

SUPREME COURT, STATE OF COLORADO

2 East 14th Avenue
Denver, Colorado 80203

Original Proceeding Pursuant to Colo. Rev. Stat. §
1-40-107(2), C.R.S. (2019-2020)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative 2019-
2020 #315 (“Tobacco Tax Revenue for New State
Preschool Program”)

Petitioners: ANNA JO HAYNES,

v.

Respondents: MONICA VONDRUSKA and JON
CALDARA,

and

Title Board: THERESA CONLEY, DAVID
POWELL, and JASON GELENDER.

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Supreme Court Case No.:
2020SA154

RESPONDENTS’ OPENING BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in C.A.R. 28(g) because it contains 4,198 words.

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A), because it contains under a separate heading before the discussion of the issue, as applicable, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

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.

By: /s/ Benjamin J. Larson
Benjamin J. Larson, #42540

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Respondents Monica Vondruska and Jon Caldara (“Proponents”), registered electors of the State of Colorado and the designated representatives of the proponents of Initiative 2019-2020 #315 (“Initiative #315”), through counsel, IRELAND STAPLETON PRYOR & PASCOE, PC, respectfully submit their Opening Brief in support of the title, ballot title, and submission clause (the “Title(s)”) set by the Title Board for Initiative #315.¹

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the Title Board clearly erred in finding that Initiative #315 contains a single subject when Initiative #315 funds a new preschool program by reallocating certain state revenues from tobacco and nicotine products.

2. Whether the Title Board clearly erred when the Titles first describe the new tax as required by TABOR and then indicate that Initiative #315 amends both the Colorado Constitution and Colorado statutes as required by § 1-40-106(3)(c), C.R.S.

3. Whether the Title Board clearly erred when the Titles succinctly and accurately describe that the new preschool program is funded by reallocating state revenues from tobacco and nicotine products and, for the sake of brevity, do not

¹ Objector’s caption to the Petition for Review lists Julie Pelegrin as one of the Title Board members. However, Jason Gelender, not Ms. Pelegrin, heard Initiative #315, which is reflected in the caption of Proponents’ Opening Brief.

identify each specific revenue reallocation, including the reallocation of the portion of state cigarette tax revenues that would otherwise be distributed to local governments that ban tobacco and nicotine products.

4. Whether the Title Board clearly erred when the Titles succinctly and accurately describe that tobacco and nicotine revenues are reallocated from “health-related programs” and, for the sake of brevity, do not identify all the specific health-related programs from which funds are reallocated.

STATEMENT OF CASE

I. Nature of the Case and Proceedings before the Title Board.

This is an original proceeding pursuant to section 1-40-107(2), C.R.S. of the title setting for Initiative #315. Proponents filed Initiative #315 with the Secretary of State on April 3, 2020. R., p. 2.² The Title Board, on behalf of the Secretary of State, held a title hearing on April 15, 2020, unanimously finding that Initiative #315 contains a single subject and setting the Titles. R., p. 9.

Petitioner Anna Jo Haynes (“Objector”) filed a motion for rehearing (“Motion for Rehearing”), raising three arguments as to why Initiative #315 purportedly contains more than one subject and several other arguments

² Citations to the Title Board Record are to the certified copy of the Title Board Record submitted with the Petition. Because the Title Board Record is not paginated, page number references are to the electronic page number.

concerning the Titles set by the Title Board. *See* R., pp. 10-14. The rehearing was held on April 23, 2020, at which the Title Board unanimously denied Objector's Motion for Rehearing. R., p. 16. On April 30, 2020, Objector petitioned this Court pursuant to section 1-40-107(2), C.R.S., seeking review of only one of the single subject issues and three of the clear-title issues raised before the Title Board. Petition for Review at 4.

II. Statement of Relevant Facts.

Initiative #315 is a straightforward measure that funds a new preschool program by reallocating state revenues from tobacco and nicotine products and by establishing a new vaping tax, while continuing to fund existing tobacco education, cessation, and prevention programs where needed. R., at 2, Proposed Colo. Const. art. X, § 22(1)-(4); R., at 7, Proposed § 39-28.6-101, C.R.S.³ As set forth in Initiative #315's legislative declaration, there have been significant improvements in the regulation of tobacco and nicotine products such that tobacco smoking levels are at all-time lows. R., p. 2, Proposed Colo. Const. art. X, § 22(1)-(3). Consequently, Proponents believe that the State of Colorado would be well served

³ Initiative #315 is one of two measures advanced by Proponents this cycle (along with Initiative 2019-2020 #293) that fund a new preschool program by reallocating state revenues from tobacco and nicotine products. However, Initiative #315 also establishes a new tax on tobacco-derived nicotine vapor products to fund the program. R., at 7, Proposed § 39-28.6-101, C.R.S. (establishing new vaping tax). Proponents will not advance both measures on the 2020 ballot.

by taking tobacco and nicotine tax revenues from certain existing health-related programs and devoting them to preschool programming.

