

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p> <hr/> <p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p> <hr/> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2019-2020 #299 (“Petitions”)</p> <p>Petitioner: Kelly Brough</p> <p>v.</p> <p>Respondents: Mike Spalding and Chip Creager</p> <p>and</p> <p>Title Board: Theresa Conley, Jason Gelender, and David Powell</p>	<p>DATE FILED: May 20, 2020 4:55 PM</p> <p>▲ COURT USE ONLY ▲</p>
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<p align="center">PETITIONER’S ANSWER BRIEF ON PROPOSED INITIATIVE 2019-2020 #299 (“PETITIONS”)</p>	

CERTIFICATE OF COMPLIANCE

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

The brief complies with C.A.R. 28(g).

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It contains 788 words.

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s/ Thomas M. Rogers III

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SUMMARY

The Title Board erred in setting titles for #299 because the measure's treatment of the single subject requirement of current law is inconsistent and renders the measure impossible to comprehend. Because the measure cannot be understood, clear titles cannot be set, and the Title Board should have refused to do so. The Title Board's reading of this Court's precedent requiring the Board to comprehend a proposed initiative sufficiently to state its single subject clearly in the titles is too narrow. It is not sufficient, as the Board claims, for it to be able to state that the single subject of the measure concerns initiative and referendum petitions. Instead, the Board must be able to determine whether the measure would or would not repeal the single subject rule currently in the Colorado constitution, and what rule would result from the measure's passage, in order to set a title that will inform and not mislead voters. Because the answers to those questions cannot be determined, the Board should not have set titles for the measure.

LEGAL ARGUMENT

- A. The Title Board should not have set titles for #299 because the measure's treatment of the single subject requirement of current law is inconsistent and renders the measure so incomprehensible that the measure's meaning cannot be ascertained.

Initiative #299 would expressly repeal art. V, sec. 1(5.5) of the Colorado constitution, which prohibits ballot measures containing more than one subject. *See* #299, sec. 5. The measure then makes reference to “protests...to enforce the state single subject rule, **which remains in effect.**” *Id.* at sec. 1(1), *emphasis added*. It is unclear whether these two contradictory provisions would repeal the single subject rule or leave it in effect. Moreover, if the measure does leave the single subject rule in effect, it is impossible to determine what the rule would be after passage. Clearly, it would not be the single subject rule as articulated in art. V, sec. 1(5.5) of the Colorado constitution (which the measure would repeal), yet the measure offers no provision or language to replace it.

This inconsistency renders the measure so unclear that titles cannot be set. “[I]f the Board cannot comprehend a proposed initiative sufficiently to state its single subject clearly in the title, it necessarily follows that the initiative cannot be forwarded to the voters.” *In the Matter of the Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #25, supra*, at 465. The Board interprets the 1999-2000 #25 case literally, pointing out that the Board was able to determine the single subject of the measure—“concerning initiative and referendum petitions”. *The Title Board’s Opening Brief* at 15, *citing* the Record at p. 9. The Board’s reading is too narrow. In 1999-2000 #25 the Board failed to determine whether the

measure at issue there would or would not require a reduction in spending on state programs. *Id.* at 467. If the measure included such a requirement, it would constitute an impermissible second subject. Because the Board failed to make this determination, the Court reversed the Board's action to set titles for the measure. *Id.* 1999-2000 #25 stands for the proposition that if the Board does not understand a measure, it cannot possibly set titles that will inform and not mislead voters. There, the Board's failure to resolve an "ambiguity" in the measure "rendered the Board incapable of setting clear titles that would not mislead the electorate" and reversal was required. *Id.* The same circumstance is present here. An ambiguity in #299 makes it impossible to determine whether or not the measure repeals the single subject requirement or what the rule would be if the measure passes. If the Board cannot resolve this ambiguity (as Petitioner argues, it cannot), then the Board cannot set titles for #299.

Finally, the question of whether the measure would repeal the single subject rule or not is, as in 1999-2000 #25, critical to the question of whether the measure has a single subject. If the measure would, in fact, repeal the single subject rule, then #299 certainly violates the current single subject rule by mingling procedural and substantive provisions. *See In re Title, Ballot Title and Submission Clause for 2003-2004 #21, #22, #32 and #33*, 76 P.3d 460, 462 (Colo. 2003) (finding a

second subject where a measure combines procedural and substantive changes to existing law). Under the circumstances, the single subject of #299, if there is one, cannot be ascertained and the measure cannot be forwarded to the voters.

CONCLUSION

Initiative #299 is internally inconsistent and incomprehensible such that clear titles cannot be set for the measure and it cannot be forwarded to the voters. The Court should reverse the decision of the Title Board to set titles for this flawed measure.

Respectfully submitted this 20th day of May, 2020.

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CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the **PETITIONER’S ANSWER BRIEF ON PROPOSED INITIATIVE 2019-2020 #299 (“PETITIONS”)** was sent electronically via CCEF this day, May 20, 2020, to the following:

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