

<p>COLORADO SUPREME COURT 2 East 14th Ave. Denver, Colorado 80203</p> <hr/> <p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2019-2020) 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 #295 (“Voter Approval Requirement for creation of Certain Fee-Based Enterprises”)</p> <p>Petitioner: William Hunter Railey,</p> <p>v.</p> <p>Respondents: Michael Fields and Lindsey Singer,</p> <p>and</p> <p>Title Board: Theresa Conley, David Powell, and Jason Gelender.</p>	<p>^ COURT USE ONLY ^</p>
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<p>THE TITLE BOARD’S ANSWER BRIEF</p>	

CERTIFICATE OF COMPLIANCE

I 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, I certify that:

- A. The brief complies with the word limits set forth in C.A.R. 28(g) because it contains 804 words.
- B. The brief complies with C.A.R. 28(b) and C.A.R. 28(7)(a) because for each issue it contains, the Title Board's Opening Brief contains, under a separate heading, a statement of the applicable standard of review with citation to authority, statements whether the issue was preserved, and if preserved, the precise location in the record where the issue was raised.

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/ Anne M. Mangiardi

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The Colorado Title Board (“Board”), by and through undersigned counsel, hereby submits its Answer Brief.

SUMMARY OF THE ARGUMENT

Petitioner’s single subject arguments ask this Court to engage in a speculative analysis of how the initiative, if approved by Colorado voters, might apply to certain fact patterns. Such speculation is outside the scope of the Board’s role in title setting and the Court’s review here.

Petitioner’s final argument is that the title is misleading because the title does not notify voters of two elements of the measure. The title set by the Board accurately summarizes the substance of the initiative and is not misleading. The Board’s action in setting the title for #295 should be affirmed.

ARGUMENT

I. Petitioner’s single subject challenge fails because it requires this Court to speculate on potential future effects of the measure.

Petitioner’s Opening Brief recognizes that prediction of a measure’s possible future effects is beyond the role of the Board or this

Court on review of title. Petitioner maintains that the challenge here is not speculation regarding potential future effects, but “arises from a facial reading of the Initiative....” (Pet. Op. Br. p. 9.) But the factual scenario envisioned by Petitioner is just one of many impacts the measure could have, if enacted by voters.

Initiative #295 requires that any state enterprise “with projected or actual revenue” in excess of one hundred million in its first five years be submitted to the voters in a statewide general election. Record, p. 2. Petitioner assumes that future enterprises will (1) exceed this threshold; (2) not be submitted for a vote until after the threshold is exceeded; and (3) continue to operate without enterprise status until after that vote. The factual scenario envisioned by Petitioner is not inevitable. It is just as likely that future enterprises will (1) be designed to never reach the threshold; (2) be submitted to a vote in the enterprise’s first year of operation, based on a projection that the enterprise may reach the threshold within five years; or (3) cease operations from the time the enterprise approaches the threshold until

after a vote. If any of these events happen, the scenario envisioned by Petitioner would never occur.

Petitioner's single subject challenge asks the Board, and this Court, to speculate on a potential impact the initiative may have, under one of many fact scenarios. A challenge to title is not the forum to litigate this issue. *In re Title, Ballot Title, & Submission Clause for 2013-2014 #90*, 328 P.3d 155, 160 (Colo. 2014). The ballot title should be affirmed.

II. The initiative is not incomprehensible.

Petitioner's second issue presented also argues that speculative questions regarding the potential legal effects of the measure under specific fact patterns deprive the Board of jurisdiction to set title.

Questions regarding the meaning of specific terms of the initiative, and how the initiative, if passed, might work under certain circumstances, do not deprive the Board of jurisdiction to set title. To hold otherwise would go beyond the Board's role in title setting, and risk depriving the people of their constitutional rights to the initiative

process. *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 #255*, 4 P.3d 485, 492 (Colo. 2000). The Board does not lack jurisdiction to set title simply because Petitioner has identified potential questions about the legal impact of the measure. *In re 2013-2014 #90*, 328 at 160. The Board's action in setting title for #295 should be affirmed.

III. The ballot title is not misleading.

Petitioner's opening brief narrows the third issue presented to address only two items. Petitioner alleges the title is misleading because it does not include specific ballot language or explain the term "qualified." (Pet. Op. Br. pp. 1-2.) None of the two remaining elements identified by Petitioner render the ballot title misleading.

Petitioner's opening brief fails to explain how voters would be misled by exclusion of the specific ballot language required by the initiative for future enterprise elections from the title. The Board is not required to set out every detail of the measure in the title. *In re Title*,

Ballot Title, and Submission Clause for 2001-2002 #21 and #22, 44 P.3d 213, 222 (Colo. 2002).

Petitioner’s opening brief makes clear that Petitioner’s objections to the term “qualified” is really seeking to have the Board explain “by the title how this ‘qualify’ trigger works.” (Pet. Op. Br. p. 16.) But it is not the Board’s role to ascertain the measure’s efficacy, construction, or future application. *In re Title, Ballot Title, & Submission Clause for 2009-2010 #45*, 234 P.3d 642, 645 (Colo. 2010).

The title set by the Board plainly and briefly expresses the initiative’s core purpose. The ballot title should be affirmed.

CONCLUSION

For the foregoing reasons, the Court should affirm the Board’s actions in setting the title for Initiative #295.

Respectfully submitted this 20th day of May, 2020.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S ANSWER BRIEF** upon the following parties or their counsel electronically via CCEF, at Arvada, Colorado, this 20th day of May, 2020, addressed as follows:

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