SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	DATE FILED: May 20, 2020 4:31 PM
Original Proceeding Pursuant to Colo. Rev. Stat. §1-40-107(2) Appeal from the Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2019-2020, #295 **Petitioner:** WILLIAM HUNTER RAILEY **v.** **Respondents/Proponents:** MICHAEL FIELDS and LINDSEY SINGER **and** **Ballot Title Board:** THERESA CONLY, DAVID POWELL, and JASON GELENDER	▲ **COURT USE ONLY** ▲ Supreme Court Case No.: 2020SA328
Attorneys for Respondents/Proponents**:** Suzanne Staiert, Reg. No. 23411 MAVEN LAW GROUP 1800 Glenarm Place, Suite 950 Denver, CO 80202 Phone: (303) 263-0844 Email: sstaiert@mavenlawgroup.com	

RESPONDENTS'/PROPONENTS' ANSWER BRIEF

CERTIFICATE OF COMPLIANCE

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

The brief complies with the applicable word limits set forth in C.A.R. 28(g) or 28.1(g).

It contains 1,291 words. (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

The brief complies with C.A.R. 28(b) and/or C.A.R. 28(c).

For each issue raised by the respondents, the brief contains under a separate heading before the discussion of the issue, a concise statement of whether the petitioner agrees with the respondents' statements concerning the standard of review with citation to authority 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 or 28.1, and C.A.R. 32.

/s/ Suzanne Staiert
Suzanne Staiert
Attorney for the Respondents/Proponents

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Michael Fields and Lindsey Singer ("Respondents/Proponents"), through the undersigned counsel, hereby respectfully submit this Answer Brief in support of the title, ballot title and submission clause set by the Title Board for Proposed Initiative 2019-2020 #295 (the "Initiative" or "Measure").

ARGUMENT

I. THE TITLE BOARD PROPERLY FOUND THE MEASURE CONTAINS A SINGLE SUBJECT.

The objective and purpose of Initiative 2019-2020 #295 is to require voter approval of any state enterprise if the projected or actual combined revenue from fees and surcharges is greater than $100 million within the first five years.

The crux of Petioner Railey's challenges to the single subject requirement are simply that the measure is a bad policy. First, Petitioner Railey argues that the initiative violates the single subject requirement because it will reduce state spending. As Proponents and Title Board make clear, this argument fails because effects and merits of a measure are irrelevant to a single subject review. Furthermore, as identified by Title Board member Gelender, reductions in state spending are a commonplace result of a measure or of legislation. As stated, "we do that all the time" and when increasing or decreasing appropriations, "[i]n theory money might not be available elsewhere." Audio of March 25, 2020 Hearing, at

26:02.[1] This Court has repeatedly held that "in determining whether a proposed initiative comports with the single subject requirement, [this Court] do[es] not address the merits of the proposed initiative or predict how it may be applied if adopted by the electorate." *In re Initiative for 2013-2014 #90*, 328 P.3d 155, 161(Colo. 2014) (quoting *In re Title, Ballot Title & Submission Clause for 2007-2008 #62*, 184 P.3d 52, 58 (Colo. 2008)).

Next Petitioner Railey claims the Title Board lacked jurisdiction to set a title because the initiative is "incomprehensible." Here, Petitioner Railey relies on an exchange between the Title Board and the Proponents related to the enterprise qualification of a community college. Petitioner Railey points to the question of whether a college that became qualified as an enterprise would cease to exist if voters do not vote to approve the enterprise. At the conclusion of the discussion, it was made clear that the college would still exist, but the measure would require

[1] At the April 15, 2020 Rehearing, the Petitioner, the Proponents/Respondents, and the Title Board incorporated their comments and the discussion from the March 4, 2020 Hearing and March 25, 2020 Rehearing on Initiatives #273 – 275. The initiative at issue in this case, Initiative #295, is the same as measures #273-275, except it added "from fees and surcharges" to describe the type of revenue which would trigger the voter approval requirement.

that the college no longer be exempt from Colorado's Taxpayers' Bill of Rights (TABOR)[2]. March 2, 2020 Hearing Audio at 4:00:15 - 4:03:02.

Petitioner Railey mischaracterizes the exchange at the Title Board and the tenants of TABOR in an effort to support his contention that the measure operates in a way it does not.