To accomplish this goal, Initiative #315 amends the Colorado Constitution by adding a new section 22 in article X that directs the creation of the preschool program and reallocates existing constitutional tobacco taxes imposed by section 21 of article X. R., p. 2, Proposed Colo. Const. art. X, § 22(1)-(4). Initiative #315 also amends Colorado statutes to reallocate state revenues from other tobacco and nicotine-related sources. For instance, Initiative #315 reallocates revenues received from the state's Master Settlement Agreement with tobacco manufacturers. *See* R., pp. 3-5, Proposed C.R.S. § 24-75-1104.5(1.7).

Additionally, Initiative #315 reallocates revenues from the state's statutory tax on cigarettes. Under current law, 27.5% of the state cigarette tax is apportioned and distributed to local governments by a formula provided in the statute. § 39-22-623(1)(a)(II)(A), C.R.S. Initiative #315 reallocates the state cigarette tax revenue (known as cigarette tax rebates) that would otherwise go to local governments that enact a ban on tobacco and nicotine products by crediting those revenues to the new preschool program. R., pp. 5-6, Proposed § 39-22-623(1)(a)(II)(A), C.R.S.

As identified and described in the Initial Fiscal Impact Statement, several existing state health-related programs will be affected by the reallocation of

various tobacco and nicotine-related funding sources. R., pp. 19-20, Initial Fiscal Impact Statement at 3-4 (identifying at least ten health-related programs from which funds will be reallocated).

After careful consideration, the Title Board elected not to burden voters with lengthy and cumbersome Titles that identify all the tobacco and nicotine-related revenue sources from which funds are reallocated and the various programs affected by the reallocation.⁴ R., p. 16 (denying Objector's Motion for Rehearing). Instead, the Title Board determined that these implementing details are properly left to the Blue Book. Accordingly, the Title Board succinctly and accurately set the Titles as follows:

STATE TAXES SHALL BE INCREASED \$6,300,000 ANNUALLY BY AN AMENDMENT TO THE COLORADO CONSTITUTION AND A CHANGE TO THE COLORADO REVISED STATUTES CONCERNING A NEW PRESCHOOL PROGRAM THAT IS FUNDED WITH REVENUE GENERATED BY STATE TAXES ON TOBACCO AND NICOTINE PRODUCTS, AND, IN CONNECTION THEREWITH, REQUIRING THE STATE TO CREATE AND ADMINISTER THE NEW PRESCHOOL

⁴ The Title Board spent nearly two hours during the initial hearing and rehearing crafting the Titles for Initiative #293, from which the Titles for #315 are derived. Hearing Before Title Board on Proposed Initiative 2019-2020 #293 (April 1, 2020, available at https://csos.granicus.com/MediaPlayer.php?view_id=1&clip_id=159 (discussion at 2:18:20-3:49:45); Rehearing Before the Title Board on Proposed Initiative 2019-2020 #293 (April 15, 2020), available at https://csos.granicus.com/MediaPlayer.php?view_id=1&clip_id=165 (discussion at 2:56:58-3:14:54).

PROGRAM, WHICH MUST SUPPLEMENT EXISTING PRESCHOOL PROGRAMS AND FUNDING, AND PAYING FOR THE PROGRAM BY: 1) IMPOSING A NEW TAX ON TOBACCO-DERIVED NICOTINE VAPOR PRODUCTS; AND 2) REALLOCATING FROM CERTAIN HEALTH-RELATED PROGRAMS AND OTHER STATE PURPOSES PORTIONS OF THE EXISTING REVENUE FROM TAXES ON TOBACCO AND NICOTINE PRODUCTS AND MONEY THE STATE RECEIVES FROM TOBACCO LITIGATION SETTLEMENTS.

R., p. 15.

