

COLORADO SUPREME COURT
2 East 14th Avenue
Denver CO 80203

DATE FILED: May 5, 2020

Original Proceeding Pursuant to
1-40-107 (2) C.R.S. (2019-20)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative
2019-2020 #299 (“Petitions”)

Petitioner: Kelly Brough

Case No. 2020SA 135

v.

Respondents
Donald Creager and Mike Spalding

and Title Board:

Theresa Conley, Jason Gelendar,
and David Powell,

OPENING BRIEF OF RESPONDENTS
CREAGER AND SPALDING

CERTIFICATE OF COMPLIANCE

I hereby certify this brief complies with the word limits set forth in C.A.R. 28 (g). It contains fewer than 2,000 words.

Donald Creager, co-proponent

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ARGUMENT

“Petitioner” Brough DROPPED her single subject challenge. We now face “only” a delay tactic about word choice. We lost the six months the general assembly “provided” for signers. Even if this court rules in a week, we have barely TWO months to collect “200,000 entries” on petition forms not yet seen. The constitution does not limit how long one may collect entries; its only time line is filing by three months before the election. The general assembly has also taken three weeks from the time line, a new limit on petitions. It is also unconstitutional beyond reasonable doubt. By whim, the secretary of state ignores the newer three-week statute, but not the six-month limit made to limit a fundamental right to an illegal six-month window. Why violate the constitution at all? Strike both.

Petitioner Brough mixes the board’s duty, to state clearly and briefly main features of proposed texts to proposed signers and voters, with her personal desire to stretch ballot titles to nearly all parts of a half-page text.

Proponents and board agree its duty is only the former. The board repeatedly quoted the court. The board listed too much detail. “Requirements, procedures, and deadlines” is redundant; text says “procedures” in a bold-print heading. All words in text section 1 are “**procedures.**” Sub-categories of 1), 2), and 3) are complicated; sub-categories of sub-categories are ridiculous. A 152-word title on a 467-word text is not “brief.” The board wrote c. 60 words for a prior title. A standard is 10 or more words of text per word of title, not 3-to-1.

Saying what a text does NOT require is not typical. Tell Joe Voter what #299 does. A vague phrase “all parts of the state” is not in Colorado law and not typical. Each condo is part of a state. “Change petition procedures” is adequate notice. Voters assume majority rule applies; the 55% rule has not yet applied.

Stay on general topics, not minor details of interest only to lawyers and petition historians. The issue is, “How does #299 affect Joe’s daily life or his rights?” Joe will never protest a petition, and has no interest in technicalities, legalese, or esoterica.

#299 overrides all petition laws, including county ones. #299 does not say “municipal.” #299 sets petition laws, not “municipal provisions.” #299 repeals conflicting laws; saying it also overrides municipal laws is redundant.

A proper ballot title of neutrality, brevity, and clarity would be the following:

Shall the Colorado constitution be amended concerning petitions, to allow petitioning all local governments, change petition procedures, inform voters of petitions, limit petition titles to 60 words, limit bills exempted from possible petition, change laws enacted by initiative only by another initiative, and repeal all conflicting laws?

Simple. Fair. Accurate. Brief. Natural. Neutral. Readable. A 10-to-1 ratio. Perfect.

CONCLUSION

Uphold #299 after making revisions suggested here.

Our right to petition in 2020 has slipped away. In this “emergency” time, this court has ruled, 4-to-3, the language “120 calendar days” does not mean 120 consecutive days. That benefits state power. This court should also change the calendar for filing petitions to allow 2021 elections for petitions filed 90 days before the November 2, 2021 election. That benefits citizen power.

TABOR allows any November voting on any “ballot issue,” defined as a “non-recall petition or referred measure in an election.” #299 is a non-recall petition.

This court should void any confinement order, even if passed by the general assembly, negating the last two rights in the First Amendment (assembly and petition), and stopping proponents from filing signers by August, 2021, or deny presumed validity of Article V section 1 (6) validity of entries.

This court must restore constitutional presumption of validity to entries filed under Article V section 1 (6), last sentence, and strike state challenge to review of petition entries.

The board did not allow title setting September through November 2019. The board then imposed dizzying rulings, starting December 4, 2019, to deny, deny, allow, deny, allow, deny, etc. a ballot title on what was always one subject in the state's title--"petitions."

Statutory and emergency bans have even less validity. This court must obey the highest state law's unlimited time to file signatures, if filed three months before the next state election date (November 2, 2021). This court must declare unconstitutional other statutory filing limits that add three weeks to the three-month rule, an unlawful six-month collection time limit, and executive health bans by illegal state order. We waive the 20-day Answer Brief and seek instant ruling.

Submitted May 5, 2020

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CERTIFICATE OF MAILING

I certify that I emailed this Opening Brief on May 5, 2020

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