. Grueskin.

Steven, have we confirmed that both of the designated representatives are here?

MR. WARD: Counsel?

MR. LARSON: Yes, they are here.

CHAIRMAN SCHLER: Both designated representatives are here. Thank you.

MR. GRUESKIN: Thank you very much,

Mr. Chairman.

I know there was an issue late yesterday via e-mail as to whether or not the Board has accepted jurisdiction over the motion for rehearing. May I assume because you're calling these matters that you have accepted jurisdiction?

CHAIRMAN SCHLER: No. I think that the Board -- we put these on the calendar specifically to address the jurisdictional question. So I think that's where we should start.

MR. GRUESKIN: The issue that has been raised before the Board before it gets to the substance -- I believe you can and must -- is whether or not the Board has jurisdiction due to the timing of the title setting.

If I could, Mr. Chairman, just very briefly recount factually what occurred. As to initiative 74 and 75 at its last title -- at its last meeting the Title Board rejected those measures as a matter of jurisdiction. The proponents of the measure filed a motion for rehearing on two topics only as to both measures. One was single subject and the second was the accuracy of the abstract, not the title set itself. The Board met within 48 hours pursuant to statute, reheard those titles as to jurisdiction, reversed itself, and

set titles for the first time. Within 48 hours in terms of business days, Mr. Nova, through our offices, filed a motion for rehearing so that this matter could be held -- excuse me -- could be heard today and asked that it be heard today.

The objection that was made by the proponents -- and I'll let Mr. Larson, I'm sure, will give adequate voice or more than adequate voice to his legal argument -- is that the statute reads that you are incapable of considering a motion for rehearing after one motion for rehearing has been filed; specifically, 1-4-107(2) provides -- I want to be accurate as to my language, Mr. Chairman, so if you'll bear with me.

CHAIRMAN SCHLER: Sure.

MR. GRUESKIN: Oh, excuse me. It was -- it's actually 1-40-107(1)(c) provides that any motion for rehearing, the statute actually says, "The motion for rehearing shall be heard at the next regularly scheduled meeting of the Title Board except that if the Title is unable -- the Title Board is unable to complete all action on all matters scheduled for that day consideration of any motion for rehearing may be continued to the next available day and except that if the title and submission clause protested were set at the last meeting in April the motion shall be heard

within 48 hours after the expiration of the seven-day period for filing of such motions."

Let me note that that trigger was never met until April 26th based on a motion for rehearing filed on April 24th based on the lack of a setting of titles and submission clause on April 17th.

The statute continues, as you know and as Mr. Larson pointed out in an e-mail yesterday, "the decision of the Title Board on any motion for rehearing shall be final except as provided in subsection 2 of this section and no further motion for rehearing may be filed and considered by the Title Board."

In essence, the argument that is being made to you is that you lack jurisdiction because of your finding on April 17th and your reversal on April 26th, even though the last meeting of the Title Board was held on the 17th and no title was set.

Therefore, the suggestion that's being made to you here is that there can be no objection to whatever your work product was, whatever your decision was on April 26th, which necessarily flies in the face of your statutory objective and specifically I would point you to 1-40-106 which requires that the title that is set for any initiative be set with certain standards of clarity and accuracy in mind; specifically,

1-40-106(3)(b) provides that you consider the public confusion that might be caused by misleading titles and that you avoid titles for which the general understanding of a yes or no or a yes for or no against vote will be unclear. Further, you have to correctly and fairly express the true intent and meaning of the measure. And as the Supreme Court has repeatedly noted, the point of the rehearing process is to ensure that that statutory obligation has been met. If you reject jurisdiction over the motion, then it is actually impossible for you to live up to that statutory duty beyond that. In a case as -- as we pointed out in the e-mail that I imagine was referred to you, there had been attempts by earlier proponents to go through the process and then file another motion for rehearing. We cited two cases for you, Aisberg versus Campbell and Sanderson versus Henderson. In both of those cases, the Colorado Supreme Court said, in essence, there is one opportunity for an objector to file the objections. He or she does not get to come back to the Title Board if -- even when the Title Board, as in the Sanderson case had been fixed, that unless the fix went to reflected error, if there are issues that could have been raised by a timely motion for a hearing, then they had to have been filed.

I would also refer you to an earlier case. This was In Re Title, Ballot Title and Submission Clause, and Summary for Initiative #26 Concerning School Impact Fees. There the issue before the Board was whether or not the Board had jurisdiction over a measure that was in an odd numbered year over a measure that was -- could only be put before voters in an even numbered year. And the Court very clearly held that it did, that in essence you have two different sets of obligations. One as to TABOR elections and another in terms of the timing requirements of the statute as to matters that can only be put before voters at a general election in an even numbered year.