SUMMARY OF ARGUMENT

Objector first contends that the reallocation of state cigarette tax revenues that would otherwise go to local governments that enact a ban on tobacco and nicotine products constitutes a second subject. However, this banning reallocation provision is directly related to the new preschool program because it establishes another revenue source through the reallocation of tobacco-related tax revenues. Objector incorrectly characterizes the banning reallocation provision as a “financial penalty” in an effort to contrive a second subject. Objector’s characterization wrongly imputes to Proponents a punitive purpose—a characterization that finds no support in the record.

Objector’s remaining arguments concern whether the Title Board acted within its broad discretion in setting clear titles that are not misleading. Objector contends that the Title Board erred because the language at the beginning of the

Titles does not expressly state whether the new vaping tax is statutory or constitutional. However, whether the new tax is imposed by statute or constitution is not a central feature of the measure. Regardless, the language at the beginning of the Titles is dictated by the Colorado Constitution and statutes, and the Title Board acted well within its broad discretion in ensuring the Titles comport with Colorado law.

Objector next contends that the Title Board erred by not describing the banning reallocation provision in the Titles. However, the banning reallocation provision is not a central feature of the measure. Rather, it is an implementing provision aimed at funding the new preschool program and is simply one of several available revenue sources created by reallocating tobacco-related tax revenues. All of Initiative #315's revenue reallocation provisions, including the banning reallocation provision, are succinctly and accurately described in the Titles.

With her last clear-title argument, Objector contends that the Title Board erred because—of the various health-related programs affected by reallocation—the Titles do not identify three such programs arbitrarily handpicked by Objector. Rather than selectively identifying programs of Objector's choosing or attempting to identify all affected programs, the Title Board properly balanced clarity and brevity in developing a concise and accurate summary that unambiguously alerts

voters that state tobacco and nicotine revenues will be reallocated from existing health-related programs.

ARGUMENT

I. Initiative #315 Contains a Single Subject.

A. Standard of Review; Preservation of Issues on Appeal.

In reviewing the Title Board’s decision on single subject, the Court “employ[s] all legitimate presumptions in favor of the propriety of the Title Board’s actions.” *In re Title, Ballot Title, and Submission Clause for 2013-2014 #89*, 328 P.3d 172, 176 (Colo. 2014) (quoting *In re Title, Ballot Title, and Submission Clause for 2009-2010 #45*, 234 P.3d 642, 645 (Colo. 2010)). Consequently, the Court “liberally construe[s] the single subject requirement and ‘only overturn[s] the Title Board’s finding that an initiative contains a single subject in a clear case.’” *Id.* (quoting *In re Title, Ballot Title, and Submission Clause for 2011-2012 #3*, 274 P.3d 562, 565 (Colo. 2012); *In re Title, Ballot Title, and Submission Clause for Proposed Initiative 1996 #6*, 917 P.2d 1277, 1280 (Colo. 1996)).

In addition to this deferential standard, the Court’s review of the Title Board’s single subject decision is limited to the narrow inquiry of the “plain language of the initiative to determine whether it comports with the [single subject

requirement].” *In re 2013-2014 #89*, 328 P.3d at 176 (citing *In re 2011-2012 #3*, 274 P.3d at 565). The Court does not consider the initiative’s merits and does not review its “efficacy, construction, or future application.” *In re 2013-2014 #89*, 328 P.3d at 176 (internal quotation omitted).

With respect to preservation of this issue on appeal, Proponents agree that Objector preserved the single-subject argument concerning the banning reallocation provision.

B. All of Initiative #315’s Provisions, Including the Banning Reallocation Provision, Relate to the Reallocation of Tobacco and Nicotine-Related Revenues to Fund the New Preschool Program.

A proposed initiative comports with the single subject requirement of Article V, section 1(5.5) of the Colorado Constitution “if the initiative tends to effect or to carry out one general object or purpose.” *In 2013-2014 #89*, 328 P.3d at 177. “An initiative meets this requirement as long as the subject matter of the initiative is necessarily or properly connected. Stated differently, so long as an initiative encompasses *related* matters it does not violate the single subject requirement.” *Id.* (internal citations and quotations omitted) (emphasis in original).

Here, the single subject of Initiative #315 is the funding of a new state preschool program by reallocating state revenues generated from tobacco and nicotine products. All of Initiative #315’s provisions, including the banning

reallocation provision, relate to its single subject. The banning reallocation provision concerns what are known as “cigarette tax rebates” that local governments receive from the state for state cigarette taxes that are collected locally and remitted to the state. *See* § 39-22-623(1), C.R.S. Specifically, Colorado statute provides that 27.5% of the state cigarette tax is apportioned and redistributed to local governments by a formula provided in the statute that is based on the percentage of states sales taxes collected in the municipality as compared to total state tax sales taxes collected in the state. § 39-22-623(1)(a)(II)(A), C.R.S.