Enterprises are defined under Article X, Section 20 of the Colorado constitution. TABOR requires voter approval for any new tax and for the issuance of debt. *Id.* at § 20(4)(a), (b). Enterprises, as defined by TABOR, are exempt from TABOR's voter approval requirements. *See id.* at § 20(2)(b), (4). The measure would require any new or qualified state enterprise that collect fees and surcharges[3] "with projected or actual revenue" in excess of one hundred million over the first five years to be approved in a statewide general election. The measure does not impact the ability of government to operate an entity or collect a fee, it only affects its qualification as an enterprise under TABOR.

[2] TABOR, approved by voters in 1992, limits the amount of revenue the State of Colorado can retain and spend. Colo. Const. art X, § 20.

[3] Petitioner Railey's argument relies upon the measure's original language and not the amended language. The amended measure limits its effect to enterprises collecting "fees and surcharges," resulting in no impacts to tuition and grant based colleges.

Petitioner also attacks the measure by relying upon an exchange between the Title Board and Proponents regarding enterprises that go in and out of enterprise status and whether they are subject to the measure. At the end of the exchange, it was clear that such enterprises would be subject to the measure and that there are technical issues which may be left to interpretation by the legislature or courts at a future date. This Court has repeatedly held that "implementation details that are directly tied to the initiative's central focus do not constitute a separate subject". *In re 1999-2000 No. 200A,* 992 P.2d 27, 30 (Colo. 2000). Here, whether the trigger for a general election vote is called a creation, qualification or requalification is an implementation detail that does not impact whether the measure has a single subject.

Lastly, Petitioner Railey appears to argue that the measure violates the single subject requirement because it would impact enterprises which are projected to receive $100,000,000 or does receive $100,000,000 in fees or surcharges in the first five years. However, the purpose of the alternative language is to factor for an enterprise projected to collect under the limit that then exceeds the projection. In other words, the legislature cannot circumvent voter approval by simply projecting a lower number. This language is necessarily connected to the initiative's purpose.

The initiative carries out a simple and limited purpose and is therefore not contrary to the single-subject requirement.

II. THE TITLE FAIRLY ADVISES VOTERS OF THE CENTRAL FEATURES OF THE MEASURE.

Petitioner Railey complains the Title is misleading because: 1) it does not advise voters that an existing enterprise may qualify over the course of a five-year window; and 2) it does not refer to the specific required ballot language. Irrelevant to this Court's review of the Title Board's actions, Petitioner Railey also argues typical voters are not prepared to understand TABOR and the operation of enterprises. Petitioner Railey's apparent dissatisfaction with past voter decisions on taxes and TABOR is reflective of his belief the measure is bad policy and is not a tenable legal argument.

Petitioner Railey mischaracterizes the applicability of the measure. The measure does not apply to existing enterprises. It only applies to newly created or qualified enterprises after January 1, 2021. The Title does advise voters that it applies to any newly created or qualified enterprises. Petitioner appears to confuse the enterprise formation with the underlying fee or surcharge. A fee or surcharge can continue to exist without the formation of an enterprise.

Next, Petitioner argues the Title must refer to the specific ballot language. Titles need not contain every feature of the proposed measure. *In re Title, Ballot*

Title, Submission Clause, & Summary with Regard to a Proposed Petition for an Amendment to the Constitution of the State of Colo. Adding Section 2 to Article VII, 907 P.2d 586, 592 (Colo. 1995). The Title Board has considerable discretion in drafting the title. *In re 1999–2000 No. 256,* 12 P.3d 246, 255 (Colo. 2000). Unless a title is insufficient, unfair, or misleading, the Court defers to the Title Board's drafting authority. *See In re Title, Ballot Title & Submission Clause for #62,* 184 P.3d at 60.

The Title Board did in fact consider Petitioner Railey's request for additional language and rejected it because as Board Member Gelender stated the requested language reflected an implementing measure and that the risk of confusion and more words exceeded the benefit from including the language. Audio of March 25, 2020 Hearing, at 36:02. The Title as set apprises the voters fully of the central features of the measure.

CONCLUSION

Respondents/Proponents respectfully request the Court affirms the Title Board's determination that the measure satisfies the single-subject and clear title requirements.

Respectfully submitted this 20th day of May 2020.

MAVEN LAW GROUP

/s/ Suzanne Staiert
Suzanne Staiert
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CERTIFICATE OF SERVICE/MAILING

I hereby certify that on 6th day of May, 2020 a true and correct copy of the **RESPONDENTS'/PROPONENTS' ANSWER BRIEF** was served via the State of Colorado's ICCES File and Serve e-filing system, email and United States mail, postage prepaid, properly addressed to the following:

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