#74 and #75 are not TABOR questions. They are substantive matters that cannot be placed before voters in 2019 and, therefore, can only be placed, if they are, in fact, circulated before voters in 2020. And therefore they fall squarely within the admonition of the Court that its jurisdiction continues unabated for such measures notwithstanding the statutory time clock that is provided. And, therefore, we believe that it would be error for you to reject jurisdiction over the motions because of the substance, because of the timing, and because of the case law and the statute that clearly anticipate that you will fulfill your obligation

with regard to each and every ballot title that is set.

Thank you.

CHAIRMAN SCHLER: Any questions for Mr. Grueskin from the Board?

MR. GELENDER: I think so. Just two, actually.

The first one is you talked about this being sort of the end of the cycle. Is that -- does that actually make a difference if the same sequence of events had happened in, say, February of this year would you have the same objection?

MR. GRUESKIN: I don't know that the same issue would have been triggered in that I doubt that the proponents would have argued that you lack jurisdiction. But if your point, Mr. Gelender, is that the Board retains jurisdiction, notwithstanding --

MR. GELENDER: I think my argument is if we say you have one hearing. So we have one hearing, one rehearing. We did a hearing. We did not set a title. Now we have a rehearing, and we reversed course and set a title. Would we -- if that had happened in February instead of when it did happen, would we have been done? Would you be arguing that we should still be granting a rehearing --

MR. GRUESKIN: So the question I would

ask --

MR. GELENDER: Or a second rehearing?

MR. GRUESKIN: Right. The answer is there would be the opportunity for a second rehearing because there was no title to object to in the first instance. After you rejected jurisdiction, you do not go through the academic exercise of then also setting a title just in case you were to reverse your decision. So there was nothing for Mr. Nova to object to except to file an opposition on the non-specified ground in the motion for rehearing filed by the proponents. I remind you if you look at that motion for rehearing, it does not specify the grounds either as to single subject or as to the accuracy of the abstract. And, therefore, if we wanted to get picky about it since the statute requires that the motion for rehearing be filed with particularity, that motion for rehearing would have kept Mr. Nova from -- from fully objecting because he couldn't have possibly known prior to being -- unless he was at the hearing what to object to. But it's an easier issue to resolve than that. Because you never set a title and, therefore, this is the only way to test the accuracy and legal sufficiency of the title.

MR. GELENDER: So is it also your contention that at the April 26 rehearing Mr. Nova had filed a

motion in opposition to the motion for rehearing on the grounds, say, similar grounds to what you have here, and we consider that and nonetheless -- whichever way we ruled, set a title, would he have had his bite at the apple or would you still be here again saying that you could have a second rehearing?

MR. GRUESKIN: If Mr. Nova had appeared at the April 26 hearing and filed motion or made the arguments made there, you would have, I assume, rejected that motion because it was untimely because the motion for rehearing was required within seven days of your title setting. And, therefore, the only opportunity to make those challenges he is was after you actually set a title.

CHAIRMAN SCHLER: What about the jurisdictional component of your motion for rehearing that you filed for today? The Board took up jurisdictional questions at the initial motion -- motion for rehearing. Do you believe you get a second bite at the apple on the jurisdictional side as well?

MR. GRUESKIN: Well, I think that may be a closer question, but, again, the motion for rehearing did not specify the grounds upon which the rehearing was being granted and, therefore, there was no capacity on the part of Mr. Nova to be able to accurately, fully or

with any sort of deliberation be able to make an argument until there was the rehearing itself. So I would argue that, yes, you do have to consider particular arguments when they are raised because this motion at least is consistent with the statute. Thank you.

CHAIRMAN SCHLER: Thanks.

Mr. Larson.

MR. LARSON: Good morning. My name is Ben Larson with the law firm of Ireland Stapleton Pryor & Pascoe. I'm here this morning on behalf of the designated representatives of the proponents who we've already discussed are here today.

The crux of Mr. Grueskin's argument is that the General Assembly meant something different than what it said in the statute, and that is that the language means only that the same objector cannot file a second motion for rehearing that raises objections that could have been raised in a first motion for rehearing. But that's just simply not what the statute says.

The plain language of the statute is clear. It says -- and I quote, "the decision of the Title Board on any motion for rehearing shall be final except as provided in subsection 2 of this section." That's the appellate section. "And no further motion for rehearing

may be filed or considered by the Title Board."