Initiative #315 provides that, if a local government enacts a ban on tobacco and nicotine products (and as a result does not collect and remit any cigarette tax revenues to the state), the portion of state cigarette tax revenues that would otherwise go to the local government are reallocated to the new preschool program. R., pp. 4-5, Proposed § 39-22-623(1)(a)(II)(A), C.R.S. This provision is therefore directly related to the new preschool program because it establishes another revenue source through the reallocation of tobacco tax revenues.

In attacking this provision as a second subject, Objector mischaracterizes this provision as a “financial penalty” rather than a funding source for the new preschool program. Petition for Review at 4. Additionally, Objector amorphously argued below that there is no “internal justification” for reallocating revenues from

banning jurisdictions and directing those revenues to the new preschool program. R., p. 22. However, the single subject inquiry does not consider the merits of a proposed initiative or review its “efficacy, construction, or future application.” *In re 2013-2014 #89*, 328 P.3d at 176. Accordingly, Objector’s speculative arguments that the banning reallocation provision is an unjustified “financial penalty” are irrelevant to the single subject inquiry and should be ignored.

Regardless, Objector’s characterizations of the banning reallocation provision are wrong. As the Title Board recognized, logical policy dictates that a local government that does not collect any state cigarette tax revenues should not expect or get a proportionate share of those tax revenues.⁵ Instead of providing banning jurisdictions a windfall on cigarette tax revenues, Initiative #315 establishes another tobacco-related revenue stream by reallocating the windfall funds to the new preschool program. Consequently, the banning reallocation is directly related to the funding of the new program and does not create a second subject.

⁵ Rehearing Before Title Board on Proposed Initiative 2019-2020 #293 (April 15, 2020, *available at* https://csos.granicus.com/MediaPlayer.php?view_id=1&clip_id=165 (discussion at 3:00:30-3:02:11) (addressing identical issue on 2019-2020 #293).

II. The Titles Succinctly and Accurately Describe Initiative #315's Central Features in a Manner that Voters Can Easily Understand.

A. Standard of Review; Preservation of Issues on Appeal.

“The Title Board is vested with considerable discretion in setting the title and the ballot title and submission clause.” *In re Title, Ballot Title & Submission Clause for 2015-2016 #156*, 2016 CO 56, ¶ 8. Accordingly, the Court “employ[s] all legitimate presumptions in favor of the propriety of the Title Board’s actions.” *Id.* Thus, the Court will “only reverse the Title Board’s decision if the titles are ‘insufficient, unfair, or misleading.’” *Id.* (quoting *In re 2013-2014 #89*, 328 P.3d at 176) To make this determination, the Court “employ[s] the general rules of statutory construction and accord[s] the language of the proposed . . . titles their plain meaning.” *Id.* The Court’s role is “not to consider the merits, efficacy, construction, or future application of a proposed initiative, but instead to determine whether the Title Board fulfilled its duty of ensuring that the [titles] meet constitutional requirements.” *Id.*

Proponents agree that the three clear-title issues raised by Objector were preserved below. Each is addressed in turn.

B. The Title Board Did Not Err in Ensuring that that the Language at the Beginning of the Titles Comports with the Colorado Constitution and Statutes. .

The Title Board’s job in setting titles is “to capture, in short form, the proposal in plain, understandable, accurate language enabling informed voter choice in pursuit of the initiative rights of Colorado citizens.” *In re Title, Ballot Title & Submission Clause for 1999-2000* #29, 972 P.2d 257, 266 (Colo. 1999). While titles must be “fair, clear, accurate, and complete,” they need not set out every detail of the initiative. *In re Title, Ballot Title & Submission Clause Summary for 2005-2006* #73, 135 P.3d 736, 740 (Colo. 2006). Rather, section 1-40-106 (3)(b), C.R.S requires that ballot titles be brief. Therefore, the Title Board “often cannot describe every feature of a proposed initiative in a title or ballot title and submission clause and simultaneously heed the mandate that such documents be concise.” *In re Title, Ballot Title & Submission Clause for 1997-98* #62, 961 P.2d 1077, 1083 (Colo. 1998).

