

COLORADO SUPREME COURT
2 East 14 th Avenue
Denver CO 80203

DATE FILED: April 17, 2020

Original Proceeding Pursuant to
1-40-107 (2) C.R.S. (2018)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative
201902020 #245 (“Petitions”)

Petitioner: Kelly Brough

Case No. 2020SA 92

v,

Respondents Natalie Menten and
Donald Creager

and Title Board: Theresa Conley,
David Powell, and Jason Gelender

ANSWER BRIEF OF RESPONDENTS
MENTEN AND CREAGER

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 1,500 words.

Donald Creager, co-proponent

ARGUMENT..... 1-2

CONCLUSION..... 3-4

ARGUMENT

Petitioner Brough DROPPED her single subject challenge. We face only a delay tactic about word choice. We already lost the six months the general assembly “provided” to collect signatures. If this court rules in a week, we have under three months to collect 200,000 entries on petition forms not yet seen. The constitution does not limit how long one may collect signatures; the only time line is filing by three months before the election. By statute, the general assembly also illegally added three more weeks in violation of that constitutional time line, a novel restriction on petitions that should be stricken here as unconstitutional beyond a reasonable doubt. By whim, the secretary of state ignores that illegal statute, but not the other limit on collection made by statute, to limit a fundamental right to a six-month window. Why let the state violate the constitution?

Petitioner Brough mixes the title board’s duty, to state clearly and briefly main features of a proposed initiative to proposed signers and voters, with her personal desire for a ballot title that mentions nearly every part of every sentence of the half-page text.

Proponents and the title board agree its duty is the former, not the latter. The title board repeatedly quoted this court’s summary of the board’s duty. In fact, the board listed too much detail, and made one error of fact through a false misreading (below).

“Requirements, procedures, and deadlines” is redundant; the text says “procedures” in a bold-print subheading. All words in text section 1) define “procedures.” Sub-categories within 1), 2), and 3) is complicated; sub-categories of sub-categories in a half-page text is ridiculous. A 152-word title for a 467-word text is, by law, not “brief.” The average is 10 or more text words for one word of title, not 3-to-1.

Saying what a text does NOT require is not the goal of a ballot title. Tell Joe Voter what it does. The phrase “all parts of the state” is not in Colorado law and not covered here. Each home is part of the state. “Change petition procedures” is adequate notice. Again, the title should mention what #245 does, not what it does not do. Voters expect majority rule; the 55% rule has never been applied.

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

The phrase “and eliminating arguments against a petition from the ballot information booklet” is FALSE. It was inserted on rehearing at the request of Ms. Brough. #245 says NOTHING about suppressing voting information; it simply says proponents get the last word, as at trials. Their filing date is 42 days before election; opponents still get 45 days. The first duty of a ballot title is to tell the truth; that clause does not. Please delete it.

#245 overrides all home-rule petition laws in conflict, including county ones. #245 does not say “municipal.” #245 applies to petition laws, not “municipal provisions.” #245 repeals all 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 petition contents, 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. Neutral. Readable. A 10-to-1 ratio.

CONCLUSION

Uphold after making the revisions, corrections, and deletions suggested in this brief.

Our right to petition for 2020 is slipping away. In this “emergency” time, this court has ruled, 4-to-3, the constitution’s language of “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 a November 2021 election for petitions filed 90 days before the November 2, 2021 election date. That would benefit #245 citizen power.

TABOR says any November election allows voting on any “ballot issue,” defined as a “non-recall petition or referred measure in an election.” #245 is a non-recall petition.

This court should take judicial notice the governor’s illegal confinement law, not even passed by the general assembly, repeals the last two rights in the First Amendment (assembly and petition) and stops proponents from collecting 200,000 signatures by the start of August 2020.

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.”

The statutory limits have even less validity. This court should allow, as does the state constitution, unlimited time to collect signatures, provided they are filed before the new election date (November 2, 2021). This court should declare unconstitutional the other statutory limit that adds three weeks to the three-month rule, and the six-month collection time limit not in the constitution.

Submitted April 17, 2020

Natalie Menten
nmlakewood@gmail.com

Donald Creager
chip@creagermerc.com

CERTIFICATE OF MAILING

I certify that I emailed this ANSWER Brief on April 17, 2020

mike.kotlarczyk@coag.gov

mark@rklawpc.com

trey@rklawpc.com

Donald Creager