Now, this provision is in no way connected to timing issues, as Mr. Gelender has correctly pointed out. I would submit that it's here because that's the end of the motion for rehearing provisions.

And Mr. Grueskin's argument at least in his e-mail filing was that the legislature was merely codifying what the Supreme Court has said about a dozen years prior in the year 2000. Those cases are from the year 2000. This was amended in 2012. Now he cites no support for this assumption that contradicts the plain language of the rule.

The assumption that he is reading into this situation also contradicts commonsense and the basic -- basic principles of statutory construction.

As I mentioned, the prior Supreme Court case from a dozen years earlier codified -- excuse me -- said that the basic rule is that the same objector can't file a second motion for rehearing. But that left open an issue. What happens if you have a different objector file a second motion for rehearing? What happens if, for example, if -- if there was a back and forth; for example, today what if you changed course on Mr. Grueskin's motion for rehearing, could I then file another motion for rehearing if you change the titles?

So that issue is left open by the Supreme Court's precedent, and the legislature seeking finality said, clearly, what it says in the statute.

Now, the principles of statutory construction that I think are important are twofold.

The first is that when the General Assembly substantively amends a statute is presumed that a change in the law was intended. Here if the legislature was simply trying to repeat what the Supreme Court had said there was no need for that provision to be added.

The second is that the General Assembly is presumed to know the judicial precedent in place on a particular subject matter on which it is legislating. So we have to assume that the General Assembly knew the Supreme Court precedent from 2000, and it's not simply going to make a new law to say the same thing that's already in place.

Now, as for the argument that allowing for only one round of motions for rehearing would be unfair, that is not accurate. The public is on notice of both the initial Title Board hearing -- It can show up then -- and the public is on notice of the motion for rehearing, and it can show up at that motion for rehearing and make arguments.

So here, for example, Mr. Grueskin was

present at the last Title Board hearing, and the Title Board deliberated and changed course on single subject, and then we moved on to set a title. Anyone can appear and make arguments as to the title and whether it's accurate. In fact, the only prejudice that could be argued is that in the case where a motion for rehearing is ruled and decided upon an objector will lose its second bite at the apple.

And that's per -- I don't really think that's much of a prejudice and that was the General Assembly weighing the need to have finality on motions for rehearing versus process. And, you know, I just find it somewhat disconcerting that we have to have our designated representatives back here for a third time so that Mr. Grueskin can, per the usual, not raise his arguments at the initial hearing and lie in the weeds and wait for a motion for rehearing to raise arguments for the first time.

Well, if there is already a motion for rehearing, you lose that strategic option. And that's it, and that's the prejudice, but that's what the General Assembly said in passing that provision. So had the General Assembly meant what Mr. Grueskin argues about, it could have very easily said that. It could have said that this is applying to motions for rehearing

by the same objector. It could have tracked the Supreme Court -- the Supreme Court's holding in the cases he cites. But they didn't do that. So in this situation I would therefore argue that the Title Board lacks jurisdiction and it should not hear the motions for rehearing on 74 and 75.

CHAIRMAN SCHLER: Any questions from the Board for Mr. Larson?

MS. MORRILL: I have one. So is it your position that it was incumbent upon Mr. Grueskin on behalf of his objector to, you know, follow the agenda and notices set, which are public, these meetings are open to the public, to see that your clients had filed a motion for rehearing when the Board determined initially at the initial hearing that it lacked jurisdiction; you filed a motion for rehearing on that? Is it your position that it was incumbent for his client to send him here to be present to watch what the Board did on the single-subject question and when it reversed itself on jurisdiction and then proceeded to engage in the process of setting a title, it was incumbent on him to object on the record, not necessarily to file a motion for rehearing but at least to make a record that he objected to the title that was set?

MR. LARSON: Yes. That is the process that

is in place. Once there's a motion for rehearing that's been filed per the statute, you need to understand that this is going to be it. This is going to be the last bite at the apple. And if you have an objection and you think that you want to have a say in what the titles say and whether there's clear title, you better show up. As our designated representatives have to show up on any motion for rehearing, you better show up and make your arguments because that's your time to be heard.

MS. MORRILL: And if he had made so, would you then be taking the position and any resulting appeal -- let's say he had done so. He had made his objections to the title, and we had, you know, overruled those and proceeded to set the title that we set, would you then be taking the position on appeal that he didn't have standing to appeal because he didn't file a formal motion for rehearing?