Here, Initiative #315 establishes a new statutory tax on tobacco-derived nicotine vaping products. R., at 7, Proposed § 39-28.6-101, C.R.S. Objector contends that the Title Board erred because the language at the beginning of the Titles does not expressly state whether the new vaping tax is statutory or constitutional. Petition for Review at 4. However, the legal origin of the tax—

whether in statute or constitution—is not a central feature of the measure. *In re 2005-2006 No. 73*, 135 P.3d at 741 (rejecting clear title argument because titles need not describe every detail of a measure and the provision in question was not a central feature). Rather, the tax-related central features that matter to voters, i.e., the imposition of a new tax, what is being taxed, and the amount of the tax, are clearly and succinctly described in the Titles. R., p. 15.

Further, the language at the beginning of the Titles that Objector complains of is dictated by Colorado law. Because Initiative #315 proposes a new vaping tax, Article X, section 20 of the Colorado Constitution (“TABOR”) requires the Titles to begin with the TABOR tax-increase language. Colo. Const. art. X, § 20(3)(c) (“Ballot titles for tax increases shall begin, ‘**SHALL [STATE] TAXES BE INCREASED (first . . . full fiscal year dollar increase) ANNUALLY...?**’”) (emphasis in original). In addition, section 1-40-106(3)(c), C.R.S. requires that, “[i]n order to avoid confusion between a proposition and an amendment . . . , the title board shall describe a proposition in a ballot title as a ‘change to the Colorado Revised Statutes’ and an amendment as an ‘amendment to the Colorado constitution.’”

Here, Initiative #315 amends both the Colorado Constitution and Colorado statutes. Thus, after the TABOR language, the Title Board was required to provide

both the constitutional and statutory amendment language provided in section 1-40-106(3)(c), C.R.S. The Title Board correctly reasoned that it was more important to ensure that the Titles satisfy Colorado law than to expressly identify whether the new vaping tax is statutory or constitutional because the origin of the tax is not a central feature of the measure.⁶ This decision was well within the Title Board's broad discretion in setting ballot titles.

C. The Proposed Reallocation of Tax Revenues that Would Otherwise Be Distributed to Local Governments that Enact Bans Is Not a Central Feature.

Objector next contends that the Title Board clearly erred in not describing the banning reallocation provision in the Titles. However, this provision is not a central feature, but is instead an implementing provision aimed at preserving funding for the new preschool program. This provision is simply one of several available revenue sources created by reallocating tobacco-related tax revenues. All of Initiative #315's tax reallocation provisions, including the banning reallocation provision, are succinctly and accurately described in the Titles in the following

⁶ Rehearing Before Title Board on Proposed Initiative 2019-2020 #315 (April 23, 2020, *available at* https://csos.granicus.com/MediaPlayer.php?view_id=1&clip_id=165 (discussion at 2:43:28-2:44:24) (Board member Gelender reasoning that concerns over additional length and complexity outweighed notice considerations because legal origin of tax is not a central feature).

clause: “requiring the state to create and administer the new preschool program . . . by reallocating from certain health-related programs and other state purposes portions of the following existing revenue sources: 1) taxes on tobacco and nicotine products.” R., p. 20. If voters want to further understand precisely how Initiative #315 proposes to reallocate the web of existing tobacco-related revenues, they are free to explore that in the ballot information booklet, i.e., the Blue Book.

Accordingly, after carefully weighing brevity and clarity considerations, the Title Board correctly determined that it should not significantly lengthen the titles to describe the banning reallocation provision, particularly given that this provision would apply prospectively to future bans of tobacco and nicotine products. R., p. 5, Proposed § 39-22-623(1)(a)(II)(A), C.R.S. (reallocating cigarette tax revenue that would have been allocated to local governments “but for the adoption of a ban on or after December 31, 2021” and prohibiting the “enacting of bans” in order to qualify for distributions) (emphasis added).⁷ Moreover, the Title Board correctly reasoned that the banning reallocation provision is not a central feature because voters would not be surprised to learn that, if their local government opts to ban the

⁷ Hearing Before Title Board on Proposed Initiative 2019-2020 #293 (April 1, 2020, *available at: https://csos.granicus.com/MediaPlayer.php?view_id=1&clip_id=159* (discussion at 3:40:55-3:41:30) (board member Gelender explaining identical issue on 2019-2020 #293 that titles generally do not describe prospective features that are contingent on future action).

sale of a good that is currently taxed, the local government will forego sales tax on that good.⁸

