

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2019) Appeal from the Ballot Title Board</p> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2019- 2020 #245 (“Petitions”)</p> <p><b>Petitioner:</b> Kelly Brough</p> <p>v.</p> <p><b>Respondents:</b> Natalie Menten and Chip Creager,</p> <p><b>and</b></p> <p><b>Title Board:</b> Theresa Conley, David Powell, and Jason Gelender.</p>	
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<p><b>THE TITLE BOARD'S ANSWER BRIEF</b></p>	

## CERTIFICATE OF COMPLIANCE

I hereby 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:

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

It contains 845 words.

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/ Michael Kotlarczyk*

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## TABLE OF CONTENTS

SUMMARY OF ARGUMENT .....	ii
ARGUMENT .....	1
I. The title set by the Board is not unclear or misleading.....	1
A. The Board appropriately exercised its discretion in balancing the length, complexity, and clarity of the title. ....	1
B. <i>In re 2015-2016 #73</i> does not apply here because the title for #245 contains much more detail about the proposed measure.....	3
CONCLUSION.....	5

**TABLE OF AUTHORITIES**

<b>CASES</b>	<b>PAGE</b>
<i>In re Title, Ballot Title, &amp; Submission Clause for 1999-2000</i> #246(e), 8 P.3d 1194 (Colo. 2000).....	5
<i>In re Title, Ballot Title, &amp; Submission Clause for 2013-2014 #90,</i> 2014 CO 63 .....	3
<i>In re Title, Ballot Title, &amp; Submission Clause for 2015-2016 #73,</i> 2016 CO 24 .....	1, 3
<b>STATUTES</b>	
§ 1-40-107(2), C.R.S. (2019).....	2

## SUMMARY OF ARGUMENT

The Board has broad discretion to balance the “length, complexity, and clarity” of a title, and the Board appropriately exercised that discretion here. The case relied upon by Petitioner in her opening brief, *In re 2015-2016 #73*, does not apply here, because this title provides the details the Court found lacking there.

## ARGUMENT

**I. The title set by the Board is not unclear or misleading.**

**A. The Board appropriately exercised its discretion in balancing the length, complexity, and clarity of the title.**

In her motion for rehearing, Petitioner identified 13 “central features” of the measure that she said should have been listed in the title. Record, pp 6-7. But her petition to this Court raises only six of them. Petitioner presumably balanced several different considerations when determining which of her arguments to raise here. She may have

reasonably determined that raising all thirteen may actually make her overall argument less clear.<sup>1</sup>

The Board made the same kind of determinations in setting the title. During the course of a rehearing that lasted nearly two hours, the Board gave serious consideration to how to draft the best title, balancing the specificity of the measure with the statutory mandate to set brief titles. The Board made significant changes to the title during the course of the rehearing in its effort to strike the correct balance. *Compare id.* at 11 *with id.* at 4. It is notable that Petitioner thinks the Board erred on the side of too little specificity, while the Proponents believe the Board provided too much. *See Resp. Op. Br. 2-3.*<sup>2</sup>

For the reasons stated in the Board’s opening brief, the Board appropriately exercised its broad “discretion in resolving interrelated

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<sup>1</sup> A few of her arguments were also addressed by the Board during the course of the rehearing.

<sup>2</sup> To the extent the Proponents request in their briefing that the Court order changes to the Board’s title, that argument should be rejected because the Proponents did not file a petition for review in this Court. *See* § 1-40-107(2), C.R.S. (2019).

problems of length, complexity, and clarity in setting a title and ballot title and submission clause.” *In re Title, Ballot Title, & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 24. As to the six specific features discussed by Petitioner in her opening brief, the Board stands on its arguments from its opening brief.

**B. *In re 2015-2016 #73* does not apply here because the title for #245 contains much more detail about the proposed measure.**

Finally, Petitioner discusses *In re Title, Ballot Title, & Submission Clause for 2015-2016 #73*, 2016 CO 24, but that case is distinguishable on numerous grounds. There, the Court found that an 83-word title discussing changes to recall elections failed to adequately describe the measure. The Court held that “generally stating in a title that the initiative specifies recall and successor election procedures without in any way describing those procedures does not provide sufficient information to allow voters to determine intelligently whether to support or oppose the proposal.” *Id.* at ¶ 32.

The title for #245 is nearly twice as long and provides the detail the Court found lacking in *In re 2015-2016 #73*. The title for 2015-2016

#73 stated only that the measure “specif[ied] recall and successor election procedures for state and local elective officials,” without giving any indication of what those procedures included. *Id.* at ¶ 6. But the title for #245 provides much more. In pertinent part, the title states that the measure

chang[es] requirements, procedures, and deadlines for: 1) circulating petitions and qualifying petitions for the ballot, including elimination of the requirement that signatures for constitutional amendments be gathered from all parts of the state, 2) protesting petitions, including changing the venue and accelerating the protest process, and 3) informing voters of petition contents, including referring voters to pro and con websites and eliminating arguments against a petition from the ballot information booklet . . . .

Record, p 11. The title thus describes the requirements, procedures, and deadlines that would be changed. Unlike in 2015-2016 #73, this title informs voters of the effect of a yes or no vote (e.g. should signature requirements be reduced; should protest process be accelerated; should voters be directed to websites rather than the bluebook).

Petitioner thinks even more detail should have been included, such as how certain elements of the initiative would change existing law as it relates to review procedures and procedures for qualifying

measures to the ballot. But the Board “is not required to present a side-by-side proposal of the existing law and how the proposed initiative would change it. It need not touch on every aspect of a proposal. Instead, its task is to present straightforward, succinct, and nonargumentative titles and summaries.” *In re Title, Ballot Title, & Submission Clause for 1999-2000 #246(e)*, 8 P.3d 1194, 1197 (Colo. 2000). The Board did that here, and provided voters with a clear indication of the meaning of a yes or no vote on the proposed initiative.

### CONCLUSION

The Court should affirm the decisions of the Title Board.

Respectfully submitted on this 20<sup>th</sup> day of April, 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 Denver, Colorado, this 20th day of April, 2020, addressed as follows:

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