MR. LARSON: That's a good question. No, I would not. Because subsection 2 clearly contemplates that you can have standing to appeal if you show up and oppose a motion for rehearing.

CHAIRMAN SCHLER: Other questions for Mr. Larson?

Thank you.

MR. LARSON: Thanks.

CHAIRMAN SCHLER: Other discussion from the Board?

MR. GELENDER: No.

MS. MORRILL: So all I would add for the record is that the provision of 1-40-107 -- what is this? The numbering? One...

MR. GELENDER: (C).

MS. MORRILL: (1)(c) where it says the decision of the Title Board on any motion for rehearing shall be final, except as provided in subsection 2, which is the appeal provision, and no further motion for rehearing may be filed or considered by the Title Board." I don't know how we reconcile the -- you know, any -- the use of the word "any" which is, you know, standard interpretation of that is all motions for rehearing shall be final. I don't know how they can be final if Mr. Larson's motion for rehearing included a request that we not only find that we had jurisdiction, but then if we agreed with him and granted his motion to that extent that we also set a title. And so I think the statute assumed that our decision on both of those things if we were in the position of reversing ourselves, as charged jurisdiction and proceeding to set a title, both of those decisions have to be final coming out of that rehearing per the plain language of the

statute, and I don't know how we honor that directive -- legislative directive if we then proceed to allow additional rehearings.

MR. GELENDER: And now I will follow up on that. Also, you know, the statute, this is 1-40-107(2) where it contemplates on the appeal. Anyone who appeared before the Title Board or in support of or in opposition to a motion for rehearing. So it contemplates that that's the option. So I don't think there's a deadline where, you know, there's no title set within the seven-day limit an opponent has to file an anticipatory motion that a title might be set.

MS. MORRILL: Right.

MR. GELENDER: I mean, I think what happens and we've seen all the time is they see a motion for rehearing in this case from the proponents and oppose it, and that -- and come in and that wasn't done in this case. So I agree that we don't have jurisdiction.

Last final piece, while it's not binding, probably -- well, it isn't binding. But I took a look at the actual bill that added this statute language, House Bill 12-1313 which was not amended at all during the legislative process, so since its introduction the bill summary indicated what the bill does. So it said, makes the following changes related to the statewide

initial Title Board, and then there's a bullet point. Specifies that after the Title Board takes action on a motion for rehearing, no further motions for rehearing may be heard.

So I think the General Assembly had sort of clear notice of what it's doing, the plain language of the statute indicates that, and we don't have jurisdiction.

MS. MORRILL: And my understanding of committee testimony on the bill is consistent with that bullet point that you -- you just read.

CHAIRMAN SCHLER: Mr. Gelender, would you like to make a motion?

MR. GELENDER: Sure. I move that -- I don't even know if it's -- I guess it's -- I don't know if it's denial or just lack of jurisdiction.

I guess I'd say I move that we deny the motion for rehearing on proposed initiative 2019-20 #74 on the grounds that we lack jurisdiction to consider the motion.

MS. MORRILL: Second.

CHAIRMAN SCHLER: All those in favor say aye.

MS. MORRILL: Aye.

MR. GELENDER: Aye.

CHAIRMAN SCHLER: Aye.

That motion passes.

Mr. Grueskin, anything additional on #75?

MR. GRUESKIN: No.

CHAIRMAN SCHLER: We are now on 2019-2020 number --

MS. MORRILL: Should we deny that motion as well?

CHAIRMAN SCHLER: Yes. Yes. So I'm just --

Mr. Gelender, would you like to also make a motion on #75?

MR. GELENDER: Sure. I move the board deny the motion for rehearing on 2019-20 #75 on the ground that we lack jurisdiction to consider the motion.

MS. MORRILL: Second.

CHAIRMAN SCHLER: All those in favor say aye.

MS. MORRILL: Aye.

MR. GELENDER: Aye.

CHAIRMAN SCHLER: Aye.

That passes as well.

(End of requested transcription.)

REPORTER'S CERTIFICATE

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

I, Jennifer W. Hulac, Registered Professional Reporter and Notary Public within and for the State of Colorado, do hereby certify that this transcript was created by use of the audio recording from the Secretary of State's website.

I further certify that I am not related to, employed by, nor of counsel for any of the parties or attorneys herein, nor otherwise interested in the result of the within action.

IN WITNESS WHEREOF, I have affixed my signature and seal this 15th day of May, 2019.

JENNIFER W. HULAC
Registered Professional Reporter