In attempting to frame the banning reallocation provision as a central feature, Objector nevertheless continues to mischaracterize the banning reallocation provision as a “financial penalty.” Petition for Review at 4. Additionally, Objector overstates the importance of this provision by making specious arguments that any regulation of tobacco sales, such as prohibiting the sale of cigarettes from vending machines, would subject local governments to losing their revenue distributions. R., p. 12, Mot. for Rehearing at 3. The Court should reject Objector’s speculation as to the future application of Initiative #315 because such speculation cannot serve as the basis for a clear-title challenge. *In re 2015-2016 #156*, 2016 CO 56, ¶ 8. Regardless, Objector’s position on the future application of Initiative #315 is incorrect because the provision in question applies to “bans,” not to any form of regulation as Objector contended below. R., p. 5, Proposed § 39-22-623(1)(a)(II)(A), C.R.S.; R., p. 12, Mot. for Rehearing at 3.

⁸ Rehearing Before Title Board on Proposed Initiative 2019-2020 #293 (April 15, 2020, *available at https://csos.granicus.com/MediaPlayer.php?view_id=1&clip_id=165* (discussion at 3:00:30-3:02:11) (addressing identical issues on 2019-2020 #293, board member Gelender explaining that concerns over additional length and complexity outweighed notice considerations because the banning allocation provision is not a central feature).

In sum, the Title Board was well within its considerable discretion in electing not to describe the banning allocation provision in the Titles.

D. The Titles Succinctly and Fairly Describe that Initiative #315 Reallocates Revenue from Health-Related Programs.

State revenues from tobacco and nicotine-related products are used to fund various existing state health-related programs. *See R.*, pp. 18-20, Initial Fiscal Impact Statement at 2-4. While Initiative #315 continues to fund some of the existing programs that already receive funding from tobacco and nicotine-related sources, it reallocates funding from other programs in order to fund the new preschool program. *See R.*, p. 20 (identifying at least ten programs that will be affected by the reallocation of revenues to the preschool program).

At the initial hearing on Initiative #315, the Title Board deliberated at length as to how to accurately and succinctly summarize the programs from which revenues will be reallocated and the source of those funds.⁹ The Title Board developed a description that is concise and accurate, and unambiguously alerts voters that state revenues from tobacco and nicotine products will be reallocated

⁹ The Title Board spent more than an hour and a half at the initial hearing discussing and setting the titles for 2019-2020 #293, from which the Titles for Initiative #315 are derived. Hearing Before Title Board on Proposed Initiative 2019-2020 #293 (April 1, 2020, available at: https://csos.granicus.com/MediaPlayer.php?view_id=1&clip_id=159 (discussion at 2:18:20-3:49:45)).

from certain “health-related programs.” R., p. 20. As the Title Board reasoned, because several different health-related programs will be impacted, identifying each of them would be unwieldy and unnecessary. Voters can look to the Blue Book to identify the specific programs impacted, the nature of those programs, and how they will be impacted.

Objector’s proposal to identify only three specific programs handpicked by Objector was unworkable and properly rejected by the Title Board. R., pp. 12-13, Mot. for Rehearing at Argument II.B.6. Objector’s proposal fixated on one of four revenue sources addressed by Initiative #315, i.e., the tobacco settlement funds, and then arbitrarily proposed a threshold of 5% of total settlement monies to land on three programs that Objector contended were worthy of identification. *See id.* Objector’s proposal failed to consider the total budget of those programs, the percentage of their budgets that comes from tobacco settlement funds, or the availability of other sources of revenue for those programs. *See id.* In essence, Objector asked the Title Board to speculate as to the alleged “significant” effect that Initiative #315 would have on these specific programs in hopes that voters would do so too.

Objector’s proposal would paint an incomplete and inaccurate picture of the various programs and revenue sources from which Initiative #315 reallocates

funds. Accordingly, the Title Board was well within its broad discretion in determining that a succinct summary is better suited for the Titles here. The Court should reject Objector's request to identify certain handpicked programs that further Objector's political goals.

CONCLUSION

WHEREFORE, Proponents respectfully request that the Court deny the Petition and affirm the Title Board's title setting for Initiative #315.

Respectfully submitted this 15th day of May, 2020.

IRELAND STAPLETON PRYOR & PASCOE, PC

/s/ Benjamin J. Larson
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**ATTORNEYS FOR
PROPOSERS/RESPONDENTS**

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2020, a true and correct copy of the foregoing **RESPONDENTS' OPENING BRIEF** was duly filed with the Court and served via CCEF upon the following:

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